

HEARING TO ACCEPT THE REPORT OF THE VETERANS' CLAIMS ADJUDICATION COMMISSION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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WEDNESDAY, MAY 21, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The committee met, pursuant to call, at 1:50 p.m., in room 334, Cannon House Office Building, Hon. Bob Stump (chairman of the committee) presiding.

Present: Representatives Stump, Smith, Bilirakis, Spence, Everett, Buyer, Quinn, Bachus, Stearns, Moran, Cooksey, Hutchinson, Hayworth, LaHood, Evans, Kennedy, Filner, Gutierrez, Doyle, Mascara, Peterson, Reyes, Snyder, and Rodriguez.

OPENING STATEMENT OF CHAIRMAN STUMP

The CHAIRMAN. The committee will please come to order.

The purpose of today's hearing is to take testimony on the findings and the recommendations of the Veterans' Claims Adjudication Commission, Public Law 103-446, established by the committee to evaluate the VA's claims adjudication system.

There was good reason to establish this commission. Over the years claims processing has been a consistent flaw in the VA's relationship with veterans. Each year we hold oversight hearings on how VA is processing claims and hear a constant flow of complaints about every facet of VA's claims operation, including congressional caseworkers struggling with 30,000 constituent inquiries every year about problems with their VA benefits.

Check the hearing reports. In the VSO's own words, you will see that it is not just fixing the computer or making the employees do the right thing or eliminating hand-off or restructuring that is necessary. It is all of these and more.

Veterans' service organizations tell us that they collectively spend over \$50 million a year to assist veterans with their benefit claims, and we all, of course, applaud these veterans' service organizations for helping the veteran. Think what could be done with that money if these funds could be spent for scholarships, assisting the homeless, emergency family assistance, and the citizenship programs.

Activities at the Board of Veterans' Appeals and the Court of Veterans Appeals will cost taxpayers about \$47 million each year. That is \$47 million that is not available to approve benefits or open new clinics.

In my opinion, the commissioners have done a good job, and the veterans owe them a debt of gratitude. They were willing to look at the new ideas and not be bound by the past or by narrow biases.

The Strategic Management Group, VA's most senior managers, and the work groups assigned to review the Commission agreed with the majority of the Commission's recommendations and found reasons to study some of the more controversial ones.

Unfortunately, the Secretary has taken a much more reactionary approach, disagreeing with many of his own Strategic Management Group's positions. While he is entitled to his own views, it appears that he may be locked in the past.

We intend to work with the service organizations and VA to draft several bills reflecting some of the recommendations of the Commission. We plan to introduce a bill to institute a limited lump sum compensation system that would be optional, not mandatory, for those static disabilities rated at 20 percent or less. These lump sum payments would be exempt from laws requiring offsets against military retirement pay, as well as DOD severance incentives. I am sure Mr. Bilirakis will like to hear that.

Second, we should consider a bill to make it mandatory for a claimant who disagrees with the VA decision to go before a local hearing officer who would be empowered to affirm, reverse, or remand a regional office decision. That is before it is sent up to Washington and takes all of that time.

This bill will not change the functioning of the Court of Veterans Appeals.

We should also study and consider suggestions relating to pension reform, C&P claims data forms, filing simplification, separation exams, and clarifying several legal concepts, like duty to assist.

I would invite the VSOs to become part of the solution by offering suggestions on how to improve these bills. Years of stagnation have put veterans in a bind, and doing nothing is the worst we can do. It does not make any sense to waste time on hearings in which the service organizations merely list the VA's faults and provide no solutions.

I hope we can work together just as we have on health care eligibility reform.

I would now like to recognize Mr. Evans, the Ranking Member of the committee.

OPENING STATEMENT OF HON. LANE EVANS

Mr. EVANS. Thank you, Mr. Chairman.

I also want to recognize the contributions that the Commission has made to our understanding of the VA's processing of claims.

Some of the issues touched on by the report have generated considerable controversy in the veterans' community. While many of the recommendations of the Commission have been supported by the VA, several others have been rejected. I hope that the issues which have been raised will encourage all of us to think creatively about the problems which continue to arise in the handling of veterans' claims and to develop solutions which will improve the ability of the VA to serve veterans more effectively and efficiently.

Contrary to abundant rumors, I want to reassure the veterans' service organizations and the veterans of our country that our committee will not enact legislation without giving their views full consideration.

I remain very concerned, however, about the findings in the report and the testimony we heard last week concerning continued problems with the quality of claims development and decisionmaking at the regional office level. Simply reducing the amount of time to adjudicate claims will not necessarily improve the quality of VA decisionmaking. Indeed, some information needed for proper development of the claim is not within the VA's control.

The Commission's survey indicated it took an average of 210 days to process an original compensation claim from the date that the claim was received until a decision was reached. Much of this time was spent in the development of the claim.

While technological advances may assist us in expediting the handling of claims, they will not produce a better outcome unless serious attention is paid to the quality of claims development in the adjudication process.

I am especially concerned about repeated and continued reports of the VA's failure to notify veterans of the evidence needed to support their claim and to assist veterans in the development of their claims. So-called harmless errors in the development of a claim are not viewed as harmless by the veterans affected. They do not generate faith in the fairness of the system either.

I appreciate the VA's willingness to implement many of the Commission's suggestions. I also expect the VA to address the issues of adjudication quality and accountability for decisions in a more effective manner than has been evidenced so far.

As I said earlier, Mr. Chairman, I cannot stay for the hearing due to a previous commitment, but I do support the work of our committee in reviewing the Commission's recommendations.

The CHAIRMAN. Thank you, Mr. Evans.

Any others care to make an opening statement?

I am sorry. Did I overlook someone?

OPENING STATEMENT OF HON. LUIS V. GUTIERREZ

Mr. GUTIERREZ. Very quickly I just want to echo the comments of the Ranking Member, Mr. Evans, and just to say, Mr. Chairman, if we could just do something to get a report because we are processing the claims in Chicago out over in Hines. They are going to move them to somewhere in Texas. There is going to be a move somewhere in Texas, and the computers have to be up, and you know, like a 1 percent error rate is huge. It is tens of thousands of veterans not getting their checks, and they still do not have the system in place, you know, this transfer. So in the year 2000 this has got to work. So we have got to practice this in 1999, and we are halfway through 1997.

But, Mr. Chairman, if you could just do something to get us some answers in terms of making sure that computer system is on board, because if it is not, we are in deep trouble getting those claims out to everybody.

The CHAIRMAN. Mr. Gutierrez, I believe Mr. Everett's committee is going to look into that, but thank you very much. He has left the room right now.

Anyone else? Mr. Quinn.

OPENING STATEMENT OF HON. JACK QUINN

Mr. QUINN. Mr. Chairman, thanks very much.

I would like to associate myself with your remarks and the remarks of Mr. Evans. Now the committee, the department, and the VSOs, I think, have an historic opportunity to improve the system. As you know, Mr. Chairman, the subcommittee with Mr. Filner's leadership has begun a series of hearings on the various benefits programs that are implementing the Government Performance and Results Act. Many of the members are here today and Mr. Rodriguez joined us last week before he was officially a member of the committee, and we appreciate his interest, to find ways where Congress can work together to determine some of those outcomes and those ways in which we can help.

The Results Act is designed to sort of force/influence, or encourage the agencies and the Congress to work together, and I think that that is where we are going to find any success that we have.

I am very interested, as the entire subcommittee is, and grateful to you calling today's hearing.

Thank you, Mr. Chairman.

The CHAIRMAN. Any others?

Mr. BILIRAKIS. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Bilirakis.

OPENING STATEMENT OF HON. MICHAEL BILIRAKIS

Mr. BILIRAKIS. I was going to withhold, but I guess maybe very, very briefly. I do have a full statement I would like to have put in the record.

The CHAIRMAN. Without objection.

Mr. BILIRAKIS. Mr. Chairman, two Congresses ago I served as the Ranking Minority Member of the Compensation, Pension and Insurance Subcommittee, and Representative Slattery at the time was the chairman, and we really focused on this problem.

We went downtown and spent an awful lot of time on it, and then, of course, our terms are only 2 years, and you move on, and then there are interruptions, and you said it very well when you referred to the fact that the veterans' service organizations spend millions of dollars and devote countless hours, and the post service officers who never get any credit put in so much more time, too, and yet progress does not seem to be made.

It is just very hard, I think, for all of us, and we are all sort of doers or we would not be in Congress, to accept the fact that no matter what we do, it just does not seem to be helping all that much. I just hope we can come up with some sort of an imaginative way to maybe focus on this and not tie it into our terms or our time on the committee, but so that there will be a continuation of thinking, you know, rather than an interruption every darn time we change committees or we retire, whatever the case may be.

I do not know. I wish I had the answer. We do not have the answer, but we keep looking for it.

The CHAIRMAN. Perhaps we can find it.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Any others? (No response.)

The CHAIRMAN. If not, Mr. William LaVere, a member of the Veterans' Claims Adjudication Commission, if you would care to come up, please.

We are going to have votes this afternoon. We have five panels. We would like to expedite this as rapidly as possible. We are not trying to cut you off, but, sir, if you could limit your remarks to 5 minutes, it would be appreciated. Your entire statement will be included as part of the record, and if you care to introduce Mr. Kehrer or perhaps I might as well do it. Mr. Darryl Kehrer, the Executive Director of the Commission. We welcome both of you.

Mr. LaVere, you can proceed in any way you want.

STATEMENT OF WILLIAM LAVERE, MEMBER, VETERANS' CLAIMS ADJUDICATION COMMISSION; ACCOMPANIED BY DARRYL KEHRER, EXECUTIVE DIRECTOR

Mr. LAVERE. Could I have a brief opening statement?

The CHAIRMAN. Please proceed.

Mr. LAVERE. Good afternoon, Mr. Chairman and members of the committee.

Mr. Chairman, I very much appreciate the opportunity to testify before the committee on behalf of the Veterans' Claims Adjudication Commission. Unfortunately, our Chairman, Mr. Melidosian, is out of the country and is unavailable to testify. Mr. Melidosian would very much want to be here, but his absence gives me the opportunity to say a few things about him that he would be too modest to say about himself.

Our chairman is a remarkable man. This committee is well aware of his extensive background, but for me the experience of working closely with him was nothing less than a revelation. Over the course of the Commission's work, I was constantly amazed at the breadth and depth of the man's talents. His intellectual capabilities are unique, as are his managerial, leadership, and social skills.

It all adds up to a rare combination of talents in one individual. I can assure you that all of our chairman's talents were needed to produce the Commission's report. He led us; he directed us; he kept us on track; and he single handedly fashioned the maximum cohesiveness from a diverse group.

But perhaps most importantly, whatever new insights are in the report, and I believe there are many, are the products of his probing, insightful mind. I can honestly say of our chairman that rarely, if ever, has one person accomplished so much with so little.

As the spokesperson for the Commission, I would be remiss if I did not also pay public tribute to the work of the Commission's staff, adroitly led by its Executive Director. I wish that all those who are so quick to criticize our civil servants could have seen first hand how the staff accomplished a monumental job. They combined exceptional knowledge and abilities with extraordinary dedication and enthusiasm. It goes without saying that the Commission's re-

port would not have been possible without them, and the Commission is deeply grateful for their efforts.

The Commission's report has been out for 5 months, and I am sure that by now all interested parties have gone over it with a fine-toothed comb. Therefore, it would be superfluous for me to summarize it no matter how concisely.

However, I would like to take this opportunity to make some general observations about the Commission's work. The report is the successor to a long series of reports about the VA system. I think that it contains a number of conclusions and recommendations that should be helpful to Congress and the VA in improving the claims processing system.

However, as with other reports, while adoption of its recommendations will result in incremental improvements to the system, there is no magic bullet. What is perhaps unique about this report, however, is that it includes a wealth of new data that should provide new tools and new insights to those involved in ongoing efforts to improve the VA's claims processing system.

The intent of the Commission was to examine the claims processing system as thoroughly as possible in order to develop the data that would enable the VA to better manage what it has been asked to do by Congress. If these data led to conclusions and recommendations the Commission could adopt unanimously or with a solid majority, so much the better.

It is important to note, however, that the Commission was well aware of its limitations in terms of its expertise, time, and resources. This is the reason why much of the material in the report includes data and analyses in areas that were natural adjuncts to the Commission's basic inquiries, but which are unaccompanied by specific recommendations. Simply put, specific recommendations in these areas were beyond the scope of the Commission to make and, in any event, would have been premature.

The Commission believes, however, that these data and analyses are a good starting point and that they will be valuable to Congress and the VA who do have the expertise, time, and resources to develop them fully. Only then will definitive recommendations in these areas be possible or appropriate.

I also want to emphasize that the Commission had no pre-conceived agenda if for no other reason than it was too diverse in make-up to have one. The Commission developed original data for the purpose of getting an accurate picture of the extent and nature of the claims work load the VA is required to process. The data developed are neutral in the sense that they merely describe what is, but what is, of course, has great significance for managing current work loads and projecting future work loads.

It is significant, for example, that repeat or reopened claims outnumber original compensation claims by a ratio of nearly three to one; that of the new accessions to the compensation rolls in 1995, veterans had an average of 2.7 disabilities; that only 16 diagnostic codes out of more than 700 accounted for almost 50 percent of those disabilities; and that 86 percent of the total number of disabilities were rated 0 or 10 percent.

It is also significant that as the Commission's year 2015 model projections indicate, based on what now is, it is very unlikely that VA's claims workload will decrease in the future.

During the course of the Commission's work, we frequently received comments to the effect that our task was difficult and unenviable. It was difficult to be sure, but our acknowledged limitations insulated us from the truly difficult tasks of actual strategic management and the policy and decisionmaking it entails.

The Commission's report, however, is not without controversy as the dissents of individual commissioners to Commission findings, conclusions, and recommendations clearly demonstrate. Indeed, if it were, it would not be worth much, but in the end, I think the Commission's report represents a comprehensive piece of staff work that can be used by Congress and VA for the complex and difficult tasks of improving program, policy and decisionmaking, and strategically managing current and future claims workloads more effectively.

In conclusion, I would like to say that the Commission is gratified to learn that its report has already been put to use by the NAPA panel. On behalf of the Commission, I thank Chairman Socolar for his kind comments on the Commission's report.

That concludes my statement, and I would be happy to answer questions if I can.

[The prepared statement of Mr. LaVere appears on p. 36.]

The CHAIRMAN. Thank you, Mr. LaVere. I am sure there will be some.

I have a question. Let me ask you, in reviewing the testimony of some of the veterans' service organizations, the statements were made that the Commission may have exceeded its mandate. How would you respond to that?

Mr. LAVERE. Well, I do not think we exceeded our mandate at all. I do not think we even approached the mandate that we were given by Congress, and the reason for that was primarily our lack of resources and the time.

The other thing I think that is very important and that the chairman has emphasized so much in the past is that the make-up of the Commission was not a group of in-house experts. It was purposely designed to have a diversity of professions and views, and when you have this kind of diversity, people are going to ask very obvious questions, like what is really going into the system.

I think the best example is probably with Mr. Merritt from the insurance industry, where as a routine matter they settle claims in an entirely different way than the VA system, and he would like to know if there were any characteristics that were different or any similar that you could use for an approach for an alternative type of payment system.

But the data that we developed is simply what was in the actual VA database, but it was in terms of more explicitly finding out who was in the system, why are they in the system, what can we expect in the future based on what is in there now.

The CHAIRMAN. Thank you.

Let me ask you one more question, and then I will yield. Were the report's examples regarding lump sum payments intended to

recommended specific methods of payment or were they just merely food for thought?

Mr. LAVERE. The latter, food for thought.

The CHAIRMAN. Food for thought. No specific recommendations?

Mr. LAVERE. No.

The CHAIRMAN. I thank you, sir.

Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman.

The Commission devoted a significant amount of time to the analysis of repeat claims. What relationship, if any, did you identify between the repeat claims and VA's failure to advise claimants of the evidence necessary to decide a claim or the evidence a claimant may submit to assist the development of a claim?

Was VA less likely to assist persons rated from 0 to 10 percent who file repeated claims?

Mr. LAVERE. No, I do not think there was anything of that nature that we identified, but the distinction is the original compensation claims, at least the initiatives that are now underway with the separation medical examinations and the extended efforts to advise the separating veterans of their potential rights to VA benefits, that that part of the process we were very impressed with, with what was going on within the VA.

Now if all of that work, you should have a completely adequate record to decide original compensation claims at the time the veteran is separated, but when you get into the reopened and repeat claims, there is not that kind of process just because of the very nature of it, that a veteran wants to have his case reopened or he is filing for an increased rating.

But in those kinds of situations, we think that there could be a much easier and rational way of developing a record that was focused on actually what had to be proven, and there, I think, is where the current process is somewhat deficient.

But here, again, I think that the VA at this level is addressing this particular issue very well with the BPR. The Commission was very impressed with the direction that the BPR and the VA is going in that direction. I think it just has to if it works anywhere near according to plan result in better developed records more quickly.

The CHAIRMAN. Pull the microphone just a little closer to you, please. I think the people in the back of the room may be having a little trouble hearing you.

Mr. MASCARA. I have heard over the past 3 years the great strides that have been made in reducing the number of days it takes to adjudicate a claim, and I have heard all kinds of numbers, 165 to 100 to 200 and some to 160-something.

In dealing recently with the claim for the Gulf War Syndrome or undiagnosed illnesses, I note the difference between what happened in Phoenix and what happened in Philadelphia, and Phoenix really performed well, and I am beginning to wonder whether or not the people who are in charge of those locations in the region or area, wherever it might be, that, on the one hand, Phoenix did well and Philadelphia did not. Are people trained, some kind of standard training, how to deal with employees who work for the VA who are adjudicating claims?

I just get the sense that if the Director has some kind of mindset, and I read in your testimony Mr. LaVere where people are making claims that are 50 years old, that somehow because of the number of years that have gone by since the individual served in the United States military, that there is a mindset that we should not look at these very closely and we should not give them the same kinds of consideration that you would otherwise.

Mr. LAVERE. So what is the—

Mr. MASCARA. Well, the question is: do you have standardized training? Is there less personnel today than there was years ago working on adjudicating claims?

Instead of all of us sitting here and being very kind to each other, someone should admit, well, we do not have enough people and that is the reason, or we do not do training. We do not standardize training or directors in these different regional offices who will counsel with the people who work for them who have the responsibility of providing adjudication for a claim.

I am asking you what is going on out there. I have heard enough now over the past 2 years and 5 months I am beginning to wonder if we are all being very kind to each other and not really getting to the source of the problem.

Do you need more people? Do you have less people now than you had 2 years ago or 5 years ago?

Mr. LAVERE. Well, you know, I am not with the VA, but all I can give you in terms of the training and the quality of the adjudication is anecdotal evidence, and I personally was very impressed with the adjudication officer group. I thought they were very knowledgeable and very dedicated, and they were credible. They were very credible to me in terms of what they liked to do, what they could do, what direction they thought should be taken by the VA in the adjudication system.

One thing that struck me is that I had been under the impression from prior budget matters and things of that nature that the experience of the adjudicators in the VA was a very short experience. A lot of employees, adjudicators, have retired, and they had not filled the gap with training.

The adjudication officers dispelled me of that notion. They said that the adjudicators that they have now are better than they have been in a long, long time, and I also think that the VA has made great strides in terms of their training efforts. I do not in any way question their good faith.

Now, why some regional offices perform better than others, that is something I just cannot address. Of course, that would be part of a strategic management focus.

The CHAIRMAN. Mr. Bilirakis.

Mr. BILIRAKIS. Well, thank you, Mr. Chairman.

I think we are all grateful for the report and for the time that you all put into it. It all helps, I suppose.

In my opening statement, a portion I did not refer to in my oral remarks, I say that some of the service organizations express alarm, if you will, with some of your findings, and I guess I would ask the flat out question: did the Commission recommend in any way that veterans not be compensated for their service connected disabilities or that the pension system be abolished?

Mr. LAVERE. No.

Mr. BILIRAKIS. All right. Do you want to expand upon that? Why might they, the veterans' organizations, come to the conclusion that that is really what you meant or recommended?

Mr. LAVERE. I have no idea.

Mr. BILIRAKIS. Well, you talked about simplifying the pension system.

Mr. LAVERE. Right. There are a series of options. I may say that that is so complicated that I do not know how in God's name we could have possibly had this kind of result. The Commission's inquiry in that area, of course, we had statements from the Social Security Administration with the SSI program.

Mr. BILIRAKIS. Yes.

Mr. LAVERE. And if there was some way that we could balance the two, if they were just duplicating various functions, why have the duplication?

But as we got into it more and more and more, the differences were so great that there were only certain aspects that you could actually address, but in no instance had anyone even thought of eliminating them.

Mr. BILIRAKIS. Actually eliminating them.

Mr. LAVERE. It just never entered anybody's mind. This was to see if it could be consolidated into a more functional delivery system.

Mr. BILIRAKIS. You apparently tried to address in a pro and con manner the idea of lump sum payments at the lower disability levels. Do you want to expand upon that in any way whatsoever?

Do you personally, based on your experience through all of this process, and I know that there are four pros and four cons listed here in your booklet, but do you personally think there might be merit to something like that?

Of course, staff may have already gone through this, but that is a question that we will ask the veterans, too, when they come up.

Mr. LAVERE. Personally I do. I think there would be considerable merit to it, and certainly as an option.

Mr. BILIRAKIS. As an option?

Mr. LAVERE. Yes.

Mr. BILIRAKIS. Any way you look at it, it would be an option, would it not? I mean certainly not anything that is going to be forced upon the veteran?

Mr. LAVERE. Right, right. I think when you start comparing what is in the system, and what was really truly startling to me is that the data on the 1995 accessions to the compensation rules, that 0 and 10 percents accounted for 86 percent of the disabilities. That is a massive portion of the adjudication case work.

And the other aspect is the repeat claims, and the profile of an average claimant going before the VA is someone who has filed before, who is in benefit status. I think two-thirds are in receipt of compensation filing again. They are represented by a professional veterans' service organization. At the initial level it is 57 percent representation, and at the Board of Veterans' Appeals there is over 90 percent representation.

With that level of representation, competent representation, the development features just should not be that time consuming and

that complicated. You should be able to know what is needed for this particular claim to establish exactly what they think they can establish and then work together with the VA to identify that evidence and then see who is in the best position to get it.

And in my view that would pretty much take care of all the complex duty to assist issues that arise subsequently.

Mr. BILIRAKIS. Well, let me ask you, sir. Somewhere in here you refer to empowering a corporate data collection and analysis focus. Can you describe very briefly, and my time is about up, why the VA might need the corporate database, the type of information interfaces it should have? In other words, what is the value of such a database? Why have you recommended it?

Mr. LAVERE. Darryl, do you want to respond to that?

Mr. KEHRER. Yes. The value, sir, I believe is the data would be data at the departmental level rather than data that is stovepiped, if you will, in each of the operating elements, such as the Board of Veterans' Appeals or the Veterans' Benefits Administration or the health side of the operation.

For policy development and decisionmaking purposes, the Secretary needs departmental data, corporate data, and those data are much more holistic, if you will, than the data at the administration level.

Mr. BILIRAKIS. I see.

Mr. KEHRER. And the Commission believes a corporate data here would promote more informed decisionmaking, as well.

Mr. BILIRAKIS. I see. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rodriguez, would you have a question?

Mr. RODRIGUEZ. No, Mr. Chairman.

The CHAIRMAN. Mr. Quinn.

Mr. QUINN. Thank you, Mr. Chairman.

I had a couple of questions that you have answered already, sir. So I appreciate the question on the typical claimant. With the demographics that you have, you've outlined it as someone who is already in the process with a claim that has been made.

But you have mentioned already two or three times just this afternoon, and it is mentioned in the report, this business of a repeat claim, and you then said just a few minutes ago in response to Mr. Bilirakis that there ought to be a simpler way once it is there and they are represented by competent folks from AVSO to cut down on all that goes with that.

Can you take a minute to maybe offer a suggestion or two, given that that is where you find the typical claimant?

Mr. LAVERE. Well, I think that the BPR is right on, and their whole approach is brand new. It is very, very welcome, and I wish the other agencies that adjudicate claims in large numbers would take the same approach and have the same commitment to actually implementing.

But, you know, if I can speak frankly.

Mr. QUINN. Yes, please.

Mr. LAVERE. And this is my personal view, not the Commission's, which is that I do not like it personally when the claim system is taken away from the veteran and the veterans' service organization. The whole attitude of the paternalistic, the, well, you file

and we will take care of you and you will get what you need, we will decide and we will keep you informed maybe, and certainly at the end of the process you will get a decision up or down.

Well, a claimant, and especially a claimant who is represented by an experienced veterans' service organization, it is his claim. It is not the VA's claim, and all he needs is to find out what he actually needs to prove, and then getting that should not be some complex issue.

Mr. QUINN. But it is.

Mr. LAVERE. Does it exist? Yes. Who has it? They do. Who is in the best position to get it? You do. You do. Go get it.

Mr. QUINN. I see.

Mr. LAVERE. And then if you have within the adjudication process a difference between what the VA says and what the veteran says concerning the adequacy of the record, that should not just be left hanging. That should be addressed in the decision issued by the VA.

Mr. QUINN. Sure.

Mr. LAVERE. This evidence as not obtained because it was not on point. It was not relevant or it was unobtainable or it was the veteran's obligation to get it, and then you would have the duty to assist issue focused within the adjudication system and the issue narrowed on appeal.

Mr. QUINN. Which is what a real adjudicator should be doing anyway.

Mr. LAVERE. Right, and the other aspect is that there already is a requirement, I believe, that veterans, when their claims are being denied, be informed as to where they have fallen short in terms of the evidence.

Mr. QUINN. Are you concerned that that will result in more repeat claims?

Mr. LAVERE. Oh, no.

Mr. QUINN. Okay.

Mr. LAVERE. No, I think that that will take care of things at the beginning.

Mr. QUINN. I agree.

Mr. LAVERE. And they should not tell them only after they have issued the decision. They should tell them while the development process is underway.

Mr. QUINN. Sure. Thank you very much.

And in response to a question Mr. Mascara had earlier, as you know, Mr. Chairman, our Benefits Subcommittee has heard testimony and had a lengthy discussion with Ms. Moffitt last week about training, and we have invited the staff and members and the VSOs to participate in some of that training that will be going on. You are not able to answer, I know, because you are not part of the VA, but Mr. Mascara will get some information to you there where we can be helpful.

Thank you for your frank response. I appreciate it.

The CHAIRMAN. Mr. Bachus. Mr. Bachus.

You do not have to.

Mr. BACHUS. Oh, no. I did not hear you.

The first question, the report to Congress appears to have 12 chapters, but the last three, there is nothing back here. Why is that?

Mr. KEHRER. In that Extract, Mr. Bachus, the Commission apologizes. In the representation of the findings, sir, the very last chapter of the Commission's main volume, was inadvertently left off, the last chapter alone.

Mr. BACHUS. How about the alternate views of commissioners, which is Chapter 11?

Mr. KEHRER. Those were not intended, sir; the alternate views were not intended by the Commission to be in the Extract. The Extract was designed to summarize the substantive findings and recommendations.

Mr. BACHUS. You know, it just had it in the front here.

Mr. KEHRER. Yes, sir. The Commission apologizes for that oversight.

Mr. BACHUS. The Commission recommended that Congress define certain terms. How would this help? I mean, I agree with you that it would, but "burden of proof," "well grounded," and "duty to assist"—there is no policy definition of that, nothing legal?

Mr. LAVERE. I will be as brief about this as I can, but these issues constantly arise especially before Court of Veterans Appeals, and they are decided on a case-by-case basis, that in this particular case duty to assist was not afforded because the VA should have made more efforts to do this, that or the other thing.

There is a whole theory of the well grounded claim, and I think as we explain in the report, but if you would take a look at just the bare language of the statute, it would be describing anything but a paternalistic system. The veteran is responsible for submitting a well grounded claim.

Well, I would ask various adjudicators and people within different offices in the VA what is a well grounded claim in practices, and I got answers all over the lot. The most expansive was that an allegation that is not inherently incredible is sufficient to support a well grounded claim.

Now, that may be, but all the Commission is saying is that if that is what Congress intends, they should so articulate that so there would be one basic definition that could be applied across the board and make things easier rather than reinventing the wheel with each case and trying to get the pertinent court decisions and the pertinent this and pertinent that.

In Appendix 1, we give the examples of what an adjudicator at least theoretically would have to go through in virtually every case to determine if he was properly affording duty to assist. If we could have a consistent, simply stated rule, that would obviate.

And I might add that, you know, with the partnership agreement that we are talking about and the BPR, I think that most of these things will just take care of themselves within the ordinary cooperative process that would be going on.

Mr. BACHUS. Has the Secretary attempted to give any direction in defining these terms?

Mr. LAVERE. No. The direction is coming from the Court of Veterans Appeals.

Mr. BACHUS. Okay.

The CHAIRMAN. Thank you, Mr. Bachus.

Dr. Cooksey.

Dr. COOKSEY. Yes. Thank you, Mr. Chairman.

Mr. HUTCHINSON and I would like to know what BPR is.

Mr. LAVERE. Business process reengineering.

Dr. COOKSEY. That sounds like a reengineered term. Thank you.

(Laughter.)

The CHAIRMAN. Are there other questions?

Mr. Hutchinson. Excuse me.

OPENING STATEMENT OF HON. ASA HUTCHINSON

Mr. HUTCHINSON. Thank you, Mr. Chairman.

I wanted to go back to one recommendation that the Commission made and which the Chairman made reference to in his opening remarks. That is the problem of repeat claims and then also the Chairman's indication that there might be some legislation that would address the lump sum payment for smaller disability claims.

I commend the Chairman for examining that. I think that is something that very much should be looked at, and I wanted to look at that from the standpoint that in Arkansas, the state that I am from, we have a worker's compensation system in which, you know, a claimant could voluntarily select a lump sum payment, and whenever he or she does that, then that claimant must waive any further claims in the future. They are forever barred. They are on their own. That is a final payment that they accept, and they acknowledge that they accept those risks.

What is your thought in regard to that? If there is a lump some payment for a smaller percent disability case, say, less than 20 percent, would you recommend that the claimant be barred from ever reopening that claim?

Mr. LAVERE. I would not make any recommendation on that, and the Commission has not made any kind of recommendation on that.

Mr. HUTCHINSON. What is your suggestion for dealing with the problem of repeat claims?

Mr. LAVERE. Well, let me begin by saying that repeat claims are not a problem per se. They are what exists. Three out of four claims that the VA adjudicates are claimants who are coming back, and they are perfectly entitled to come back.

Mr. HUTCHINSON. I think there is a little problem there. I know that they have the right of the statute.

Mr. LAVERE. Right, but there has to be some method of closure, and from very early on in our work, Mr. Merritt, the representative from the insurance industry, said there is no closure. The cases keep on going on and on and on, and what can we do about it?

Here is what the insurance industry does about it.

Mr. HUTCHINSON. Do you have a recommendation? Does the Commission recommend what to do about that problem?

Mr. LAVERE. No. We do not think it was within our scope to make a recommendation, a specific recommendation on that.

Mr. HUTCHINSON. All right, but do you believe that it is a significant problem that should be addressed? The problem of repeat claims and the lack of finality?

Mr. LAVERE. Yes, I do.

Mr. HUTCHINSON. Do you have an opinion? I think you indicated you do not have an opinion about the proposal for a lump sum for smaller disability claimants.

Mr. LAVERE. Well, I think it has merit.

Mr. HUTCHINSON. I think that there was one statistic that 76 percent of the claims that are repeat claims already have a disability rating.

Mr. LAVERE. Right. It is, I think, 67 percent are in benefit status. In other words, they have a rating of 10 percent or more.

Mr. HUTCHINSON. You know, before coming to Congress, I was licensed to practice and still am, I guess, before the Court of Veterans Appeals. I have represented veterans. I have seen their heartache when they file a claim, it is processed, they go up as far as they can, it is rejected, they come back, they go to a veterans service officer and are told "The only thing you can do is to file another claim."

So they file another claim because they have hope. They go through this process year after year after year after year, everyone always saying, "File another claim," and I think that if it is a bad claim, they need to be told that.

If they have a 10 percent disability and they want to increase that, if they had a lump sum option, that gives them an option and provides some finality. Does what I say make sense to you?

Mr. LAVERE. Yes. If I can put it colloquially, what we try to do is set the table for the policy making and decisionmaking that has to be done by Congress and the VA, and so we wanted to provide as much data and analyses that would set these issues up to be debated, to be considered, to test how good they could be, what impact they would have on the system, and what drawbacks would they have for the system.

Mr. HUTCHINSON. There were some comments earlier that different statistics have been aired as to how long it takes for an adjudication officer to process a disability claim. Did your commission find exactly what the statistic is on that?

Mr. LAVERE. Yes. We have the latest statistics in the report.

Mr. HUTCHINSON. Do you know what it is?

Mr. LAVERE. For the regional office?

Mr. HUTCHINSON. Yes.

Mr. LAVERE. What is it?

Mr. KEHRER. At this time, 134 days, I believe.

Mr. HUTCHINSON. One hundred thirty-four days, and then it goes up to the Board of Veterans' Appeals?

Mr. KEHRER. Yes, sir, if the veteran elects to appeal, yes.

Mr. HUTCHINSON. And how long is the average time before the Board of Veterans' Appeals before a decision is made?

Mr. KEHRER. At the time of the publishing of the Commission's report, I believe the elapsed time was 650 to 700 days because of the backlog.

Mr. HUTCHINSON. That is almost 2 years before the Board of Veterans' Appeals.

Mr. KEHRER. Yes, sir.

Mr. HUTCHINSON. And then you go to the Court of Veterans Appeals. What is the average time between the Board of Veterans' Appeals to the Court?

Mr. KEHRER. That I do not know. I do not believe the Commission spoke to that. It is a fairly substantial amount of time, however, I believe.

Mr. HUTCHINSON. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Mr. Mascara.

Mr. MASCARA. On page 10 of your statement in Paragraph 2, you indicate that there is a \$50,000 cost, a minimum cost, associated with adjudicating a very easy claim. Could you explain that?

Mr. LAVERE. That is the lifetime benefit that is involved. That is the lifetime benefit.

Mr. MASCARA. Okay. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

We are at the end of our first panel. Do you have any questions?

Mr. MORAN. I have no questions, Mr. Chairman.

The CHAIRMAN. Any other discussion? (No response.)

The CHAIRMAN. Gentlemen, thank you.

We do have a vote right now. In fact, we have two votes, and it will be necessary for us to recess for at least 25 minutes. We will be back just as rapidly as possible.

Mr. LAVERE. Are you through with my testimony?

The CHAIRMAN. Yes, sir. Thank you very much.

[Recess.]

The CHAIRMAN. I apologize for the delay. The voting machine broke down, and I do not know whether anybody is coming back, but there is nobody here to object. We are supposed to have two people, I think, but as long as they are not here, we are going to go unless I hear somebody out there object.

Panel number two: Dr. Lemons, if you care to introduce the people accompanying you, please feel free to do so, and your entire statement will be made a part of the record. If you can summarize, we would appreciate it, sir.

STATEMENT OF DR. STEPHEN L. LEMONS, ACTING UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY DENNIS DUFFY, ASSISTANT SECRETARY FOR POLICY AND PLANNING; KRISTINE MOFFITT, DIRECTOR OF COMPENSATION AND PENSION SERVICE; ROGER BAUER, ACTING CHAIRMAN, BOARD OF VETERANS' APPEALS

Dr. LEMONS. Thank you, Mr. Chairman.

I am pleased to be here this afternoon to present the Secretary's position on the recommendations and findings of the Veterans' Claims Adjudication Commission.

I am accompanied by Mr. Dennis Duffy, the Assistant Secretary for Policy and Planning; Ms. Kristine Moffitt, the Director of the Compensation and Pension Service; and Mr. Roger Bauer, the Acting Chairman of the Board of Veterans' Appeals.

Before I begin my comments, let me convey the Deputy Secretary's regrets. Mr. Gober was personally looking forward to providing this testimony for you, but the last minute change in time of the hearing created a conflict for him with a prior commitment of long standing.

I would like to offer my brief comments. I want to recognize the massive and complex task undertaken by the Veterans' Claims Adjudication Commission, and especially the efforts of Mr. Sedrick Melidosian, the chairman. We view their report as a genuinely helpful effort to assist us in improving services to veterans and their dependents.

Mr. Chairman, you have before you a document which embodies the Department's review and analysis in response to the commissioners' work. As you can see, it is an extensive report and one which we are hopeful would be very useful to the entire committee.

The CHAIRMAN. Thank you, sir.

Dr. LEMONS. Our effort in this regard was to provide a detailed analysis on the part of our top managers and truly take a one-VA approach to this effort.

Four "cross-cutting" work groups comprised of top managers were formed to address groupings of the recommendations. Each group was chaired by an individual from an organization not having a principal interest in the work of the group's issues or not having a parochial interest in the issues that were developed.

The SMG's efforts are represented by the work group reports, which assess the pros and cons of each Commission recommendation and suggest a Departmental position.

The Secretary, I am pleased to say, by and large agreed with the analysis and recommendations of the SMG work group. He did take exception in a few cases where he felt that the recommended approach might diminish a veteran's well-earned rights.

His exceptions he personally detailed in a Decision Paper provided at the beginning of the report.

As you know, the Commission made quite a few recommendations or suggestions, 54 on our account; VA agreed with the Commission or is further studying 40 of the recommendations. The 14 on which we part company generally were opposed because they were found to be potentially adverse in their effect on veterans or because the VA's review found them to be unneeded or unnecessary.

Among those on which VA's position is in disagreement with the Commission are those suggesting a need for Congressional action to clarify the purpose of the compensation in the pension programs, the recommendation that the Board of Veterans' Appeals be made strictly an appellate review body, and those that would close the evidentiary record early in the appellate stage or institute a shortened time limit for filing appeals.

VA will benefit from the implementation of the many recommendations with which we are in agreement with the Commission. We are already actively engaged in efforts to review our various benefit programs to assure that their goals and outcomes complement each other. We will undertake the time and resource intensive effort to move the VA's adjudication rules and procedures from manuals into regulations and will further examine ways to simplify administration of our pension program and will work hard to improve our partnership with veterans' service organizations and claimants.

All of the 40 recommendations that we concurred in will be implemented. I can assure you that we have already begun in the ef-

fort to assure that this report does not become just another report collecting dust on someone's bookshelf.

The Assistant Secretary for Policy and Planning has been charged by the Secretary with responsibility for overseeing the development of detailed implementation plans for each approved action and for monitoring their accomplishment. The Deputy Secretary will personally be involved and be provided with frequent status reports.

We are just in the earliest stages of developing the departmental implementation plan, but we hope to have a final plan approved for the Deputy Secretary by the end of June. We will be most happy to share that plan with the committee when it is done.

I am pleased with the testimony of Mr. LaVere and the endorsement of our efforts in regards to business process reengineering and our efforts within VBA to improve the process.

I want to thank you for the opportunity to provide these comments. Mr. Duffy, Mr. Bauer, and Ms. Moffitt and I will be happy to respond to any questions that you or the committee may have.

[The prepared statement of Department of Veterans Affairs appears on p. 43.]

The CHAIRMAN. Thank you.

We are encouraged by the Department's overall response to the Commission's report, and I do apologize again for keeping you.

Mr. Mascara.

Mr. MASCARA. I made it back.

The CHAIRMAN. Thank you for coming back.

Mr. MASCARA. The Commission found that localized or situational measures alone cannot be expected to solve systemic problems. What steps or step is the VA taking today to improve the quality and consistency of adjudicating claims by different regional offices?

Dr. LEMONS. I appreciate your perspective on that, and I would tell you that we also are of the belief that a systematic, organization-wide approach to process improvement is exactly what we need.

We want to encourage the continuation of best practices and innovative approaches at the regional office level, but we would also agree that an overall systematic approach is what is needed. We have attempted to develop this business process reengineering specifically to deal with the direction and change in the nature of relationships with the department and the veterans and the veterans' representatives as a key element of that type of approach.

Mr. MASCARA. I posed to the earlier panel the question of why Phoenix did a much better job than Philadelphia in handling the Gulf War Syndrome claims, and can we learn something from Phoenix that perhaps we can standardize throughout the VA and the regional offices or area offices?

Dr. LEMONS. I would ask Ms. Moffitt to discuss the specifics about that issue, but also the broader issue about standardization of practices.

Ms. MOFFITT. Yes, Mr. Mascara. As I mentioned the other day in our previous hearing, we have never looked at the grant rates. You know, you look at Phoenix as the best decision makers with

regard to Persian Gulf claims. We have not looked at the grant rates.

We are now undertaking a 100-case review to determine in grants what are the right decisions to be made, and to go one step further, we are substantively looking at overhauling the whole entire quality review system that we have. We are undertaking that in conjunction with being ready for GPRA standards as of the end of September, October 1st of 1997, to look at both quality at the national level, the local level, and where accountability should be assigned.

Mr. MASCARA. Would you admit then that perhaps the director at Philadelphia or the director at Phoenix maybe had a better mindset in working with the adjudicators? Is that part of the reason for the better performance?

Ms. MOFFITT. As I offered you the other day, when we have done this 100-case review that will include grants, as well as, denials, I will be happy to furnish you with some sort of an analysis of the differences.

Mr. MASCARA. Thanks, Ms. Moffitt.

The CHAIRMAN. Doctor, we do have some questions by staff, but in the interest of time, if you would submit them for the record, we will furnish the questions to you for reply as quickly as possible.

Dr. LEMONS. I would be happy to, Mr. Chairman.

The CHAIRMAN. I appreciate it.

And with that, I guess there are no more questions and we will not keep you any longer. Thank you very much to you and your panel for appearing.

Dr. LEMONS. Thank you.

The CHAIRMAN. Our next panel will be Mr. Milton Socolar, the Chairman of the National Academy of Public Administration. If you would care to come up, sir, with your people, we will move along.

While you are getting ready, sir, your statement will be included in its entirety in the record. If you care to introduce those accompanying you, please do, and proceed in any way you see fit.

STATEMENT OF MILTON SOCOLAR, CHAIRMAN, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION; ACCOMPANIED BY JOHN SCULLY, PROJECT DIRECTOR, AND MICHAEL MCKLENDON

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

On my right is John Scully, who is the Project Director for the work of the academy panel, and on my left is Mike McLendon, who did the work for the panel in relation to the BPR Program and information technology.

I am pleased to present my views regarding the Department of Veterans Affairs' response to recommendations of the Veterans' Claims Adjudication Commission made in its 1996 report to the Congress. Because the panel has not yet fully reviewed the draft findings and recommendations developed by the staff, I am addressing you today in my individual capacity as chair, and not on behalf of the academy panel members.

The Commission report covered a wide-ranging examination of VBA compensation and pension program and made a number of

specific recommendations for improving claims processing procedures. Let me say at the outset that I think the department did a good job of analyzing and responding meaningfully to all of the Commission recommendations.

The Secretary and his strategic management group of top leaders concurred with most of the recommendations made. However, notwithstanding this high degree of concurrence, I have some concerns.

First, let me address those recommendations with which the department did not concur. The department did not concur in the need for Congress to review the purpose of the compensation program. The department maintains that there is a consensus among Congress, the VA, and the veterans' community that the schedule as structured serves as an equitable basis for determining compensation for America's disabled veterans.

Actually the academy panel concentrated on ways to improve management of the program as it is now legislatively constituted and did not explore this and other controversial policy issues that could have diverted its attention from improving administration.

Nevertheless, being aware that the rationale for determining benefits under the compensation program is the replacement on average of lost income and being aware of changed conditions in the job market and of advances made in medical technology, I have to say, speaking for myself, that I agree with the Commission recommendation. I strongly suspect, particularly in the case of many disabilities rated at the ten, 20, and 30 percent levels, that the correlation between compensation awarded and average income lost by reason of disability is tenuous at best.

It is, therefore, appropriate in my view that notwithstanding long acceptance of the rating schedule as now applied, Congress should examine the fundamental rationale under which the compensation program is administered.

The department, while recognizing that keeping the Congress informed is an essential responsibility that it has, did not concur with the Commission's recommendation that the GAO periodically review progress on implementation of the requirements for handling the computer year 2000 problem. Irrespective of the department's intentions to keep the committee fully advised, I think that the program risks are so great that it would be beneficial to have a periodic independent review and report to the Congress, and to the department as well, to help assure success of that effort. I am sure that the VA manager of information technology modernization would find such reviews and reports helpful.

There are a number of other recommendations that the Commission made that the department does not concur in. Most of them relate to recommendations to explore data and provide analysis for a range of issues that the Veterans Benefits Administration should have been considering in its ongoing operations.

The concern that the department raises is that reviewing and considering these kinds of issues have the potential for adverse effect on the veterans. The strategic management group, in assessing the Commission recommendations, often recognized the need for additional information and analysis and the need for developing

One can scan the summary charts of the group's conclusions to note a high degree of concurrence with recommendations relating to the collection and analysis of data not previously considered by VA, but relevant to efficient program administration. In particular, the group agreed with the Commission's strong and explicit recommendations about the need to develop a capacity to conduct actuarial analysis. The group also agreed with the desirability of VBA involvement with other federal and state government agencies and with private insurers and medical associations that deal in disability determinations.

Finally, the strategic management group recognized the merit of establishing a group at the department with high level VBA and VHA representation to develop and disseminate best rating examination practices.

I think it is well accepted by many within, as well as outside of VA, that the department and VBA have been administering the compensation and pension program with a narrow, insular perspective. VBA has tended to address issues as they arise very much on an ad hoc basis and has not yet succeeded in realizing the more important of its articulated initiatives for improving service.

Given the history of troubles that VBA has had in administering the compensation and pension program, it is important to appreciate that it will take considerably more than its recognition of the things needing to be done for VBA to achieve the desired improvement in its service to veterans.

Recently VBA launched a new business process reengineering plan to dramatically improve the timeliness and the quality of its adjudication decisions by the year 2002, while achieving significant reductions in staff resources. Its plan has received positive reaction from Congress and veterans' service organizations, and the academy panel also believes that if implemented successfully BPR will have significant benefits.

I am concerned, however, that the management deficiencies that have caused VBA's past inability to implement sustained performance improvements will continue to exist. These not only impair VBA's ability to remedy immediate problems in its BPR plan, but threaten the long-term success of the BPR service improvement goals. These same deficiencies threaten VBA's ability to implement vitally important efforts to meet its year 2000 computer requirements and improve the management of its computer modernization efforts.

The academy panel will provide detailed recommendations on developing the planning and management capacities necessary to overcome these deficiencies. VBA at present lacks the management capacities that would enable its leaders to define long-term direction and provide the resources to follow through. VBA leadership must establish these capacities—the capacity to plan, to integrate and execute complex program activities, information gathering and evaluation capacities to measure performance and hold responsible officials accountable for results, and the capacity to maintain an annual plan, implement, and review cycle to integrate all parts of the organization into a comprehensive operational effort to fulfill VBA goals.

Despite progress since 1996, the potential for a cohesive, well functioning leadership team is uncertain. The VBA's strategic management committee is a step in the right direction, but up to now it lacks clear purpose, a long-term agenda for change, ability to integrate and oversee complex activities, and a clear vision of what strategic management means.

Recent efforts to implement the Government Performance and Results Act are laudable, but insufficient. There are major gaps and short circuits to lines of accountability within the leadership team, a bias against developing a systematic corporate information capacity and a reactive decision averse culture in which senior executives are reluctant to take meaningful action against a failing member.

VBA today is a closed organization that historically has avoided making full use of information for planning purposes from outside stakeholders, and this must change.

Despite a few dissents, I think it is promising to see how receptive VA has been to the Veterans' Claims Adjudication Commission recommendations. A high degree of receptivity, together with other indications, such as recent establishment of the department's strategic management group and VBA's strategic management committee, suggest an awakening by VBA to the urgent need for management direction, control and discipline. I am sure that requirements of the Government Performance and Results Act have also served to move VA to a better understanding of its management deficiencies.

That completes the essence of my prepared statement. I and my colleagues will try to answer any questions that you or the other members of the committee might have.

[The prepared statement of Mr. Socolar appears on p. 48.]

The CHAIRMAN. Thank you, sir.

Let me ask you just one very brief question, please. Can you tell me in your opinion what will be the single most important recommendation of your forthcoming report?

Mr. SOCOLAR. Yes. I think that the single most important recommendation will be the need for VBA to develop a structure and the capacities to manage strategically, that is, to manage with discipline. VBA must learn to provide plans based on good analysis and that cover all the resources and efforts that need to be integrated. VBA has to develop the ability to review plan implementation against specific milestones to see what is happening, make revisions as necessary, and hold responsible officials accountable.

Today I think it is fair to state that the VBA essentially administers the compensation and pension program without the kind of forward planning and analysis that good management calls for. If the VBA would develop this necessary capacities, a lot of the specific difficulties that it now has would eventually, with proper analysis and informed action, be overcome. Without that kind of discipline, I think we will see the same kinds of difficulties occurring over and over again.

The CHAIRMAN. Thank you, sir.

The gentleman from Pennsylvania, Mr. Mascara.

Mr. MASCARA. At the present time, the Director of Compensation and Pension Programs does not have line authority over the re-

gional offices, which makes the decisions concerning compensation and pension. In your opinion, is this a management deficiency which contributes to the lack of consistency in claims adjudication?

Mr. SOCOLAR. Well, I do not think that it is necessary that the C&P service should have line authority over regional offices. The C&P service should review field operations to develop an understanding of what is occurring in the various regional offices, understanding how one regional office operates as opposed to another regional office; do the analysis that would keep the Under Secretary informed as to the kinds of actions that he or she needs to take to keep the organization functioning smoothly.

Fundamentally, C&P service should operate as a staff office to the Under Secretary and have his respect and—I cannot think of the word I am looking for—his confidence in the analysis and work that it does.

But, no, I do not think it is a management deficiency that it does not have line authority.

Mr. MASCARA. On page 2 of your statement, Paragraph 2, while you indicate that the Congress needs to continue to be informed and the VA has the responsibility to fulfill that, you disagree with the Commission's recommendation to have the General Accounting Office periodically conduct a review.

Why? Why do you think the GAO should not?

Mr. SOCOLAR. No, no. I am saying the contrary.

Mr. MASCARA. It says, "The department disagrees with the Commission." Okay. All right.

Mr. SOCOLAR. No, I think it is good to have an independent review. I think it would be helpful to VBA, and I also think that self-reporting has certain problems associated with it. It often does not really dig into the kinds of problems that do need attention, even the best of intentions, and I think an independent review is helpful to overcome that.

Mr. MASCARA. Why do you think the VA disagrees then?

Mr. SOCOLAR. Well, I think the VA is saying that it recognizes that it has the responsibility to keep the committee informed, and it certainly does. I cannot go any further than that.

Mr. MASCARA. You think it has to be the VA though.

Okay. Thank you.

The CHAIRMAN. Mr. Socolar, thank you very much for you and your panel taking the time to be with us, and I think perhaps we do have a couple of questions we would submit to you for the record if you would answer them, please.

Mr. SOCOLAR. We appreciate it.

The CHAIRMAN. Thank you very much.

Our next panel will be representatives from the veterans' service organizations: Mr. Crandell from AMVETS; Ms. Carol Rutherford from the American Legion; John McNeill from the Veterans of Foreign Wars; Rick Schultz, Vietnam Veterans of America; and Rick Surratt from the Disabled American Veterans. If you would come forward, please.

We thank you for being here today, and we apologize for keeping you, and as you know, all of your statements will be printed in their entirety in the record. I am going to let you decide who wants to go first out there, the lady or whomever else. Just proceed as

you wish. If you would try to summarize, we can get out of here maybe before we have to go vote again.

Ms. RUTHERFORD. Okay, sir. Thank you.

The CHAIRMAN. We do not want to cut you off, but thank you.

**STATEMENT OF CAROL RUTHERFORD, ASSISTANT DIRECTOR,
VETERANS AFFAIRS AND REHABILITATION COMMISSION,
THE AMERICAN LEGION**

Ms. RUTHERFORD. Well, the American Legion does appreciate this opportunity to comment.

The CHAIRMAN. If you would pull the microphone over just a little bit, please. It is hard to hear in the back of the room.

Ms. RUTHERFORD. I think that is about it.

The CHAIRMAN. All right.

Ms. RUTHERFORD. I will sit like this.

Okay. As I said, we do appreciate this opportunity to comment on this report.

The Commission's final report we find is very wide ranging and extensively detailed, and we wish to compliment the Commission for its substantial efforts.

Now, many of the VCAC findings and recommendations we do agree with. However, there are those with which we disagree, and included in this are the issues of lump sum payments, restriction of repeat claims and appeals, and examination of the VA's duty to assist.

We note that much of the Commission's analysis proceeds on the assumption that the current backlogs in the regional offices in the Board of Veterans' Appeals are the unavoidable outcome of strategic management failures and the long-term transition to judicial review.

In our opinion, the real underlying causes of VA's work load problems are the lack of quality decisionmaking, the lack of accountability by regional offices, and the unreliability of the current work load reporting and performance measurement system.

The Commission's conclusion is that short of radical procedural and legal changes, further efforts by VA and Congress to reengineer the claims process are not going to be successful. Our primary concern is that many of the Commission's recommended cures to the current system are intended to benefit the bureaucracy by placing priority on efficiency and process rather than quality service to veterans.

These cures would take away our veterans' historical rights and benefits to resolve VA's fundamental management and budgetary problems. We feel this would be grossly unfair.

Thank you.

[The prepared statement of Ms. Rutherford appears at p. 53.]

The CHAIRMAN. Thank you.

Mr. MCNEILL. I will go next.

The CHAIRMAN. Don't be bashful. Mr. McNeill.

**STATEMENT OF JOHN MCNEILL, FIELD REPRESENTATIVE,
NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS**

Mr. MCNEILL. Thank you, Mr. Chairman.

Our keystone in evaluating and critiquing the Commission's report was simple. Will the recommendation lead to improvements in claims processing timeliness and quality?

There are many solid recommendations in the report. In the written testimony, we make four points about it.

First, the ones concerning VA strategic planning and medical examination issues are particularly important. We support strongly VBA's business process reengineering plan for the Compensation and Pension Service both as the primary means now to improve claims processing quality and, secondarily, to implement the Commission's recommendations on strategic planning.

On medical examination and medical evidence issues, we feel the one most important action the VA could presently make is to universally embrace and expand the Chicago regional office's initiative that "out-bases" adjudication and rating specialists in the West Side VA Medical Center to all of the VA medical centers that perform a large number of compensation examinations.

Second, we believe that the good parts of the Commission's report are regrettably overwhelmed by the negative aspects. These occur mainly in Section V, the section on Process Design.

For instance, we disagree that Congress and the Secretary of Veterans Affairs have been deficient in their policy making responsibilities. This point is rebutted just alone by the Veterans' Judicial Review Act of 1988. In our opinion, both Congress and the Secretary have been very thorough over the years in exercising their policy making responsibilities.

However, even more disturbing to us is the assault on long-established principles of veterans' entitlements under the mistaken assumption that diluting certain important and benevolent principles will enhance claims processing efficiency. Concepts such as, quote, duty to inform, unquote, and finality will do nothing to improve claims processing timeliness and quality. Indeed, they will only serve as a disservice to veterans.

Third, we feel it unneeded to further debate such radical and dangerous concepts as duty to inform, finality, closure, and elimination of de novo review at the Board of Veterans' Appeals.

Our problem also with lump sum payments is that we believe that concept will in the long run actually add time to the adjudication of claims. The best answer to these concepts is basically coming from the rapid improvements the VA is presently making in processing veterans' claims.

We also cite in our written testimony figures that further support our argument that the VA is now capable of rendering quality, timely decisions even while complying with their present duty to assist and burden of proof responsibilities.

It is our belief that there is no better time ever in the history of veterans' claims processing than the present for a veteran to receive a fair and just decision on his claim. Indeed, if BPR proves successful, the VA soon might be the epitome of government service to the people, and we believe Congress has played a significant role in that.

Fourth and last, we support Secretary Brown's April 1997 decision paper as the best and correct way to implement the Commission's recommendations.

At the end of our written testimony we make a plea for the Congress in the future to rely less on outside consultant studies and instead rely more on the excellent oversight of the type provided by Congressman Everett and his subcommittee in the last few years. There is more elaboration on this request of ours in the written testimony.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McNeill appears on p. 61.]

The CHAIRMAN. Thank you. Mr. Schultz.

**STATEMENT OF RICHARD SCHULTZ, EXECUTIVE DIRECTOR,
VIETNAM VETERANS OF AMERICA**

Mr. SCHULTZ. Thank you, Mr. Chairman.

I will be brief. I know you are pressed for time, but I would like to say on behalf of the Vietnam Veterans of America, we do appreciate the opportunity to appear here today, and we do, as others, wish to compliment the Commission on putting together the report.

However, we, like the other organizations, do have some problems with some of their recommendations.

Some of the things we have covered in our statement, and I will just briefly go over them, and then I would like to talk a little bit about some of the comments that were made here today.

One is we believe the VA should get it right the first time. In fact, I think it goes without saying that getting it right the first time will go a long way towards relieving the backlog problem. We do not believe there should be a delimiting period for filing claims, and there should be no additional limits on finality of decisions for repeat claims. We are not in support of paying benefits in a lump sum, and the board should continue to provide final agency decisions. We believe that many of the changes recommended by the Commission would not be in the best interest of veterans.

And of course, we have noted in our statement that we believe that veterans should be allowed to retain private attorneys at least after there has been a first final decision by the Department of Veterans Affairs.

I would like to note also that Mr. LaVere in his comments did indicate that the BPR plan is the way to go. We certainly support that. We believe that the VA has done some good work there, and if implemented, it will really go a long way in solving some of these problems.

I also note that the person from NAPA had indicated, too, that they are pleased the VA recognizes the problems. The question now is how do they solve them, and we certainly agree with NAPA on that issue.

When Mr. LaVere talked about well grounded claims, that VA is all over the ball park and there is really no standard, well, there is a standard, and that has been defined by the court. So we believe that there are some standard in place, and I do believe if the VA is all over the ball park then that is an internal problem and not a legislative issue.

Also, as far as repeat claims, when they say there should be some method of closure, well, certainly there is, and claims are final unless someone can come up with new and material evidence,

and we do not believe some of these, which we believe would be sort of Draconian solutions, are the way to go.

And we certainly do appreciate your efforts, Mr. Stump. I note in your opening statement that obviously you are frustrated with the current VA system, and you would like to make sure that veterans receive compensation payments in a timely fashion. I assure you that VVA will work with you on those issues, and that is certainly what we want, too.

Thank you.

[The prepared statement of Mr. Schultz appears on p. 66.]

The CHAIRMAN. Thank you. Mr. Crandell.

STATEMENT OF WILLIAM F. CRANDELL, NATIONAL OPERATIONS DIRECTOR, AMVETS

Mr. CRANDELL. Mr. Chairman, AMVETS also appreciates this opportunity, and I personally am glad to be back in this chamber.

We also have some problems with the report of the Adjudication Commission, and I think I can sum it up actually by talking about my own case just for a minute.

When I was 24 I received a wound in the foot, a minor wound. By the time I left the service I was not limping anymore, in fact, had gone back to combat duty. I had no sense of having a disability whatsoever.

Occasionally I had a slight pain. It was a little like a headache. It went away if I took aspirin. For a lot of years it did not get worse than that, and then gradually it was more frequent.

Ten years ago I was advised: file a claim. You are going to get arthritis. Good advice. I did not take it. I was busy.

At the age of 54, last fall, I put in a claim for it because I am finally starting to have enough difficulty with it that it is a real bother. There are certain jobs that would require me to be on my feet a lot that really I could not do.

I had great difficulty at that point because it was not until then I discovered that the records of that hospital never made it into my file. So I have had to track that down.

Probably in a decade or so I will need to walk with a cane some of the time. If you had given me a lump sum when I got out at 25, it would not have been \$5. It would not have done anything to recognize the slowness of the development of this kind of a problem.

What does not fit the actuarial tables that strike the Commission members as so odd is that we are talking largely about war wounds. We are talking about injuries largely to young people who have those injuries develop over a very long time. It is not like the kinds of injuries that any other agency deals with, and for that reason lump sums do not work. Time limits do not work, and we really do need the Board of Veterans' Appeals to be able to make a final decision where there has been a mistake.

Thank you very much.

[The prepared statement of Mr. Crandell appears on p. 76.]

The CHAIRMAN. Thank you, sir. Mr. Surratt.

**STATEMENT OF RICK SURRETT, ASSISTANT NATIONAL
LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS**

Mr. SURRETT. Mr. Chairman, members of the committee, good afternoon.

I am Rick Surratt with the Disabled American Veterans.

The effects of judicial review are a major factor in the Commission's report, and I will address that here.

Before Congress authorized judicial review, veterans were frustrated with VA decisionmaking. Although Congress expressed confidence in the administrative system, it also thought that judicial review would benefit veterans and assure justice.

The DAV and many in the veterans' community also believed that the architecture of the system was sound, but we knew from years of experience that VA too often failed to follow the law or its own procedures. VA officials boasted about the liberality of its rules, but its adjudicators often ignored them in practice.

I recall a time at one of our national conventions when the Chief Benefits Director had addressed our group and was responding to a pointed question from the floor about some practice from the VA at that time. The Chief Benefits Director felt compelled to add to her answer that VA always resolves reasonable doubt in favor of the veteran.

Spontaneous laughter erupted from the two or 300 people in attendance at that seminar. They laughed, not because the statement was humorous in and of itself, but because that overworked line was so far from the truth it just naturally evoked laughter.

The problem was not the law or procedures, but VA's failure to adhere to them, VA adjudicators and the Board of Veterans' Appeals conveniently ignored some of the rules beneficial to veterans and followed other unwritten rules that departed from the law.

These irregularities were obviously not what Congress was applauding when it commended the VA claims process in its deliberations on the Veterans' Judicial Review Act. Congress was complimenting the system as it was designed to operate, not these practices.

This committee's own report on the Judicial Review Act included a full description of the claims and appellate processes. That description discussed in very positive terms the assistance VA gives to veterans and the ability of veterans to reopen their claims.

The committee stated its intent that these and the other beneficial qualities of the existing system be maintained, and that no changes be made to the system unless they would enhance accuracy or fairness. The committee was stating that judicial review should in no way formalize or change the administrative claims process.

Quite frankly, when the court began reviewing VA's decisions, it found plenty wrong with them. For the first time veterans had a way to enforce those longstanding beneficial provisions in VA law and regulations that VA had often not felt compelled to follow.

The degree of the court's impact on VA was a measure of how far out of line VA's decisionmaking was at that time. The court did not cause VA's problems, however. It merely exposed them. When the court began enforcing veterans's rights, the veterans' community began to fear that the impact of the court's decisions would be-

come an excuse to lessen veterans' rights to allow VA to maintain the status quo.

When the Commission first began reviewing the situation, VA was still in a stage of denial and blamed the court for its problems. Perhaps this is partly responsible for some of the Commission's recommendations that would do exactly what we feared: paint the court as activist and intrusive into VA's proceedings and recommend lessening of veterans' rights to return the system to some sanity.

Since the Commission first began to form its views, the mindset in VA's leadership has changed markedly, however. The VA no longer attempts to blame the court for all of its problems. VA now acknowledges that, in large part, claims backlogs and resulting long delays for veterans are the results of poor quality.

VA is no longer passively resisting the realities of judicial review. It has a big job because from our perceptions regional office adjudicators have yet to awaken to the new reality and still hold to some of their old attitudes.

Nonetheless, VA has now embarked on the right course through its business process reengineering plan, and all early indications are that the current leadership in VBA is serious about making real improvements.

Unfortunately, the Commission would have us do little to actually improve the system. The Commission would reduce VA's work load to accommodate its current level of inefficiency. Even worse, the Commission would accomplish this by reducing veterans' rights and eligibility through such things as time limits for filing claims, lump sum settlements, restrictions on appeals, and limits on appellate review.

The sad irony of all of this would be that because the court is doing exactly what it was created to do, and because veterans finally have the means to enforce their rights, veterans will, as a result, lose those very rights they sought to enforce. This is why DAV so strongly urges you to reject in no uncertain terms the Commission's recommendations.

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

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

The CHAIRMAN. Thank you, and I thank all of you for taking the time to be here. I want you to know that we appreciate what you have done for the members of your organizations, and we also appreciate the fact that you have been very willing to work with us in the past on eligibility reform. We have got some problems ahead of us coming up with the money—the shortfall in the way they are financing us this time on health care—making us go out and collect it. We may not be able to do that, and I do not know what the administration is going to do if we do not, but I know you have complaints about the Commission and the way things have been going, and we do too. But I think we all have to agree that there certainly is always room for improvement, and I think our answers, as well as yours, are doing what we can to expedite these things.

The time lapse in some of these claims is unreasonable, and we want to work with you. We would like for you to just come back down here and sit with us, share some ideas, and let's work right

in this room and work out some of these problems. You certainly have the experience from your side, and we need your expertise, but we would like to have you also listen to us and some of the things that maybe we could be helpful in.

We may have some questions later on for the record, but I want to thank you sincerely for all of the help you have been in the past, and thanks for being here today.

Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman.

You raised serious questions about the quality of adjudication at the regional office level. The quality assurance accuracy rate of 92 percent reported by VA is inconsistent with the high rates of remand and reversal by the Board of Appeals and the Court of Veterans Appeals. In your opinion has the VA narrowed the definition of error in its adjudication process to obtain a misleading accuracy rate?

Mr. SURRETT. I do not believe the current accuracy measurement is correct, no. I do not believe it in itself is accurate, and as someone said earlier, you have to measure quality by several things and not necessarily those errors that in and of themselves would be outcome determinative.

You have to measure whether or not due process was given. For example, the failure to afford due process may not have changed the outcome of the case, but nonetheless, it is such a serious error that that it should be cited as a mistake in quality, and I think VA's definition of quality is too narrow currently.

Hopefully they will correct that. They are deliberating on it.

Mr. CRANDELL. I would like to state that the Commission noted the large number of cases in which either a 0 percent or a 10 percent rating was given and seemed to treat that as a measure of how trivial the claims were. I think it has a lot to do also with how faulty the judgment is in these cases. I think a lot of these repeat claims are not that somebody says, "Gee, I got ten percent. Maybe I should shoot for 20." What happens is that somebody really did not get a fair shake.

Mr. MCNEILL. I think that BPR goes a long way to doing that. I think the idea about the hearing officer and increasing the hearing officers is well-defined in BPR because they want to get to the pre-decisional hearing and they want to define the issues immediately. Everything in BPR is geared with dealing with the veteran face to face. That is the one criteria that make the hearing officer program so successful because that is the first time where the VA actually sits down with the veteran and says, "Mr. Jones, what are you really talking about here? What do you really need? What are we missing on this point?"

Shifting all of that forward I think will help tremendously in the idea of leading to quality decisions by adjudication personnel.

Mr. MASCARA. Thank you, ladies and gentlemen.

Thank you, Mr. Chairman.

Mr. SURRETT. Mr. Chairman, may I make one final comment?

The CHAIRMAN. Go ahead.

Mr. SURRETT. I appreciate in your statement that you mentioned many of our complaints about the VA in the past. We have made many, but the fact that we were the critics that brought those

problems to your attention, it should bear some credit that we are the ones that say that VA is on the right track. I mean, I do not believe we would be saying that if we did not believe it.

The CHAIRMAN. Thank you, sir.

Does anyone else care to make a closing statement? (No response.)

The CHAIRMAN. You will be hearing from us, and we look forward to working with you, and I hope you do likewise.

Thank you very much. The meeting stands adjourned.

[Whereupon, at 4:14 p.m., the committee was adjourned, subject to the call of the chair.]

APPENDIX

Honorable Bob Stump
Remarks
Oversight Hearing on the Report of the
Veterans Claims Adjudication Commission

May 21, 1997

Good morning. The Committee will come to order.

The purpose of today's hearing is to receive testimony on the findings and recommendations of the Veterans' Claims Adjudication Commission. Public Law 103-446 established the Commission to evaluate the VA's claims adjudication system to determine the efficiency of current processes and procedures used to decide veterans' claims, the effect of judicial review on the system and ways to increase the efficiency of the system. The Commission was also charged with suggesting ways to reduce the claims backlog and reduce the time it takes to decide a claim.

There was good reason to establish this commission. Over the years, claims processing has been a consistent flaw in the VA's relationship with veterans. Every Member of Congress typically devotes a staff member to dealing with constituents who are having problems with the VA or other government agencies. Every year we hold oversight hearings on how VA is processing claims. As a result, the Committee has heard a constant flow of complaints made by veterans and representatives of the veterans service organizations about every facet of VA claims operations. The VA typically responds by saying they are working on it and things will be better next year. But issues raised in oversight hearings or caseworkers struggling with the system are not the only indicators of current problems.

Veterans Service Organizations tell us they spend literally millions every year to assist veterans with their benefits claims. For example, DAV alone spends \$30 million every year. The Legion spends \$3 million, the VFW \$4 million, the Military Order of the Purple Heart spends \$2.3 million, PVA about \$8 million, and AMVETS another \$2.3 million. That is a total of \$50 million and does not even count the funding and efforts of many state, county, and post service officers. I applaud all the service organizations for assisting veterans with claims. But just think what could be done with that money if claims processing at the VA worked better. A good portion of those funds could be spent on scholarships, assisting the homeless, emergency family assistance and citizenship programs. Think how many lives could be dramatically improved if only half of what the veterans service organizations spend on claims assistance was available for other purposes.

Activity at the Board of Veterans' Appeals (BVA) and the Court of Veterans Appeals (COVA) are concrete examples of what a lack of quality and an outdated system of handling claims costs. The combined budgets for the Board and the Court this year will cost taxpayers about \$47 million. That's \$47 million that isn't available to improve benefits or open new clinics. Surely we have an obligation to seek ways to do things better, and to act on good faith proposals to improve the system.

As I mentioned earlier, this Committee has listened to VSO witnesses recite a litany of complaints about the claims processing system. Let me give you just a small sampling of what VSO's have said over recent years.

"The Administration would have us believe that everything is running smoothly in the Department of Veterans Benefits, and though it is taking longer to process a claim, quality will never suffer. Nonsense. The veterans service organizations know better. The subcommittee knows better. And most importantly, veterans awaiting VA decisions know better." VFW, May 26, 1988.

"A common complaint of veterans and their representatives is the perception that veterans' claim folders are being treated like a hot potato, suggesting a policy where pushing the claim down the line is a driving force." AMVETS, Nov 17, 1993

"Claims churning is going on, there is no doubt about it, and it is having a salutary effect on the backlog because the level of remands from the Board of veterans Appeals is testimony, strong testimony, to the fact that full claims development is not being accomplished at the outset..." VVA Nov 17, 1993

The staff has put together a more complete review of VSO testimony since 1988 and you will find copies on the table. I recommend this summary to anyone who thinks there is no problem or that addressing just one issue will solve the situation. From the VSO's own words, you will see that it is not just fixing the computer system, or making employees do the right thing, or eliminating handoffs, or restructuring. It is all these and more.

I am sure there are cynics who will say that Congress put the Commission in place as a sneaky way to cut veterans benefits. Nothing could be further from the truth. It's the old way of doing business that threatens veterans' benefits. When a Member of Congress receives dozens and dozens of complaints every year about an unresponsive VA benefits system, that Member naturally asks why are we doing business this way. During a VA Committee hearing in 1989, Congressman McEwen stated, "I can think of no subject which generates as much communication or ire as the veterans claims system. Some of those veterans will not live long enough to see their cases resolved." To demonstrate the magnitude of Congressional casework efforts, the VA Congressional Liaison Service

receives nearly 600 inquiries per week from House and Senate members on behalf of constituents. If the system doesn't deliver with efficiency and quality, then we should change it because it is the right thing to do for veterans. As Chairman, I believe the VA Committee should be willing to consider every opportunity to improve the system and the benefits Congress has established for veterans.

The Commission's report is broad in its approach, its findings, and its recommendations. In my opinion, the Commissioners have done good work and the veterans community owes them a debt of gratitude. They have thought "outside the box," which is another way of saying they were willing to look at new ideas and not be bound by the past or by narrow biases.

The VA Strategic Management Group - VA's most senior managers - and the work groups assigned to review the report agreed with - or did not reject outright - the majority of the Commission's recommendations, including some of the more controversial ones. Unfortunately, the Secretary has taken a much more obstructionist approach, disagreeing with many of his own Strategic Management Group's positions. While he is entitled to his own views it appears he is locked in the past.

I intend to move forward by drafting several bills reflecting at least some of the recommendations of the Commission, and I will work with the service organizations and VA to begin the difficult task of reforming VA's claims processing. First, I plan to introduce a bill to institute a very limited lump sum payment system that would be optional - not mandatory - for those veterans with static disabilities rated at 20% or less. This bill would make the lump sum payments exempt from laws requiring an offset of benefits against military retirement pay as well as DoD severance incentives. Second, the hearing officer recommendations have the potential for significantly speeding up the process and I will draft a bill to make it mandatory to go before a local hearing officer who is empowered to affirm, reverse or remand a Regional Office decision. However, the bill will not eliminate the Board. I will also work on several other recommendations dealing with pension reform, C&P claims data, forms and filing simplification, separation exams, and clarification of benefit outcomes.

Now let me say to our friends from the VSO's that I invite each organization to become a part of the solution to this mess by helping draft these bills and working on other ways to improve the system. I hope that each of you will think long and hard about proposed changes to the claims processing system. I want to say here and now that years of stagnation have put veterans in this bind and I believe it's time to do something about it. We are at a point in time where doing nothing or relying on the latest promises from the bureaucracy to fix things is the worst thing we can do. If we don't act on some of the Commission's recommendations, then it does not make any sense to waste time on more hearings in which the service organizations merely list VA's faults and provide no solutions. I hope we can work together just as we have on health care eligibility reform.

I now recognize the ranking member.

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STATEMENT FOR THE RECORD

WILLIAM R. LA VERE, MEMBER

VETERANS' CLAIMS ADJUDICATION COMMISSION

ON BEHALF OF

S. W. MELIDOSIAN, CHAIRMAN

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

MAY 21, 1997

Good morning, Mr. Chairman, and members of the Committee, I am pleased to testify on behalf of Mr. S. W. Melidosian, the Commission's Chairman, who is out of the country. Accompanying me today is Mr. Darryl W. Kehrer, who was the Commission's Executive Director.

My statement is drawn from the Chairman's opening and closing remarks at the Commission's briefing to Committee staff on December 11, 1996.

INTRODUCTION

In many ways the Commission's report is the successor to a long series of reports about the VA system. These reports range that of the Hoover Commission in 1949, to the Bradley Commission in 1956, to the Blue Ribbon Panel in 1993. These reports have been written by other commissions, and by committees, task forces, government oversight organizations such as GAO, VAIG and by VA itself. As such, this report contains a number of conclusions and recommendations that should be helpful to the Congress and VA in improving the claims processing system. However, as with these other reports, while adoption of its recommendations will result in incremental improvements to the system, there is no "magic bullet". There is no single solution to the problems or the perception of problems. However, the presentation of data, unique to this report, should provide new tools and new insights to those involved in ongoing efforts to improve the VA claims processing system. In this regard, the Commission was gratified to learn that its report was put to good use by the National Academy of Public Administration's Panel on Veterans' Claims Processing. The Commission appreciated the Panel's kind comments on the Commission's report.

This report contains, in essence, three types of material. One type is the discussions and recommendations of the issues specifically mentioned by Congress in the authorizing legislation (PL 103-446) for the Commission. The Commission began its deliberations by looking into these areas (e.g. Blue Ribbon Panel). As the Commission proceeded, additional areas of inquiry developed. Some of these were developed and are presented here. They constitute the second type of material and include areas that the Commission explored but did not take to the stage of forming recommendations (e.g. information on lump sum payment of benefits). The third type of material is the presentation of data original to the Commission (e.g. Year 2015 Repeat Compensation Claims Model Projections). These presentations are predicated upon data from the VA system which was organized and analyzed by the Commission in its attempt to understand the products produced by the claims system and thereby more clearly understand the system needed.

BACKGROUND

Mr. Chairman, of the nine commissioners, the majority had very little familiarity with VA and its operations. As required by the legislation, five commissioners are from professional backgrounds outside the veterans community. They include commissioners with expertise in the private insurance industry, in administrative law, and in similar programs of other federal agencies. In order to assist these commissioners in understanding the VA system and its products, the Commission arranged a number of briefings, tours, and meetings with VA officials. Throughout this learning process, Commissioners raised a number of questions. To respond to some of their questions, the Commission found it necessary to develop and analyze statistical data. The basic statistics are taken almost exclusively from VA's own data base. Frequently, however, the questions of the commissioners could not be answered by existing VA reports. Therefore, VA's data had to be organized, analyzed, and presented in new ways.

Most of this data is presented in Chapter 1, but it is referred to and used in various places in the report. Much of it deals with claims for Compensation, in particular for "repeat" claims. As explained in the letter transmitting the Commission's report to the Senate and House Veterans Affairs Committees on December 11, 1996, the decision to concentrate on

disability compensation claims was deliberately taken. Compensation benefits represent close to one third of the annual VA appropriation (two thirds when appropriations for medical care are removed) and the overwhelming majority of benefit claims processed each year by VBA.

The Commission noted that both VBA workload statistics and data from cases appealed to BVA showed a high number of "repeat" claims (Chapter I, Section 2). The Commission then looked to see what impact this had on workloads present and future. The result was the Concept Paper on Repeat Disability Compensation Claims (Chap. I, Section 4). The Commission looked further to see what the system produced - the results of the claims for compensation. The result of that inquiry is presented in Chapter I, Section 5 as "Veterans Added to the Disability Compensation Rolls During Fiscal Year 1995." Data was then developed concerning the disability (by diagnostic code) most frequently found among those added to the rolls (Chapter I, Section 6).

PICTURE OF THE CLAIMS PROCESSING SYSTEM

Mr. Chairman, a picture of the claims processing system, the claimants, and the products emerges through this data. The picture is striking, even to those familiar with VA, and is important to those considering the quality, timeliness, and efficiency, of the current system and any changes to it. For example, the data indicates that:

- Almost forty percent (39.64%) of veterans in receipt of disability compensation are rated as 10% disabled, and seventy percent are rated as 30% disabled or less.
- "Repeat" compensation claims is the largest broad category of either compensation or pension claims, and consumes 55% of all worker hours used to process all compensation claims.
- "Repeat" compensation claims outnumber original claims by 2 1/2 times 38% to 15%.
- Between 65% and 70% of veterans filing "repeat" claims or appeals are already in receipt of compensation at the time of filing.
- Veterans file claims for disability compensation (including claims for new disabilities) for many decades after their discharge from military service - indeed throughout their lifetimes. In a "snap shot", taken on September 30, 1995, of pending claims and appeals from veterans already in receipt of compensation, more than 20% were from veterans over age 65.
- For each compensation claim, the claims processing system must investigate and decide upon service connection and/or the degree of severity for (on average) 2.7 disabilities.
- Among the veterans added to the compensation rolls in FY 1995, 50% of the disabilities were rated at 0% disabling.
- Sixteen disabilities (as reflected by diagnostic codes) account for nearly 50% of all conditions.
- An impairment of the knee (diagnostic code 5257) was the most prevalent condition among veterans added to the rolls in FY 1995.
- Veterans with peacetime service constituted the largest (48%) service period group of veterans among the cases reviewed.
- The death rate of veterans in receipt of disability compensation, when adjusted for age groups, is nearly equal to that of the general population and is less than one half that of veterans with Service-Disabled Veterans Insurance when also adjusted for age groups.

Mr. Chairman, the picture that emerges is one of a system that veterans engage and re-engage throughout their lifetimes, where most of the disabilities are rated less than 30% disabling and where most disabilities are similar to disabilities prevalent in the general population. This picture is neither right nor wrong. It is what exists and it must be understood in order to make good decisions about the claims system.

A Commission projection model shows that if VA received no original compensation claims for 20 years beginning in FY 1996, repeat claims volume in FY 2015 would be at least 55% of its 1995 level.

STRATEGIC DATA

The Commission believes that this body of data should be greatly expanded and continuously updated. It should be used to provide the background for discussions and decisions about the claims processing system. Its effects can reach into many areas. It should be the basis for improved strategic management within VA. It should form the basis of an Annual Report on the disability compensation program. An active Advisory Committee on VA Disability Compensation should play a major role in insuring that outside/third-party points of view are brought to bear on the development, publication, and use of such data. From such a body of data, Congress, VA, and other interested parties should be able to predict workloads accurately (barring war or other unusual events). For instance, accurate predictions could be made that for every 10,000 military discharges, the VA will receive X claims for compensation for hypertension, X claims for compensation for knee conditions, etc. Trends could, and should, be identified and tracked. Such data should also be used to reliably predict the future liabilities of the disability compensation program and any proposed changes to it.

The use of such a body would also facilitate the implementation of other recommendations contained in the report by allowing them to be more carefully crafted to fit the situation as it is and not as it is thought to be.

COMMISSION REPORT: IN CONTEXT

Chapter II presents a history of veterans issues while Chapter XII presents an inventory of other studies and documents related to the VA claims processing system. Both of these chapters help to place this Commission's endeavors in context.

THE VETERAN MEETS THE SYSTEM: CLAIMS ADJUDICATION

Chapters III and V discuss particulars of the VA claims processing system. Both chapters note that it is an intricate system requiring a number of complex decisions on each claim. Chapter III recommends simplification of the application forms and filing procedures, and the elimination of the provisions for the payment of attorney fees from past-due VA benefits. Both chapters discuss the partnership between claimants, their representatives, and VA and the necessity of keeping claimants informed about their claims. Chapter V reviews, in detail, the adjudication and appeals process including the effect of the relatively new Court of Veterans Appeals. It makes a number of recommendations in this area including:

- The need to clarify a number of policy issues such as burden of proof, well-grounded claim, and duty to assist.
- Expansion of the role of the hearing officer and making it the mandatory first step in the appeals process.
- Changing the nature of the Board of Veterans' Appeals review from *de novo* to appellate.

STRATEGIC MANAGEMENT

Chapter IV contains the Commission's findings on VA's strategic management and notes that VA is making some progress in the area. The Deputy Secretary meets biweekly with VBA, VHA, and BVA for this purpose. VBA has formed a Strategic Management Committee and is continuing its business process re-engineering efforts. However, these efforts are young and must be carefully nurtured and promoted. In addition, the Commission notes that VBA, VHA, and BVA need to work to integrate their strategic plans at the department level. The recommendations reflect these concerns. Other recommendations include:

- The establishment of a strong central data collection focus.
- Publication of an Annual Report on the Disability Compensation Program with detailed analysis of the characteristics of the program and its beneficiaries.
- Establishment of a Congressionally-chartered BVA Disability Compensation Advisory Committee to provide independent examination, evaluation, and insight by experts from the private industry, government, and academic sectors on relevant topics.

EXTERNAL TRENDS

In Chapter VI, the Commission presents information about various subjects raised as questions during Commission meetings. Some of them have been raised in other reports. The Commission has made no recommendations in these areas. They are largely information and/or would require much greater expert study to determine their applicability to the VA claims processing system. Since Congress directed that Commission membership include persons from the private insurance industry and other similar federal programs, the Commission looked into these areas for ideas that could be useful to VA. The Commission did not find any system or procedure directly transferable to VA. However, a number of relevant trends, issues and management ideas, were discussed. Some differences between and similarities to private disability insurance, Social Security Disability programs, and Federal Employees Disability Compensation programs are noted. A number of these ideas are discussed in some detail to assist any future development of their applicability to VA programs. These include:

- Varying definitions of disability.
- Use of a time limit for the filing of claims.
- A discussion of the VA Rating Schedule and a comparison of it with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" as administrative tools in determining disability.
- Use of a lump sum payment plan.
- A comparison of VA Pension and SSI.

The Commission found it remarkable that there appeared to be a lack of acceptance within VBA of the possibility of using involvement and/or association with the AMA and other similar trade organizations to obtain information it could turn to its own administrative advantage in processing claims.

INFORMATION RESOURCES MANAGEMENT

Chapter VII contains reviews of VA and VBA efforts at modernization of its information management systems. Two of its recommendations concern the need for 1) VBA and BVA to work more closely and, 2) for VBA to develop and finalize a plan for the future processing system so that appropriate planning for software and hardware decisions can begin. The Commission notes that one such plan appears to have been recently approved.

These two areas (closer cooperation between various parts of VA and solid planning) recurred throughout the commission's deliberations on numerous topics.

ACCOUNTABILITY/VA IMPROVEMENTS

Chapters VIII (Accountability: Effectiveness of Work Performance Standards and Quality Control and Assurance) and X (Fine Tuning a Struggling System: Blue Ribbon Panel Implementation and Effect and Commission Survey) present the Commission's findings in several additional areas mandated by PL 103-446.

In Chapter IX, the Commission notes that VBA has undertaken a number of activities to explore methods of improving its processing system. The Commission believes that in the future specific goals and benchmarks should be established prior to starting such activities to provide a base for evaluating their effectiveness. The Commission finds that a number of these current activities are very promising and a number were developed in the field by regional office personnel. The Commission believes that these activities show a willingness to make innovative changes to improve the processing system.

LIFETIME SYSTEM

Mr. Chairman, the system of benefits created by Congress is a lifetime system with claims being filed (even for new conditions) by veterans discharged 50 years ago. Therefore, a large part of VA's workload involves "repeat" claims.

The VA's activities are not conducted on a "level playing field". The "field" is constantly being changed by events varying from wars, to military downsizing, to new legislation, to changes in medical knowledge and treatment, to available new technology, to changing political and social expectations, to the advent of judicial review, to the changing interrelationships between VA, the Congress, and the Veterans Service Organizations.

CHANGING ENVIRONMENT

Thus Congress and VA must constantly review the legislation, policies, procedures and practices to ensure that they keep pace with the changing environment within which the VA must operate its claims processing system. To do this all concerned must:

- Develop and maintain an extensive, accurate, and useful body of statistical data. This data must then be organized and presented in a way that makes clear the situation as it is and discovers and notes trends and permits and encourages accurate prediction of future situations.
- Use this data in making strategic plans, making management decisions and evaluating the impact of proposed legislation. Such plans and decisions can then be made based on "what is" not what is "thought to be".
- Constantly review and refine policy guidance to VA employees at all levels to keep pace with the changing environment. This should be done on a proactive rather than reactive basis.
- Continue efforts to improve the partnership between VA, its veteran customers, and their representatives.
- VBA, VHA, and BVA must work much more closely and cooperatively in developing their plans and procedures.
- VA, and its constituent parts should associate themselves with various non-VA groups such as the American Medical Association to quickly take advantage of any innovations, developments, and practices which can help improve the delivery of benefits to veterans.

For decades the VA disability compensation program was the only unified system assessing and compensating for disability. Today it is not. Myriad such programs exist today from Social Security Disability, to state and federal employee disability programs (workers compensation), to private insurance. New definitions of disability, new policies, new practices and new administrative tools are constantly being developed and utilized. VA must keep itself in the mainstream so that it can effectively and compassionately deliver benefits without denigration of the sacrifices of veterans.

WHAT IT ALL MEANS

Mr. Chairman, to look at the data elements contained in the Veterans' Claims Adjudication Commission's report and say – "the Commission thinks we shouldn't pay this veteran or another", is to miss the point.

The point is that by knowing who VA must pay and for what – accurate projections and predictions can be made by Congress, VA, and all concerned. For example:

- What is the average life expectancy of veterans on compensation? If we underestimate it as perhaps we have, we have understated future outlays by billions of dollars.
- If we don't look at who files claims and at what frequency, we will make bad predictions of the resources and system processing capabilities VA needs to perform its mission. For instance, it is commonly held that VA's workload will diminish as World War II veterans die. Data collected by the VCAC calls this into question. Veterans live longer. Veterans of more recent periods of service appear to file more claims on average.
- The data shows that some veterans file their initial claim for a condition many years - decades - after they leave active service. This clearly supports VA's need for more critical and specialized medical exams for all veterans at the time of their discharge.
- How long should a VA decision take and with what consumption of resources? If a claim is thought to be for a minor condition the tendency is to think of the required decisions as - easy - as clerical. Does the fact that, even with conservative estimates, these decisions will likely cost a minimum of \$50,000 affect thinking as to how much time and resources should be invested?
- If many of the conditions for which VA pays compensation are similar to conditions affecting the general population (in etiology, treatment, rehabilitation, and prognosis), is it better for veterans that VA maintain its own separate system for judging the degree of disability - one that is detached from other organizations involved in very similar determinations (e.g. American Medical Association)? Is it effective? Is it efficient? Is it good use of resources?

CLOSING

These are the valuable questions raised by the data contained in the report. If the discussion of this data turns on whether or not, or how much some veteran should be paid, then Congress, VA, and the public will have missed an excellent opportunity to truly improve the VA benefits processing system. In fact, the fear that such a negative interpretation will be placed on the data (and even one's patriotism questioned!) may impede the development and discussion of such data.

To truly improve the system, the Congress, VA, the Veterans Service Organizations, the media, and the public must discuss and understand data such as that presented in the Commission report in order to create a system specifically crafted for the processing of veterans benefits as required by law.

Mr. Chairman, thank you for the opportunity to testify on behalf of Chairman Meliodasian and the Commission. I would be pleased to respond to any questions you may have.

**STATEMENT OF
THE HONORABLE HERSHEL GOBER
DEPUTY SECRETARY
DEPARTMENT OF VETERANS AFFAIRS**

**BEFORE THE COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES**

May 21, 1997

Mr. Chairman and Members of the Committee:

I am pleased to be here this morning to present the Secretary's position on the recommendations and findings of the Veterans' Claims Adjudication Commission. I am accompanied by Dr. Stephen Lemons, Acting Under Secretary for Benefits, and Mr. Dennis Duffy, Assistant Secretary for Policy and Planning.

Before I address the VA response to the Commission's report, I would like to acknowledge the massive and complex task so ably undertaken by the Veterans' Claims Adjudication Commissioners, particularly the venerable Chairman, Mr. Melidosian. They produced a far-reaching and thoughtful report, which VA views as genuinely helpful to our efforts to improve our services to the Nation's veterans and their dependents.

You have before you the document that embodies the Department's review and analysis of the Commission's work.

First, I'd like to spend a few moments discussing VA's integrated, functional approach to this effort. I believe it was a landmark effort for VA – one which I expect to see us use repeatedly for future initiatives of this sort.

With the issuance of the Commission's report in December 1996, I convened the VA's Strategic Management Group to determine an approach to our response that would be thorough and would ensure high-level attention to this important report. The SMG made it explicit that the Department's response would reflect the Secretary's approach to major issues – that is, the "one-VA" perspective. Four broad groupings of the Commission's report content were agreed upon, and a work group was assigned to address each grouping. Work groups were comprised of senior executives and programmatic experts and were chaired by individuals from organizations not having a principal interest in that work group's issues.

One might say: but the Commission's report only dealt with the claims process, why involve everyone in the Department? Precisely so that we can foster broad recognition throughout the Department that:

- from a veteran's first contact with VA, he or she becomes a customer of the *entire* Department;
- although not always readily apparent, changes in one program area of VA often have an impact elsewhere in the Department – or should;
- bringing additional points of view to bear on a program's scrutiny of itself encourages "out of the box" thinking and engenders fresh perspectives.

I believe that this report is testimony to our success.

On March 17, the Secretary was briefed on the results of the Strategic Management Group's review. That review is represented by reports prepared by the work groups on each Commission recommendation which assessed the pros and cons and suggested a Departmental position. The Secretary by and large agreed with the analysis and recommendations of the SMG work groups. He took exception in the relatively few cases in which he felt that the recommended approach did not sufficiently bear in mind the Department's responsibility to veterans. He noted that "benefits earned are different from benefits bestowed" and reinforced the need to keep this distinction in mind in consideration of these core veterans' benefits. The Secretary's exceptions are contained in the Decision Paper at the beginning of the report. That Paper also endorses the remaining SMG recommendations and adopts them as the official position of the Department. By taking this approach to his decision, the Secretary recognized the quality of the SMG's effort.

I will now briefly review some highlights of the VA position as it differs from or agrees with the Commission's recommendations.

Purpose of the Compensation Program

The Commission suggested that Congress clarify the intent of the compensation program in statute. It observed that the purpose of the program is no longer clear and that legislative and judicial mandates should be reviewed. In its comments, the Commission concluded that the Schedule for Rating Disabilities does not sufficiently reflect socioeconomic changes that occurred since its creation.

The VA position is that the purpose of the compensation program is quite clear and that congressional action is not necessary. Further, the Secretary emphasized that contrary to the view of the Commission, the Disability Rating Schedule has been radically revamped to reflect contemporary medicine and the evaluative process,

and, as structured, represents a consensus among Congress, VA, and the veteran community.

Purpose of the Pension Program

Similarly, the Commission recommended that the Congress amend Title 38 to clearly state the pension program's purpose. This recommendation was considered necessary by the Commission so that veterans' pensions could be considered in context in discussion of Federal policy regarding needy disabled Americans.

The Secretary found this recommendation to be unnecessary. The very clear purpose of veterans' pensions is to ensure a modicum of dignity to the lives of those who put themselves at the service of their country during time of war, and their families.

Make the Board of Veterans' Appeals Strictly an Appellate Body

The Commission recommended that the *de novo* nature of BVA's appellate review of claims be eliminated, which would, in effect, make the regional office hearing officer's decision final, in the absence of clear error or legal insufficiency. The Commission suggested that such a change would result in faster processing of appeals.

VA acknowledges that appellate-only review by the Board might result in some gains in timeliness. However, VA believes that any potential benefits in speed of processing could be at the expense of the veteran claimant in that a shift to the pure appellate model would deny veterans an existing right – the right to have another decision-maker take a fresh look at the facts and the law to reach an independent determination of the merits of a claim. Therefore, VA cannot concur with the recommendation. It was for this same reason that the Secretary also disagreed with the Commission's recommendations on closing the evidentiary record early in the appellate stage and instituting a shortened time limit for filing appeals.

Conduct High-Level Review of Benefits Programs

The Commission noted that in some cases the various benefit programs are insufficiently integrated in terms of producing the best outcome for the beneficiaries. They recommended that we take a look at these programs and ensure that the goals and outcomes complement each other.

VA wholeheartedly agrees with this recommendation. In fact, such a review is already underway under the auspices of the VA's efforts to address the requirements of the Government Performance and Results Act.

Issue Regulations to Replace Manuals

This is another example of complete agreement between VA and the Commission. The Commission had noted that many adjudication rules and procedures are not now embodied in regulation, and it recommended that VA remedy this. VA agrees that this must be accomplished for a number of good reasons, not the least of which is the Administrative Procedures Act. However, we note that since the manual references cannot simply be lifted wholesale and called "regs", significant reworking and reorganizing of their content will be required, will take time, and will consume significant resources.

As you know, the Commission made quite a few recommendations or suggestions -- 54 by our count. I have only mentioned seven. Among the others were the issues of: VA's duty to assist, Year 2000 solutions, strategic management, finality of claims, lump sum payments, actuarial information, pension simplification, timeliness, collaboration with the Social Security Administration, improvement of the disability rating examination process, and improving VA's partnerships with veterans' service organizations and claimants. In our analysis and response, VA considered each recommendation on its merits.

Overall, VA agreed with the Commission or is further studying 40 of the recommendations. The 14 on which we part company were generally found to have the potential for diminishing in some fashion a veteran's well-earned rights, and the Secretary staunchly opposed recommendations that would bring about changes which in any way could adversely affect veterans.

In closing, let me assure you that this effort will not become a dust collector on the VA bookshelf. In keeping with the "one-VA" approach we took in conducting our review of the Commission's report, the Assistant Secretary for Policy and Planning, Dennis Duffy, has been charged with responsibility for overseeing the development of detailed implementation plans for each approved action and for monitoring their accomplishment. We are in the earliest stages of development of that departmental implementation plan. Responsible offices for the various action items have just been designated. I hope to have approved the final plan by the end of June. We will be happy to share that implementation plan with the Committee upon its completion.

Thank you for the opportunity to provide these comments on this landmark initiative. I, Dr. Lemons, and Mr. Duffy will be happy to respond to your questions.

Thank you for the opportunity to provide these comments on this landmark initiative. I, Dr. Lemons, and Mr. Duffy will be happy to respond to your questions.

Mr. Chairman and Members of the Committee,

My name is Milton J. Socolar and I am a Fellow of the National Academy of Public Administration. I am serving as chair of an academy panel tasked by the congressional appropriations committees with studying and making recommendations to improve operations of the Veterans Benefits Administration, with particular emphasis on compensation and pension claims processing. Because the academy panel has not yet fully reviewed the draft findings and recommendations developed by the staff, I am addressing you today in my individual capacity as chair and not on behalf of other panel members.

I am pleased to present my views regarding the Department of Veterans Affairs response to recommendations of the Veterans' Claims Adjudication Commission made in its 1996 report to the Congress.

The commission report covered a wide ranging examination of the VBA compensation and pension program and made a number of specific recommendations for improving claims processing procedures. The department response groups the matters raised by the commission into four categories: (1) goal setting and performance management, (2) legal and regulatory issues and oversight activities, (3) medical examinations and evidence issues, and (4) program purpose and process design issues.

Let me say at the outset that I think the department did a good job of analyzing and responding meaningfully to all the commission recommendations. The secretary and his strategic management group of top leaders concurred with most of the recommendations made. However, notwithstanding this high degree of concurrence, I have some concerns. But first I will address those recommendations with which the department did not concur.

Purpose of the compensation program. The department disagrees with the commission recommendation that, because the disability rating schedule does not reflect current socioeconomic reality, Congress should clarify the purpose of the compensation program. The department maintains that there is a consensus among Congress, VA, and the veteran community that the schedule as structured serves as an equitable basis for determining compensation for America's disabled veterans.

The academy panel has concentrated on ways to improve management of the program as it is now legislatively constituted and did not explore this and other controversial policy issues that could have diverted our attention from improving administration. Nevertheless, being aware that the rationale for determining benefits under the compensation program is the replacement (on average) of lost income and being aware of changed conditions in the job market and of advances made in medical technology, I have to say, speaking for myself, that I agree with the commission recommendation. I strongly suspect, particularly in the case of many disabilities rated at the 10-20-30% levels, that the correlation between compensation awarded and average income lost by reason of disability is tenuous at best. It is, therefore, appropriate, in my view, that notwithstanding long acceptance of the rating schedule as now applied, Congress should examine the fundamental rationale under which the compensation program is administered.

GAO review and report to Congress. The department recognizes congressional concern and need to be kept apprised about how VA automated systems will handle the year 2000 computer problem and meet turn-of-the-century requirements. While making clear that keeping Congress informed is a VA responsibility that it will fulfill, the department disagrees with the commission recommendation to have the General Accounting Office (GAO) periodically review and report on the status of progress being made. Irrespective of department intentions, the program risks are so great, in my judgment, that it would be beneficial to have a periodic independent review and report to the Congress, and to the department as well, to help assure success. I am sure that the VA manager of information technology modernization would find such reviews and reports helpful.

The commission recommended for consideration several other matters requiring legislative action:

- (1) that VA's duty to assist veterans in pursuit of their claims be examined,
- (2) that the merit of providing lump sum benefits in lieu of monthly payments to veterans with low disability ratings be studied,
- (3) that the consequences of repeatedly considering the same or similar issues because claims decisions lack finality be studied, and
- (4) that the time for appeal of claims decisions be shortened to 60 days and the evidentiary record closed at the time an appeal is filed.

The department rejected all the listed recommendations essentially on the ground that each could only result in adverse effect to veterans. Concerning the first, "duty to assist," I agree with the department that the criteria for providing assistance to veterans have been reasonably well defined, primarily through decisions of the Court of Veterans Appeals. Notwithstanding the clarity of VA's duty, however, I think that this and all the other items listed involve the kinds of issues that should have been regularly analyzed long before now in managing the administrative process. An agency that, in deference to its clients, avoids evaluating its basic programmatic activities and potential alternatives is also avoiding its responsibilities to the taxpayer for serving program purposes as efficiently as possible. I would also note that thorough analysis of such issues often results in identification of "win-win" situations in which significantly better service scenarios can be developed while at the same time achieving efficiencies.

Information and analysis. The strategic management group, in assessing the commission recommendations, often recognized the need for additional information and analysis and the need for developing better overall information and analysis capabilities. One has only to scan summary charts of the group's conclusions to note a high degree of concurrence with recommendations relating to the collection and analysis of data not previously considered by VA but relevant to efficient program administration. In particular, the group agreed with the commission's strong and explicit recommendations about the need to develop a capacity to conduct actuarial analysis. The group also agreed with the desirability of VBA involvement with other federal and state government agencies and with private insurers and medical associations that deal in disability determinations. Finally, the strategic management group recognized the merit of establishing a group at the department with high level VBA and VHA representation to develop and disseminate best rating examination practices.

Narrow management perspective. It is well accepted, by many within as well as outside of VA, that the department and VBA have been administering the compensation and pension program within a narrow, insular perspective. VBA has tended to address issues as they arise, very much on an *ad hoc* basis and has not yet succeeded in realizing the more important of its articulated initiatives for improving service.

Given the history of troubles that VBA has had in administering the compensation and pension program, it is important to appreciate that it will take considerably more than its recognition of the things needing to be done for VBA to achieve the desired improvement in its service to veterans. Recently, VBA launched a new business process reengineering (BPR) plan to dramatically improve the timeliness and quality of its adjudication decisions by the year 2002 while also achieving significant reductions in staff resources. This plan has received positive reaction from Congress and veterans services organizations, and the academy panel also believes that, if implemented successfully, BPR will have significant benefits.

However, I am concerned that the management deficiencies that have caused VBA's past inability to implement sustained performance improvements will continue to exist. These

not only impair VBA's ability to remedy immediate problems in its BPR plan but threaten the long-term success of the BPR service improvement goals. These same deficiencies threaten VBA's ability to implement vitally important efforts to meet its year 2000 computer requirements and improve management of its computer modernization efforts. The academy panel will provide detailed recommendations on developing the planning and management capacities necessary to overcome these deficiencies.

Leadership, accountability, and management capacities. VBA, at present, lacks the management capacities that would enable its leaders to define long-term direction and provide the resources to follow through. VBA leadership must establish those capacities -- the capacity to plan, integrate and execute complex programmatic activities; information and evaluation capacities to measure performance and hold responsible officials accountable for results; and the capacity to maintain an annual plan, implement and review cycle to integrate all parts of the organization into a comprehensive operational effort to fulfill VBA goals.

Despite progress since 1996, the potential for a cohesive, well functioning leadership team is uncertain. The VBA strategic management committee is a step in the right direction, but up to now it lacks clear purpose, a long-term agenda for change, an ability to integrate and oversee complex activities, and a clear vision of what strategic management means. Recent efforts to implement the Government Performance and Results Act are laudable but insufficient. There are major gaps and short circuits in lines of accountability within the leadership team, a bias against developing a systematic corporate information capacity, and a reactive decision-averse culture in which senior executives are reluctant to take meaningful action against a failing member. VBA today is a closed organization that historically has avoided making full use of information for planning purposes from outside stakeholders. This must change.

Prospects for improvement. I must say that despite a few dissents, it is promising to see how receptive VA is to the Veterans Claims Adjudication Commission recommendations. This high degree of receptivity together with other indications such as recent establishment of the department's strategic management group and the VBA strategic management committee suggest an awakening by VA to the urgent need for greater management direction, control and discipline. I am sure that requirements of the Government Performance and Results Act have also served to move VA to a better understanding of its management deficiencies.

In closing, I would note again that the extent of agreement in VA's response to the Veterans Claims Adjudication Commission report is a good sign; but also, I again emphasize that VBA has a long history of failing to make good on many of its important and well intentioned plans. It is essential, therefore, that the secretary select a strong and decisive leader for the vacant under secretary for benefits position and provide the support he or she will need to change VBA's prevailing management culture. And it is also critical to the successful implementation of change at VBA that the Congress through its committees actively follow progress as it occurs and provide the resources necessary in the short run to achieve greater efficiencies in the longer term. I would note that, in my role as panel chair, I spoke with key staff from each of the four legislative and appropriations committees responsible for veterans affairs, and the concerns they voiced were remarkably similar. The academy panel report will be recommending on-going progress reports to the Congress.

That completes my prepared statement. I and my colleagues will try to answer any questions that you, Mr. Chairman, or other members of the committee may have.

CURRICULUM VITAE

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1950 BA, University of Maryland
 1954 LLB, George Washington University
 1952 Auditor, General Accounting Office
 1956 Attorney Advisor, GAO
 1970 Assistant General Counsel, GAO
 1971 Associate General Counsel, GAO
 1972 Deputy General Counsel, GAO
 1979 General Counsel, GAO
 1981 Acting Comptroller General of the United States, (March 4 to October 1)
 1981 Special Assistant to the Comptroller General (de facto Deputy Comptroller General to retirement)
 1993 Retired December 31

1954 to 1959 Auditor and Attorney Advisor, GAO, Paris, France
 1963 to 1964 Chief Counsel, GAO, Paris

Fellow, National Academy of Public Administration
 Comptroller General's Award
 Distinguished Rank Award
 Meritorious Bonus Award
 Roger Jones Award, American University, and others.

Married, two children, four grandchildren
 Hobbies - Reading, painting, and gardening

STATEMENT ON FEDERAL GRANTS AND CONTRACTS

The only grant or contract received by either Mr. Socolar or the National Academy of Public Administration in the previous two fiscal years that is relevant to the subject matter of this testimony is the following:

Contract from the Veterans Benefits Administration for \$984,000 pursuant to the conference report on H.R. 2099 on the Departments of Veterans Affairs and Housing and Urban Development, and independent Agencies Appropriations Act, 1996, in the which the conferees stated their intention that "VBA will utilize \$1,000,000 for a study by the National Academy of Public Administration of the claims processing system." This action was initiated by the Senate Appropriations Committee and included in its report number 104-140.

CAROL RUTHERFORD, ASSISTANT DIRECTOR
VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
VETERANS' CLAIMS ADJUDICATION COMMISSION

MAY 21, 1997

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to offer comment on the findings, conclusions, and recommendations of the Veterans' Claims Adjudication Commission (VCAC or Commission) as set forth in their Report to Congress issued in December 1996.

Our testimony today will briefly discuss a number of priority issues with which The American Legion is in general agreement with the Commission's analysis and recommendations. However, the primary focus will be on those findings, conclusions, and recommendation which The American Legion has substantially differing views and perceptions.

In addition, The American Legion believes it is noteworthy to consider some preliminary comments by the Chairman of the National Academy of Public Administration, Milton Socolar, in testimony before the Senate Appropriations Subcommittee on VA, HUD, and Independent Agencies on May 1, 1997 on several of the same problems and issues addressed in the Adjudication Commission's report. The Legion is looking forward to the report of the National Academy's full findings and recommendations which should be completed in the very near future.

The Commission was established pursuant to section 402(e)(2) of PL 103-446, the "Veterans Improvement Act of 1994" for the purpose of conducting a comprehensive study of the system by which the Department of Veterans Affairs (VA) adjudicates claims for veterans benefits. The stated goal of this legislation was to conduct a broad review of issues affecting the way VA processes and adjudicates claims. Reflecting their broad congressional charge, the Commission's final report is extensively detailed and wide-ranging in its discussion of many of the complex and challenging problems affecting VA and the system of benefits provided to disabled veterans. The information, observations, and recommendations, including the views of several individual Commission members are an important contribution to the continuing debate as to the "causes and cures" for the problems affecting the timeliness and quality of VA's service to veterans and other claimants. The American Legion wishes to commend the Commission for its efforts to provide the requested input to Congress, so that veterans and their families can be ultimately better served.

On May 5, 1997, Secretary Brown released a detailed, formal response to the Commission's report. This response was the product of an extensive review and analysis of the recommendations by the VA's Strategic Management Group (SMG). There was substantial agreement with the majority of the Commission's recommendations. As a framework for their analysis, the SMG organized the various Commission's recommendations under four categories depending on the nature of issue: goal setting and performance management; legal, regulatory, and oversight activities; medical examinations and evidence issues; and program purpose and process design issues. The American Legion has followed the same categorization of the Commission's recommendation, as a convenient format for the purpose of this statement.

Mr. Chairman, The American Legion believes the Secretary and the VA staff who participated in development of this report are to be commended for their efforts to provide thoughtful and constructive responses to the Commission's many recommendations.

In addressing the Commission's report and the recommendations of the SMG, Secretary Brown in his Decision Paper expressed the view that "...we are dealing with the core veterans' benefits that represent what Americans agree is due the men and women who have shouldered the defense of the country. The exigencies of budget deficits must never dictate a strictly pragmatic approach where these programs are concerned. Benefits earned are different from benefits bestowed, and I believe this distinction must be borne in mind in all discussions of VA programs." He also stated that "The Department cannot concur with changes that in any way adversely affect veterans." The American Legion wholeheartedly endorses those sentiments and urges the subcommittee in its evaluation of these reports to adopt a similar perspective.

Mr. Chairman, Secretary Brown also stated that VA will now move forward to implement its position on the Commission's recommendations. Clearly, the seriousness of VA's problems and challenges demand prompt action. However, the National Academy of Public Administration will soon be making its recommendations to Congress on needed changes to the VA's claims adjudication and appeals process. Acceptance of their recommendations may well impact on implementation strategies and procedures have already been developed for many of the VCAC recommendations. To avoid the possibility of wasted or duplication of effort, The American Legion believes VA should consider deferring further action pending an evaluation of the National Academy's findings and recommendations. The Legion believes it will be important to develop a comprehensive, integrated implementation plan.

Mr. Chairman, many of the VCAC recommendations appear to be premised on a fundamental conclusion that VA's ongoing efforts to fine tune or incrementally improve the claims and appellate process were not going to be successful. Their report proceeds to set forth a number of recommendations for radical procedural and legal changes to the system which would, if implemented by VA or the Congress, take away or sharply restrict the historic rights of veterans and their survivors. While The American Legion agrees that certain changes in VA's current procedures and operations would help improve the level of service VA provides, certain recommendations would clearly be detrimental to the interests and welfare of veterans and The American Legion cannot and will not support these.

With respect to the Commission's conclusions and recommendations concerning VA's goal setting and performance measures, many of these focus on changes which would indirectly help improve Department management efficiency. They highlight the need for VA to take a more corporate, business-like approach to planning and management at both the operational and strategic level. They address the need for VA to develop and improve its information development and analysis capabilities in order to more adequately manage and direct the various program activities. They highlight the fact that without a coordinated, organization-wide system to provide accurate operational and management information, VA will not be able to develop reliable forecasts of activity and related resource needs, and develop and defend future plans and budgets. Along with improved information, there is also a need to coordinate local office plans, goals, and objectives with national VA plans, goals, and objectives. VA generally agreed with these recommendations. However, it was considered essential to the success of the Business Reengineering Program that local initiative and innovation be fostered and promoted through the pilot-project process.

Mr. Chairman, The American Legion has long been concerned by the persistent lack of quality adjudication decision making at

all levels, inadequate quality controls and quality assurance, and the lack of personal and management accountability. In The Legion's view, these concerns continue to be at the heart of VA workload problems and are evident in the escalating case backlogs, an inability to meet unrealistic processing goals, a high rate of appeals, and a high remand rate by both the Board of Veterans Appeals and the Court of Veterans Appeals. These factors directly affect all aspects of the claims adjudication process, including the work of the Board of Veterans Appeals. As a result, VA is unable to adequately determine and defend its current and future resource and budgetary needs.

In our opinion, the lack of accountability in the current system contributes directly to poor quality decision-making at the regional office level and the unnecessary churning of cases through the adjudication and appeals process. VA's own statistics strongly suggest that management's focus and priority is production rather than quality service. The result is poor "customer satisfaction" as reflected in such indicators as the increasing number of appeals filed each year. Of those cases which are eventually decided by the Board of Veterans Appeals, the regional office denial is affirmed in less than one-third of the cases; cases are sent back or remanded to the regional office for further development about forty-four percent of the time; and the regional office determination is overturned in about twenty percent of the cases and the benefit sought is granted. Veterans and their families are entitled to better service, i.e. to have a fair and proper decision on their benefit claim within a reasonable period of time. The Commission's recommendations described as 1K (page A-15 of VA's report), 1L (page A-17), and 1M (page A-19) and VA's response, however, only partially address these issues. We believe the resolution of these quality-related problems should be VA's highest priority.

Mr. Chairman, in addition to the long-standing problems of quality and accountability, there is another core problem which, unfortunately, was not specifically identified or addressed by the Commission. This has to do with the fact that VA's workload reporting system is, according to the VA Inspector General's audit report of February 27, 1997, "not sufficiently accurate to assure appropriate workload reporting and performance measurement of VBA operations." Although the scope of this audit was somewhat limited, The American Legion believes it is not unreasonable to conclude that the lack of accurate, reliable workload data compromises VA's ability to make appropriate and effective management decisions and, equally important, goal setting, strategic resource and budget plans. In view of the apparent seriousness of the problem and the implication of assumptions and plans based on flawed data, The Legion believes action to correct the fundamental deficiencies in the current workload measurement system should also be high on VA's list of priorities.

Mr. Chairman, The American Legion wishes to call your attention to some of the remarks of Chairman Socolar of the National Academy of Public Administration in his May 1 testimony. Among other issues, he also touched on the need for action by VA to develop accurate, reliable workload data as a prerequisite to setting performance standards and measures related to the appellate workload at the regional office level and that managers should be held accountable for meeting these standards. He expressed a concern that the appellate workload is escalating and may soon reach crisis proportions. Also, it was felt that Congress needs to ensure that VA has the necessary resources to guarantee continued benefits to veterans. However, "Given significant doubts about the validity of VBA's estimating methods, Congress should not reduce VBA resources until the organization can fully document the basis for its workload and staffing estimates and demonstrates the validity of their reengineering efforts." He stated that key recommendations of the VCAC concerning VA's strategic management capabilities and the claims adjudication process need to be implemented, including

rule simplification, development of regulations to clarify statutory requirements, and development of an integrated VBA/BVA plan to measure the quality of claims processing. The Legion looks forward to the upcoming report on the National Academy's full findings and recommendations in the near future.

The VCAC report expressed the view that certain changes in the law were necessary to make the adjudication process more responsive and efficient. A number of recommendations dealt with potential changes in the law. One addressed the need to identify those provisions in the VA's adjudication manual, M21-1, and other directives which are regulatory in nature and publish these in the Federal Register in accordance with the requirement 5 USC 552(a)(1). The American Legion has long been concerned by the lack of action to correct this problem and is pleased that VA concurred with this recommendation.

The Commission also recommended consideration be given to examining the pros and cons of using lump-sum payments to settle certain disability claims. The American Legion strongly endorse Secretary Brown's response which was "this proposal does not merit further study, despite the fact that certain interests raise it periodically. The inevitable effect would be to cut off some veterans from what they earned by their service."

Mr. Chairman, the Commission recommended a number of major changes to current law, regulation, and claims procedures. For the most part, VA expressed general concurrence with most of these recommendations and indicated that some merited further study in order to fully evaluate. There were also several which VA did not concur with. The American Legion has some very strong objections to many of the recommendations as well as the underlying findings and conclusions.

The VCAC recommended various changes in the pension program. VA felt most of these merited further study as part of their overall effort to improve and simplify the program. Elimination of the Eligibility Verification Reports (EVRs) is already planned under the FY 1998 budget. With regard to the VCAC's assertion that legislative clarification of program's purpose was needed, The American Legion believes the VCAC is attempting to raise an issue where none exists. The nature and intent of pension was thoroughly discussed and debated in 1978 with the enactment of PL 95-588 which established the current Improved Pension program. Its purpose is quite adequately set forth in 38 USC 1521. The recommendation is unwarranted and unnecessary, and does not deserve further consideration.

Much of the Commission's efforts were focused on a review and analysis of VA workload problems associated with the heavy volume of cases at the regional offices as well as at the Board of Veterans Appeals. According to the VCAC, one of the most significant workload factor was the number of "repeat" claims as differentiated from first time or original claims. Repeat claims include those in which entitlement to service connection or pension had been previously established and the claim reopened for additional benefits as well as those cases in which evidence is submitted to try and reopen a previously denied claim. There was much discussion and concern expressed about the impact of "repeat" claims on a system of adjudication which lacks finality. In the Commission's view, veterans access to the system promotes a continuing and unnecessarily high volume of claims and appeal activity. The result is that VA is overburdened and claims and appeals are increasingly backlogged. This type of process precludes any finality or closure to an individual's case which further contributes to VA's heavy workload. These conclusions are cited as reasons for recommending that Congress reassess the advisability and desirability of those provisions of current law which permit such repeat claims and appeals.

The clear implication of this "finding" is that service disabled veterans themselves are largely responsible for the creation and persistence of VA's workload problems. Therefore, their ability to pursue such claims should be severely constrained. It appears the Commission's view is that the claim system/process is more important than those for whom it was intended to benefit. There is an attempt to shift the blame for problematic service from the VA to veterans. This perspective challenges the historical legal and medical basis of the current benefit system that Congress has authorized for those who have served and become disabled as a result of such service in the armed forces of the United States. The American Legion finds this rationale very disturbing.

The significance of repeat claims and associated appeals, as defined in the report, is discussed in terms of impact on VA's workload. The report notes that current law provides life-long benefits. This, together with the incremental nature of evaluations under the VA Schedule for Rating Disabilities (38 CFR, Part 4) and the absence of any time limits on filing a disability claim, creates an economic or financial incentive for veterans with lower ratings to reapply for "increased benefits." Similarly, those veterans previously denied benefits seek to reopen their claims. The implication being that some veterans, i.e. those with minimal and moderate disability ratings as well as those whose claims have been denied for whatever reason, are taking advantage of an overly permissive system which by its nature and history fosters a high volume of repeat or "churned" claims and appeals.

The American Legion believes this characterization gives a distorted picture of the nature and intent of the VA disability compensation program. Historically, the armed services and VA have had separate missions and priorities, when it comes to ex-service members or "veterans". Congress has established specific benefits for those who incur permanent or chronic disability during or as a result of military service to the nation. The program of benefits is administered by the Department of Veterans Affairs. However, it has always been up to the individual veteran when, if ever, to apply for any benefits to which he or she may be entitled. This is why veterans who served in World War II, Korea, Vietnam, etc. are just now filing their first disability claim. It is also a medical fact of life that the disability associated with a service related condition tends to increase in severity with the veteran's age.

Congress has always recognized the nation's responsibility to compensate service disabled veterans in accordance with their changing circumstances. VA disability claims are not and never have been in the same category as "workmen's compensation" or a civil liability settlement. Congress has also mandated that the legal and administrative process for determining entitlement to VA benefits be pro-claimant. It has established very specific and stringent statutory and regulatory requirements for original claims, reopened claims, and appeals. In our opinion, such "repeat claims" by disabled veterans which the Commission seems so concerned by are precisely what Congress intended. However, the issue of VA's physical ability to process claims and appeals in a correct and timely manner involves a different set of problems and issues related to VA management policy, budgetary resources, and the continuing impact of judicial review.

Over the last ten years, almost annually there has been some addition to VA's existing workload as a result of new benefit and due process legislation. However, Congress has seldom provided VA with sufficient funding to handle the added workload associated with such action. This has been especially true since the enactment of judicial review in 1988. As the Commission noted, this was a watershed event and VA has been "struggling" since then with varying degrees of success to adapt and adjust to this new legal environment. Claims and

appeals are not only more legally and medically complex, but there are now more issues per case. In our opinion, the continued problematic quality of the adjudication process and veterans' lack of satisfaction contribute to much of the "churning" of claims and appeals within the system. VA concurred that there was a problem in this area and recommended the issue be studied to determine its scope. The American Legion strongly disagrees with the position of the VCAC on this matter. In our opinion, this recommendation overlooks the real underlying causes of VA's workload problems which are the lack of quality decision making and accountability as well as the unreliability of the current workload reporting and performance measurement system as previously discussed.

As a result of judicial review, VA has been forced to acknowledge its legal "duty to assist" veterans in the development of their claims. The Commission, however, concluded that this precedent is too broad, too ambiguous, too resource-intensive and, therefore, too burdensome for VA. No supporting data was provided to substantiate this controversial conclusion that VA's and the Court's interpretation of the duty to assist statute (38 USC 5107) is inconsistent with the intent of Congress when it passed the Veterans Judicial Review Act of 1988. The American Legion strongly supports Secretary Brown's response to this recommendation which was that "not only is legislative action inadvisable, even further study is unnecessary."

The third major grouping of VCAC recommendations concerns suggested ways in which to improve the timeliness and quality of VA medical examinations, including military separation examinations. VA, in concurring with these recommendations, indicated that many of the VCAC's ideas were already under consideration or being actively tested under various pilot projects. VA emphasized the fact that the VA Examination Process Work group would be taking a more systematic approach to identifying and evaluating "best practice" initiatives and implementing them nationwide.

The American Legion believes VA efforts in this area will help reduce delays, workload, and potentially lost benefits due to poor quality or inadequate separations examinations.

Mr. Chairman, VA has for many years conducted Transition Assistance Program (TAP) and Disabled Transition Assistance Program (DTAP) briefings at military installations. Their purposes has been to inform separating individuals of VA benefits and claims prior to their separation. However, not everyone leaving service receives a separation examination and, according to VA, the vast majority of the examinations that are conducted are inadequate for VA claims purposes. VA/DOD have now developed a joint military separation examination pilot project which takes the TAP/DTAP process one step further. This test involves three scenarios for conducting separation physical examinations at three Army facilities which will meet the needs of the service as well as the VA for veterans benefits purposes. In one scenario at Ft. Knox, KY, the servicemember can get a separation physical examination at the Louisville VA medical center. At Fort Hood, Texas, the servicemember is examined by a VA physician with support from the military medical facility. Finally, at Fort Lewis, WA, the separating servicemember is examined by Army physicians who are following VA examination guidelines. The real innovation at Fort Lewis is that VA has placed adjudication personnel at the base to actually take disability claims, develop medical evidence, including needed medical examinations, and to make a formal decision on the claim. The resulting rating goes into effect as of the date he or she leaves active duty. Under this innovative approach, The American Legion Department of Washington is providing two full-time professional Service Officers and a secretary to assist individuals with their claims and VA personnel with claims processing. In addition, these Service Officers have also performed weekly pre-separation briefings to groups of about 130 servicemembers shortly before

their separation. There are plans to expand this program to other service bases in Washington in the very near future. From the results thus far, the Fort Lewis test has been very successful for all concerned. The American Legion believes this is a wise investment of resources and would like to see it expanded to separation centers nationwide for all services.

The fourth grouping of recommendations involves issues related to the purpose of the compensation program and the design of the current claims process. VA concurred with many of the recommended changes such as developing a formal partnership between VA and the veterans service organizations (VSOs), simplify claims forms and filing procedures, improve communication with claimants, and expand the role of the Hearing Officer in the resolution of disallowed claims. While generally supportive of these efforts, some of which are already part of VA's Business Reengineering Program, The American Legion does have a number of concerns.

The American Legion believes the VA/VSO partnership proposal offers potential advantages for the VA and claimants' representatives in our collective efforts to improve the timeliness and the quality of service to veterans, their dependents, and survivors. A pilot project is already underway at the St. Petersburg VA regional office with the Florida State Department of Veterans Affairs with favorable preliminary results. Similar tests of this program will soon begin at other regional offices around the country.

The VSO representative, as the claimant's advocate, has a legitimate and essential role to play in the development of a claim. The development of appropriate guidelines to ensure they are included in the process will be beneficial to all concerned. The American Legion, however, has two basic concerns with this type of initiative. For the claimant, it must be absolutely clear that this relationship does not in any way compromise or limit the representative's independence or activities on their behalf. The American Legion intends to support the partnership concept, based on our organization's available staffing. However, in future budget considerations, VA and the Congress must not view the VSO's as an "unfunded" resource in justifying any reduction in regional office staffing.

With regard to VA's acceptance of the recommendation to expand the Hearing Officer's role in the appeals process, ostensible justification for this proposal is that it would improve processing timeliness, quality, and responsiveness. VA also felt "there may be fewer appeals to BVA." These efforts are intended to try and resolve a denied claim at the regional office level. If unsuccessful the Hearing Officer would ensure the case would be ready for final appellate consideration by the Board of Veterans Appeals. While this type of initiative may be well intentioned, it avoids the real problem which prompts the recommendation in the first place, i.e. poor quality decisions as indicated by large numbers of Notices of Disagreement, and a continuing high allowance and remand rate by the BVA. The Hearing Officers would be like a check valve before a case went to the Board of Veterans Appeals which may be helpful in the short run. It does not appear they would be in a position or have the authority, however, to attack quality-related adjudication problems. The American Legion strongly believes VA's resources should more appropriately be focused improving the fundamental quality of decisions being rendered rather trying to correct problems in individual cases after the fact.

The American Legion notes VA did not share the VCAC's views and recommendation on changes affecting the nature and scope of the Board of Veterans Appeals. Secretary Brown also rejected the recommendations to shorten the appeal period to 60 days and closing the evidentiary record in an appeal. The Legion is opposed to any proposal which would limit The Board's authority to review veterans' claims "de novo" or to close the appellate

record. As Secretary Brown indicated, while these changes to the current system might mean speedier processing, the more important issue is that the benefits of such changes would be outweighed by the loss of rights and advantages for some veteran appellants. VA could not, therefore, concur with anything that would adversely affect a claimant's ability to receive a full, fair, and timely decision.

Mr. Chairman, VA expressed particular disagreement with the recommendation that clarification of the purpose of the VA's disability compensation program was necessary. Similarly, The American Legion does not share the VCAC's views on this subject and find 38 USC 1110 to be a clear and unambiguous statement of this program's purpose. The VCAC appears to be confusing the issue of purpose with the means by which the level of service connected disability is assessed (38 CFR, Part 4 - Schedule for Rating Disabilities.) In support of its conclusions, the VCAC referred to the January 1997 GAO report on the Rating Schedule which criticized VA for paying compensation based on the average loss of earning capacity concept rather than an actual loss of earnings due to the service connected disability. The Legion continues to believe the current disability criteria provides reasonable, fair, and appropriate ratings, as stated in VA's response to the GAO report.

In conclusion, The American Legion does not accept the Commission's views on many of VA's problems. The report devoted considerable attention to "VA's success or failure in implementing Congressional expectations." Much of their analysis proceeds on the assumption that the current backlog situation in the regional offices and at the BVA are the unavoidable outcome of strategic management failures and the long-term transition to judicial review. Their inevitable conclusion is that, short of some very radical procedural and legal changes, further efforts by VA and/or Congress to "reengineer" the claims process were not going to be successful in making it more responsive and efficient. The Legion is concerned that many of the Commission's recommended "cures" for the ills of the system appear intended to benefit the beauracracy by placing priority on efficiency and process rather than quality service to veterans. Despite the VCAC's extensive analysis and expressed opinion, there is no guarantee that their recommended changes if implemented would, in fact, result in an improved level of service to veterans and other claimants. It is clear, however, that many of these changes would take away veterans' historical rights and benefits in an effort to resolve VA's fundamental management and budgetary problems. The American Legion believes this would be grossly unfair.

Mr. Chairman, that concludes our testimony.

STATEMENT OF
JOHN J. MCNEILL, FIELD REPRESENTATIVE
NATIONAL VETERANS SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO THE REPORT OF
THE VETERANS' CLAIMS ADJUDICATION COMMISSION

WASHINGTON, DC

MAY 21, 1997

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for inviting the Veterans of Foreign Wars (VFW) to this very important hearing. In essence, the VFW agrees with many of the Veterans' Claims Adjudication Commission's recommendations, particularly those concerning Department of Veterans Affairs strategic planning and on medical examination issues. The latter is especially consequential -- in most claims, the compensation and pension examination is still the most vital piece of evidence. We further believe the Commission's recommendation to out-base adjudication and rating personnel in VA medical centers as absolutely critical for the Secretary of Veterans Affairs to immediately implement.

But the good parts of the report are overwhelmed by the negative aspects, which occur mainly in Section V, *Process Design: Claims Adjudication and Appeals*.

The negative comes in two forms. The first is the creation of mythical problems coupled with proposed solutions to these myths. The foremost example is the Commission's assertion that Congress and the Secretary of Veterans Affairs have been derelict "to exercise their respective policymaking responsibilities[.]" This statement was made as a result of the Commission's belief that clarification is required for certain statutory terms and concepts.

Their declaration is beyond our comprehension. Our Service Officers fully understand the intent and meaning of "duty to assist," "well grounded claim," and, particularly, "burden of proof." They know the difference between facts and evidence. And, VA personnel do likewise; our differences occur only when they, in our opinion, fail to properly apply these principles. The irony of this discussion is that we firmly believe Congress, over the years,

has actually been quite thorough in its policymaking duties on veterans' entitlements. This includes historical legislation, such as the "Veterans Judicial Review Act of 1988", the "Veterans Benefits Improvement Act of 1994" for our Persian Gulf War brethren and the "Veterans' Health Care Eligibility Reform Act of 1996". In reality, we have little trouble understanding either Title 38 of the United States Code or Code of Federal Regulations.

Another example of the first negative is the lengthy dissertation on "repeat claims". Frankly, we had much difficulty discerning the Commission's approach on this issue. The fallacy here is that in defining a new term of "repeat claims", the Commission blends together two entirely different types of claims: those for increased compensation evaluations and those of reopened claims for service connection based on new and material evidence. This distinction is important because a reopened claim has a relatively insignificant impact on claims processing decision timeliness and quality. It is essentially the easiest claim to adjudicate.

The second negative, and by far the worst aspect of the Commission's report, is the direct assault on long-established principles of veterans' entitlements under the guise that changes will improve claims processing efficiency. We are talking primarily about the Commission's proposed concepts of "duty to inform" and "finality".

The dangers here can be best shown by two scenarios. The first is an elderly widow visiting a VA counselor attempting to file a cause of death claim, that is for Dependency and Indemnity Compensation (DIC). She is told that the VA will need the death certificate, an autopsy report, the medical records for treatment up to death, and any other records that may be pertinent to the claim including those at a VA medical center, if appropriate. With the providing of this guidance to the widow, the VA's responsibility ends under the "duty to inform" concept. The widow is now on her own to get this needed evidence and to do so at her own expense, both monetarily and psychologically.

Just as dangerous is the Commission's concern with "finality". Implementing their concept means establishing some sort of delimiting date. Can anyone here say that we would want to tell a World War II veteran who contracted beriberi in a Japanese POW camp that the VA will not support his claim for secondary ischemic heart disease because it manifested beyond a "final" date for filing compensation claims?

These are just two of the serious objections we have to the Commission's recommendations in the areas of claims processing adjudication and appeals. We must remember that the Commission was established by Public Law 103-446 to "... carry out a study of the Department of Veterans Affairs system for the disposition of claims for veterans benefits ..." (emphasis added). It was not to evaluate veterans' entitlement policies, in general.

Thus, the keystone in evaluating any of the recommendations by the Commission is whether claims processing timeliness and quality will be enhanced. The VFW has followed closely the Commission literally from its inception. We had a representative attend every minute of the second through the eighth and final open meeting. We firmly believe that the Commission's recommendations in the area of veterans' entitlements was a venture into areas beyond their capacity and ability to properly evaluate. Nowhere in the report is there objective findings of time savings or quality enhancement (that is, outcomes) on how the concepts of "lump sum payments", "duty to inform," "finality," and "elimination of *de novo* review at the Board of Veterans' Appeals" will actually improve claims processing. All we have is the Commission's hypotheses that they will.

Even then, further argument on this is unneeded. At the end of Fiscal Year 1991, just at the time the impact of Judicial Review and military downsizing was really beginning for the VA, the average processing time for original compensation claims was 164 days. Rating decisions were very seldom longer than one page of cursory reasoning, and usually replete with errors by today's standards. The Court of Veterans Appeals was beginning to regularly fault, through the Board of Veterans' Appeals, VA rating boards for being autonomous and capricious in their decisions, especially on denials without adequate supporting medical evidence or proof.

In comparison, as of this past April, the average processing time was 133 days, a reduction of 31 days. (There are similar reductions in other types of claims.) Overall, rating decisions are erudite and easy to understand. Secretary Brown has stated his belief that the average will be 117 days at the end of the year. If that becomes true, the VA will have met our goal of 120 days that we have testified through the years as being a reasonable processing period for original compensation claims. The VA is achieving these timeliness standards while still exercising their current statutory "duty to assist" and "burden of proof" responsibilities. We can thus state that there is no better time ever in

the history of veterans' claims processing than the present for a veteran to receive a fair and just decision.

It is obvious the VA has made significant strides in reducing both its backlog and timeliness problems. Much of the accomplishments have occurred during the Commission's existence. The Veterans Benefits Administration is an entirely different organization than at the time of the signing of Public Law 103-446.

Now, we are not saying that all is perfect with the Veterans Benefits Administration. There is still room for improvement in their claims processing. The VFW has long-held that the focus must be on three major issues: quality decision-making at the regional office on compensation claims; reduction of the Board of Veterans' Appeals decision time-lag; and, the high BVA remand rate. (The two appellate review problems are almost entirely integrated in decision quality at the regional office.) Solve these and all other claims processing problems will essentially resolve. However, these problems hardly describe a situation that indicates the whole system is in need of total restructuring that mandates the acceptance of the radical concepts being espoused by the Commission.

We realize that with our criticism of the Commission's report also comes an obligation to recommend an alternate approach. That work has essentially been done for us with the VA's Strategic Management Group's recent review of the report. Therefore, we agree with Secretary Brown's decisions in his April 1997 Decision Paper on the SMG's review and embrace that as the proper method to implement the Commission's recommendations. It is also the best way to integrate the Commission's findings into the VBA's Business Process Reengineering as reinforcement to the commendable goals and initiatives outlined in that plan.

There is one more thing we would like to state. It is our opinion that we are at the stage where further outside studies, such as the Veterans' Claims Adjudication Commission, will be redundant. Since June 1993, when Secretary Brown established the Blue Ribbon Panel on Claims Processing, the Veterans Benefits Administration has had at least ten General Accounting Office reports, eight VA Office of the Inspector General reports, an organizational assessment and a program review by the Center for Naval Analyses, and an ongoing review and assessment from the General Services Administration. All of those studies and reports had the claims processing system as the central focus.

That is not all. The National Performance Review/Reinventing Government Part II has many reporting requirements, reviews and oversight for the VBA's claims processing activities. The Secretary also created the COVA Fact-Finding Committee and former Board of Veterans' Appeals Chairman Cragin established his Select Panel on Productivity Improvement, both geared to the appellate process. Additionally, the VBA was heavily committed, particularly with detailed and dedicated FTE, to the Veterans Claims Adjudication Commission during its entire existence of just over two years. And, next month brings the report by the National Academy of Public Administration, which if it follows the May 1, 1997 Congressional testimony of the panel chairman, will require extensive rebuttal on the VA's part and has already raised considerable concern with us. Are we now at the stage where "enough is enough"?

We can also add to that list the numerous congressional hearings. We are not advocating that Congress should diminish its responsibilities. Quite the contrary; your role is as vital as ever. Particularly, the excellent oversight on Business Process Reengineering and VETSNET, as performed in the past by Congressman Everett and his subcommittee, must continue.

But, it is time to consider studying less the Veterans Benefits Administration and the Board of Veterans' Appeals and allowing them to fully focus all assets and resources on their missions. They will still have the Congress and Veterans Service Organizations watching. Presently, that is sufficient.

Thank you, Mr. Chairman. This concludes our formal statement. I am prepared to answer any questions you or any committee member may have.



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A Not-For-Profit Veterans Service Organization Chartered by the United States Congress

Statement of

VIETNAM VETERANS OF AMERICA

Presented By

RICHARD F. (RICK) SCHULTZ
EXECUTIVE DIRECTOR

Before The

House Veterans' Affairs Committee

Regarding

Veterans' Claims Adjudication Commission Recommendations

May 21, 1997

Introduction

Vietnam Veterans of America, Inc. (VVA) is pleased to submit its views on the Report to Congress prepared by the Veterans' Claims Adjudication Commission (the Report). VVA's more detailed comments on the Report are contained in our April 16, 1997 letter to Chairman Stump, a copy of which we provided to the Senate Veterans' Affairs Committee and key U.S. Department of Veterans Affairs officials.

VVA is a Congressionally chartered veterans services organization, with a nationwide membership of 50,000 Vietnam veterans and Vietnam-era veterans. Among other activities, VVA has a national network of over 300 service representatives whose responsibility is to assist and represent veterans in claims for VA benefits, predominantly in the area of disability compensation benefits. VVA service representatives advise and represent veterans at all levels of adjudication, from VA Regional Offices, through the Board of Veterans' Appeals, and to the U.S. Court of Veterans Appeals. On certain occasions, VVA has pursued remedies at the United States Court of Appeals for the Federal Circuit. Because of its interest in advancing the entitlement to benefits for those disabled during service, VVA has a vital stake in the outcome of the recommendations contained in the Report with respect to the disposition of claims for veterans disability benefits.

Through its advocacy on behalf of disabled veterans, VVA has compiled considerable expertise in this area and has an intimate knowledge of the strengths and the weakness of the VA adjudication process. VVA participated in the creation of the Report by submitting its recommendations as to the processes and procedures for adjudicating disability compensation claims and appeals to the Commission. We welcome this opportunity to present further comments and hope that these comments will be of assistance to Congress in evaluating the Report and taking appropriate steps on its recommendations.

VVA commends the Commission on completing and producing its extensive report to Congress. On the whole, we share many of its views about the shortcomings of the VA's adjudicative and appellate processes, which have operated to the detriment of veterans. We endorse particularly the need of the VA to "get it right the first time" at the lowest possible level. In an ideal world, a veteran should not be required to suffer the delays of appealing a flawed decision to the Board of Veterans' Appeals (Board or BVA) and even to the U.S. Court of Veterans Appeals, only to have such cases remanded for re-adjudication. Despite the training provided by VA Central Office, some rating boards ignore even remand instructions issued by the court (for example, they fail to provide the claims file to the examining C & P physician), resulting in further delay to the veteran and consumption of administrative resources. Improved quality and timeliness of VA Regional Office (VARO) decisions will not only expedite the delivery of benefits to deserving veterans but relieve the consumption of time and resources, as well as frustration about what veterans perceive is the glacial speed of the progress of a claim.

VVA does, however, have some serious reservations about the Commission's proposed solutions, and will thus restrict our views mainly to highlight areas of particular concern. Our key views on these issues can be summarized as follows.

Getting It Right the First Time

VVA supports any efforts by the VA to train VARO Office personnel to "get it right the first time." This will improve the speed and accuracy with which meritorious claims are processed, and disabled veterans receive the benefits to which they are entitled by law. Rather than revamping the system with major structural changes among VAROs, the BVA, and the court, VVA believes that the best way to improve the speed and the quality of decision-making at the regional level is through improvements through the VA. The VA General Counsel's office already prepares a decision assessment document for each precedential case decided by the court. In addition, the office of Compensation and Pension holds monthly video seminars with the VAROs. The Board of Veterans' Appeals trains new employees by videotapes, which could be distributed to the VAROs.

The Veterans Benefits Administration (VBA) has not been innovative enough in changing its inefficient procedures for processing claims. Excessive delays and backlogs continue to plague the system, sometimes forcing veterans to wait years for resolution of their claims. Part of this situation, as VVA has noted in other forums, is a general problem of performance quality at the initial decision-

maker level -- rating specialists. VVA, and the VA itself, agrees with the Commission's view that VBA should review decisional data from the U.S. Court of Veterans Appeals and the Board of Veterans' Appeals, as a quality control mechanism. VVA would take this concept even further, and urge VBA to also analyze Hearing Officer and Administrative Review decisional data. Moreover, all these types of data should be used to determine which rating specialists repeatedly make the same types of errors. This information should then be used for retraining, as well as performance evaluations and appropriate personnel actions.

If continued and amplified, these efforts should help enable VAROs to attain the goal that the Commission and VVA share, which is "getting it right the first time."

There Should be No "Delimiting Period" for Filing Claims

The Report explores the pro's and con's of establishing a "delimiting" date for claiming benefits after separation from the military. This would impose rigid cut-off dates after separations within which veterans would have to file for benefits, after which all claims would be barred.

VVA opposes any requirement imposing a cut-off date for filing claims. First, as is the case with its discussion of finality, the Commission overlooks that there is a *de facto* delimiting procedure already in operation. Thus, the longer after separation a veteran applies for compensation, the more difficult it is to provide service-connection, since evidence linking a present disability to incurrence or aggravation in service becomes lost or destroyed.

The Commission correctly notes that many veterans have suffered a service-related injury or disease but defer filing immediately after separation because of reasons varying from lack of knowledge of eligibility to the lack of severity of disability within this time. *Id. at 263-64.* A large percentage of claimants using VVA's veterans benefits services are veterans who have filed for benefits for the first time, sometimes as long as twenty or more years from separation. The same reasons cited by the Report for not promptly filing a claim for a disability are expressed to VVA by claimants to whom it provides its services. Rather than establishing a delimiting period, there should be increased emphasis on the part of the Department of Defense in explaining the advantages of making early filings for veterans benefits.

Coordination between the VA and the Department of Defense in informing all medically retired veterans, regardless of the extent of their disability, of the availability of VA compensation would significantly improve the prompt filing of claims for those veterans with a demonstrable service-connected injury or disease. Providing simple but coherent and comprehensive information about VA compensation to all separating veterans would achieve the benefits of a delimiting period without any corresponding unfairness and prejudice to veterans who, for reasons recognized in the Report, defer an initial filing for veterans benefits.

Congress Should Place No Additional Limits on Finality of Decisions for "Repeat Claims"

The Commission devotes extensive comments about "repeat" claims, which it says are the majority of claims adjudicated by the VA and those requiring the most time in adjudication, resulting in a consumption of its resources and adding to its administrative costs that it implies are disproportionate to the benefits to veterans. The Report notes that many of these "repeat" claims are brought by veterans with other service-connected disabilities, in some cases as low as a ten percent evaluation. Therefore, the Report leaves an impression that the VA adjudicative process would be improved if there were some other way of dealing with repeat claims, if not altogether eliminating them. VVA disagrees.

VVA opposes any modification of the of the way the present system deals with repeat claims and maintains that all claims should be treated with identical procedures. First of all, as a general matter, one reason for the number of repeat claims in the system results from improper adjudication at the Regional level. For example, the Report notes that the Board reverses 60 percent of all VARO decisions, and Chief Judge Nebeker informed the Commission that 60 percent of all Board decisions contain administrative error. It would appear logical to suggest that many repeat claims would be eliminated if VAROs "got it right" the first time. This would moot some of the more drastic resource-saving solutions contemplated by the Report, such as paying some disability compensation in lump sums and imposing cut-off periods after separation beyond which veterans would be barred

from filing claims, even for diseases with medically-recognized delayed onsets.

The fact that the caseload at the Board of Veterans' Appeals is growing, according to the Commission, is not due to the fact that the VA fails to render correct decisions at the Regional level. Instead, the Commission attributes this growing caseload, in part, to the fact that there is no "finality" with respect to VA claims, allowing veterans to file and refile claims for service-connection, for evaluations of disabilities not previously reported to the VA, and for increased evaluations for disabilities already established by the VA, *ad infinitum*.

This portrayal of an endless succession of identical but meritless claims overlooks the fact that there are already statutory administrative controls in place that prevent unlimited relitigation. According to law, all unreviewed VARO decisions are generally final and can be opened only by presentation of "new and material evidence." 38 C.F.R. § 3.104 (1996). "New" evidence is evidence that has not been presented to the VARO before and which is not cumulative of evidence already before the RO. "Material evidence" means evidence which, if considered with the evidence already in the file, would make it a reasonable possibility that an outcome different from a previous VARO decision would result. The U.S. Court of Veterans Appeals has endorsed this limited concept of finality, and VVA agrees with this wholeheartedly.

The requirement that a claimant submit "new and material evidence" to re-open a denied claim imposes a regulatory check on meritless "repeat" claims, particularly since the requirement of "new and material" evidence is a threshold determination, requiring minimal administrative resources, both at the VARO and at the BVA. In other words, the VA is not required to readjudicate the claim from beginning to end in every instance. It need only examine the new evidence submitted. If it is not "new and material," the VA can dismiss such claims. It is only when a claimant submits "new and material" evidence on a "repeat" claim that additional effort by the VA is required to resolve the claim. When new and material evidence establishes a reasonable possibility that the outcome of a previously denied claim would be changed, such a claim is meritorious, and it would be unfair not to ask the VARO to assist the development of such a repeat claim and to adjudicate it.

VVA is concerned about any proposal to impose finality on the VA claims process, because it would break the vow that the government will always take care of the needs of those who came to its aid in times of wartime and peacetime. Finality would suggest such "repeat" claims are less meritorious than "original" claims. This is manifestly not the case, as an examination of each class of "repeat" case will readily show. As explained by the Commission, "repeat claims" include three broad categories of veterans, those seeking: (1) increased evaluation of an established service-connected disability; (2) service connection of a disability not previously claimed; and (3) service connection for a disability previously determined not to be service-connected. It does not require extensive analysis to show that, from the veteran's standpoint and one consistent with the overall philosophical principles guiding veterans law, "repeat" claims are just as important to veterans as initial claims and to impose a stricter bar of finality upon them than the new and material evidence rule would be unfair. It would also be contrary to the underlying objectives of veterans law, which is that they will be compensated for all service-connected injuries or diseases and not only those exceeding a 20 percent evaluation.

A closer examination of the categories of "repeat claims" underlines the importance of not establishing a bar of finality after the first adjudication. Claims for increased evaluations, the first category of claims cited by the Commission, are highly important to veterans. There are few residuals of service-connected injuries or diseases that remain stable over time, and the fact that some disabilities do increase should be acknowledged and reflected within the structure of VA disability compensation.

All claims for evaluations to increase a disability should be treated identically with the procedures for assigning an evaluation to a disability in the first place; and veterans whose initial disability is rated as noncompensable or assigned a ten percent evaluation should be accorded the same access to the VA adjudication system as those veterans whose disability is initially rated at a higher level.

As for claims for disabilities not previously recognized, the second category of "repeat claims", VA regulations and practice acknowledge that many disabilities incurred in or aggravated by service have, by their very nature, a delayed onset. Post traumatic stress disorder is a paradigm

example of a mental disorder that manifests years, if not decades after service. Thus, it would be impossible for a veteran upon separation from the service to apply simultaneously for a demonstrable injury or wound and for a separate service-connected disability with a delayed onset that he/she might or might not have at that time.

To say that such a veteran would have only a single opportunity to file all the claims for service-connected disabilities he/she has or which may have at some point in the future, beyond being impractical, would distort the rules of finality to act against veterans with meritorious claims. A harsh rule of finality would also overload the VA system by setting off the equivalent of a land-rush for all veterans immediately separated from service to file for every disability they actually have or they think they might have in the future.

VVA unalterably opposes the imposition of a bar of finality based upon disabilities initially adjudicated, correctly or otherwise, as not service connected. It has been VVA's experience that many veterans are initially denied service-connection for disabilities they believe they acquired in service. This is often due to the fact that service medical records have been lost, misplaced, or destroyed, or in-service treatment was not recorded on extant medical records. This is frequently encountered in the case of disabilities acquired in Vietnam, particularly for wounds or diseases treated by medics in the field. Such veterans often are able to establish the service-connected nature of these disabilities only by "buddy statements" they acquire years later.

Even claims that are subsequently determined to be service-connected and rated at a zero percent evaluation are important to veterans, because they entitle the holder to priority treatment at VA medical facilities for those service connected disabilities. With service-connection already established, a noncompensable rating can predicate a relatively simple rating increase if the disease or residuals of an injury worsen. If a VARO denies such claims initially, as a result of insufficient evidence or simply as a result of error, it would be unfair to veterans assigned such an evaluation, although the amount of administrative resources expended on such claims, to the thinking of the Commission, may be of disproportionate benefit to a veteran. VVA does not believe that the benefits of service connected VA medical care should be denied to any disabled veteran, even if his disabilities are not severe enough to warrant compensation.

As the Commission acknowledges, weighing against the institution of additional provisions regarding finality, "Repeat claims should present limited and narrow issues, particularly if the prior decision included well articulated 'reasons and bases.'" *Id.* at 200. Again, this is another example of the importance of a VARO getting it right the first time, which is a far sounder solution than limiting "repeat claims" because of deficiencies in the VA adjudication system. VVA agrees that improvement in adjudication at the VARO level is one of the most critical objectives that any reworking of the VA should attain, and one Congress should emphasize, rather than being distracted by references to "repeat claims." An improved adjudicative process will benefit the veteran, his representative, and the integrity of the process itself.

Benefits Should Not be Provided as a Lump Sum

The Report explores the concept of providing lump sum disbursement for disabled veterans whose evaluations are 10 percent. *Id.* at 272-288. Sound policy reasons operate against this proposal. Again, there is already in place a *de facto* system of lump sum payments as a result of delays in the VA adjudicative systems. Many veterans with original claims can literally wait years before entitlement to benefits is determined, particularly if review by the BVA or the court is necessary, after which they are rewarded for their efforts and persistence by a large "retro check" from the VA.

The lump sum rates examined in the Report would be unfair to veterans with disabilities rated at 10 percent. As a result of the existing system of *de facto* lump sums explained above, virtually all veterans receive some lump sum, in the form of retroactive payment. For example, a veteran who spends a year before receiving a ten percent evaluation will receive a lump sum payment of \$1,128 at current rates. This compares to the \$10,290 one-time payment proposed in Scenario One of the Report. *Id.* at 275. In other words, a veteran assigned a 10 percent evaluation would have to receive benefits ten years or more to be better off from a financial standpoint than the \$10,290 lump sum proposed in Scenario One -- and this assumes no cost of living allowance increases in benefits. The lump sum benefit of Scenario Two, which is based on the average life expectancy of veterans entitled

to disability as a whole, would be \$12,772, which is not significantly better.

Without any evidence that veterans assigned an evaluation of 10 percent would be relieved of that disability within ten years, the lump-sum proposals of Scenario One and Scenario Two would operate to deprive veterans with service-connected disabilities lasting more than ten years, when the purpose of this program is to compensate them for this disability throughout their life.

Multiplying the unfairness to veterans with disabilities evaluated at 10 percent is the structure of the VA's *Schedule of Disabilities*, which does not provide evaluation in one percent increments or even the same increments among various disabilities. For example, the next evaluation after ten percent for Post Traumatic Stress Disorder is 30 percent. Notwithstanding 38 C.F.R. § 4.7, which authorizes rating boards to assign veterans to the highest disability rating that best approximates their disability pictures, many veterans with PTSD whose disability pictures best approximate a 20 percent evaluation (which is not provided by the *Schedule*) would be frozen at 10 percent, and their holders would receive a lump sum. At the same time, veterans with other disabilities for which the *Schedule* provides for a 20 percent assignment -- such as arthritis of two major joints -- would continue to receive benefits monthly. Such a disparity of treatment between equally disabled veterans would be arbitrary and capricious.

Few of the arguments cited by the Commission in favor of a lump sum payment set forth a compelling policy reason for adopting a program for lump sum payment to veterans. As a practical matter, financial considerations of the U.S. Treasury cannot be ignored, of course, but should be balanced with the overall objective of the veterans benefits system, recently summed up by Secretary Brown in the following terms: "The Department remains faithful to its historical underpinnings in representing a grateful Nation's respect for its veterans of military service. It is an honored tradition to which VA people everywhere have committed themselves and which I am proud to uphold." *Annual Report of the Secretary of Veterans Affairs for Fiscal Year 1995* at ii. The transitional financial barriers for recently discharged veterans cited by the Commission -- for education or to start a business -- do not apply to the many veterans who apply for compensation benefits years after separation, who generally have their careers already underway. Indeed, a main purpose of the VA compensation system is to provide compensation for the average loss of functionality in the workplace caused by a service-connected disability that reduces the money available to disabled veterans and their families for the expenses of living -- not as a subsidy program to reintegrate veterans into society. This is as true for veterans whose disabilities are assigned a 10 percent evaluation as it is for those assigned to a higher rating.

As a "nest egg" for starting businesses, expanding businesses, and pursuing educational benefits, lump sum payments between \$10,000 and \$12,000 are hardly sufficient. Veterans with significantly more severe disabilities have these same needs, but there is no mention in the Report of a proposal to convert the entire VA system into a tort-based model, with a lump sum recovery payable to all disabled veterans. Such financial burdens as recently separated veterans with minimal disabilities might face, as compared to their civilian counterparts, are far better addressed by other existing programs, such as those administered by the Small Business Administration and existing veterans' educational benefits and vocational rehabilitation programs.

One of the most compelling reasons against payment of lump sums for minimal disabilities is pointed out by the Report is that many disabilities worsen over time. *Id.* at 284, 285. Providing a "safety net" for veterans whose conditions deteriorate severely, as the Report suggests (*id.* at 285), would introduce needless complications into what was intended to be a simplification of administration and would introduce functionally unrelated pension-type financial considerations into a program of compensation. Also, as the Commission candidly acknowledges, there is a significant risk of irresponsible expenditure of lump sum benefits. *Id.* at 285. This risk increases the possibility that the VA's pension caseload would grow as a result of veterans who have spent their lump sums irresponsibly but who still are prevented from engaging in employment by reason of their service-connected disabilities, becoming impoverished and claiming VA pension benefits. Providing caseworker services to recipients of lump sum payments to ensure their prudent expenditure would offset any financial and administrative savings. Finally, as the Commission notes, establishing lump-sum payments for disabilities might be seen as a "get-rich-quick" scheme for veterans who ordinarily would not apply for benefits to apply for a quick \$10,000-\$12,000. *Id.* at 286. Therefore, VVA opposes the concept of lump sum compensation benefits.

The Board Should Continue to Provide Final Agency Decisions

In an ideal world, where VAROs rendered correct decisions, there would be no need for a BVA or the U.S. Court of Appeals. The high number of remanded cases from the BVA and from the court, however, speaks volumes about inadequacies in the quality of VARO decisions. The revision of the appellate process suggested by the Commission will not cure this problem, and any "cure" that might result will be worse than the disease. For this reason, VVA does not endorse any major overhaul of the present system, although the streamlining of appeals can be accomplished without any sacrifice to veterans or the system.

VVA opposes the Commission's proposal to restructure the appellate hierarchy within the VA as unwarranted and fundamentally flawed. As a result of the changes proposed by the Commission, the success and timeliness of the hearing officer program would be parlayed into a system where an appeal to a hearing officer would become a mandatory step in the appeals process. Since these hearings would involve the *de novo* review now performed by the Board, this will limit the scope of the Board to the appellate function of "correct[ing] clear error and ensur[ing] the legal sufficiency of the hearing officer's decision." *Id.* at 221. In some instances, the BVA could issue a brief order simply denying review. *Id.* at 222.

Under the Commission's proposal, the court's jurisdiction would be limited to a review of a Board decision that "correct[s] clear error and ensure[s] the legal sufficiency of the hearing officer's decision." Report at 221. The court's jurisdiction would be cut sharply back, since proceedings below the Board level, both by hearing officer and by the VARO, are viewed as being merged into a Board decision. As a result of the proposal, the court would be precluded from reviewing decisions for compliance with key provisions of the statute, including whether the Secretary has fulfilled his duty to assist, whether the decision contains a statement of reasons and bases for the decision, the evidence considered by the Secretary, the correctness of a VARO decision denying a claim as not being well grounded, whether the veteran has been given the benefit of the doubt, 38 U.S.C. § 5107(b), and a variety of other matters. All of these issues would be decided by the hearing officer and merged into the Board's decision of legal sufficiency and freedom from clear error.

In short, the whole purpose of the Veterans Judicial Review Act and the marked improvements that it has brought to the system would be gutted unless the statute is changed to permit the court to review both the Board decision and a mandatory hearing officer decision. If the court's jurisdiction is limited to reviewing only the Board's decision and not the *de novo* mandatory hearing officer decision, there is a high risk that the adjudicatory system would revert back to the days of "business as usual" before the VA. It would be virtually identical to the situation Congress thought so intolerable that it created a court of appeals to ensure that VA decisions adhered to statutory and regulatory law and that veterans were given due process.

To rework the statute to permit the court to review a hearing officer's decision for sufficiency of fact and compliance with all statutory provisions and a Board decision for sufficiency of law and freedom from clear error could be done, but would achieve very little. Such a mix-and-match system has no superiority over the present situation, where claimants now are entitled to have a hearing before the VARO and a hearing before the Board. Under the present situation, the court has to review only one decision, under which all previous decisions are merged. Veterans aware of the fact that regional Hearing Officer decisions reverse an astonishingly large number of VARO decisions can now take advantage of the availability of such hearings, with their high chance of success. Other veterans, who believe that their case has been developed adequately before a VARO but that the decision is wrong can go directly to the Board's appellate functions of reviewing, on a *de novo* basis, all decisions of fact and law. For veterans in the latter class to undergo the delay of a mandatory hearing that would accomplish very little and would extend the time for the Board to do justice in their case.

In addition, a cut-off date beyond which additional evidence could not be submitted in response to a VARO decision would be highly prejudicial to veterans. Many veterans do submit further evidence after a VARO decision to correct deficiencies in their case pointed out by that decision, and such evidence can now be considered by the VARO or, with appropriate waiver, by the Board. A cut-off date for additional evidence would mean that any additional evidence would have to be presented in a new claim before the VARO. Not only would this mean that a veteran would have lost the earliest possible effective date for benefits, but also such evidence would be subject to

the stringent test of "new and material evidence."

These observations aside, VVA would favor expanding the authority of hearing officers to set aside a VARO's decision. But there is no guarantee that a hearing officer will always reverse a VARO decision and might affirm this on a basis of the same errors that were committed by the VARO. For these reasons, we would in no circumstance favor the unworkable system advocated by the Commission.

Veterans Should be Allowed to Retain Private Attorneys

VVA has reason to be proud of its nationwide network of veterans' service representatives, all of whom are lay advocates that assist veterans in navigating the often labyrinthine processes of the VA adjudicatory system. VVA provides a comprehensive training program to those committed individuals seeking to become accredited service representatives, provides newsletters updating them on developments before the VA, and conducts periodic refresher training. VVA service representatives help veterans complete forms, gather and marshal evidence, represent them at hearings, and otherwise assisting veterans to develop their claims. By and large, VVA's field representatives and those of other service organizations have done an excellent job in assisting veterans and should play a continuing part in the adjudicative process.

The Veterans Judicial Review Act of 1988 and the creation of the U.S. Court of Veterans Appeals has broadened the fee-paid attorneys in the adjudicative process. Under present law, veterans can now engage the services of attorneys for all future phases of their claims once they have received a denial of their claim by the BVA. Fee agreements between claimants, by which claimants pay attorneys a portion of their past-due benefits, are subject to approval of and administration by the BVA.

Congress should seriously consider broadening the scope of proceedings before the VA when veterans can engage attorneys on a fee basis. The Report states that fewer than one percent of represented applicants designate attorneys at the VARO and only five percent are represented by attorneys at the BVA level, while 87.9 percent of represented appellants designate attorneys before the court. *Id. at 140-41*. This disparity between attorney representation at the court and administrative proceedings stems from the fact that attorneys are prohibited from charging fees until a veteran's claim(s) have first been denied at the BVA.

Both federal and state officials have recognized that involvement of attorneys at even the lowest levels of adjudication results in more effective presentations and thus more improved and fairer dispositions by the administrative bodies. Accordingly, both Social Security and state workmen's compensation programs, neither of which is more complex than VA disability programs, encourage attorney participation throughout all levels of adjudication by providing fees to be paid out of past-due benefits.

The law should be modified to encourage the participation of attorneys on a fee basis before the VA at the early stages of the claims process, at least after an initial denial by the VARO. Sound policy reasons support such a structural change. First of all, lawyers are trained and skilled to understand and apply regulations governing eligibility to veterans disability benefits and in the evidentiary means by which a claim can be established. The presence of such lawyers within the ranks of VA advocates will improve the speed and quality of adjudication and the overriding need for the VA to get it right the first time.

Introduction of lawyers at the VARO level will have other beneficial results. Service representatives are usually located in VA VAROs and VA medical facilities, where they can provide on-the-spot assistance to disabled veterans who need assistance in navigating the VA benefits system. Veterans living in places distant from a VA VARO, and who are often prevented from traveling to such facilities due to their disability or lack of funds, are prevented from receiving the face-to-face assistance of a service officer. There are very few locations, however, that do not have an attorney who will handle Social Security and workman's compensation claims. Adding veterans benefits to the disabilities which can be represented by counsel will mean that veterans will not have to travel to VAROs or to VA medical centers to receive assistance, since there could be shortly in place a system of attorneys skilled in veterans benefits proceedings, just as there already is a base of competent attorneys willing to represent claimants before the Social Security Administration and workman's

compensation proceedings.

In addition, bringing attorneys into the process will relieve the caseloads of service representatives. Many service representatives are so overwhelmed by their existing caseloads that they are unable to provide personal assistance to every claimant through each step of the process. An attorney who seeks to be compensated out of part of a veteran's retroactive payment will have significant incentives, both financial and ethical, to assist his client in a way that will expedite the maximum payments allowable by law -- a goal that the VA has explicitly adopted. Thus, the presence of attorneys at the regional level will also relieve overworked adjudication officials in discharging their duty to assist veterans presented a well-grounded claim. Attorneys specializing in disability cases in other areas are skilled in marshaling often complex medical evidence to present to the adjudicators, and their presence in the VA process will provide a service to a represented veteran and to the system as a whole.

VVA has always fought for the right of a veteran to hire an attorney. VVA took the lead in abolishing the \$10 fee limit. Nearly a decade after its passage, it appears, that the VJRA has not provided enough freedom or incentive for attorneys to represent many veterans in their claims. Congress should now consider allowing attorneys to be compensated for providing representation at the VARO level, or at least at the BVA, where evidence can still be added to the record.

Review of Attorney Fee Agreements

The Commission concluded that the VA should not be in the business of enforcing attorney fee agreements. Ironically, VVA has observed that the VA itself may be unnecessarily wasting its resources by reviewing every attorney fee agreement, even though this is not required by statute. Specifically, 38 U.S.C. Sec. 5904(c)(2) states that BVA, "upon its own motion or the request of another party, **may** review such a fee agreement" to determine if it is excessive or unreasonable, and if so, "may order a reduction in the fee." In practice, VVA has observed that the BVA automatically reviews every fee agreement under its jurisdiction. VBA Circular 20-92-14 (May 29, 1992), par.2 g-h,18. The BVA has acquiesced to this policy. BVA Chairman's Memo 01-92-19 par. 2b (June 29, 1992). Since VVA is not aware of any widespread problem of attorneys overcharging veterans, this may be a waste of the VARO's and the BVA's staff and fiscal resources. In addition, this practice appears to delay claims involving attorneys, which is another disincentive for them to represent veterans.

Summary and Conclusion

VVA commends the Commission for asking the questions that should be asked of a system that is not perfectly achieving the objective of correct and prompt decisions important to disabled veterans. Although VVA does not necessarily agree with the solutions proposed by the Commission, in its belief that fine-tuning of existing VA procedures would bring the system in conformity with its declared objective, we hope that the Report serves to focus the attention on Congress on what is wrong with the VA adjudication system and what needs to be done to fix it. As we have emphasized, the first -- and perhaps the only step -- that needs to be taken is to help VAROs "get it right the first time." Some of the conclusions of the Report, such as delimiting periods, short shrift paid to "repeat claims," and lump sum payments, as well as the radical changes proposed for the appellate procedure, do not get at this important objective of ensuring that the first decision of a veteran's application for disability benefits is decided correctly and in a timely fashion. This is what Congress should focus on.

VVA commends the Department of Veterans Affairs leadership for facing the quality problems in the claims adjudication system. We are confident that working together with the veterans service organizations, and the Congress, VA can make needed improvements, which our veterans expect and deserve.

Thank you for the opportunity to present VVA's views on these important issues. This concludes our statement. We would be pleased to respond to any questions.

RICHARD F. (RICK) SCHULTZ
Executive Director

Richard F. (Rick) Schultz became executive director of Vietnam Veterans of America, the nation's only congressionally chartered Vietnam veterans service organization, on May 15, 1997. Before assuming that position he had been national legislative director of Disabled American Veterans (DAV).

Mr. Schultz enlisted in the U.S. Army in March 1964. While serving with 25th Infantry Division as a platoon sergeant in Vietnam he was severely injured by a land mine explosion. The injuries resulted in the amputation of both of his legs and one of his fingers. After nearly two years of hospitalization, Mr. Schultz was honorably discharged from the Army in 1969. He received the Bronze Star, Purple Heart, Army Commendation Medal, and several other decorations.

After studying management at Xavier University in Cincinnati from 1972-74, Mr. Schultz became a national service officer for the DAV in 1974. For the next eleven years in that position he was heavily involved in many veterans' programs, including the DAV Vietnam Veterans Outreach Program, which was a model for the highly successful VA Vet Center program.

Mr. Schultz came to Washington, DC., in 1985 to work on DAV's national legislative staff and was appointed legislative director in 1994. In those position he was involved in the planning, development and implementation of DAV's many and varied legislative and administrative advocacy activities.

Mr. Schultz and his wife Theresa live in Crofton, Maryland. They have eight children and eight grandchildren.

FUNDING STATEMENT
May 21, 1997

The national organization Vietnam Veterans of America, Inc. (VVA) is a non-profit veterans membership organization registered as a 501(c)(19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA VAROs for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For Further Information, Contact:
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Statement of

William F. Crandall
AMVETS National Operations Director

before the
House Veterans Affairs Committee

on the
Veterans Claims Adjudication Commission

Wednesday, May 21, 1997

Cannon House Office Building
Room 334

Mr. Chairman and members of the Committee:

Thank you for the opportunity to present our views on the findings and recommendations in the final report of the Veterans' Claims Adjudication Commission. AMVETS has not received any federal grants or contracts during FY 97 or in the previous two fiscal years.

The Commission was charged with evaluating VA's efficiency in the claims adjudication process, and determining ways to improve that efficiency to reduce the current backlog of cases. It was not a veteran's benefits Commission charged with analyzing the merits of the benefits themselves, but, despite this lack of mandate, the Commission chose to wander into that arena anyway. In doing so, the Commission report reveals a lack of understanding of the uniqueness of veterans' compensation.

The most fundamental principle of VA compensation is that the level of the benefit is to correspond to the level of disability. This principle obviously requires adjustments in the level of benefits with the worsening or improvement of the condition. Attempting to apply commercial insurance companies' data and cost-saving schedules to VA compensation ratings is ludicrous, at best, and grossly insensitive and ignorant of the issue at worst.

The advantages of "lump sum" payment as advanced, by the Commission, reads like a manual put out by the insurance companies. It is a thinly disguised effort by the Commission for VA to abrogate its responsibilities to our disabled veterans. Implicit in the Commission's findings is that some veterans are not deserving of their benefits and abuse the claims process for personal gain. Instead of finding ways to improve the process, the Commission chooses to question long-established public policy. Trying to draw parallels between commercial insurance carriers, and the VA compensation program, is akin to comparing apples and oranges -- there is no basis for comparison.

The Commission would "streamline" VA's compensation process by offering one-time, lump-sum payments to veterans. We find this crass and completely objectionable. In effect, the Commission is "buying off" these veterans with a one time payment for lower-rated disabilities and prohibiting them from ever reopening their claim should the condition worsen in later years.

Under the lump-sum proposal, VA would relieve itself of future obligations to these service-connected veterans -- wash their hands of them, so to speak -- and abrogate themselves of their responsibility to care for them when their condition worsened. This proposal flies in the face of everything veterans' compensation is all about and AMVETS strongly opposes it.

We also oppose the imposition of time limits for filing claims. Nothing in the Commission report indicates those time limits for claims-filing would reduce the total number of claims filed, nor the number of frivolous claims. To the contrary, if a veteran knows that he or she has a date certain to file a claim, he or she will more than likely file a claim just to beat the deadline, if a valid claim exists.

Regarding the Commission's recommendations for the Board of Veterans Appeals (BVA), we feel BVA's focus should be on remedying any mistakes and should not focus solely on legal issues. When BVA reviews a decision, it must review all relevant evidence. If the authority of BVA to correct regional office mistakes is more restricted, as advocated by the Commission, the Board would not grant as many appeals. This is not a service to the veteran. The Secretary's final decision would be ensured, not fairness to the veteran. AMVETS opposes this recommendation.

Mr. Chairman, we feel the Commission report is long on statistical data and short on improving claims processing for veterans. Rather than focusing on its Congressional mandate to study the "VA system for the disposition of claims," the Commission chose to analyze the merits of the benefits themselves and the deservedness of veterans to receive those benefits. More emphasis was added to study the type of reform needed to reduce the number of claims filed and government obligations to veterans in future years. None of this helps veterans or expedites the claims process. The Commission's report is a dangerous first step, down a slippery slope, of abrogating this nation's duty, to compensate those disabled veterans as a result of military service.

AMVETS joins with its colleagues from the other Veterans Service Organizations in opposing the tone and direction of this report.

Mr. Chairman, this concludes my testimony; I welcome any questions you or the members of the Committee may have. Thank you.

**STATEMENT OF
RICK SURRETT
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
OF THE DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 21, 1997**

Mr. Chairman and Members of the Committee:

I am pleased to present the views of the Disabled American Veterans (DAV) on the findings and recommendations in the final report of the Veterans' Claims Adjudication Commission.

As an organization of more than one million service-connected disabled veterans and a Women's Auxiliary, DAV has a special interest in improvement in the claims processing system of the Department of Veterans Affairs (VA). Given our close involvement in both the processes and substance of veterans programs, we believe we are in a position to know VA's strengths and weaknesses and have insight into VA's problems, their sources, and their solutions. We do not believe that recommendations of the Veterans' Claims Adjudication Commission would accomplish the goal of improving the claims processing system. The DAV therefore appears before you to oppose the recommendations of the Commission as discussed below.

Congress established the Commission to study the "[VA] system for the disposition of claims." The term "[VA] system for the disposition of claims" means the "processes and procedures" of VA "for the adjudication, resolution, review, and final disposition of claims for benefits under the laws administered by the Secretary." The purpose of the study was to evaluate the system to determine (1) the "efficiency of *current* processes and procedures" and the "means of increasing the efficiency of the system"; (2) the "[m]eans of reducing the number of claims under the system for which final disposition is pending"; and (3) the "[m]eans of enhancing the ability of the [VA] to achieve final determination regarding claims under the system in a prompt and appropriate manner." (Emphasis added.) The study was to include several factors which might impact the effectiveness and efficiency of the system and its processes and procedures. The Commission's final report was to include its findings and conclusions from its evaluation of the system, its recommendations for improving the "system for the disposition of claims for veterans benefits," and "[s]uch other information and recommendations *with respect to the system* as the commission considers appropriate." (Emphasis added.)

Thus, as indicated by its name, the Commission was charged with evaluating the efficiency of the current claims adjudication processes and procedures, with the purpose of determining ways to improve the efficiency of the system and to reduce the current claims backlog (i.e., "the number of claims under the system for which final disposition is pending"). This Commission was not a veterans' benefits commission and was not charged with analyzing the merits of the benefits themselves. Unfortunately, the Commission chose to depart from its statutory mandate. The Commission made its own gratuitous judgements about the deservedness of veterans, the wisdom of the programs, and the types of reforms that should be made to reduce claims and government obligations to veterans in the future. The Commission undertook very little study of the dynamics of the work processes and procedures and provided very little in the way of supported conclusions and recommendations pertaining to the matters it was created to study.

Instead of studying the work processes, the Commission conducted exhaustive statistical analysis of the populations of veterans with completed original claims, pending reopened claims or pending appeals, and veterans added to the disability rolls during fiscal year (FY)1995. The Commission determined the composition of these groups according to demographic characteristics and disability status. The disability status was evaluated according to origin, degree, and type. The Commission concluded that many of these veterans were already receiving compensation for lower-rated service-connected disabilities. The Commission found that claims for service connection for knee conditions were more prevalent than any other single

disability. The Commission projected the costs of compensating these veterans over their lifetimes. The Commission devoted an entire section to analyzing the characteristics of veterans with service-connected knee conditions. The Commission went so far as to formulate a list of what it determined to be the most useful diagnostic and evaluative tests for knee conditions.

From these studies, the Commission found that a large percentage of repeat claims were filed by veterans who were already service connected but receiving compensation for lower-rated disabilities or service connected for disabilities noncompensable in degree. The Commission concluded that compensation, as a product, is partly responsible for the VA's claims backlog because its life-long nature creates an incentive for veterans to reopen their claims for higher benefits. According to the Commission, this life-long approach "motivate[s]" and "permits reapplication for benefits." The Commission asserted that, because claims can be reopened to seek additional benefits, the process has no "finality" and "no distinct end." The Commission warned: "As a result of these and other factors, repeat claims dominate the compensation workload and, absent some fundamental change in program or policy, can be expected to do so well into the future." The Commission also observed that, because the VA's *Schedule for Rating Disabilities* provides disability ratings from 0% to 100%, it is an added incentive for "veterans with lower disability ratings to reapply for increased benefits."

Using the statistical data and assumptions about the number of new veterans that will be added to the disability rolls, the Commission made projections that repeat claims could, by the year 2015, rise to as high as 110% of the number of repeat claims filed in FY 1995. The Commission said: "The projections of disability compensation workload in 2015 . . . raised legitimate concerns among Commissioners about the effect of VA's disability product design on the system for disposition of benefit claims. On the basis of these concerns, the Commission proceeded to explore issues associated with product design that appeared to most significantly complicate or otherwise congest the claims processing system." The Commission indicated that it decided to "investigate whether alternative configurations of the benefit could yield product advantages for veterans *and* relieve congestion in the processing system." The Commission purported to explore "issues of program intent and issues of program innovation" and suggested that it was searching for "alternative ways of achieving the purpose of disability compensation that would be consistent with streamlining the claims process." The Commission cited changes in other disability programs as support for the proposition that VA's disability program should be changed to be more consistent with "the disability environment as it exists today." Concerning other disability programs, the Commission observed that recent experience has caused "other disability programs to redefine disability [or] to restructure insurance policies." Comparing VA to commercial interests, the Commission said:

Because VA is insulated from the incentive structure of the marketplace, VA programs and practices are not subjected to either "bottom-line" economic tests or market appeal tests in the same way those of commercial insurers are. The Commission does not regard this condition as entirely advantageous or disadvantageous for veterans, taxpayers, or VA itself. However, it does tend to make commercial insurers more innovative and aggressive in their approaches to cost-saving and product-feature strategies. Consequently, it is reasonable for the Commission to review program and administrative practices of commercial insurers to determine whether they would be suitable for adoption or adaptation by VA.

The Commission therefore pointed to what it perceived as the many advantages of lump-sum payments as a means to reduce future claims and fiscal obligations of the government, while supposedly serving veterans' needs at the same time.

In this exercise, the Commission ventured totally beyond the scope of its assigned mission. It made no attempt to show any cause and effect relationship between the differing characteristics of veterans and the amount of work required to process their claims. For example, the Commission did not show that claims of veterans from one period of service or claims for one type of disability or claims originating from one cause were any more time consuming, complex, or labor intensive than other claims. The Commission necessarily implied by the significance it attached to its observation about what kind of veterans and what type of

disabilities comprise VA's workload that these veterans are not deserving of the benefits they receive and abuse the claims process by claiming higher ratings merely because they exist, that is, merely for personal gain. The Commission made much of the fact that a portion of these disabilities were unrelated to combat, were incurred during peacetime, or were only moderately disabling. This reflects on the Commission's approach to its mission. In this respect, the Commission was interjecting its own value judgements and questioning public policy, not endeavoring to find ways to improve the process. The Commission apparently has the erroneous notion that a veteran's worthiness for compensation is proportionate to his or her level of disability. We believe that a veteran with a 10% disability due to a shell fragment wound is just as entitled to the compensation he or she receives at that rate as another veteran who is 100% disabled due to a service-incurred respiratory disorder, for example. We believe that a veteran rated 50% is just as entitled as a veteran rated, 90%.

We question the methodology employed by the Commission in projecting the number of reopened claims for the year 2015 (space does not permit us to deal with that issue here), and we suspect that the projections are high, but limiting the number of future claims was not within the purview of the Commission's duties in any event. It is hardly a surprising revelation that the Commission found more of VA's caseload is reopened claims than new claims. Reopened claims are from the much larger number of service-connected veterans from conflicts throughout this century who are seeking adjustments in their benefits, while most first-time claims are from the much smaller group of recently discharged veterans. A fundamental principle of VA compensation is that the level of the benefit is to correspond to the level of disability, and this necessarily requires adjustments with worsening (and improvements) in the condition. The system does have limits and finality, however. The Commission's assertions to the contrary reveal its lack of understanding of VA's limits on reopening or reconsidering claims. *See, e.g.*, 38 U.S.C. §§ 5108, 7104(b); 38 C.F.R. §§ 3.156, 3.159, 20.1100, 20.1103, 20.1104, 20.1105 (1996).

The long-term costs of compensating veterans was not a legitimate area for the Commission's study and deliberation. This is yet another point indicating the real motives underlying the Commission's direction and recommendations. Similarly, because methods of payment and limitations on claims and future liabilities in commercial programs are driven by profit motives, there are no valid parallels between reforms in the commercial insurance industry and compensation for service-connected disabilities. The purpose and goals of other disability programs are so dissimilar to VA's disability compensation program that they do not provide a model for VA programs to emulate.

The Commission would solve VA's problems, not by improvements in the system, but by changes to reduce eligibility and limit veterans' rights to file and reopen claims as a way to reduce VA's workload to levels compatible with its current performance levels. In other words, the Commission would make changes to serve the system and accommodate the status quo, not better serve veterans. The Commission would force veterans to accept a one-time payment for lower-rated disabilities. This way, the Government could relieve itself of any future obligations to these veterans by lump-sum settlements based on the degree of the disability when rated low. VA could pay these veterans off while their disabilities are still minor and then forever wash its hands of them—avoid their reopened claims and avoid paying higher compensation when their disabilities worsen.

The Commission's attempt to show that lump-sum settlements would benefit veterans is also flawed. Some of the Commission's rationale is included in these statements: (1) "It is questionable, for example, whether monthly compensation at the 10[%] disability rate meaningfully assists with a veteran's rehabilitation"; (2) "The Commission developed preliminary evidence that paying less disabled veterans by lump sum could potentially provide them greater adjustment assistance, reduce program costs, *and* allow reallocation of administrative resources within VBA to better serve the needs of more severely disabled veterans"; (3) "A lump sum benefit payment invested in commonly available financial instruments *could* provide veterans with substantial monetary benefits during their lifetimes"; (4) "A veteran who does not invest a lump sum benefit payment may realize little or no advantage from receiving entitlement in that form. Even so, the \$91 monthly benefit payable for a 10[%] disability is not likely to produce a significant advantage at any point in his or her life. A lump

sum payment, on the other hand, could provide transition opportunities he or she would otherwise not have in the adjustment to civilian life"; and (5) "Concentrating the benefit at the point of transition to civilian life may conform more closely with the intent of the program for these veterans than does the monthly payout system." Compensation is neither a "rehabilitation" nor a "transition" benefit. Congress did not create the Commission to determine how to provide veterans with "greater adjustment assistance," how to "reduce program costs," or how to reallocate administrative resources to better serve one group of disabled veterans over another. If compensation is provided to make up for ongoing diminished earning capacity or to replace lost income, how can it be invested? It is a shallow, condescending view that \$91 (the 10% compensation rate at the time of the Commission's report) would not assist service-connected disabled veterans, especially those with lower incomes. It may make a payment on modest transportation or help buy food, for example. Many people on Supplemental Security Income depend on monthly benefits not much larger than that. If a lump sum is not advantageous unless invested, it is a contradiction to say that it could provide transition opportunities. How does the Commission know that a lump sum would more closely serve the intent of the program, and how does it justify that sweeping statement without any specific support for that view, especially since the Commission has confused compensation with rehabilitation, transition, and adjustment benefits? This recommendation is misguided. The DAV opposes lump-sum settlements for service-connected disability.

The Commission faults the lack of a time limit for filing compensation claims as a contributor to the claims backlog. It asserts that when claims are filed long after the veteran's military discharge, the evidence is often difficult to locate, lost, damaged, or destroyed. This increases the effort necessary to obtain evidence and diverts scarce resources away from processing of claims timely filed, thereby unnecessarily delaying all claims, according to the Commission. However, the Commission admits that "no data are kept describing how long after service veterans first apply for compensation." The Commission did not cite any studies or comparison data showing that the time and effort required to process delayed claims is more than claims filed soon after discharge. We therefore believe the Commission is relying on unsupported and erroneous assumptions. The Commission provided no support for its view that evidence is more difficult to locate when a claim is not promptly filed after discharge. Theoretically, evidence maintained by the government at centralized locations should be no more difficult to obtain now than at some earlier point in time (with the exception of records destroyed accidentally or by natural disaster). VA simply writes the facility where the record is stored. The record is either there or not. If the record is not found, VA decides the claim on the available evidence. Because the burden of proof is on the veteran, the VA is not adversely affected by the unavailability of evidence. The Commission has not demonstrated that delaying a claim, as a rule, makes evidence in government custody more likely unavailable, and the Commission has certainly not shown that available evidence requires more effort to retrieve as time goes by.

The disadvantages of time limits for filing claims far outweigh any advantages. Currently, conditions such as Posttraumatic Stress Disorder (PTSD), asbestosis, and radiogenic diseases can be service connected without regard to how long after service they are first shown. This is because of their characteristically delayed clinical manifestations or latency periods. See 38 U.S.C. § 1113(b); 38 C.F.R. § 3.303(d) (1996). Sometimes evidence first discovered years after service can support a claim for service connection. In other instances, proof is unavailable for years because of government secrecy. An example of this is only relatively recently declassified documents on human experimentation such as with Mustard Gas exposure during the World War II era. The law provides that some conditions, such as those of former prisoners of war, will be presumed service connected no matter how long after service they first manifest. The system is designed to avoid defeating meritorious claims by mere technicalities and artificial constraints.

On this issue, the Commission makes what we consider some rather naive and ill-advised suggestions:

Comprehensive services currently available *prior* to separation suggest any need for lifelong opportunity to claim disability compensation is decreased. Although unquantified, the transition services provided to 1.4 million separating service

members world wide by VA, DOD [Department of Defense], and DOL [Department of Labor] since FY 1992 has increased the percentage of discharges who file claims for benefits. In addition, VA/Army's separation examination tests are evaluating several methods for conducting examinations for separating and retiring service members who intend to file a disability claim with VA. Carrying this concept to its logical extreme, VA and DOD could cooperatively track veterans' health on *entry* into service. This could lead to a paperless benefits delivery system in which veterans would not need to apply for benefits. On discharge, VA would have all information needed to pay appropriate benefits without any action on the veteran's part.

First, the services available prior to separation do not detect or foresee latent disabilities. Second, do we really want VA to track every servicemember's health for the entire period of service? What a waste of resources, not to mention an unnecessary workload for an already strained VA. Additionally, compensation should remain a benefit available for those who elect to claim it when they decide to claim it, not automatically distributed to everyone who may be entitled. The process should accommodate veterans' desires, needs, and convenience, not VA's. In addition, it is quite likely that a statute of limitations for compensation claims would have the effect and added cost of an increase in claims from separating servicemembers because it would remove their options and force them to file claims, they might not otherwise file, as protective and precautionary measures. The Commission seems to have made this and other suggestions without any insight into their implications and probable consequences. While time limits for filing claims will almost assuredly prevent some veterans from filing claims, it will even more certainly cause claims to be filed that would not otherwise be filed. In either event, this will not improve the system's performance or efficiency. The DAV opposes the imposition of a time limit for filing compensation claims.

The Commission maintained that the duty to assist contributes to the VA's inefficiency. The Commission's discussion of the duty to assist and the burden of proof reveals that it did not fully understand these two concepts. The Commission saw an irreconcilable contradiction in the principle that the burden of proof is upon the claimant, on the one hand, but the VA has the duty to help the veteran bring forward that proof, on the other hand. The Commission made some erroneous statements about the burden of proof that further demonstrated its lack of knowledge in these areas. The Commission implied that VA should be relieved of the duty to assist, but it expressly suggested that "Congress needs to attend to the concept of 'duty to assist,' either by providing specific definitions or codifying the Court's rulings." Discussing the apparent contradiction between the duty to assist and the burden of proof, the Commission also confused the claimant's responsibility to establish a "well-grounded claim":

Removing from the claimant the burden "of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded" results in decreased adjudicative timeliness and efficiency. Whatever VA does for a claimant that the veteran can do for himself or herself is an unnecessary and wasteful expenditure of resources. Adversarial paternalism places little, if any, responsibility or expectation on the part of the claimant. This creates a burden additional to the one already self-imposed on VA and, in the process, lifts the burden of proof from the claimant.

The Commission further observed: "The effect is that VA is put in the position of trying to 'prove a negative,' *i.e.*, that the claimant is *not* entitled to all possible benefits." The Commission stated that this is contrary to the rule that "the burden never shifts to the Secretary, it always remains with the claimant."

First, the Commission's suggestion that the Congress might solve the perceived problem by "codifying the Court's rulings" is misguided. VA is already bound by the Court's rulings, which are themselves an enforcement of the statute passed by Congress. The Commission's logic cannot be seen here. Second, the duty to assist is already adequately defined in that it requires VA to assist the claimant in developing facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law. Simply stated, if there is material that potentially contains facts pertinent to the claim, VA has a duty to assist the veteran

in gathering it, provided that the veteran has presented a claim which is on its face sufficient, or is accompanied by adequate preliminary information, to meet the well-grounded threshold requirement. The burden of proof which is generally, but not always, upon the veteran is not shifted to VA through the duty to assist, and VA is not in the position of proving a negative and certainly not put in the position of proving that “the claimant is *not* entitled to all possible benefits.” The burden of proof being on the veteran means that the VA is not required to adduce evidence to disprove a mere unsupported assertion of entitlement by the veteran. The veteran must be able to identify sufficient evidence to meet his legal burden; the VA merely has the administrative duty to help the veteran negotiate the processes by helping him or her obtain the evidence from its source or repository, something VA is presumed better equipped to accomplish than a veteran not familiar with such procedures. The VA’s regulation, which the Commission apparently did not consult, presents a clear explanation of the concept. Under 38 C.F.R. § 3.159 (1996) it is provided:

(a) Although it is the responsibility of any person filing a claim for a benefit administered by the Department of Veterans Affairs to submit evidence sufficient to justify a belief in a fair and impartial mind that the claim is well grounded, the Department of Veterans Affairs shall assist a claimant in developing the facts pertinent to his or her claim. This requirement to provide assistance shall not be construed as shifting from the claimant to the Department of Veterans Affairs the responsibility to produce necessary evidence.

(b) When information sufficient to identify and locate necessary evidence is of record, the Department of Veterans Affairs shall assist a claimant by requesting, directly from the source, existing evidence which is either in the custody of military authorities or maintained by another Federal agency. At the claimant’s request, and provided that he or she has authorized the release of such evidence acceptable to the custodian thereof, the Department of Veterans Affairs shall assist the claimant by attempting to obtain records maintained by State or local governmental authorities and medical, employment, or other non-government records which are pertinent and specific to the claim. The Department of Veterans Affairs shall not pay any fees charged by the custodian for providing such evidence.

(c) Should its efforts to obtain evidence prove unsuccessful for any reason which the claimant could rectify, the Department of Veterans Affairs shall so notify the claimant and advise him or her that the ultimate responsibility for furnishing evidence rests with the claimant.

The Commission’s statement that the burden of proof never shifts to VA is but one of many throughout its report that demonstrates its findings, and thus its recommendations, are not well informed. Under several statutory provisions, once a veteran has qualified for a certain presumption or established or attained a certain status, the burden shifts to VA to disprove the matter if it is to be disposed of unfavorably. *E.g.*, 38 U.S.C. §§ 1111 (clear and unmistakable evidence required to rebut presumption of soundness), 1113 (affirmative evidence to the contrary required to rebut presumption of service connection), 1133 (clear and unmistakable evidence required to rebut presumption of service connection), 1154 (clear and convincing evidence required to rebut veteran’s lay evidence of service-connection in case of combat-related disability); 38 C.F.R. §§ 3.105 (“service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being on the Government)”), 3.304(b),(d), 3.305(b),(c), 3.306(b), 3.308(b), 3.343(c) (1996) (evidence required to rebut presumptions and to support reductions in ratings). Although the burden is upon VA to rebut presumptions or to prove changes in status in some instances, again, the duty to assist does not shift the burden of proof to VA. The Commission’s statement that VA is put in the position of disproving the veteran’s entitlement to all possible benefits is beyond exaggeration: it is absurd. If that were true, no veteran’s claim would have ever been denied for a lack of proof, and every veteran who ever made the unsupported assertion of entitlement would now be receiving all the benefits claimed except where VA accomplished the very difficult feat of proving a negative. The Commission’s recommendation that Congress take action on the duty to assist follows not only from its misunderstanding of the concept but also from an uninformed notion

that the VA is forced to disprove entitlement to all possible benefits. Action on the duty to assist is unnecessary, and the DAV opposes this recommendation.

The Commission recommends reducing the period for initiating an appeal from 1 year to 60 days. This will in no way improve the efficiency or performance of the VA. It may reduce the number of appeals by limiting the time for their filing, but it may result in an increase in protective appeals, filed to give the veteran and his representative time to call the case in for more in-depth study on whether it should be appealed, or to get additional evidence. We do not believe that backlogs, which are a product of the ratio of workload to production capacity, can be attributed to the length of the appeal period. Here again, the Commission cited no data on how promptly veterans file appeals and how that may have a cause and effect relationship to the backlogs. In any event, the DAV opposes this recommendation because it penalizes veterans for VA's inefficiency.

The Commission recommended limiting the scope of review of the Board of Veterans' Appeals. The Commission stated several reasons why this is needed. The Commission said, "[t]he Commission believes that the practice of *de novo* review unnecessarily impedes the functionality, efficiency, and fairness of the appeals process." The Commission maintained, "[a]n appellate review would be considerably less resource intensive than the hybrid *de novo*/appellate review it now conducts." The Commission thought the BVA's review should be narrowed to "focus the BVA's legal expertise on purely legal issues." "Having the issues decided by the BVA as similar as possible to those decided by the CVA [Court of Veterans Appeals] would sharpen the issues before the CVA," according to the Commission. In addition, "[h]aving the BVA conduct an appellate review on behalf of the Secretary will unify the adjudication and appeals process, with each step having a clearly defined purpose and function." Finally, the Commission argued that "[e]stablishment of the Court has also brought into question the role of the BVA which, prior to CVA, was the last step in the appeal process."

Because *de novo* review requires BVA consideration of documentary evidence submitted, or testimonial evidence given, after the decision by the regional office, the Commission would close the record after the regional office completed its review. Under the Commission's vision, the "BVA's review standard would be similar to the CVA's, and the purpose of the BVA's review would be to correct clear error and ensure the legal sufficiency of the hearing officer's decision." (Under the Commission's plan, all appealed cases would go through a mandatory "appeals officer" and "hearing officer" review at the regional office.) The role of BVA would be one in which it only reviewed appeals at its discretion and would accept cases for review on the merits where it deemed review appropriate: "In cases where the hearing officer's decision was legally sufficient, the BVA could issue a brief order denying review. . . ." "If the BVA determined that the hearing officer's decision was legally sufficient (which presumes that it was not clearly in error), the BVA would decline review and the hearing officer's decision would become the final decision of the Secretary, which would be subject to judicial review."

The Board would have authority to issue precedent decisions, a function now reserved for the VA's chief legal officer, the General Counsel: "In appropriate cases, the BVA could articulate the Secretary's construction of the statute as it applies to particular issues, for the benefit of VA adjudicators and CVA." "In cases where the BVA determined that the facts or circumstances are such that the correct application of the law, regulations, or VA policy is in dispute, unsettled, or unclear, it could issue a decision on behalf of the Secretary that would provide the Secretary's definitive interpretation as to the manner in which cases presenting similar facts and circumstances should be adjudicated at all levels." If BVA found a reversible error, it could "reverse or modify the hearing officer's decision [or] remand."

The Commission essentially objected to the current *de novo* review simply because it requires the Board to review of all aspects of a regional office decision, and the Commission saw this "as a contributing factor to the deterioration in its timeliness and productivity." When BVA reviews a decision and the record, it must review all relevant evidence, however. Its decision could be shorter with the much more restricted scope of review advocated by the Commission. That would be convenient for the BVA, but it would not increase the efficiency or fairness of the appeals process. Obviously, if the authority of the Board to correct regional office mistakes is more restricted, the Board would not grant as many appeals. The Commission's priority here

was clearly not service to veterans. As the Commission stated, the Board's function would be to ensure the "sufficiency" of the Secretary's final decision, not its fairness. The Board would serve more to cover the VA in anticipation of judicial review, by correcting only the types of errors the Court would reverse, than it would to ensure appellants obtain justice. This would also place review of factual findings almost totally within the regional office jurisdiction and immune from appellate review. Under the clearly erroneous standard of review, where factual findings are essentially presumed correct unless they are without a "plausible" basis, the reasonable doubt standard would become unenforceable and illusory. Moreover, it would make the Court's review one more step removed from fact finding. Courts review only the decision of the highest agency tribunal. The CVA reviews the BVA's decision, not the regional office's. It is difficult to understand how the CVA could review the Board's clearly erroneous review without reaching into the reasoning of the regional office. Now, the Court is able to review the BVA's fact-finding and supporting rationale because BVA's decision is *de novo*. Under the Commission's recommendation, the Court would review, under the clearly erroneous standard, the BVA's clearly erroneous review of the regional office's fact-finding. In short, the Court would uphold BVA's decision unless BVA had no plausible basis for holding that the regional office's decision had a plausible basis. In both instances, the appellate tribunal would be operating on the principle that it will defer to the tribunal below unless that tribunal has committed almost absolute error in its review of the facts. Veterans are unlikely to have a real remedy for poor fact-finding, not to mention the confusion that will likely result from this anomalous scheme of appellate review. (The Court of Appeals for the Federal Circuit does not have jurisdiction to examine CVA's review of questions of fact.)

If the veteran were precluded from submitting additional supporting evidence during the pendency of the appeal, that might mean the very evidence necessary to tip the scales in his or her favor could not be considered in the current review. A reopened claim would be required to consider this evidence. That would delay receipt of benefits and require VA to consider the same issue all over again, rather than accepting that evidence as soon as it becomes available and considering it as soon as possible. This will result in piecemeal consideration of evidence and more reopened ("repeat") claims. If the issue was one of an increased disability rating and the veteran was hospitalized on several successive occasions for the disability, there could be multiple concurrently pending claims and appeals. Moreover, there are regularly occurring situations where the Board determines that cases are of a complexity to merit opinions from independent medical experts under 38 U.S.C. § 7109. Would the Board be required to permit these cases to be finalized without the needed opinions? Without *de novo* review, it could not consider new evidence.

The Board's focus should be on remedying any mistakes it finds, not merely on legal issues. Under the current system, BVA has no authority to issue precedent decisions. It must follow the law. If there is a genuine question of the meaning of the law, BVA can request a precedent decision from the VA General Counsel. Administrative agencies create policy to implement laws or interpret statutes in two ways—rulemaking under authority of the agency head or precedent adjudications. The Board is comprised of a large and diverse group of members. Allowing single BVA decisionmakers to issue precedent decisions would concentrate too much authority in a nonjudicial individual not working directly for the Secretary (in some instances the Court would have to give deference to these interpretations) and would result in great confusion, given the number of BVA members. The integrity of the system would suffer.

We do not believe that the current process lacks a "clearly defined purpose and function." As to the effect of judicial review, the law prescribing BVA's role has not changed. Many administrative tribunals are reviewed by courts, but that does not change their basic role. Also, BVA continues to be the final decisionmaker in all but the small percentage of appealed cases that go to the Court. The future workload of the Board will be determined by how well regional office decisions are improved. The Commission's recommendation is a solution in search of a problem. Changing the Board's role to lessen its responsibilities at the expense of justice for veterans is objectionable, and the DAV opposes it.

The Commission made numerous and varied other recommendations. They include implementation of actuarial studies; creation of committees, reviews and reports; a new partnership between VA and veterans service organizations; better coordination of VA programs,

etc. Some of the recommendations, although meritorious, are peripheral to the object of the Commission's study. Other suggestions are already in effect under current procedures. Several of the Commission's suggestions were already included in VA's Business Process Reengineering (BPR) plan.

Although we believe some of the Commission's recommendations have merit, generally the Commission's report is flawed because some of its conclusions do not necessarily follow from the data it cites for support. As discussed in connection with some points previously, the Commission asserts or assumes facts or conditions without actual supporting data. In other places, the Commission expects its assertions to be accepted as if they were self-evident where they are not necessarily so. This is much the same as its preliminary report which drew criticism on that basis. In his 1996 supplement to his prior monograph on the jurisprudence of CVA, Professor William F. Fox, Jr., of the Catholic University School of Law, observed regarding the Commission's earlier report: "The difficulty in assessing each of these assertions is that the preliminary report contains no back-up or argumentation supporting each of the findings." Concerning the Commission's critical comments about CVA and judicial review, Professor Fox stated: "The author of this supplement has reviewed six years of CVA case law in his original monograph and in this supplement. Among other things, he has compared the work of CVA with other courts that regularly review the actions of federal administrative agencies. His personal view is that the Court is functioning fully within the mainstream of modern American administrative law. . . . To a certain extent, many of the Commission's comments on the CVA misconstrue the nature of judicial review and proper intra-agency adjudication of claims with requirements imposed by a reviewing court." Finally, Professor Fox observed: "To another extent, the Commission's study is difficult to deal with because it simply utters broad assertions without the detailed criticism and documentation that would help outsiders understand those assertions. . . . At this time, there are few matters addressed in the preliminary report involving CVA that are solidly supported in the report's text."

The DAV notes that the Commissioners themselves were divided on several points. The alternative views of the two members from the veterans' community express objections similar to ours. The opening paragraph of another dissenting member divorces herself from the Commission's recommendations: "I do not agree with the report's proposal to redesign the adjudication and appeals process." This member saw the BPR plan as credible and promising and thought that the Commission would have better served VA and Congress by assessing the plan's strengths and weaknesses.

Finally, we note that, after review and consideration of the Commission's report, the Secretary of Veterans Affairs rejected many of the Commission's suggestions, and all of the ones adverse to the rights and interests of veterans. A Secretary less committed to the real interests of veterans could have easily embraced many of these recommendations as a way to lessen VA's obligations to veterans and make the process more convenient for VA. The DAV appreciates Secretary Brown's continuing to "put veterans first." The DAV believes that VA's BPR plan correctly identifies the sources of VA's claims processing problems and provides the solutions to correct them.

We also appreciate this Committee's support for our Nations' disabled veterans. Because we firmly believe that the Commission's recommendations are harmful to their rights and interests, the DAV urges this Committee to take no action on the Commission's recommendations we have discussed in this statement.



Motto: "If I cannot speak good of my comrade, I will not speak ill of him."



DISABLED AMERICAN VETERANS

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DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Disabled American Veterans (DAV) does not currently receive any money from any federal grant or contract.

During fiscal year (FY) 1995, DAV received \$55,252.56 from Court of Veterans Appeals appropriated funds provided to the Legal Service Corporation for services provided by DAV to the Veterans Consortium Pro Bono Program. In FY 1996, DAV received \$8,448.12 for services provided to the Consortium. Since June 1996, DAV has provided its services to the Consortium at no cost to the Consortium.

Curriculum Vitae
for
RICK SURRATT

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Biographical Data

Birth Date: May 22, 1949
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Military Service

U.S. Army
Enlisted June 1966 and honorably discharged April 1969.

Education

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Paralegal Certificate

Relevant Experience

Assistant National Legislative Director, Disabled American Veterans (DAV), January 1996 to present.

Associate National Legislative Director, DAV, March 1994 to January 1996.

Judicial Appeals Representative before the United States Court of Veterans Appeals, DAV, September 1989 to March 1994.

National Appeals Officer before the Board of Veterans' Appeals, DAV, June 1989 to September 1989.

National Service Officer, DAV, September 1976 to June 1989.

Other Information

Principal author of DAV's portion of *Independent Budget*

STATEMENT OF
JOHN C. BOLLINGER, DEPUTY EXECUTIVE DIRECTOR
PARALYZED VETERANS OF AMERICA
FOR THE RECORD OF THE
HOUSE COMMITTEE ON VETERANS' AFFAIRS
CONCERNING
THE REPORT OF THE VETERANS' CLAIMS ADJUDICATION COMMISSION
MAY 21, 1997

Chairman Stump, Ranking Democratic Member Evans, members of the Committee, the Paralyzed Veterans of America (PVA) appreciates this opportunity to share our views regarding the report to Congress of the Veterans' Claims Adjudication Commission (Commission). This report was transmitted to Congress in December, 1996, pursuant to section 402(e)(2) of Public Law 103-466. Unfortunately, the operation of reporting to Congress was one of the few statutorily mandated charges that this Commission chose to follow.

Section 402 (b) of P.L. 103-466 states:

- (b) Purpose of Study. -- The purpose of the study is to evaluate the Department of Veterans Affairs system for the disposition of claims for veterans benefits in order to determine the following:
- (1) The efficiency of current processes and procedures under the system for the adjudication, resolution, review, and final disposition of claims for veterans benefits, including the effect of judicial review on the system, and means of increasing the efficiency of the system.
 - (2) Means of reducing the number of claims under the system for which final disposition is pending.
 - (3) Means of enhancing the ability of the Department of Veterans Affairs to achieve final determination regarding claims under the system in a prompt and appropriate manner.

This was the mandate given to the Commission. Unfortunately, the Commission failed to address in an adequate and full manner the adjudication process as it currently exists. For all intents and purposes, the conclusion of the Commission is this: The problem with the adjudication system is veterans.

The Commission believes that creating an adversarial system from inception, changing the Board of Veterans' Appeals into an appellate body whose sole task would be to make a denial of benefits to a veteran appeal-proof, reducing the appeals period for a veterans from one year to 60 days, and providing lump-sum payments to veterans with 10 percent disabilities would fix the current system. Of course, these conclusions fail to address the problems inherent in the current process, unless one believes that foreclosing the ability of veterans to receive benefits they have earned, and Congress intended them to have, is a solution to the problems besetting the system.

The Commission's rationale for its almost total concentration on the benefits earned by veterans and not the system established to process and adjudicate these benefits seems to be derived from a book on public administration:

The process does not, however, exist in a vacuum, separate from and independent of its *product*. This is true not only for VA. Contemporary public administration authors acknowledge a "complex and intimate relationship between process and product. . . ." [citing Michael Barzelay, *Breaking Through Bureaucracy: A New Vision for Managing in Government*]. VA's process is custom designed to deliver the product defined in statute, and it is the nature of this product that permits reapplication for benefits." Report at 71.

The Commission was side-tracked by its decision to venture beyond its scope, to examine and evaluate the benefits and rating levels granted veterans. The Commission's method of reducing the backlog of claims is simply to reduce the number of claims and the potential for new claims. The Commission's obsession with "repeat" claims is an indication of this. The Commission was so concerned with "repeat" claims that in the Executive Summary, as part of its "intriguing picture of VA disability compensation benefits. . ." [Report at 3] it highlights these claims as its first points. The Report indicates that 69 percent of "repeat" claims from a seven-day, 100-percent sample, as well as 67 percent of appeals, were filed by veterans already in receipt of compensation. This strongly suggests, to the Commission, that "repeat" claims are clogging the system.

PVA believes, and has testified on innumerable occasions, that inadequately developed claims at the VA Regional Office level (VARO) and the inability of the VAROs to apply decisions of the Court of Veterans Appeals (CVA) is the real reason that “claims are clogging the system.”

PVA is mystified about the Commission’s concern over the level of compensation received by a veteran and whether a claim represents a “repeat” claim. PVA is further puzzled over why the commission considers the aggravation of a previous injury be a “repeat” claim. Congress has provided that any increase of compensation, dependency and indemnity compensation, or pension will be the date of the original claim. This is not a “repeat” claim, it is a continuation of the original claim. If a veteran’s service-connected condition deteriorates over the lifetime of the veteran, they have the right to seek the appropriate benefit. Veterans may expect that as they age they may find old wounds causing additional problems, problems not foreseen at the time they were rated. It should not be surprising that a service-connected knee-injury that was only slightly disabling for a 30 year old veteran, may prove more severe to a 60 year old veteran. To avoid providing for the veteran as he or she ages is a disservice, and is inconsistent with the intent of Congress in creating a compensation program. To quote Commissioner Ernest T. Chavez: *“It is no more reasonable to implicate claims as the cause of system failure than it would be to blame the bearer for bad news!”* Report at 363 (emphasis in original).

The Commission goes on to recommend altering the role of the Board of Veterans Appeals. Restructuring BVA from a *de novo* review body to an appellate body, would reduce the ability of veterans to submit evidence on behalf of their claim. BVA would examine only the legal sufficiency of the decision. This will prevent a veteran from overcoming mistakes made by the VARO and would require “perfect” Regional Office decisions. As a large number of remands are due to the inefficiency and errors at the VARO any new evidence would need to be submitted in a reopened claim, through the same Regional Office that made the mistakes. This will only add to the backlog currently facing the VA and is ill-advised. Changing the BVA into an appellate body would add a further “adversarial” level to the claims process. The Commission has failed to provide any meaningful and substantive support for its contention that this would somehow improve the process.

The Commission recommends the appeal period be reduced from one year to 60 days. Again, a chimerical gain of supposed efficiency is had at the expense of the veteran. It reduces the veteran's ability to appeal, while not benefiting the processing of claims. Whether a veteran takes one year or 60 days, is not going to alter how efficiently, properly, or correctly the claim is processed. In his dissent, Commissioner Chavez stated that "[t]his would result in a significant reduction of claimant's options with little or no measurable impact on the processing or appeals workload." Report at 367.

Restricting the appeals-window for veterans will simply permit the elimination of claims not filed within 60 days and therefore give the appearance of efficiency by reducing the backlog. Of course, denying the veteran the right to appeal a detrimental decision would also increase efficiency, as would providing a one-day appeal window. This does not address what is wrong within the process. This same approach is further seen in the recommendation of placing a time limit on an original claim. How can a time limit on a claim, increase the efficiency in processing? Again, it simply eliminates the claim itself, without improvement of the system.

Finally, providing a lump-sum payment will not improve the system, it will only create the appearance of improvement. We could extrapolate that if the VA only granted claims that were rated at 100 percent, the system would become very efficient. This does not provide us with any answers as to the fundamental problems within the process. The Commission's report implies that a veteran with a 30 percent disability is somehow less deserving than one with a 60 percent or 100 percent disability, and is a drain on the system. That they should recommend reducing future claims by these veterans by limiting additional benefits to those who have accepted a lump-sum payment is nothing more than an attempt to prevent a veteran from receiving the compensation that the veteran is due for service to the Nation. PVA is baffled over how this recommendation improves the timeliness or quality of claims processing and adjudication, unless the recommendation of the Commission is, as it seems to be throughout the Report, reduce the number of veterans with access to the system.

The Commission's rationale for lump-sum payments seems to be a comparison between the benefits provided veterans and those provided by commercial insurance companies. This comparison has no place in this report. A commercial company has one purpose only, to earn a profit. Perhaps the Commission has in mind a return to a different era, where soldiers fought for local princes and commercial interests.

PVA believes the solution to the inordinate delays facing veterans in the claims process lies with the VARO. We are disappointed that the Commission failed, in its Report, to recommend concrete solutions to these delays, solutions that attempt to remedy the problems, not just blame the veteran for them. Our recommendation is simple: by "getting it right" the first time, the backlog could be reduced significantly. If the VAROs were given additional resources, the backlog would be reduced. The Commission itself indicated as a preliminary finding, in February 1996, that when the VA committed increased resources to the adjudication process, in overtime and additional rating and authorization decision makers, the backlog decreased. Yet the Commission's final recommendations deal more with reducing the number of claims that need adjudication, rather than improving the system that provides for our veterans.

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

Fiscal Year 1995

Department of Justice - Joint venture to produce procedures implementing the Americans with Disabilities Act (ADA) through certification of building codes \$25,000.00

Department of Veterans Affairs - donated space for veterans' representation \$869,519.26 *

Court of Veterans Appeals, administered by the Legal Services Corporation - National Veterans Legal Services Project \$240,286.

Fiscal Year 1996

General Services Administration - Preparation and presentation of seminars regarding implementation of the Americans with Disabilities Act (ADA) \$25,000

Federal Elections Commission - Survey accessible polling sites resulting from the enactment of the Voting Access for the Elderly and Handicapped Act of 1984, PL 98-435 \$10,000

Department of Veterans Affairs - donated space for veterans' representation \$897,522.48 *

Court of Veterans Appeals, administered by the Legal Services Corporation - National Veterans Legal Services Program \$200,965.

Fiscal Year 1997

Architectural and Transportation Barriers Compliance Board (ATBCB) - Develop illustrations for an Americans with Disabilities Act (ADA) technical compliance manual \$10,000

Department of Veterans Affairs - donated space for veterans' representation \$224,380.62 (as of 12/31) *

Court of Veterans Appeals, administered by the Legal Services Corporation - National Veterans Legal Services Program \$37,125 (as of 12/31).

* This space is authorized by title 38 U.S.C. § 5902. These figures are estimates and were derived by calculating square footage and associated utilities costs. It is our belief that this space does not fall under the definition of federal grants and contracts.

CURRICULUM VITA

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Education

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Professional Experience.

1992 - present Deputy Executive Director
 Paralyzed Veterans of America

1990 - 1992 National Advocacy Director
 Paralyzed Veterans of America

1987 - 1990 Associate Director of Legislation
 Paralyzed Veterans of America

1986 - 1987 Assistant to the Administrator of Veterans Affairs
 Department of Veterans Affairs

1972 - 1986 Veterans Benefits Department
 Department of Veterans Affairs

Organizations

Trustee - Paralyzed Veterans of America Spinal Cord Research Foundation (SCRF)

Board Member - Paralyzed Veterans of America Education and Training Foundation (ETF)

Member of Executive Board - President's Committee on Employment of People with Disabilities (PCEPD)

Board Member - National Spinal Cord Injury Hotline

Military

United States Navy, retired in 1970



Non Commissioned Officers Association of the United States of America

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STATEMENT OF

LARRY D. RHEA

DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS

PRESENTED TO THE

COMMITTEE ON VETERANS AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

ON THE

REPORT OF THE VETERANS' CLAIMS ADJUDICATION

COMMISSION

MAY 21, 1997

Chartered by the United States Congress

The Non Commissioned Officers Association of the USA (NCOA) thanks the Distinguished Chairman for inviting the views of this Association on the final Report of the Veterans' Claims Adjudication Commission. Mr. Chairman, NCOA is grateful also for the attention that you and the members of this Committee have devoted to improving the system of processing and adjudication of veteran's benefits claims.

It is also appropriate for NCOA to begin our testimony by commenting on the work of the Commission in producing the report that is the subject of this hearing. The Association would be remiss if we failed to acknowledge and compliment the Commissioners and staff for their substantial work and dedication on this project. Even amid the criticism that the Commissioners went beyond their charter, NCOA believes the discussion that the report has prompted is healthy and needed. In NCOA's view, the Commissioners have at least focused attention on some of the tough questions and issues that eventually must be faced. Whether or not one agrees with the report's conclusions and recommendations, a useful purpose has been served by getting a focused dialogue started.

NCOA's major criticism of the report is the failure by the Commissioners to address the bedrock issue that accounts for many of the shortcomings in the claims and adjudication process. **There is no accountability throughout the entire process – from beginning to end!**

As an illustration, NCOA invites the Committee to recall testimony that was presented before the Subcommittee on Benefits on May 14, 1997, regarding the processing of Persian Gulf claims. Even in these cases that are receiving special attention by virtue of high public and congressional interest in the illnesses of Persian Gulf veterans, VA can't seem to get it right. The VA official testifying at that hearing readily admitted that "mistakes were made" and "claims were mishandled." NCOA was left with the impression that an admission of shortcomings was all that was needed and that any further critique was unnecessary.

In NCOA's view, the situation involving Persian Gulf claims is nothing more than a manifestation of the systemic, root problem that has plagued the claims process for years.

In making this point, NCOA wants to be clearly understood. The Association is not indicting every employee within the Veterans Benefits Administration but in our view there are three principles of good management and leadership that need a forceful application throughout the claims process – responsibility, authority, and accountability.

VBA's responsibility for claims is challenging but clear – timely and accurate processing and adjudication of benefits claims by veterans. In NCOA's opinion, VBA has been given authority commensurate with that responsibility, including sufficient resources. When VBA has not had authority, Congress has been quick to act, as in the case of compensation for veterans with Persian Gulf Syndrome. The responsibility and authority portions of the equation are clear and sufficient in our view.

The portion of the equation that is not sufficient, in NCOA's opinion, is accountability and accountability cannot be applied to a process. Accountability, both for what is done and that not done, must be applied to individuals. It sometimes appears to NCOA that a greater interest is placed on preserving the "process" or "system" than is placed on improving it. The single, greatest thing that could be done to improve both the system and the process would be to bring accountability to this issue. In NCOA's opinion, the "mistakes were made" and "claims were mishandled" dismissals are not acceptable.

The Final Report of the Veterans' Claims Adjudication Commission raises many interesting thoughts in the areas of repeat claims, finality of decision, delimiting period, lump-sum benefit payments and the pension program. All of these are worthy of extensive careful discussion

Future discussions notwithstanding, and the results that those discussions may or may not produce, NCOA is convinced on one central principle. The best way to improve the

timeliness and quality of benefits claims is to bring accountability to the process. Merely reducing the number of claims in the pipeline, even if there is merit in doing so, does not get at the problem of flawed decisions at the regional offices, that leads to remanded cases with remand instructions often ignored.

As indicated, NCOA endorses a healthy discussion on each of the Report's recommendations. The Association believes veterans and the VA would be best served if a dialogue on accountability preceded such discussions. NCOA is hopeful that planned hearing on VBA's strategies for implementation of the Government Performance and Results Act will focus on this area. The best way to "get it done right the first time" is to apply accountability where it should be applied. As it is now, veterans are the one's being penalized in delayed or denied benefits. The situation needs reversed.

Thank you, Mr. Chairman, for the opportunity to express NCOA's thoughts on the Commission's Report. The Association looks forward to further discussion on the important areas raised by the Commissioner's recommendations.

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To: The Honorable Bob Stump, Chairman,
and Members of the House Veterans Affairs Committee

Subject: A Technician's Proposal to Improve the Department of
Veterans Affairs Claims and Appeals Process

With all due respect for the experts in the management of programs who have heretofore conscientiously studied the problems herein, it is appropriate to consider the views of someone who has had hands-on experience in producing the product herein; i.e., decisions in veterans claims by technicians.

As an attorney with the Board of Veterans Appeals for more than 34 years, I qualify as a technician or producer of many thousands of final appellate decisions. As special counsel for veterans affairs for a national veterans organization for an additional 15 years, I share with you concerns for the current state of affairs of my fellow veterans.

I have read the reports of the Veterans Claims Adjudication Commission and have commented thereon in letters to your Committee dated September 26, 1996, and April 25, 1997, and I am shocked that after a two-year study I have noticed no comment as to the role of medical doctors in the decision-making process.

In my September 26, 1996, letter to your Committee I stated, with respect to the doctor's role, and the Court of Veterans Appeals' interference therewith, the following:

In one of its earliest decisions, COVA frowned on the inclusion of a medical doctor on Board Sections and their participating in the signing of appellate decisions, notwithstanding the fact that more than 90% of the Board's appeals involve medical questions. The medical member had for decades helped the BVA to keep current with its workload by on-the-spot assistance to their associates in deciphering medical script in the evidence of record. They readily answered questions and lectured on the signs and symptoms of the disabilities at issue on appeal as well as their prognosis and complications, thus avoiding the time-consuming medical research by lay members in finding the answers necessary to reach 'findings of fact' as required by laws and regulations.

It was no surprise to me, that with the removal of doctors from the Board Panels, there soon developed a backlog which has continued to date. Medical textbooks and dictionaries, in the hands of laymen, are not acceptable substitutes for real-live medical doctors, on the spot, when needed to unravel medical problems.

With the loss of medical expeditors, the Board also lost skillful questioners at personal hearings as well as public relations specialists. The art of extracting pertinent clinical data from patients in private practice with a bedside manner was very helpful in obtaining information pertinent to resolving appellate issues, and in the process the medical member convinced the claimant-witness that the Board did in fact 'care for him who bore the battle and for his widow and orphan.'

All this loss because COVA does not believe a medical member of the Board can legally be a witness and judge in the same matter. It has no objection, however, in permitting legal members from taking judicial notice of matters within the scope of their discipline. Why, then, cannot medical members draw on the knowledge acquired in their area of expertise? Although I can understand COVA's objection may well apply to proceedings in courts of law, the BVA, as an administrative body, was not subject to the strict rules of evidence or pleadings and practices of judicial bodies prior to the imposition thereof on the BVA by COVA, nor should it be so treated unless Congress so determines, and it has not done so since the creation of the Board.

In place of the input previously provided by its medical members, the Board and COVA are frequently remanding appeals to the regional offices for physical examination and requests for opinions from VA examiners as to the origin of disabilities in issue in service, an adjudicative function! This inappropriate practice adds many months to the processing time of appeals and the backlog.

I am still thoroughly convinced that veterans' claims, 90% of which involve medical questions, will never again be timely processed until medical doctors are returned to the decision-making panels of the Regional Offices and the Board of Veterans Appeals.

Streamlining procedures alone will never replace an expert (doctor) on the production line.

Respectfully,


Gene Troiano

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

Responses to Questions Posed to William R. LaVere
Member
Veterans' Claims Adjudication Commission
by the Honorable Bob Stump
Chairman
Committee on Veterans' Affairs

Question 1. Your data describing the demographics of the veterans community is interesting. First why did you develop these data, and second can you provide a composite view of the typical claimant?

Answer 1. The Commission developed such data because, by law, the majority of the members of the commission came from outside the veterans community and were unfamiliar with the veterans benefits system. Commissioners wanted to know what VA was in charge of, e.g., who claims benefits and why? Commissioners expressed a desire for a reference point in their work that went beyond the procedural abstract. The demographics helped provided such a reference point.

2,235,675 veterans – about 8.6 percent of the total veteran population – receive disability compensation. Almost 40 percent of those are evaluated ten percent disabled. Eighty four percent are evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent). The “typical” claimant files “repeat” disability claims, averages 2.7 service-connected disabilities each, and has a disability commonly experienced (e.g., knee, back, and skins conditions, arthritis, and hypertension) in the general population.

Question 2. Please describe what the Commission meant by “repeat” claims. Why is this category important, and did the Commission intend to suggest that veterans should not be allowed to reopen claims when their conditions worsened.

Answer 2. “Repeat claims” are claims from “repeat” customers. For purposes of the Commission’s report, the term means any application involving a disability determination submitted by a veteran and received after one (or more) prior VA disability decisions(s) pertaining to the same claimant. VBA once referred to any such claim as “reopened.” However, VBA redefined the term “reopened claim” in November 1995, prompting the Commission to adopt a generic equivalent. Repeat compensation claims would include claims for increased evaluation, claims for service connection following prior denial, and claims for service connection of additional disabilities. “Repeat appeals” are second and subsequent appeals.

The “repeat” claims category is important because “repeat” claims outnumber original claims by nearly three to one. Further, initial claims accounted for only 15 percent of all compensation applications processed by VA in fiscal year 1995. The Commission’s 100 percent computerized sample of 111,101 pending reopened disability compensation claims and 38,685 pending appeals during a seven-day period in FY 1995 revealed that sixty nine percent of “repeat” claims and sixty seven percent of appeals were filed by veterans already in receipt of compensation; about 30 percent in each category were filed by veterans over 61.

A Commission projection model shows that if VA received no original compensation claims for 20 years beginning in FY 1996 – and repeat claims activity *diminishes* as veterans age – then repeat claims volume in FY 2015 would be at least 55 percent of its 1995 level.

The Commission’s projection model further demonstrates that if VA received no original compensation claims for 20 years beginning in FY 1996 – and repeat claims activity remains *consistent* with current levels – then repeat claims volume in FY 2015 would be at least 72 percent of its 1995 level.

Mr. Chairman, the Commission did not intend to suggest – and did not suggest – that veterans should not be allowed to reopen claims when conditions worsened.

Question 3. Please describe why VA needs the corporate data base and the type of information and interfaces it should have. What is the value of such a database?

Answer 3. VA needs a “corporate” data base, i.e., a strong central focus for identifying data needs, collecting data, and analyzing data at the Departmental level. All VA components should be required to collaborate with this entity to ensure use of common understanding about future workloads and the needs of current and future customers. The Commission notes that such data are essential for ongoing actuarial analysis, as well. A corporate data base could add significant value in that it would be held in one centralized repository that cross-cuts VA organizational lines and could be accessed at VA headquarters and the field. Such Departmental-level data would be used not only for operational matters, but for formulating long-term strategies/policies for the Department.

Question 4. Please expand on the Commission's recommendations regarding *de novo* review and necessity to limit the number of times the same facts in a claim are reviewed.

Answer 4. The Commission's concept is to afford the claimant a "full blown" *de novo* review of his/her claim by a hearing officer at the regional office level. Such a hearing would be mandatory -- either in-person or of the record. The Commission believes this approach promotes the most fair and complete disposition of the claim at the agency level. It also could resolve the claim as close as possible to the point of service -- the regional office. It would also help ensure that the record is complete for an appellate review, should one be needed. Given a *de novo* review -- conducted by a hearing officer at the agency (regional office) level -- the Commission believes another *de novo* review at the Board of Veterans' Appeals level would be unnecessary. The Board's review would be appellate. The record would essentially be closed at that point and the issues decided as contemporaneously as possible to the existing evidence.

POST-HEARING QUESTIONS
CONCERNING THE MAY 21, 1997
HEARING TO ACCEPT THE REPORT OF THE
VETERANS' CLAIMS ADJUDICATION COMMISSION

FOR THE DEPARTMENT OF VETERANS AFFAIRS

FROM THE HONORABLE BOB STUMP
CHAIRMAN, VETERANS' AFFAIRS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

1. I am not sure I agree with your statement that the rating system represents a consensus between VA, the VSO and Congress. For instance, if the economic analysis suggested by the GAO disclosed that veterans or a large percentage of them were seriously under compensated in today's job market, would there be a consensus? Isn't today's "consensus," as you put it, the result of a lack of quantitative analysis?

Answer: Determining the average impairment of earning capacity of a specific disability, such as an amputation, on occupations with large differences in salaries as well as physical and mental occupational requirements—from highly paid executives to those who earn the minimum wage—is theoretically possible. Determining the "average" effects of diseases such as asthma or diabetes, which affect some much more severely than others, is more difficult. For these reasons we believe that the value of any qualitative analysis would be questionable, at best. Were such an economic analysis to disclose that veterans, or a large percentage of them, were seriously under compensated in today's job market, that fact might reflect as much on the rates of compensation or some other factor as on the validity of the rating schedule. We also note that in 1973 VA published the results of an attempted economic validation of the rating schedule. Neither Congress, the veterans' service organizations nor VA found the results satisfactory.

We maintain that a rating schedule that is medically based is the fairest and most equitable way to determine levels of disability. As the GAO report itself clearly indicates, the veterans service organizations believe that the rating schedule has withstood the test of time and that ratings derived from it generally represent the average loss of earning capacity among disabled veterans. VA has undertaken the first comprehensive review of the rating schedule since 1945 based on a December 1988 GAO recommendation; the revisions resulting from that review have been based on medical criteria. Congress was aware of those facts when it revised 38 U.S.C. 1155 to protect the level of ratings derived from the previous schedule without otherwise revising VA's mandate to establish and periodically revise the schedule. (Section 103 of Pub. L. 102-86) We view that as a tacit Congressional endorsement of the review and the manner in which it is being conducted. Based on these observations we believe that the rating schedule does, in fact, represent a long-term consensus among Congress, the veteran community and VA as to how veterans should be compensated for their disabilities.

2. Please describe how a limited lump sum payment option might be a win-win situation for veterans and the Department?

Answer: The Department of Veterans Affairs does not believe that a limited lump sum payment would be beneficial for veterans and the Department. The effect of this proposal would be to cut off some veterans from what they earned by their service. There would be administrative difficulties if a veteran was given a lump sum payment and the veteran's condition subsequently worsened to the point where monthly benefits were again payable. High program costs would result in the early years of implementation and the lure of a lump sum could lead to a higher number of claims, some of which may have little merit.

3. VBA has recently expanded its hearing officer program, and I have stated that I intend to codify the program to make it available to all veterans. The VSO's and the Department oppose eliminating EVA's de novo review authority. How many times should the same claim be subject to de novo review?

Answer: As a preliminary matter, we note that, strictly speaking, the "same" claim is subject to de novo review by the Board of Veterans' Appeals only once. Once the Board has made a final decision (or once a regional office decision is not appealed within the statutory time limit), the law is quite specific that it may not thereafter be opened unless the claimant presents new and material evidence. 38 U.S.C. §§ 5108, 7104(b).

We note further that hearings before a hearing officer are currently available to all veterans. As you know, making the hearing officer decision a required part of the appellate process is included in VBA's Business Process Reengineering plan.

Nevertheless, mandatory hearing officer hearings do not imply that there must be a change in the standard of review by the Board. We believe the Board performs a valuable service to both veterans and the VA adjudication system by taking a fresh look at the entire claim. Based on the almost 20% allowance rate at Board, as well as the many claims which are granted at the regional office level after being remanded by Board, it is clear that many veterans' claims are granted due to de novo review of the evidence by Board. The Board possesses not only expertise on purely legal issues, but years of experience in deciding factual questions.

As you know, the Veterans' Claims Adjudication Commission in its report to Congress recommended making the Board an appellate-level review board rather than a de novo reviewer. As we noted in our response to that report, however, there are virtually no data relating to the consequences such a change. And while the Commission did note numbers of claimants who entered the system more than once, it relied on no statistics involving claims--i.e., particular issues--which were the subject of more than one adjudication or appeal. Accordingly, we do not believe that there is sufficient data to respond to the assumption which seems to underlie your question, i.e., that a large number of claims are being finally adjudicated more than once.

4. How long do you estimate it will take to turn VA's claim manuals into regulations?

Answer: As noted in our testimony of May 21, 1997, this project will require a very time- and resource-intensive effort to complete . We are forming a task force representing VBA, the Office of the General Counsel, BVA and the Office of Policy and Planning to identify specific tasks to be completed, identify specific resources needed to complete the project, develop a cost estimate and establish a timetable. We expect to submit a detailed plan for the Secretary's approval by November 15, 1997. We will share the task force's findings and projected timetable with you once they are completed.

POST-HEARING QUESTIONS
CONCERNING THE MAY 21, 1997
HEARING TO ACCEPT THE REPORT OF THE
VETERANS' CLAIMS ADJUDICATION COMMISSION

FOR THE DEPARTMENT OF VETERANS AFFAIRS

FROM THE HONORABLE LANE EVANS
RANKING DEMOCRATIC MEMBER
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

1. Please provide a detailed description of the "overhaul of the Quality Assurance system" you discussed in your testimony.

What other steps could be taken by BVA [VBA] to improve the quality and consistency of decisions?

When will those steps be taken?

ANSWER: Concurrent with efforts to implement the requirements of the Government Performance Results Act (GPRA), Business Process Reengineering (BPR) has been a key focus for the Compensation and Pension Service. During Fall 1995, Compensation and Pension service GPRA and BPR teams comprised of Central Office and field representatives worked together to coordinate goals and measures. Both teams proposed a revised approach for measuring accuracy. A quality work group has been created to look at accuracy at the national and local levels and to develop an implementation plan to revise methodology consistent with GPRA and BPR. The work group is composed of representatives from the Veterans Benefits Administration, Veterans Health Administration and the Board of Veterans' Appeals.

The importance of measuring customer satisfaction and the need to develop balance score card measures for "Quality" are recognized. However, the focus of this work group is "technical accuracy." Cases will continue to be randomly selected from the prior 12 months completed workload for each regional office. The sample size has not yet been finalized but will be statistically valid. The national level accuracy review will be restricted to end products associated with original and reopened claims generally rating related and appellate issues. During the review process we will look at the following elements and determine whether the case is "accurate" or "in error."

Were all the issues addressed?
Did we fulfill our duty to assist?
Was the grant or denial correct?
Were all effective dates correct?
Were reasons and bases correct? (Analyzed all evidence and explained basis of decision.)
Was notification correct?

A National Accuracy Rate will be the percent of cases reviewed and determined to be accurate. No longer will we determine a Payment Accuracy Rate, Service/Control Accuracy Rate, and Notification Accuracy Rate.

Our goal for National Accuracy Rate is 97 percent. With the implementation of BPR, we have established interim accuracy goals as follows:

Fiscal Year	GOAL
FY 1997	90 Percent
FY 1998	92 Percent
FY 1999	92 Percent
FY 2000	93 Percent
FY 2001	95 Percent
FY 2002	97 Percent

The work group is looking at accuracy at the national and local levels and expects to have revised methodology in place by October 1, 1997. At that time, accuracy will be incorporated into the performance standards of top managers as well as those individuals processing claims.

Improved quality and consistency of decisions will also be accomplished through redesign of the post decision review process, the training and certification programs for Veterans Service Representatives and Decision Review Officers, and the implementation of information systems to better support the claims process such as CPS and VETSNET.

2. Does the VA conduct any mandatory system wide training on adjudication issues which VA employees are not merely "invited" but required to attend? What is the purpose of this training?

ANSWER: VBA conducts training on adjudicative issues on a regular basis. Most is done locally by the regional offices, based on directive information received from the Compensation and Pension Service, the Area offices and other organizational elements; based on the station's own identification of training needs as assessed through various quality reviews; and based on the developmental training for those "new" to their respective adjudicative positions. Part of the training on adjudicative issues is done on a national level by the C&P Service. Such training is conducted at the VBA Academy in Baltimore or Denver or at specific field sites, such as regional offices; or it is conducted by C&P in Washington for transmission by satellite or phone. For all of this training on adjudication issues, specific students are identified; e.g., new claims examiners, journey rating specialists, hearing officers, appeals coordinators, etc. Members of the specific audience identified are required to attend, as schedules and resources allow. Central office does not mandate attendance for field personnel; rather, local managers determine which training sessions are appropriate and necessary for which staff. Local managers monitor all types of training to ensure attendance to the extent necessary and possible.

3. How does VA measure the effectiveness of training?

- How effective is the training now being provided?
- How could this training be more effective?

ANSWER: Many individual training sessions or programs are measured for effectiveness based on student and instructor assessment, and this generalization applies to VBA training in all program and support areas, not just compensation and

pension. Currently, this assessment method indicates that VBA's centrally provided adjudicative training programs are successful and effective in meeting limited training goals. The majority of adjudicative training within VBA, however, is via on-the-job training, and it is generally left to each regional office to ensure training in this area and to assess its effectiveness. Centralized training helps in specific program and subject areas, but VBA has not had sufficient resources on a national basis to meet all the training needs of all regional offices, in particular, those relating to adjudication. Up to this point it has remained up to each office to provide much of the training it needs.

Starting last year VBA embarked on the development of a computer-based, multimedia training and performance support system for three of its program areas: compensation and pension, insurance, and loan guaranty. Upon completion (the first deliverable for compensation is due out this Fall in the area of appeals certification) VBA will have the essential means to measure the effectiveness of training for a number of its key adjudicative positions, new rating specialists in particular. With more training initiatives being developed under the Business Processing Reengineering initiative using the principles of instructional systems design, such as the one for new rating specialists, VBA's future training programs will be more effective, measurable, and capable of being validated.

4. Can you explain the Commission's findings that the VA fails to notify veterans of the evidence needed to establish their claims and the evidence which should be submitted to the VA?

ANSWER: Often a veteran's claim evolves between the time it is initially filed and the time it is finally adjudicated. As the claim takes on a more well defined form, VA employees are able to do a better job of identifying precisely which supporting evidence is needed and of assisting the veteran in developing his or her claim because they have more information about which disabilities the veteran is claiming, which benefits the veteran is seeking, and the legal theory underlying the veteran's claim. Considering the large number of issues that can come into play during the adjudication of a disability claim, VA employees might not be able to anticipate them all at the point in time at which the claim is filed.

VA is currently testing the Claims Processing System (CPS) which was designed to improve VA's development of original disability compensation claims. We expect that this system will be available nationwide by the end of 1997. CPS is an automated development system which guides the employee through the development process by means of a series of prompts. We expect that CPS will significantly improve development of original disability compensation claims, and plan to evaluate whether it does achieve that goal.

5. The Commission analyzed not merely the total length of time to adjudicate an original or subsequent compensation claim but the length of time for completing various elements in the process. VA has been focusing on the use of computer technology to reduce the length of time to adjudicate a claim. The Commission's survey found that the longest period of time taken in the development of the claim was due

to obtaining information from sources (medical reports, obtaining other evidence) over which the VA has no control.

- Has the VA set unrealistic timeliness goals which fail to adequately consider the length of time to properly develop a claim?

ANSWER: The short answer is "no." In developing the claims processing environment envisioned by our Business Process Reengineering effort the need to obtain evidence from sources outside of VA was explored. Certainly we look for enhanced information technology to assist in reducing task time, but we also look for it to significantly shorten the time it now takes to obtain evidence. By improving our liaison with information sources outside of VA, we will establish electronic data links to transfer essential information resulting in instant or nearly instant reply. By establishing a partnership relationship with our veterans and their representatives, VBA expects to gain their direct participation in evidence development efforts. This direct participation will create an environment where each claim will be better focused at the very beginning so that essential evidence needs can be identified sooner and the information secured more quickly than under the current process. By simplifying the rules and regulations pertaining to veterans benefits, we will reduce the delays caused by current requirements that may lead to erroneous or unnecessary claims development. Finally, by reengineering our core processing steps in the adjudication process, delays related to multiple handoffs will be reduced. We have reconsidered all facets of the claims adjudication process to arrive at processing timeliness goals that reflect the realities of receiving a claim, accumulating evidence, finalizing a determination, and notifying the veteran.

6. VA has encouraged "local initiatives".

- Has VA determined which of these local initiatives are not consistent with law, regulations and national policy, including changes necessary as the result of precedential decisions of the Court of Veterans Appeals?
- How has VA made this determination?
- Has each local initiative been assessed for consistency with law, regulations and policy?

ANSWER: "Local initiatives" run the gamut from minor adjustment of task assignments for existing local staff, to significant outreach, information technology or organizational changes. Field station personnel and local Adjudication Officers, who are specifically tasked with assuring the proper application of the law in their local jurisdictions, are well aware that the initiatives they choose to pursue must be consistent with existing statutory, regulatory, and/or case law mandates. We have not seen any local initiatives that are inconsistent with these mandates.

Proposed local initiatives which are at variance with policy as described in M21-1 must be submitted to the Compensation and Pension Service for review and approval. If the local initiative is approved, a "manual deviation" is given to the requesting office for a specified period of time. Additionally, reports are required so that the value of the

initiative can be assessed to determine whether the deviation should be continued and/or extended to all stations as a change to policy.

It is the responsibility of local station management to ensure that modifications to procedure or process are consistent with the law and to request the concurrence of higher management or program management when a question might arise.

7. Why does VA not keep data which would easily enable VA central office, the Veterans Benefits Administration and the local Adjudication Officers to identify patterns of erroneous decision-making? What specific steps is the VA taking to improve its ability to track issues and errors as opposed to "and products?"

ANSWER: Current procedures do include administrative requirements for local offices to exercise an ongoing Quality Improvement program through statistically valid sampling of claims work to identify error trends for analysis and corrective action. In addition, the Compensation and Pension Service conducts Quality Assurance reviews of case work at each field office addressing three broad, critical areas of processing: Control and Development; Decision Elements; and Notification. This centralized review of claims identifies whether or not individual offices are attaining acceptable levels of quality in their claims adjudication efforts.

While there is a two-tier quality review program currently in place, we are reconsidering the entire "quality" issue. The answer to question 1 provides a detailed explanation of the revised quality review system.

8. The veterans service organizations have continually raised serious questions about the quality of adjudication at the regional office level. The quality assurance "accuracy rate" of 92 percent reported by VA is inconsistent with the high rates of remand and reversal by the Board of Veterans Appeals and the Court of Veterans Appeals. Has VA narrowed the definition of "error" in the adjudication process to obtain a misleading "accuracy rate?"

ANSWER: VA has not constructed a definition of error with the intent to deceive ourselves or mislead our veteran-clients or stakeholders about the accuracy of the claims work.

At the outset, however, it is important to recognize that less than 3% of all decisions rendered by field offices are identified by our veteran-clients as potentially in error by filing an appeal. Of those determinations, about half are not pursued beyond the Statement of the Case step of the appellate process. We have heard the service organization questions about the quality of claims work based on statistical information about appeal work. We would like to put that statistical information into the perspective of the entire universe of claims work. By way of illustration, information about fiscal year 1996 shows that:

- Over 2.6 million claims actions were completed. Of those, approximately 730,000 were rating-related decisions.

- Fewer than 70,000 Notices of Disagreement were received--most with rating-related decisions.
- BVA completed just less than 34,000 cases. Of those completed cases 6,754 were grants, 10,444 were denials, and 14,821 were remands. Grants by BVA represent less than 1% of all rating decisions.

The Quality Assurance accuracy rates are based on a statistically valid sample of field office case work. The cases in the appellate process are a self-selected, judgment sample. This unique set of cases may appear to support some common sense feelings about claims adjudication work quality, but to look at appeal data as a valid indicator from which larger conclusions may be drawn about the quality of all primary claims work is in error.

9. While some deficiencies in claims processing would not necessarily lead to a different result, where the claimant has not been provided information necessary for him or her to effectively pursue the claim, "harmless errors" may indeed lead to serious miscarriages of justice. Why does the VA quality assurance manual limit the maximum number of deficiencies to one in each of the three areas?

ANSWER: "Harmless Error" is a legal concept defined by Black's Law Dictionary as "An error which is trivial or formal or merely academic and was not prejudicial to the substantive rights of the party assigning it, and in no way affected the final outcome of the case."

Given this definition, we generally do not cite "harmless errors" in our review process. We do, however, cite as errors any omissions or commissions involving duty to assist and proper notification which seem to be the principle concerns of your question.

As to the last part of your question, the quality assurance manual does not suggest that the staff identify or call a limited number of errors. Rather, errors fall into three main or primary categories of: control/development; decision making; and notification. The adjectival comments which describe the exception by the Quality Assurance Staff may identify several improprieties on the part of a particular adjudicative action. The system also permits the identification of error trends at the regional office level which permits management to marshal their resources and direct meaningful training efforts.

10. Describe existing and new safeguards to assure that the decrease in the time required to process original and reopened claims will not result in violations of the VA's responsibility to fully inform veterans of the evidence needed to pursue their claims and to assist them in obtaining evidence? How will this be evaluated?

ANSWER: The "safeguards" in any system or process are those built into a quality assurance program. This is true in the processing of claims in the present and in the future. While the development of evidence in a specific case (out of the 2.5 million processed each year) may on occasion be deficient, the claims processing system calls for full development in all cases.

Improved processing timeliness will be achieved through changes in the core process, elimination of case hand-offs,

better linkages with outside information providers, and better communication with claimants and their representatives. None of the improvements contemplate curtailing any of our existing duty to assist or responsibility to fully inform claimants. We believe that significant improvements in processing timeliness will occur by reducing the number of individuals responsible for a claim from the current eight down to between one to three (depending on the nature of the claim). A highly trained and skilled decision maker will take charge of a case at the very beginning to accomplish all the development that is required early in the claims process. This will eliminate multiple queues with the associated queue times as they now exist.

We propose to shorten the time required to receive these records by soliciting the claimant's assistance through our "focus issue" interview process. Even as we solicit the claimant's aid to obtain these essential records, we will still attempt to secure them ourselves from the provider.

Following our "focus issue" interview the claimant will be provided with documentation of the substance of the interview for review, amendment, or correction as needed. Additionally, a detailed letter explaining what information is needed to prosecute the claim successfully and what has been developed will be provided.

Evaluation of the new process will be accomplished through three mechanisms. Changes in the core process and information technology will be deployed to our laboratory stations, Houston and Seattle. This will provide a live environment to measure the effect of individual changes, modify them as necessary, and document the results compared to baseline data. Once changes are deployed nationwide, we would anticipate that national performance data will improve. Finally, on-going quality checks through our current Quality Assurance program, or any revised quality program which may result from our current studies of this issue, will be used to monitor claims work quality at all field offices.

11. Are claims in which benefits are denied before the time for submitting evidence has expired treated as errors or mistakes?

ANSWER: The law provides for a one year period in which to submit evidence in most situations. The claimant is fully informed when development is initiated of the one year period, but he/she is asked to submit the evidence as soon as possible, generally within 60 days. Under current administrative procedures, we look to decide cases based on the evidence of record--absent requests for extensions of time limits by claimants--once the 60 day period has expired unless we are waiting for information from other government records. In government record cases, we defer a decision until the records are received or we are informed that they do not exist. Experience has shown that only a small proportion of private sector evidence is received more than 60 days after it is first requested. Since the claimant's original effective date is protected as long as evidence is received within the one-year window, we believe we better serve our customers by providing them with a decision as soon as possible following a reasonable period for their response to requests for evidence.

Determinations that are consistent with the procedures described above are not treated as mistakes or errors, nor should they be. Unfavorable decisions which are rendered without allowing for the expiration of the full 60 days provided for receipt of requested evidence are considered errors.

12. If a prematurely denied claim is revisited during the one year period for submitting evidence, how are the timeliness of these claims measured?

From the original application date?

From the period beginning with the submission of additional information?

ANSWER: We are compelled to take issue with the characterization of "prematurely denied claims" for any denial decision rendered after the expiration of the 60 days, but prior to the expiration of the one-year time frame for submission of evidence. Such decisions are not premature denials. If we deny a claim for which all the evidence developed has not been received, the claimant is fully informed of the bases of our decision, and reminded of the final date he/she has to submit the requested evidence and still protect the original application date.

If evidence initially developed, but not timely submitted, is received after a decision is promulgated, reconsideration of the claim based on the new evidence is tracked from the date the evidence was received in any element of VA.

13. Please describe your understanding of the Department's responsibility to assist veterans in the development of their claims?

What recent training has VA provided to adjudicators concerning the duty to assist?

When did this training occur? Describe in detail the content. How many adjudicators received this training?

ANSWER: VA's responsibility for duty to assist must be met whenever relevant to a well-grounded claim. VA's claims processors, a group which includes rating specialists, must ensure that all indicated development is completed before deciding a claim, unless allowance is warranted based on the evidence of record. VA's responsibility is to consider all issues in a veteran's case, including those which may be inferred from a liberal reading of an appeal and the evidence, under all applicable regulations and procedural guidelines. VA may not ignore or reject an issue merely because the veteran or claimant did not expressly raise the appropriate legal provision for the benefit sought. VA has a statutory obligation to assist a claimant in developing facts pertinent to a well-grounded claim (38 USC 5107(a)). VA also has a duty to assist, albeit more limited, when a case is not well grounded. Under the provisions of 38 USC 5103(a), VA must notify a claimant that the claim is not well grounded and inform the claimant of what evidence is required to make the claim well grounded. By law, VA's duty to assist includes requesting any information from other Federal departments or agencies which may be needed to determine eligibility and entitlement or to verify evidence (38 USC 5106). VA regulations also require the Department

to request other records when a release is provided (38 CFR 3.159).

Insofar as training is concerned, duty to assist provisions are included in virtually all adjudication related training programs conducted, since it is such an essential part of the compensation and pension claims process. Most recently, training on the redistribution of Persian Gulf War cases included major discussions of the duty to assist provisions and how VA must go the extra mile in this regard for Persian Gulf veterans' cases. This was done on the May 29, 1997, satellite broadcast as well as at the two-day conference in Cleveland on June 2-3, 1997, that followed.

For the satellite broadcast on Persian Gulf War issues on May 29, there was a national audience watching. Rating Specialists, Hearing Officers, as well as adjudication supervisors and managers in every regional office, were the targeted audience for the broadcast and all were given the opportunity to ask questions and make comments on the topic. As training room space permitted, local representatives from the National Service Organizations were invited. A videotape of the broadcast is also being made available to any office that would like a copy. That training was followed up with a two-day conference in Cleveland where at least one person from each regional office (except Manila) attended. In total, approximately 60 field personnel attended the training conference in Cleveland, and they were expected to return to their respective offices and to conduct follow-up training there.

14. At what point does an emphasis on more rapid adjudication of claims at the Regional Office level impact on the duty to assist the veteran in the development of a claim?

ANSWER: The duty to assist impacts on the timeliness of claims processing rather than the other way around. By law, VA is required to assist claimants in developing the facts pertinent to their claims (38 U.S.C. 5107). The United States Court of Veterans Appeals (the Court) has been very specific in defining the "duty to assist" liberally to benefit the claimant. The general concept of "duty to assist," as defined by the Court, may be summarized as follows: VA must develop for all indicated evidence before deciding a claim, unless it can award benefits based on the evidence of record.

This has an obvious impact on the timeliness of claims adjudication. If a claimant furnishes numerous potential sources of evidence, or advises us of additional potential evidence in a piecemeal fashion, we must develop for the indicated evidence either until we may grant the benefit sought or until we have attempted, often several times, to obtain all potential evidence. VA must expend significant time and resources developing for that evidence, and the timeliness of claims processing suffers.

15. Please respond in detail to the following comments extracted from the testimony presented by Milton J. Socolar, National Academy of Public Administration, to the Committee on Veterans' Affairs on May 21, 1997. I would appreciate having your response no later than June 15, 1997.

- **"It is well accepted...That the department and VBA have been administering the compensation and pension program**

within a narrow, insular perspective. VBA has tended to address issues as they arise very much on an ad hoc basis and has not yet succeeded in realizing the more important of its articulated initiatives for improving service."

- "Given the history of troubles that VBA has had in administering the compensation and pension programs, it is important to appreciate that it will take considerably more than its recognition of the things needing to be done for VBA to achieve the desired improvement in service to veterans."
- "I am concerned that the management deficiencies that have caused VBA's past inability to implement sustained performance improvements will continue to exist."
- "Despite progress since 1966, the potential for a cohesive, well functioning leadership team is uncertain. The VBA strategic management committee is a step in the right direction, but up to now it lacks clear purpose, a long-term agenda for change, an ability to integrate and oversee complex activities, and a clear vision of what strategic management means."
- "There are major gaps and short circuits in lines of accountability within the leadership tea, a bias against developing a systematic corporate information capacity, and a reactive-averse culture."
- "VBA today us a closed organization that historically has avoided making full use of information for planning purposes from outside stakeholders. This must change."
- " In closing, I would note again that the extent of agreement in VA's response to the Veterans Claims Adjudication Commission report is a good sign; but also, I again emphasize that VBA has a long history of failing to make good on many of its important and well-intentioned plans."

ANSWER: VBA has reviewed the full draft report of NAPA and has provided input to the Academy for its consideration and possible inclusion in its final report. This input is a prelude to the Department's response to the final report submitted by NAPA to Congress. At this point, since we are dealing with a draft, we believe it is premature to respond to specific items since they might change in the final version or have their meaning modified in the context of surrounding text.

June 23, 1997

Note to: Mike Brinck

From: John Scully
202-383-7774

Subject: Q&A for the Record

Mike, attached are the Q&A's you requested. Mr. Socolar has seen and edited them.

I have not forgotten your two requests from our briefing several weeks ago. I want to finish the report first to base our work on the final report wording.

(-:

JS.

Question: In your view, what needs to be done to improve the quality of adjudication?

Answer: We have taken the view that improving the quality of adjudication requires systemic improvements in the claims adjudication and appeals process. We endorse VBA's business process reengineering goals for creating three basic positions in the regional offices to perform the initial claims adjudication process and requiring these employees to be case managers, and we recommend that these employees be supported by comprehensive training and quality assurance strategies. Further, because the panel views the compensation claim adjudication and appellate process as one continuous process, we recommend that VBA and BVA become close partners in developing training and quality strategies that provide a high level of mutually beneficial support to employees in both organizations.

Specifically, the academy panel report will recommend that the Compensation and Pension Service take a more systematic approach to adjudication quality by taking the following steps:

1. Assigning an office or individual responsibility for adjudication quality within the Compensation and Pension Service.
2. Developing a quality standard which takes into account the views of various stakeholders such as BVA, VSO's, VHA, and of course the veteran.
3. Creating a system-wide data base of relevant quality information such as types of medical issues most subject to error, and which regional offices are at a sub-standard quality level.
4. Making use of a third party review agent such as the Inspector General to validate the measurement techniques being used to assess system wide quality.
5. Using review and assistance teams to visit with each of the 58 regional offices to help identify and solve problems, and assist in the dissemination of best practices.
6. Ensuring a close link between quality findings and the VBA and BVA training efforts so that immediate corrective training can be implemented based on the on-going quality assessments.

Question: You compliment the department on its response to the report of the Veterans' Claims Adjudication Commission. Would you elaborate?

Answer: The way the department responded was positive in two significant ways. First, with the several exceptions noted in my testimony, the response to the commission's recommendations was positive. The department agrees with the commission's strong recommendations about the need to conduct actuarial analysis and other recommendations that will enhance departmental management. Second, the method by which the department prepared its response was refreshing. Led by the strategic management group, four teams of top departmental talent were established to examine the commission's recommendations. To obtain a fully balanced view, these teams were comprised of staff from all organizations affected by the recommendations. To minimize bias in the response, each team was led by a senior executive whose organization is not directly involved with the subject matter. As the secretary and deputy secretary stated, they intended to give a "One-VA" response to the commission and I believe that they achieved that.

Both the nature of the responses and the way in which they were prepared are encouraging. This kind of positive response, based on the broad involvement of key executives and staff, can become the basis of the needed leadership and management improvements that are needed to implement long-term service improvements on behalf of veterans.

Question: Your written statement discusses the socio-economic reality relative to the compensation program. Would you expand on your statement?

Answer: While research into this issue was not part of the academy panel's charter, we did have available an excellent report done in January, 1997, by the General Accounting Office to the Chairman of the Subcommittee on Compensation, Pension, Insurance and Memorial Affairs, of the House Committee on Veterans' Affairs. This report makes very clear that "the disability ratings in VA's current schedule are still primarily based on physicians' and lawyers' judgements made in 1945 about the effect of service-connected conditions had on the average individual's ability to perform jobs requiring manual or physical labor" (Page 2, GAO/HEHS-97-9). The report goes on to describe the obviously dramatic changes that have occurred in society, the labor

market, and technology since then. It further finds that VA's efforts to improve the schedule have only focused on the accuracy of medical conditions and have not reexamined original assumptions about the economic loss associated with these conditions. I personally believe that, after over 50 years, it is time to validate the premises on which this program operates.

Question: You fault VA for "avoid[ing] evaluating its basic programmatic activities... and a narrow management perspective. What is the result of that type of management?

Answer: As I said in my statement, an agency that avoids evaluating its basic programmatic activities and potential alternatives is also avoiding its responsibilities to the taxpayers for serving program purposes as efficiently as possible. This kind of approach can have major consequences. The most significant of these, in my opinion, is that the organization does not develop the full set of capacities needed to manage well. Evaluation of program outcomes is a fundamental component of a cycle in which an organization develops plans for achieving desired program outcomes, evaluates implementation of those plans to see if these outcomes are being achieved or could be achieved better, and then alters its original plans based on evaluation and other information received during implementation. Evaluation is a fundamental component of the Government Performance and Results Act which all federal agencies must implement beginning on October 1, 1997.

Any public organization must chart a course that provides the best service possible to its clients but at the same time is mindful of the taxpayers' general interest. VBA does not collect national data on current allowance rates and trends over time -- in total and by key medical conditions -- and the same information for each of the 58 individual regions. The organization needs to know if allowance rates are going up or down, both on a national basis and RO by RO. Developing this kind of information is not only critical to forecasting good estimates of future program costs, but it provides a key window into program results over time. Significant changes in the trend lines would serve as the basis for analysis and possibly early corrective action.

Question: Please describe VA's lack of management capacity, especially as it relates to information resources.

Answer: The panel report analyzes VBA's management and concludes that the agency needs to develop an integrated and fully staffed set of strategic planning and management capacities. Basic capacities need to be built for: (1) gathering corporate data, data analysis and program evaluation; (2) planning rigorously for initiatives undertaken and disciplined plan implementation with provision for regular review and revision as needed; (3) goal-setting, performance measurement, tracking of results and imposing accountability; (4) providing the training necessary to develop or maintain required skills; and (5) coordinating better among VBA components and with VBA stakeholders including BVA, the Veterans Health Administration, key persons in the office of the secretary, the Department of Defense, the Congress, veterans service organizations, and relevant federal and state agencies.

What is true for VBA generally is also true for its information resources management (IRM). In analyzing VBA's IRM management capacity, the panel looked at the skills, processes, and experience required to effectively analyze, plan, implement, evaluate, and integrate complex information technology projects. Skills include project management, technical analysis, cost analysis, cost benefit analysis, project estimation, and software development. Processes include determination of business requirements and goals for information system capabilities, requirements analysis, development and use of metrics to assess project performance, configuration control of software and system changes, technical and program integration, resource estimation, prioritization, and project evaluation. Experience refers to the levels of corporate and individual knowledge that exist within the organization for complex system development and program management. This capacity also refers to the demonstrated experience of those individuals within the information resource management organization to serve in the role of project or program manager. The critical experience that is required for success relates to project management discipline.

Historically, VBA's information resource management organization has focused on

information system operations. Its management capacities were in line with the skill sets, processes, and experience required for an operationally focused organization. However, the planning, integration, and execution of complex information technology modernization programs require a different set of skills, processes, and experience. VBA began its modernization program before putting in place the management capacities required for complex programs. VBA has not paced its investments in modernization projects with first building demonstrated capabilities for managing them. The current performance deficiencies in VBA's information resource management organization will likely continue until VBA changes its management philosophy to emphasize management capacity investments over modernization investments.

Question: The following are vacancies in VA's senior management: Inspector General, Under Secretary for Benefits, Director of the Vocational Rehabilitation Service, and the Chairman of the BVA. Most have been vacant for months and one for at least a year. What is your reaction to those vacancies and what kind of person should fill the Under Secretary position?

Answer: The academy panel report will identify leadership and strategic management capacity as the most critical elements in implementing long-term performance improvements in the compensation and pension program. Because the claims process extends across both VBA and the Board of Veterans Appeals, it is crucial that these two organizations form a partnership in administering the process. The current vacancies give the secretary a rare opportunity to identify leaders for both the under secretary and chair of the board who can develop this partnership and lead their organizations to the permanent improvements that the veteran deserves.

The person selected to fill the Under Secretary position should have a clearly demonstrated ability to lead and manage a large and complex organization. The new leader needs to be able to formulate a vision of how the organization should ultimately be shaped in order to provide first class service to veterans. He or she must have an appreciation of the kinds of management capacities that the organization needs to enable translation of that vision into permanent operational improvements. And, the leader needs to be firm and constant in his or her purpose, willing to be flexible tactically but not waver from the ultimate vision for the organization.

**THE AMERICAN LEGION RESPONSE
TO QUESTIONS FROM THE
MAY 21, 1997
COMMITTEE ON VETERANS AFFAIRS HEARING
BY CONGRESSMAN BOB STUMP**

Question 1.

VA has agreed with the recommendation to close the claim to new evidence in some cases. Assuming the appeal period is not changed from the current one year period, is it not reasonable to expect a veteran to provide all the additional supporting evidence prior to the claim going forward? Does a veteran have responsibility here?

Answer:

From our reading of his Decision Paper dated April 22, 1997, Secretary Brown unequivocally rejected his Strategic Management Group's recommendation (4I) that VA concur with the VCAC recommendation to close the evidentiary record when an appeal is filed. He pointed out that although closure of the record at some prescribed point may offer certain benefits for VA, they were "outweighed by the fact that these changes would diminish rights and advantages for some veteran appellants. The Department cannot not concur with changes that in any way adversely affect veterans."

The American Legion is opposed to any effort which would impose additional burdens and restrictions on the veteran for the sole purpose of administrative expediency and convenience.

Question 2:

Each VSO reacted strongly to the idea of a lump sum payment to some veterans. We understand there is interest in lump sum payments within the veterans community outside of the VSO Washington offices. You are taking it upon yourselves to make it impossible for veterans who might want a lump sum payment to invest, make a down payment or even pay for a bit night on the town. Isn't that an excessive approach?

Answer:

Within the VSO community in particular and the veteran community as a whole, there is usually a wide divergence of opinion on all issues. This is probably true of the idea of payment of lump sum disability compensation. However, for The American Legion, the views expressed in our testimony are reflective of the concerns of the organization's membership not just the Washington office, despite the question's implication to the contrary. The position of the other VSOs on this subject, I feel certain, is similarly based.

In addition, we are not aware of nor have we heard of any groundswell of support for this type of change or complaints about having compensation paid on a monthly basis. The fact that the VSO's singularly or collectively share a similar view on the subject in no way "makes it impossible for veterans who might want lump sum payment....." This is a free country, anyone can write or call his or her Congressmen and senators expressing their own personal opinion on this issue and requesting appropriate legislative action which may or may not occur.

Question 3:

Are you saying there is no circumstance under which you would support lump sum payments?

Answer:

Yes.

Question 4:

The claims adjudication system is largely the result of your organization coming before the Congress and lobbying for what is now in place. In effect, you are the architects of the system - a system that, if its goal was to produce cars, America would not longer be in the care business because the quality would be horrible as each of you has often testified. Are you telling me that given a clean sheet of paper, this is the system you would design?

Answer:

The question confuses the issue of the "system" or framework of laws under which benefit claims are adjudicated with the "physical and administrative process" these claims go through as they are adjudicated. We believe the system itself is basically fair. It is not broken nor is it need of any drastic overhaul or radical change.

In our opinion, continued problematic quality, i.e. backlogs of pending claims, long processing times, large numbers veterans filing appeals, and a remand rate of almost 50% and an allowance rate of 20%, is the fault of VA decisionmakers and the process by which claims are handled. We also frankly feel Congress must share some of the responsibility for the deterioration in the quality and timeliness of the claims processing" which has occurred over the past 10-15 years. VA staffing levels have not been adequate to meet its responsibilities, for a variety of reasons. VA managers and planners have not utilized the available resources in the most efficient manner. Training has been insufficient. Poor planning and problems have delayed and slowed computer modernization. Basically, the organization lacked a sound and effective business plan. As a result of GPRA and other mandates, VA is now beginning to develop its business plans and make may long overdue changes in the way it processes claims.

With regard to the statement in this question that "you are the architects of the system...", the VSOs are no more the "architects" of the VA's current adjudication system than average citizens are the architects of the various programs of the Federal government. Congress has enacted a framework of laws some of which we have supported and some we have opposed as not being in the best interest of veterans. VA is responsible for administering these laws. In reality, the claims adjudication procedures which have evolved over the years have generally been developed and implemented without the opportunity for substantive input from external sources, i.e. from either VA's "customers" or the VSOs.

In our view a more accurate analogy would be, if VA were in car making business, they would have the same type of budget and quality problems. The quality of their cars would be horrible and the subject of continuing criticism.

Bankruptcy would be looming on the horizon. Some of the main reasons for this situation are that workers and managers can ignore the blue prints and design plans for the various models or fail to follow proper engineering procedures. However, no one is penalized or fired if their quality is poor as long as production was high. Efforts to improve the quality and timeliness of their service are plagued by poor planning, inadequate resources, inaccurate workload data, lack of effective leadership in key positions, lack of personal and organizational accountability, etc., etc.

VA has continued to complain about the increased workload demands resulting from the decisions of the Court of Veterans Appeals. Judicial review is, in fact, fulfilling its intended purpose which is to make VA abide by its own rules and regulations which is all veterans and the VSOs have asked of the system. The veterans of this nation deserve no less. Congress to has an obligation to provide VA with both the necessary resources to carry out its mission and oversight to monitor their performance and progress. VA, however, must be able to provide accurate and realistic data to support its budget requests and performance levels.

With regard to the question, would we design the same "system" if we were starting over, the answer is basically yes. However, we would want to improve the procedures by which this system functions and to make sure there were adequate resources to get the job done right the first time.

Question 5:

VVA suggested that attorney fees be authorized at earlier stages of the process. How do you feel about that idea.

Answer:

The American Legion has no position on the question of attorney fees in VA claims.

We appreciate this opportunity to share our concerns with you.

**VETERANS OF FOREIGN WARS RESPONSE TO
MAY 21, 1997
COMMITTEE ON VETERANS AFFAIRS HEARING QUESTIONS BY
CONGRESSMAN BOB STUMP**

1. VA has agreed with the recommendation to close the claim to new evidence in some cases. Assuming that the appeal period is not changed from the current one year period, is it not reasonable to expect a veteran to provide all the supporting evidence prior to the claim going forward? Does a veteran not have some responsibility here?

There are three significant words in the question and they are "claim going forward". Certainly, it is reasonable that the claimant should provide all evidence prior to the certification of the appeal. Indeed, we work very hard to ensure that all evidence is actually submitted prior to the initial decision on the claim.

The present problem is the length of time from BVA docketing, which is around one week after the submission of the Substantive Appeal (VA form 9) to the BVA's decision. Presently, it is taking about 471 days, which is a significant reduction even from last year but still way short of an ideal. (We agree with and support the goal of six months by Fiscal Year 2000.) That, length of time, of course, is not the veteran's fault.

"Closing of the record" will cause greater problems while we have that length of time for decisions by the BVA, particularly for appeals on denials of increased evaluation claims. For example, what happens if a veteran was hospitalized for treatment of the very disability that is the issue on appeal and the medical records now provide the needed justification for an increased rating? If the record on appeal is "closed", the only recourse is for the claimant to file an additional claim. But, that makes the VA work two parallel and obviously redundant claims. The scenario gets worse: what will the VA (or, more precisely, the BVA) do with the original issue on appeal, if the second claim actually results in a regional office grant based solely on the new evidence? Is the BVA required to continue on to a final decision when clearly the original appeal is no longer required?

We noted that the Veterans' Claims Adjudication Commission made a finding that "considers this a significant factor in the continuing high rate of BVA remands." (Page 197 of their report.) We know of no figures to objectively support the premise that claimants cause remands because the record stays open until a final BVA decision. The VCAC's report did not contain any. The real answer to the VCAC's finding lies not in closure but to the question as to why the regional office is certifying the appeal to the Board if the record is not current or complete? Failure to properly do so is not the claimant's fault.

There has been a companion "theory" -- and it seems to be ever-lasting -- that the one-year period for a claimant to file a Notice of Disagreement is, again, a factor in timeliness delay and claims backlog problems. There is no logic to this "theory" and we, frankly, do not understand why it is still being discussed. When the VA sends a notification of a claim denial to a claimant, their "timeliness clock" for processing that claim stops, as it rightfully should. They essentially shelf the file until the claimant responds with an NOD. At that time, the "appeals clock" then commences, which is a different time standard (different end-product code). The "between time" is the claimant's responsibility, not the VA's. Whether it takes 60 days or one year for a claimant to file the NOD should be of very little concern to the VA. At the very least, it is only a very minor irritant to receive a NOD at the end of the due process period. The only real impact we can imagine is that it may

take a few days to recall the file. That's hardly justification to now consider a seriously constrained time-limit such as 60 days (which will also be much less because of mail transient time). Further, a short reaction time of 60 days will only result in having to work with irate veterans who inadvertently were unable to respond in time because of such things as an extended vacation or serious illness. We understand there could be exceptions for good cause. However, these waiver requests will require more work for both the claimant and the VA that, in our opinion, will far exceed any off-setting time savings (which, as just stated, is literally none) to the VA by having a more limited due process period. There are far bigger issues for us to confront than this one.

Consequently, the answer to your question is actually to not make any changes to the present system. When evidence comes in during the time the file is waiting call-up by the BVA, the regional office just does a Supplemental Statement of the Case. All that is required is a review of the submitted evidence in relation to the recent rating decision (and the Statement of the Case). That is far easier and takes much less time than to commence a new claim with its associated full development process. If the SSOC actually results in a favorable decision, that will, in most cases, terminate any further appeal. (There may be an effective date issue but that will be treated separately with very little impact on timeliness. Provisions under 38 C.F.R. § 3.400 on effective dates preclude any "Windfall".)

What seems to be misunderstood by the VCAC in this discussion is that there are already regulations that stipulate "closure". See 38 C.F.R. § 20.1304. Again, the best approach to this perceived "problem" is for the BVA to reduce its decision time to the professed goal of six months.

2. Each VSO has reacted strongly to the idea of a lump sum payment to some veterans. We understand there is interest in lump sum payments within the veterans community outside the VSO Washington offices. You are taking it upon yourselves to make it impossible for veterans who might want a lump sum payment to invest, make a down payment or even pay for a big night on the town. Isn't that an excessive approach?

It might be excessive if it could be shown that lump sum payments would enhance timeliness and quality of claims adjudication. It won't. Indeed, it will create extensive problems. For instance, claims raters will have to be actuarial experts when trying to decide the financial adjustments required when a veteran is successful in receiving an increased evaluation. (That is, unless, the intention behind "lump sum payments" is to forever preclude a veteran from filing such claims. If that is the approach then we are plainly talking about reducing government expenditures and not improving the system. It is thus just a method to eliminate veterans from the system. We imagine those veterans "outside the VSO Washington offices" will quickly change their favorable opinion once they realize this is the situation.) Also, how would we "lump sum" a veteran compensated at 10 percent for multiple noncompensable disabilities (38 C.F.R. § 3.324)? Will the veteran designate one or all of those noncompensable disabilities as the "lump sum"? What about veterans who, in the rare cases, actually show medical improvement and are now subject to a reduction in their rating -- will they be required to make a refund? There are many other questions such as these, but the point is made that this is an issue with almost interminable side-effects.

The veteran who spends his payment on a "big night on the town" is just the case that scares us. Certainly, that is his choice. However, it becomes the VA's problem when the veteran later is remorseful for having wasted that money and now wants more self-discipline through a monthly compensation check. There will be soon a request for reconsideration of his decision to accept the lump sum.

Of, course, the VA's answer will be conciliatory but along the theme "that's the law; you took it!" The likely result is a further embittered veteran. And, to answer that veteran creates additional time and labor to a system that is desperately trying to better manage those critical commodities. An analogy to this is the responses made to those ineligible for VA benefits either because there is no military service or through characterization of discharge. A better comparison may be those veterans who contributed to the Montgomery G.I. Bill but cannot receive the benefits due to a subsequent failure to comply with one of the statutory requirements. We have all dealt with those angry veterans who demand a refund of their contributions. It takes a lot of time and it is not fun.

3. Are you saying there is no circumstance under which you would support lump sum payments?

As just described, lump sum payments is a proposal fraught with major headaches. They are of such proportions that we cannot envision how legislation can possibly be drafted that will prove beneficial without negatively impacting all veterans.

4. The claims adjudication system is largely the result of your organization coming before the Congress and lobbying for what is now in place. In effect, you are the architects of the system - a system that, if its goal was to produce cars, America would no longer be in the car business because the quality would be horrible as each of you has often testified. Are you telling me that given a clean sheet of paper, this is the system you would design?

Absolutely! Or, at least, we would certainly import ("copy" and "paste") a great deal of the current program into the "clean sheet of paper". That will make up almost the entire paper. We would then fill in with the VBA's Business Process Reengineering (BPR) plan, the important recommendations of the Veterans' Claims Adjudication Commission (i.e., Secretary Brown's April 1997 Decision Paper, *SMG Review of the Veterans' Claims Adjudication Commission Report*), and the VBA's IRM Support Plan.

The purpose here is to keep focused on how we want the system to look in 2002. The "clean sheet of paper" will obviously need review and editing each year for necessary adjustments, particularly when there are important items to consider such as last year's Veterans' Satisfaction Survey. Congress should maintain its "Senior Editor" status on the contents of the "paper".

It was not long ago that the American automobile industry almost collapsed against the upsurge in foreign competition. Quality was the issue then, too. But, the industry responded by retooling its operations, not dismantling and starting over. General Motors, Ford and Chrysler are still with us. The same should apply to the VA. Don't dismantle, improve it.

The VCAC's recommendations contained in Section V, *Process Design: Claims Adjudication and Appeals*, call for a dismantling of the current claims adjudication system. Indeed, we believe acceptance and implementation of the recommendations involving veterans' due process rights will also actually lead to greater delays in processing claims. No one has yet been able to present even a subjective rebuttal to this assertion by us.

Until that occurs, the just described "clean sheet of paper" is the way to go. The VBA's BPR is good retooling of that paper and it is being incorporated into a system that has a solid foundation to it.

5. VVA suggested that attorney fees be authorized at earlier stages of the process. How do you feel about that idea?

A claimant should have the right to representation of choice at any time in the process. There obviously has to be protection (safeguards) to keep veterans from being "hocked" by "ambulance chasers". The additional caution we have is that it must not mean a movement toward "elimination of *de novo* review" for the Board of Veterans' Appeals.

**ANSWERS TO QUESTIONS FOR RICK SCHULTZ
 EXECUTIVE DIRECTOR
 VIETNAM VETERANS OF AMERICA
 REGARDING MAY 21, 1997, HEARING TO ACCEPT
 THE REPORT OF THE VETERANS' CLAIMS ADJUDICATION COMMISSION
 FROM THE HONORABLE BOB STUMP
 CHAIRMAN
 COMMITTEE ON VETERANS' AFFAIRS**

1. **VA has agreed with the recommendation to close the claim to new evidence in some cases. Assuming that the appeal period is not changed from the current year period, is it not reasonable to expect a veteran to provide all the additional supporting evidence prior to the claim going forward? Does a veteran not have some responsibility here?**

Although a VA working group studying the Veterans Claims Adjudication Commission Report, agreed with this recommendation, the ultimate position of the U.S. Department of Veterans Affairs was to oppose it. The Board of Veterans' Appeals gives claimants an additional opportunity to submit evidence whose existence or significance (e.g. based on new Court of Veterans Appeals decisions or VA General Counsel Opinions) may have been only recently discovered. It also allows the Board member deciding the case to hear and judge the veracity of their testimony (which is a type evidence). Responsibility on the part of the claimant is not the issue here; the current process provides BVA with all the current, relevant evidence it needs to make a correct process provides BVA with all the current, relevant evidence it needs to make a correct final decision, which will reduce remands by BVA.

2. **Each VSO has reacted strongly to the idea of a lump sum payment to some veterans. We understand there is interest in lump sum payments within the veterans community outside the VSO Washington offices. You are taking it upon yourselves to make it impossible for veterans who might want a lump sum payment to invest, make a down payment or even pay for a big night on the town. Isn't that an excessive approach? I am especially surprised at VVA's position in the light of your traditional support of an individual's freedom of choice.**

VVA was a leading force behind the passage of veterans judicial review, which gave VA claimants the freedom of choice to appeal beyond the agency level, a right enjoyed by all other federal disability compensation claimants. As stated in our May 21, 1997 testimony to the Committee, VVA does indeed believe that VA claimants should have the same freedom of choice to hire an attorney representative, as do other claimants seeking federal disability compensation benefits. Supporting freedom of choice to allow claimants full due process is a wholly different matter than drastically changing (in our view, degrading) the type of substantive benefits which VA provides to disabled veterans.

3. **Are you saying there is no circumstance under which you would support lump sum payments?**

There are no circumstances under which VVA would support a program that calls for lump sum payments in lieu of monthly disability compensation payments. If Congress does intend to pass such legislation, we believe it should be limited to veterans with less severe disabilities. Moreover, such legislation should ensure that the veteran is familiar with the disadvantages and potential risks in accepting a lump sum payment.

4. **The claims adjudication system is largely the result of your organizations coming before Congress and lobbying for what is now in place. In effect, you are the architects of the system - a system that, if its goal was to produce cars, America would no longer be in the car business because the quality would be horrible as each of you has testified. Are you telling me that given a clean sheet of paper, this the system you would design?**

The term "system" is not defined in the question, and it is unclear whether it is intended to

refer to the adjudication procedures, or the substantive benefits provided by, the VA claims system (or both). In fact, VVA does not believe that either the procedural or substantive portions of the VA claims system are fundamentally flawed in their designs. Rather, as we stated clearly in our May 21 testimony, it is the manner in which VA is running "the system" which needs improvement. As we have stated, Congress could achieve a major improvement in the quality of the system simply by requiring VA to use existing data to determine which employees are producing quality work. They can be offered re-training, and if this fails, other appropriate personnel action should be taken.

In addition to making VA adjudicators responsible for their errors in veterans claims, another good way to improve quality is to add more oversight to VA's decisions in veterans' claims. One way to improve oversight is to allow veterans to hire attorneys at the VARO and BVA. These attorneys will have professional and financial incentive to point out VA's mistakes and ask VA to correct them. Over time, VA staff should learn from having these mistakes brought to their attention, and will thus make fewer mistakes. This should in turn reduce the number of appeals and therefore the overall case backlog.

VVA has never, and will never, defend the status quo for its own sake. The above two steps would be seen by some as quite radical, yet they are simple, effective ways to significantly improve the system. We would be glad to discuss them further with you and your staff.

AMVETS Answers to Questions from Hearing of May 21, 1997

1. **VA has agreed with the recommendation to close the claim to new evidence in some cases. Assuming that the appeal period is not changed from the current one year period, is it not reasonable to expect a veteran to provide all the additional supporting evidence prior to the claim going forward? Does a veteran not have some responsibility here?**

Of course the veteran has some responsibility, provided he or she is competent. Even then, those veterans in the greatest need of a supportive, forgiving process are often least able to comply with such standards. Veterans are still not encouraged to seek help in filing claims, until their claims are denied or approved at a low rate of compensation. Many veterans lack the schooling or good judgment to be treated with finality if at first they do not succeed. Yes, claims should be as complete as possible when they go forward, and competent, capable veterans who neither seek representation at the outset nor put effort into filing complete claims are penalized by waiting a very long time -- especially given the VA claims backlog -- for the rating they deserve.

Further, judging from the consistent rate of remands for poor work done at the Regional Office level by VA employees, it would be unfair to set a standard of total and final veteran responsibility when VA goes nowhere near measuring up to such a yardstick. Beyond that, important evidence frequently does not fall into the veteran's hands within a neat, orderly period. DOD and VA records take months and even years to unearth.

2. **Each VSO has reacted strongly to the idea of a lump sum payment to veterans. We understand there is interest in lump sum payments within the veterans community outside the VSO Washington offices. You are taking it upon yourselves to make it impossible for veterans who might want a lump sum payment to invest, make a down payment or even pay for a big night on the town. Isn't that an excessive approach?**

No, it is not. Are the VSOs taking it upon themselves to deny veterans a small lump sum they can squander in an evening, as the question suggests? No more so than Members of Congress are taking it upon themselves to identify the interests of the constituents they represent. Most veterans do not file claims frivolously -- the work and frustration involved are too great, and most veterans are honest citizens. Likewise, the VSOs' veterans service officers have caseloads too large for them to waste time on meritless claims.

Lump sums would address only the weakest claims, those sure never to grow more serious. Spurious claims are more likely to be rewarded by lump sums for this reason, because they offer quickie settlements. Should they ever be an option? Frankly, we think not. Whatever legislative provisions Congress might enact to make such settlements final, we would expect many of these settlements to generate court cases nonetheless.

3. **Are you saying there is no circumstance under which you would support lump sum payments?**

We are.

4. **The claims adjudication system is largely the result of your organizations coming before the Congress and lobbying for what is now in place. In effect, you are the architects of the system -- a system that, if its goal were to produce cars, America would no longer be in the car business because the quality would be horrible as each of you has testified. Are you telling me that given a clean sheet of paper, this is the system you would design?**

AMVETS shares your frustration, Mr. Chairman. Year after year, step after step, bill after bill, the Veterans Service Organizations and Congress have worked together -- generally in a cooperative effort -- to create a workable veterans claims system. Yet we get no further than the unrepentant mess that is the Veterans Benefits Administration.

Given a clean sheet of paper, the Veterans Service Organizations and Congress might very well design a system with the outlines that appear on paper now. But we do not have a clean sheet of paper. We have instead the Veterans Benefits Administration with all its prejudices against claimants, be they new or appeals cases. We have a Veterans Benefits Administration with all its clear understanding that too few dollars exist to meet the legitimate needs of service-connected veterans. We have a Veterans Benefits Administration and a Board of Veterans Appeals that see their job as denying bad claims, rather than as also rewarding good ones, still looking for ways to avoid veterans' right to sue the government for wrong rulings. We see a system based on weeding out veterans with good claims while it weeds out veterans with bad ones.

The result of these biases on this dirty sheet of paper is that many, many initial rulings are appealed, and more than half the rulings in those appeals are thrown out when they are appealed. Neither the Veterans Service Organizations nor Congress intended the system we built to operate this way, but it does so regardless of which party controls Congress or the White House. If this committee is truly interested in giving us a clean sheet of paper, we would be happy to work with you to design a system that works better. Until then, our interest is in protecting what rights this system gives the veterans we all try to serve.

5. **VVA suggested that attorney fees be authorized at earlier stages of the process. How do you feel about that idea?**

We support it. The earlier in the claims process veterans are treated as clients with rights rather than wards of a benign, paternal VA, the sooner good decisions are reached that put claims money into the hands of veterans with bona fide claims, and stop wasting taxpayer dollars on fighting appeals against bad rulings.

At the same time, good VSO veterans claims officers can do better than most lawyers in the field, and at no cost to the claimant. While there is room for improvement in the services offered by veterans service organizations, this network provides hundreds of thousands of veterans skilled representation that they need in the confusing claims process, in which simple merit decides too few cases. Also, with real variation in quality, state and even some county governments offer claims representation that is better than amateurs filing alone -- and again, at no cost to the veteran.

VA must put information in bold letters on all claims forms urging veterans to avail themselves of such assistance. Without it, nine out of ten will never think of the kinds of evidence they need, nor how to obtain it.

**ANSWERS TO QUESTIONS FOR RICK SURRETT
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
REGARDING MAY 21, 1997, HEARING TO ACCEPT
THE REPORT OF THE VETERANS' CLAIMS ADJUDICATION COMMISSION
FROM THE HONORABLE BOB STUMP
CHAIRMAN
COMMITTEE ON VETERANS' AFFAIRS**

Question 1: "VA has agreed with the recommendation to close the claim to new evidence in some cases. Assuming that the appeal period is not changed from the current one year period, is it not reasonable to expect a veteran to provide all the additional supporting evidence prior to the claim going forward? Does a veteran not have some responsibility here?"

Answer: I am unaware of such VA agreement. Indeed, it is my understanding that VA disagrees with that recommendation by the Veterans' Claims Adjudication Commission.

Under 38 U.S.C.A. § 303 (West 1991), the Secretary of Veterans Affairs is the head of VA. While the Secretary may seek the advice of his subordinates—as he did on the recommendations of the Veterans' Claims Adjudication Commission—he is vested with the discretion to accept or reject that advice. Congress delegated to him, as the head of the VA, the authority to determine VA policy and to prescribe rules and regulations necessary to carry out the laws administered by VA. 38 U.S.C.A § 501 (West 1991). In his "Decision Paper" on his Strategic Management Group's positions regarding the Commission's recommendations, the Secretary said: "The positions taken by the work groups, with the relatively few exceptions specified below, are hereby endorsed and may be considered as the official positions of the Department of Veterans Affairs." One of the exceptions, however, was the Commission's recommendation to close the evidentiary record when the appeal is filed. On that recommendation and the recommendation that the appeal period be shortened to 60 days, the Secretary said:

Closure of the evidentiary record at a prescribed point and institution of a 60-day limit for filing a notice of disagreement could mean a speedier appeals process and fewer remands, and on that basis the work group recommends concurrence. However, while faster processing is a major goal, it is my judgment that the potential benefits in speed would be outweighed by the fact that these changes would diminish rights and advantages for some veteran appellants. The Department cannot concur with changes that in *any* way adversely affect veterans.

Like the Secretary, we are perplexed by recommendations to destroy veterans' substantive rights in the name of procedural expedience. How are veterans benefited by trade off of their fundamental rights for some potential degree of shortened processing times, especially when these beneficial aspects of the procedure are not responsible for the problem they would be sacrificed to correct? This seems a bit like removing a patient's eyes because he needs glasses. Administrative convenience—not service to veterans—is necessarily the goal of this recommendation. Like the Secretary, the DAV (and from the testimony, the other veterans service organizations) easily sees through this transparent attempt to misuse what was intended to produce improvements in the process to better serve veterans as an exercise to do the opposite. Why not solve the backlog problem by correcting its causes, those identified in the Business Process Reengineering (BPR) study, instead of making other unnecessary changes at the expense of lessening veterans' rights?

While the DAV fully agrees with the VA's rejection of this recommendation because it is contrary to the greater concern of veterans' rights, we do not agree with the concession that these changes "could mean a speedier appeals process and fewer remands" insofar as it suggests such a result generally. Permitting veterans to submit evidence during the pendency of the appeal can have positive timeliness effects and increase efficiency in several ways. Where newly submitted evidence is sufficient to change a denial to a grant, it can result in a favorable disposition and termination of action on the claim at the regional office level sooner than if the veteran pursued the appeal through the Board of Veterans' Appeals and possibly the Court of Veterans Appeals

before reopening his or her claim with the new evidence. In that instance, the ability to submit new evidence during the pendency of the appeal increases timeliness and efficiency where the inability to do so would have the opposite result. Submitting additional supporting evidence during the pendency of the appeal may avoid a remand for obvious reasons. Closing the record to the submission of new evidence during the appeal merely delays the consideration of the new evidence to a later date—i.e., piecemeal consideration—and ensures that VA will have to adjudicate another claim on the issue in the future, thereby making the process more inefficient. The small additional time it takes the regional office to consider the new evidence in connection with the already pending appeal, the beneficial effects of favorable disposition of the case as soon as possible from the veteran's standpoint, and the efficiency of not having to go forward with the appeal through the Board and the Court on the current evidence when new evidence is available that might more clearly establish entitlement, far outweigh any advantage in allowing the regional office or BVA to refuse to consider the additional evidence. To avoid the disruption that might occur from a veteran's submitting new evidence at a time when the BVA decision is already written and about to be issued, the Board has a cut-off period for the submission of new evidence, but this does not operate to defeat the effective date the veteran would receive for a grant if the new evidence later establishes entitlement. 38 C.F.R. § 20.1304 (1996). Frankly, while we understand the basis for this rule, we believe that it also has the counterproductive effect discussed above. It requires an additional future decision, and a complete new review of all the other evidence at that time, when review of the new evidence in conjunction with the current review would alleviate that additional complete review and more quickly dispose of the matter. Review of the new evidence in conjunction with the current claim would of course benefit the veteran and at the same time reduce VA's pending caseload. Consequently, we would have preferred to have seen a rule which cut off the time for consideration of new evidence a set number of days before the date of the written BVA decision to avoid the necessity to revise an already written decision upon the receipt of new evidence. Apparently, the former Board Chairman who promoted this rule was more interested in the small short term gain that could be realized from avoidance of consideration of additional evidence than the long-term efficiency and reduction of workload that could be realized by considering the evidence (and the most complete record available) in connection with the current review.

If as we say, there is no benefit in putting off until tomorrow what can be more efficiently accomplished today, you might ask why anyone would make this recommendation. Our experience and associated perceptions suggest one reason to us and our knowledge of the history of this recommendation makes us aware of another. With the advent of judicial review, VA adjudicators lost some of their ability to decide cases according to their own views and liking because the Court reversed or remanded when they did not follow the law. The truth is that while VA paid lip service to its liberal rules, many adjudicators personally disliked the liberality (and still do). We know this from their attitudes, comments, and practices. When the Court started forcing them to follow the rules, they were unhappy because of their philosophical disagreement and the added work of correcting their mistakes. The reaction was a sentiment for revision of the rules to make them less favorable to veterans. Some of VA's rulemaking reflected that reaction, and the Commission's thinking was apparently also influenced along those lines. Some adjudicators would like to deny a claim and never be challenged on their decision or never have to consider new evidence. They resent having to consider new evidence. Cutting off veterans' rights to submit new evidence during the pendency of the appeal would inhibit what they cannot prohibit, that is, the eventual submission of this evidence, and would lessen these veterans retroactive entitlement by reason of the later effective date of the reopened claim.

You might question this strong indictment of some VA adjudicators. We know from years of experience, however, that some adjudicators will seek to lessen the benefits if they reach a point they must allow the claim. For example, in past years, there was a philosophy at VA Central Office and BVA that retroactive payments for clear and unmistakable error should be avoided, and this was accomplished by merely arbitrarily declaring that the claim was granted based on mere difference of opinion under 38 C.F.R. § 3.105(b) (1996) or the previously existing authority for an "administrative allowance" at the Board. When there was no higher review available, adjudicators and VA and BVA officials did not bother to hide these unwritten rules. They were common knowledge and were not infrequently stated orally as the reason for a result that did not square with the undisputed facts and the law. As arbitrary and unlawful as it was, we

had no remedy. So, the first reason for this suggestion is nothing more than a desire to reduce veterans' rights.

We believe this desire was at least partially responsible for misinterpreting the law to justify the second reason. Also, another invalid practice at the Board of Veterans' Appeals was a primary factor. However, the false premise for closing the record was articulated and relied on in a report by the VA Office of Inspector General (IG), *Audit of Appeals Processing Impact on Claims for Veterans' Benefits* (Mar. 15, 1995) (Rep. No. 5D2-B01-013). Because this report was transmitted to the Commission, the DAV wrote to the Commission about it in a letter of September 29, 1995. (Reprinted in Appendices to the Commission's December 1996 "Report to Congress," at App AA-4-AA-9.) In our letter, we pointed out to the Commission that closing the administrative record during the pendency of the appeal was not the solution to the problem. We said:

Closing the administrative record during the pendency of an appeal is not a solution to the problem. The premise for this recommendation is as follows: "However, due to the increasing case backlogs there is a circularity of untimely claims processing that requires updated information and decisions before the claims can be finalized, with a sufficient number resulting in questionable outcomes." [*Audit of Appeals Processing* at i.] This premise incorrectly assumes that the Court causes backlogs, that the backlogs cause delay, and that delay causes "a circularity of untimely claims processing that requires updated information and decisions before the claims can be finalized."

As discussed above, COVA [Court of Veterans Appeals] is not responsible for VA's backlog. The cases appealed to COVA are only about 0.02 percent of the total cases decided by VA. It is the poor quality and resulting large remand rates and multiple reviews that account for the backlogs.

Part of the problem may also have been BVA inappropriately remanding claims on the ground that examination results had become "stale" during the pendency of the appeal. The Independent Budget, supra [for fiscal year 1996], addresses the impropriety of this practice at page 18. The VA General Counsel agrees that this is not a valid basis to remand and has issued a precedent opinion to that effect. Op.G.C. 11-95 (Apr. 7, 1995).

Thus, the premise for closing the administrative record is incorrect. The Court does not cause the delay, and the delay does not necessitate current examinations. It is only the inappropriate gathering of evidence during the pendency of the appeal that exacerbates the backlog. An inappropriate VA practice is no excuse to lessen veterans' rights to submit additional evidence during the appeal. Furthermore, the IG's recommendation will have a detrimental effect on the efficiency and fairness of the system.

The current process allows the submission of supporting evidence during the pendency of appeal and treats this evidence "as having been filed in connection with the claim which was pending at the beginning of the appeal period." 38 C.F.R. 3.156(b). This is the most practical and efficient way to adjudicate these claims because such additional evidence can serve to clarify facts in dispute.

Sometimes clarifying evidence is unavailable at the time of the rating decision. During the clinical course of disease, more thorough diagnostic tests can identify underlying pathology responsible for increased symptomatology. Other sorts of circumstances and situations develop that make it equitable to accept medical evidence as proof of an increase in disability earlier claimed. After all, it cannot be assumed that veterans file claims in advance and in contemplation of a worsening of their disabilities. Sometimes, a disability undergoes an increase during the pendency of the appeal, but more often, the later evidence merely clarifies the already existing degree of disability. "Different

examiners, at different times, will not describe the same disability in the same language. Features of the disability which must have persisted unchanged may be overlooked or a change for the better or worse may not be accurately appreciated or described.” 38 C.F.R. 4.2. The current process resolves these problems in a manner that is most likely to be fair to the veteran. Moreover, regulations on effective dates allow no windfall. E.g., 38 C.F.R. 3.400.

There are valid reasons, including duty to assist, for VA to determine it needs additional evidence during the pendency of an appeal. Other than improperly reexamining the veteran for a more current report, as discussed above, such additional evidence obtained by VA is for clarification purposes. See, e.g., 38 U.S.C. 7109; 38 C.F.R. 20.901 (expert opinions). The veteran should have the same right to submit additional clarifying evidence.

During VA hearings, most of which are post-decisional, testimony is received by the regional office and the Board long after the date of the decision under appeal. All testimony is evidence, whether it is given by veteran or by a physician rather than in a written report. There is no rational basis to distinguish between testimonial and documentary evidence by accepting one and refusing the other. Testimony sometimes also leads to the discovery of additional relevant documentary evidence.

If this recommendation were adopted, a veteran who receives ongoing treatment or is re-hospitalized numerous times during the course of his appeal might have several concurrent claims and appeals on the same issue. So long as the evidence is submitted well enough in advance that it does not interfere with or delay the Board's decision, all available evidence should be received into the record, see 38 C.F.R. 20.1304, especially while the record is dormant in storage awaiting the next action. A single decision on appeal, based on a complete and thorough understanding of the issue and all available evidence, is preferable to multiple piecemeal adjudications. A single decision would certainly be more efficient, accurate, timely, and cost-effective.

Appendices at AA-6-AA-8.

Despite the holding by the VA General Counsel that a new examination is not required merely because of the passage of time between the regional office's decision on an examination and the subsequent review of the Board of Veterans' Appeals, the Commission persisted in citing the need for updated evidence as a factor in the high BVA remand rate: “The Commission believes that the lengthy intervening period between the initial decision and the appeal certification frequently changes the issues and the evidence needed to decide them (e.g., medical evidence can no longer be considered current). The Commission considers this a significant factor in the continuing high rate of BVA remands.” “Report to Congress” at 197. However, given that the premises for closing the record have been shown to be false, the only remaining reason is to lessen veterans' rights. That we oppose.

Given the many reasons accounting for the submission of additional evidence throughout the appeal process and given that this ability serves efficiency (and justice) rather than hampers it, there is no valid reason to lessen veterans' rights in this respect, regardless of the length of the appeal period or the pendency of the appeal. Obviously, the veteran should attempt to submit evidence he knows to be available and understands to be relevant as soon as possible. However, to suggest that there is a widespread problem of veterans withholding evidence they know to be supportive of their claims is to suggest that veterans themselves are purposely delaying grants of the benefits they seek and in so many instances desperately need. We do not find any data in the Commission's report that supports the proposition that evidence which is available and known to be relevant is withheld by veterans as a matter of practice or widespread negligence. Rather, evidence is submitted during the appeal with some frequency because it only becomes available after the decision or its relevance becomes known by the identification of subsidiary issues to which it is relevant.

Question 2: "Each VSO has reacted strongly to the idea of a lump sum payment to some veterans. We understand there is interest in lump sum payments within the veterans community outside the VSO Washington offices. You are taking it upon yourselves to make it impossible for veterans who might want a lump sum payment to invest, make a down payment or even pay for a big night on the town. Isn't that an excessive approach?"

Answer: The veterans service organizations agree that lump-sum payments for compensation are not in veterans' best interests. Further, the DAV believes that veterans' best interests were not the Commission's motivation in presenting this idea for consideration. We will support our view to that effect below.

We recall no expression of interest in lump-sum payments from disabled veterans before the Commission raised the issue. We have received no indication of interest since, other than the opposition expressed at our 1997 annual Mid-Winter Conference where we briefed our membership on that and the other of the Commission's suggestions. The Commission conducted a focus group on this issue and apparently convinced the participants of the benefits of lump-sums, but only if (1) the amount was fair, (2) entitlement to medical care continued, (3) there would be counseling and education on how to manage the lump sum, and (4) they could return to the system if their condition seriously worsened. "Report to Congress" at 279. These are big "ifs," and as I will point out below, not the only complicating factors by any means. At least one of DAV's state Departments has passed a resolution opposing lump-sum settlements. That resolution will be considered at our DAV National Convention where we expect its adoption by the delegates. We do not doubt that some of our members could be sold on the proposal, but we are confident that the majority will reject it once they are given an explanation of its real motivations and implications. Yes, the DAV is opposing lump-sum payments in the hope of ensuring that it does not become law. We do not think that is at all an excessive approach, but rather one in the best interests of disabled veterans and one entirely appropriate in our role as a guardian of veterans' rights. We are happy to explain our position in the following.

Your central assertion provides a natural starting place. You say, "[y]ou are taking it upon yourselves to make it impossible for veterans who might want a lump sum payment to invest, make a down payment or even pay for a big night on the town." A disabled veteran's using his or her lump-sum settlement for service-connected disability to "pay for a big night on the town" is precisely one of the main reasons for DAV's opposition. That would be neither a beneficial nor responsible use of disability compensation for the veteran or the public. As a route to the public policy considerations, I will discuss the Commission's motivations and reasoning for presenting this issue and then the implications of lump-sum payments, first from the standpoint of practicality in administration and then on the aspect of the consequences in the public policy sense.

"The term 'compensation' means a monthly payment made by the Secretary to a veteran because of service-connected disability. . . ." 38 U.S.C.A. § 101 (West 1991) Obviously, compensation is dispensed through recurring, periodic payments to make it run with the disability. Payments continue for as long as there is compensable disability. Thus, its flow is regulated to coincide with the ongoing economic effects of disability, and ideally it would neither be received in advance of nor after the time of need (as too often occurs with protracted appeals). In addition to being attuned to benefit the veteran contemporaneous with persisting need, compensation is adjusted as necessary to correspond to degree of disability. Despite the fact that this is by design rather than inadvertence, the Commission wrung its hands over the "life-long" nature of compensation as if this were some objectionable side effect Congress and the American public may not have fully intended, the adverse effects of which were revealed only through the Commission's insight. In discussing the Commission's reasoning and motivation, I will include just a few of the Commission's many repeated statements on these matters. These few are sufficient to prove our point.

Under its general discussion of "repeat disability compensation claims" in Part I, Section 4 of its report, the Commission attributes these claims to the life-long availability of disability compensation: "In its current design, the VA compensation product provides life-long benefits

to all veterans with disabilities unless the disabling effects disappear (for example, a wound scar may heal to the point that it no longer impairs earning capacity). This long-term approach to compensation for service-connected disabilities applies equally to the severely, the moderately, and the minimally disabled. “Report to Congress” at 70, 86. This life-long availability, together with the mere potential for higher levels of compensation, motivates repeat claims, according to the Commission’s conjecture: “*In combination with the long-term perspective of the compensation product, the incremental nature of the disability rating schedule appears to provide incentive for veterans with lower disability ratings to reapply for increased benefits.*” “Report to Congress” at 70, 86. The Commission does not explain how the compensation product, being fundamentally the same throughout most of this century, by its nature is the cause of the claims backlog, which is only a fairly recent phenomenon, but the Commission used its claimed knowledge of veterans’ greedy and litigious predispositions as the justification for looking at lump-sum settlements (a product alternative) as a way to stop repeat claims and thereby reduce VA’s workload:

- “The purpose is to provoke thoughtful discussion about the dynamics that give the system its shape and motivate the behavior of the parties to it, as well as to provide insight to long-term demands on the system.” “Report to Congress” at 71.
- “As a result of these and other factors, repeat claims dominate the compensation workload and, absent some fundamental change in policy, can be expected to do so well into the future.” “Report to Congress” at 72.
- “The projections of disability compensation workload in 2015 described in Chapter 1 raised legitimate concerns among Commissioner’s about the effect of VA’s disability product design on the system for disposition of benefit claims. On the basis of these concerns, the Commission proceeded to explore issues associated with product design that appeared to most significantly complicate or otherwise congest the claims processing system.” “Report to Congress” at 229.

Along the way, the Commission also noted the lifetime cost of providing compensation for lower-rated disabilities. *E.g.* “Report to Congress” at 74, 94. In addition, the Commission suggested actuarial analysis for addressing certain key issues such as: “estimating the future costs arising out of individual amendments or military actions, on an aggregate as well as a per-person basis. This information may be useful for analyzing alternative payment options, such as a [lump-sum payment of benefits].” “Report to Congress” at 172 (brackets in original). In its discussion devoted to introducing the concept of lump-sum settlements in Part VI., Section 7, the Commission began with a review of its findings that repeat claims from veterans with lower-rated disabilities make up much of VA’s workload. “Report to Congress” at 272. Among other things, the Commission said: “These data indicate that repeat claims from veterans with low disability ratings create heavy workload demands. Under the circumstances, Commissioners found it reasonable to consider whether this claims pattern, which concentrates claims processing resources on veterans who already receive benefits for relatively minor disabilities rather than dedicating the same resources to more disabled veterans, is consistent with the intent of the program.” The Commission proceeded to conclude that lump-sum settlements would be a way for the Government to avoid the administrative costs of repeat claims and the future obligation to pay compensation: “The Commission developed preliminary evidence that paying less disabled veterans by lump sum could potentially provide them greater adjustment assistance, reduce program costs, and allow reallocation of administrative resources within VBA to better serve the needs of more severely disabled veterans.” “Report to Congress” at 273. “The Commission’s consideration of this issue addressed the *concept* of lump sum payments for minimally disabled veterans; for purposes of this program cost and workload analysis, ‘minimally’ disabled veterans are defined as those whose *combined* service-connected disability evaluation is 10 percent.” *Id.*

There is no question that reduction of repeat claims and costs were the primary motivation for the Commission’s suggestion of lump-sum settlements. About repeat claims, the Commission said: “Payment by lump sum would lead to fewer repeat claims.” “Report to Congress” at 283. About cost-savings from lump-sums, the Commission said: “significant budgetary savings would be expected in the future, with the cumulative effect of declining

monthly payment obligations to veterans with 10 percent disabilities." "Report to Congress" at 284.

Given all of this in the Commission's report, it is incredible that the Commission's witness testified substantially as follows:

Mr. Hutchinson. . . . I wanted to go back to one recommendation that the Commission made and which the Chairman made reference to in his opening remarks. That is the problem of repeat claims and then also the Chairman's indication that there might be some legislation that would address lump sum payment for smaller disability claims.

. . . . [discussion about whether veterans who accept lump sums would be able to reopen their claims about which the Commission's witness had no recommendation.]

Mr. Hutchinson. What is your suggestion for dealing with repeat claims?

Mr. Lavere. Well, let me begin by saying that repeat claims are not a problem per se. They are what exists. Three out of four claims that the VA adjudicates are claimants who are coming back, and they are perfectly entitled to come back.

Mr. Hutchinson. I think there is a little problem there. I know that they have the right of the statute.

Mr. Lavere. Right, but there has to be some method of closure, and from very early on in our work, Mr. Merritt, the representative from the insurance industry, said there is no closure. The cases keep on going on and on and on, and what can we do about it? Here is what the insurance does about it.

Mr. Hutchinson. Do you have a recommendation? Does the Commission recommend what to do about that problem?

Mr. Lavere. No. We do not think it was within our scope to make a recommendation, a specific recommendation on that.

Mr. Hutchinson. All right, but do you believe that it is a significant problem that should be addressed, the problem of repeat claims and the lack of finality.

Mr. Lavere. Yes, I do.

Mr. Hutchinson. Do you have an opinion? I think you indicated you do not have an opinion about the proposal for a lump sum for smaller disability claimants.

Mr. Lavere. Well, I think it has merit.

Not only did the Commission's witness give testimony contradicting the Commission's report, he gave contradictory answers in his testimony. First, contrary to the entire thrust of the Commission's report, the Commission's witness stated, that repeat claims "are not a problem per se," that they are just the nature of much of VA's caseload, and that veterans have every right to file such claims. Then, in response to a later question as to whether he thought repeat claims are a "significant problem that should be addressed," he answered, "[y]es, I do."

We see no effective difference in the Commission's labeling its recommendation as a recommendation or as merely something for Congress to consider inasmuch as Congressional consideration is required for such action either way and very well may be generated either way. Indeed, there is no denying that this Committee is prominently considering lump-sum settlements as a result of the Commission's presenting it. We find the Commission's attempt to peddle this distinction without a difference a little disingenuous, especially considering that it spent so much of its inquiry and reporting on developing a case for establishing lump-sums as a

way to reduce repeat claims and future fiscal obligations. As to the claim that the Commission explored lump-sums with the thought of improving benefits for veterans, they need only ask this question: "Did Congress establish the Commission to improve the compensation product for them?" The answer has to be "no" because Congress clearly stated it established the Commission to find ways to reduce the claims backlog. Lump-sum settlements were among the Commission's several other recommendations on ways to reduce claims and VA's workload, such as time limits for filing claims, a reduced appeal period, and restricted scope of appellate review, all of which represent a reduction rather than an enhancement of veterans' rights or improvements in their benefits program. It follows logically that lump-sums are offered to serve the Government's purposes rather than as goodwill toward veterans. The list of ostensible benefits of lump-sums for veterans is full of contradictions and other fallacies which are too extensive to discuss here. Thus, upon being provided the full picture, veterans in Arizona and across the country are likely to see through such transparent actions and representations by the Commission and flatly reject arguments in favor of lump-sums. We are confident that the grass-roots response will be a strong one.

Introduction of lump-sum settlements into the current compensation scheme would be so out of harmony with the compensation structure and philosophy that it will create a multitude of practical problems. Several examples come immediately to mind and numerous others would no doubt arise. Consider, for example, the calculating veteran who has a service-incurred disability he knows will be rated 10% under the rating schedule. He claims service connection and accepts a lump-sum settlement. Then, he files a claim for service connection for a different condition. How can he fairly be barred from receiving another lump-sum or monthly award for that condition? Assume this variation of the facts. This veteran receives a lump-sum for the first disability, and a separate disability manifests during the presumptive period provided in 38 U.S.C.A. § 1112 (West 1991 & Supp. 1997). How can this veteran be prevented from filing repeat claims and receiving separate compensation for the separate disability? Assume another variation. The veteran accepts a lump-sum for a disability, and a secondary disability manifests shortly thereafter. How can we justify denying that veteran compensation to which he is fully entitled for the secondary condition? What if he later becomes unemployable due to the combined effects of the two service-connected disabilities? Can both disabilities be considered on the question of entitlement to a total rating for compensation purposes due to unemployability under 38 C.F.R. § 4.16 (1996)? Assume the veteran received disability severance pay from the military. How will the offset be handled to be beneficial to the veteran? How will lump-sums be offset against military retired pay and Special Separation Benefits (SSB)? Accrued benefits are paid to survivors for the 2-year period before death. Because a lump-sum will be paid in lieu of a lifetime award, how will it be treated as an accrued benefit? Service-connected disability can be considered in determining whether the veteran meets the total disability requirements for nonservice-connected pension. 38 C.F.R. § 3.314(b)(2) (1996). If a lump-sum has been paid for the service-connected disability, will the veteran be allowed to receive pension based partly on that disability? If not will he be forever precluded from using it for pension purposes? Additionally, veterans may not receive both compensation and nonservice-connected pension *concurrently*. 38 U.S.C.A. § 5304(a) (West 1991). Will this nonduplication provision apply where the veteran has received a lump-sum settlement? What if the veteran reenlists after receiving a lump-sum? Compensation entitlement terminates upon reentry into the military service? Will the lump-sum be recouped from the veteran, and, if so, will it be on a complex prorated formula? Compensation is discontinued while a reservist is in receipt of active service pay also. See § 5304(c). How will this effect lump-sums? Similarly, what if service connection is severed under 38 C.F.R. § 3.105(d) (1996)? How will VA be able to award apportionments of lump-sums to entitled dependents under 38 U.S.C.A. § 5307 (West 1991)? How will lump-sums be handled for incarcerated veterans pursuant to 38 U.S.C.A. § 5313 (West 1991); veterans indebted to the Government, 38 U.S.C.A. § 5314 (West 1991); and mentally incompetent veterans, 38 U.S.C.A. § 5503(b) (West 1991)?

The ripple effect of practical problems and the list of technical problems goes on and on. Lump-sums will require a whole body of new law and regulations to deal with their introduction into the compensation program. Formulae for offsets, prorating, etc., as well as many other provisions, will quite probably be complex. The administrative savings from lower numbers of future claims and the savings in program costs may very well be substantially reduced by the added work related to these issues. On the other hand, if lump-sums are not recouped in such

cases as return to active service, there could be substantial budgetary implications. (What other veterans' program will have to be cut for the "paygo" offset for the costs of lump-sum settlements?) Veterans who accept lump-sums are likely to be unhappy with all these complications and hidden surprises. Lump-sums simply do not harmonize very well with the compensation scheme. Accordingly, lump-sums are a bad idea from a practical standpoint.

Lump-sum settlements are an even worse idea from the public policy standpoint. The reasons are obvious, the most obvious of which is perhaps the example you gave where the permanently disabled veteran squanders his or her lump-sum on a big night on the town and then later is barred from receiving more compensation even when his disability worsens. Before I proceed, let me deal with the Commission's suggestion that there could be a "safety net" provision to reopen when the disability worsens severely: "The Commission believes that any lump sum proposal should provide a 'safety net' for those veterans whose conditions worsen severely. These veterans should be allowed to apply for and receive the benefits they would have been entitled to under the current system. However, a policy that contemplates too many exceptions could have the effect of negating many of its advantages." "Report to Congress" at 285. We disagree with the third sentence. A scheme that has *any* exception will negate any advantage for the Government. What if a veteran's disability suddenly worsens to the severe level (in itself a complex and problematic issue) within a short period of time after the lump-sum is paid? Will there be some complex offset formula? Will veterans not have to file repeat claims to have the question decided as to whether their disability is severe? Will there not be an incentive to file more repeat claims if the determination is unfavorable, especially if the veteran is rated just one step below the threshold for renewed entitlement? "Severe is not synonymous with "total" (100%) disability under many of the disability rating formulae in the rating schedule. Does this mean that compensation would resume for disabilities substantially less than total? If so, where will the line be drawn without some purely arbitrary basis? The broader this resumed entitlement, the less savings to the government. On the other hand, without some exception for renewed entitlement with worsening disability, the most persuasive selling point is lost. As with the many examples of practical problems listed above, some of which may factor into and complicate this aspect of the problem, these obvious problems of administration are probably only the tip of the iceberg. We have little doubt that such a scheme would be a classic "Rube Goldberg."

Now, I will discuss some of the adverse public policy consequences of lump-sum settlements. Assume no renewed entitlement for severe disability. A veteran incurs a serious cancer in service. (Active cancer is generally rated 100% under the VA rating schedule, but cancer which is cured is rated on the residuals, in some instances with a 10% minimum.) This veteran is paid a lump-sum because, by the time he is released from service, his cancer is believed cured. Shortly thereafter, the cancer recurs, and will perhaps never be cured again because it is widespread. The veteran is totally disabled and even needs the regular aid and attendance of another person to assist him in the activities of daily living such as eating, dressing, and going to the bathroom. He has a wife and small children. His wife must stay home to care for him. He spent his lump-sum on a big night on the town, or a new sports car, or a new pleasure boat. There is practically an unlimited number of similar circumstances that could occur. This veteran might have to seek public assistance such as welfare, Medicaid (if his entitlement VA health care was surrendered with the lump-sum), Supplemental Security Income (SSI), or any other government assistance available. Because he has no compensation entitlement, he and his family may become a burden on society, even homeless. The Government will pay for his disability twice, and he and his family will suffer all manner of hardships. Even with renewed entitlement for severe disability, there is no guarantee that circumstances could not occur that would have similar adverse public policy consequences. Making the lump-sum an option does nothing to guarantee it will be used wisely. Even where the disability does not worsen substantially, it is not in the public interest to pay lump-sums because their unwise use can cause or add to later hardship.

There are other situations where the receipt of a lump-sum, even by a responsible veteran, may well work to his detriment due to unforeseen complications. Veterans whose disabilities require hospitalization or surgery, for example, are compensated temporarily at the 100% rate when they will be totally disabled for a temporary period of at least a month or the better part of a month in some instances. Assume a veteran accepts a lump-sum and then later has a series of

hospitalizations or convalescent periods. If provisions are not made for paying such veteran benefits under 38 C.F.R. §§ 4.29, 4.30 (1996), he and his dependents may suffer the same kind of hardship as the veteran in the example above. Assume the veteran is one with a mental disorder rated 10% initially which later matures into a severe but temporary episode of full psychosis for which he is institutionalized for four months. If he is not entitled to this temporary award of compensation at the 100% rate, consider the possible hardship on his family. Assume that the veteran has a bipolar disorder that alternates between exacerbations and remissions and that the law permits reinstatement of compensation in the case of total service-connected disability notwithstanding the prior payment of a lump-sum. Will he be awarded 100% for a few months, then go back to receiving no compensation for a few more months, and then possibly again be awarded 100% for a few more months or a year, and so on, under a "all or none" compensation rate structure?

Apparently, commercial practices influenced the Commission on this issue. Certainly, the private sector's need to compete might cause the discovery of process efficiencies that could be applied to VA. However, commercial companies are concerned primarily with the profit ratio. They exist to perform profitably for their owners or stockholders. Because they do not exist for the benefit of those to whom they pay settlements, they do not maintain a structure for administering ongoing benefit programs (with the exception of workers' compensation administered for governmental purposes) with the recipients' needs paramount. That burden would, of course, reduce or destroy profitability. VA, on the other hand, exists solely to serve the needs of its beneficiaries. Compensation is not a commodity to be viewed as a vehicle for enterprise and profit. When the Commission went beyond looking at corporate processes to corporate products, it departed from its assigned mission and the goal of service to veterans. When the Commission suggested consideration of lump-sums because insurance companies dispense settlements in that manner for their advantages, it revealed that veterans' best interests did not underlie its recommendation, or at least that it did understand and appreciate the primary purpose of compensation.

We do not deny that there may be some individual instances in which a responsible veteran would be well-served by a lump-sum, but for disabled veterans as a whole we do not believe there are advantages that outweigh the disadvantages. Considering the real motivation for lump-sums, considering the likely disruptive effect and administrative complications it will have for VA, and all of the associated negatives, the DAV sees insufficient justification for implementing lump-sum settlements. The primary purpose of lump-sum settlements for the Government has to be its ability to avoid future claims and liabilities. With service-connected disability that is not a valid goal. The DAV therefore opposes lump-sum settlements as a matter of principle, because such a scheme would represent a departure from the principle that the Government has an obligation to place the needs of service-connected disabled veterans above less noble goals and interests that might drive the desire to impose such cost-saving measures. The DAV strongly opposes the Government's using lump-sum settlements to entice veterans to bargain away their future compensation entitlement.

Regrettably, the suggestion that we should condone providing lump-sum settlements to allow veterans the ability to spend them for a big night on the town is, we believe, rather cavalier, insensitive, and indifferent to the real nature of disability and its effects upon veterans as well as the importance of this issue. This suggestion trivializes service-connected disability. We take the issue very seriously. We have studied the Commission's recommendation carefully and thoughtfully even though we do not believe it was properly motivated or methodically analyzed. We believe it was beyond the scope of the Commission's purpose. We believe the recommendation will do nothing to improve VA's efficiency or solve the problems the Commission was created to study. We believe the recommendation is misguided and in no way in the best interests of disabled veterans. Given these things, we are concerned that it is getting far more serious consideration than it deserves, and for the wrong reasons. We take our responsibility to disabled veterans seriously, and we believe the entire thrust of the Commission's recommendations is one of the most serious threats to veterans' long-honored rights we have seen in recent times. We do not believe our approach is in any way inappropriate or excessive under the circumstances. What does surprise us is the tone of the questions presented to us by the Committee. While we welcome and should be subjected to probing questions on our views and position, these questions seem to project a resentment of our earnest

advocacy for disabled veterans with regard to the Commission's recommendations. Throughout its history, this Committee has championed the cause of disabled veterans and has repeatedly stood firm against threats to their rights. We hope that the Committee's commitment and that philosophy toward veterans continue.

Question 3: "Are you saying there is no circumstance under which you would support lump sum payments?"

Answer: We are not aware of any justification or circumstances that would cause us to support lump-sum settlements. If the delegates to our upcoming National Convention adopt, as we expect, a resolution opposing lump-sum settlements, we will be mandated to do so under our National Constitution and Bylaws.

Question 4: "The claims adjudication system is largely the result of your organizations coming before the Congress and lobbying for what is now in place. In effect, you are the architects of the system—a system that, if its goal was to produce cars, America would no longer be in the car business because the quality would be horrible as each of you has often testified. Are you telling me that given a clean sheet of paper, this is the system you would design?"

Answer: The lack of the profit motive of the commercial sector need not mean that inefficiency is to be tolerated in a government agency. However, the lack of judicial oversight for decades led VA fall into counterproductive practices. With judicial review, a credible authority began exposing VA's problems. Congress did the right thing in authorizing judicial review. That remedied many individual veteran's problems and in so doing brought the larger systemic inefficiencies to light. Creation of the Veterans' Claims Adjudication Commission to search for solutions to the systemic problems has not had a beneficial a result, however. The Commission was poorly suited to do so and apparently perceived political support to venture off the charted course. We agree with the testimony of the Commission's witness in which he unwittingly admitted that the Commission did not fulfill its statutory mission to study the "efficiency of current processes and procedures": "Well, I do not think we exceeded our mandate at all. I do not think we even approached the mandate we were given by Congress, and the reason for that was primarily our lack of resources and time." The language of the law setting the scope of the Commission's authority is plain, and the Commission plainly did not follow it. Simple declarations to the contrary are unlikely to convince anyone who compares what the Commission actually did with what it was supposed to do. The Commission's actions are indefensible.

Although our response to the Commission's report has met with disapproval, we cannot responsibly and honestly commend the Commission's work or product. Considering that the Commission chose to go off track, we cannot excuse its product as well-intentioned. We must honestly state that the Commission did a disservice to Congress, veterans, and taxpayers. Your question stems from our reaction to the Commission's recommendations. We will therefore support our response by addressing the characteristics of the current system in light of the Commission's recommendations to change it.

As much as we would like to, we cannot take credit for designing the current system although we have contributed from time to time no doubt and are proud of that. In its report on the Veterans' Judicial Review Act, this Committee said: "Congress has designed and fully intends to maintain a beneficial non-adversarial system of veterans benefits." H.R. Rep. No. 963, 100th Cong., 2d Sess. 13 (1988). Much of the detail for the system's design can be credited to VA itself. Generally, we believe that VA constructed the system with the veterans interests at the forefront, as it should have. Years of experience and institutional insight formed the processes and procedures. We think the architecture is unmatched anywhere. In 1988, this Committee shared our view. "In light of the committee's long history of consideration of permitting court review of VA benefit decisions, it is relatively clear that the Committee views with approval most of the procedures adopted by the VA to adjudicate claims." *Id.* at 25. The Committee had many laudatory remarks about the system and its processes. If we could honestly take credit for the existing system, we would not hesitate to do so. In our testimony before this Committee, in the *Independent Budget*, and in our public comments, we have not faulted the system for the claims adjudication problems. Rather, we have directed our criticism at deviation from the manner in which the system was intended to operate.

We agree, if VA manufactured automobiles, it would have gone out of business years ago. Its customers would have refused to buy its product. Without any alternative and any way to force improvement, veterans had no choice but to be consumers of VA's product. Product design, performed by Congress, was never the problem, however. Compensation itself is a superbly designed and enduring product that only needs occasional minor adjustments to reflect new scientific breakthroughs and newly arising situations, to which its basic design is easily adaptable. Neither was the design of the fabrication or manufacturing facilities flawed so as to be responsible for the condition in which the product was delivered. This too was superbly designed, with its form well-suited to function. The problem was a company philosophy that did not match its public puffing on the dedication of its workers, its commitment to quality, and its focus on service. Workers did not manufacture and deliver the product according to design specifications. They by-passed established manufacturing processes by employing their own short-cuts and preferred methods. Because the product and assembly design were superior, the company was highly revered, and this, perhaps, resulted in a long-standing reluctance to admit the problems with management and manufacturing, and even we must share some of the blame for we feared that the wrong changes might be made, especially if the Board of Directors began to tinker with the product as a way to avoid admitting the real problems. Shortly, after you brought in an effective quality control (the Court), the company was required to make a massive recall of poorly constructed products. That eventually prompted some new management to take a serious look at the problems. Industrial engineers were assigned to an in-depth analysis of the processes and performance to find the causes of the problem. They discovered that poor manufacturing quality, a lack of effective quality control, and a lack of accountability for quality were the root causes for the situation. Management then devised a plan to correct these deficiencies and make some change in the business processes to create a better climate for quality and improved customer service. Not content that this temporary backlog could work itself out if management and the workers were forced to correct the defective products and begin complying with design specifications and standard procedures in future products, you brought in an outside consultant who had no appreciation for the company's hallmark of valuing a well-designed and durable product for the consumer over cheaper materials and less exacting assembly. Your outside consultant's focus is immediate corporate profits and moving out the existing inventory at the expense of long-term soundness, durability, and suitability of the product for the consumer. Your outside consultant's proposed product is not merchantable from the standpoint of your discriminating consumers.

We are surprised how little attention the VA's BPR plan is getting and how much attention the Commission's recommendations are getting. The BPR team took an in-depth look at adjudication processes and identified the causes for the claims backlog. The Commission essentially ignored the work processes and instead looked at the makeup of the customer and substantive structure of the programs.

Watching the deliberations of the Commission and reviewing its report demonstrated to DAV that the Commission did not first examine the system, identify potential causes for the problems, and then proceed with an objective analysis to confirm or eliminate each potential cause. In the Commission's early meetings, it seemed as if certain members already had their own ideas about the VA claims process. These ideas then became the Commission's areas of deliberation. Some members appeared to use only the functioning of other systems as standards to judge the VA system and never showed any sign that they appreciated the reasons for VA's differences. Rather than the result of a careful, methodical, and objective analysis, the Commission's report is a collection of notions that the Commission picked up from various sources along the way. The Commission's findings and recommendations also contain many internal contradictions.

As we mentioned briefly in our testimony, many of the Commission's findings, and thus recommendations, followed from premises which were either outright erroneous or which were merely unfounded assumptions. For example, the Commission assumed without supporting data that the longer the time between the veteran's discharge and his or her claim, the more difficult the case. The Commission did not even have data to show what percentage of veterans file claims immediately upon discharge, what percentage file within the first year, and what percentage wait for several years to file claims. Yet, the Commission concluded this was a

problem which a time limit on claims would solve. Similarly, the Commission had no statistics on how promptly veterans appeal, and it had no data to show that the current 1-year appeal period has in any way led or substantially contributed to the problem it was created to study, the claims backlog. Yet, the Commission made a recommendation to reduce the appeal period to 60 days. The common factor in these recommendations is that they would lessen veterans' rights; they would do nothing to improve VA's efficiency. Because these recommendations would do nothing to improve VA's efficiency, because they would lessen veterans' rights, and because they are unnecessary, the DAV and other veterans' organizations oppose them strongly.

The Secretary of Veterans Affairs rejected such recommendations as time limits for filing compensation claims, closing the record during the appeal, reducing the appeal period, and payment of lump sums. We were surprised by the characterization of the Secretary's concern about veterans' interests as "obstructionist," while praise was given the Commission for its recommendations.

The Commission did not know and understand the uniqueness of the compensation program well enough to appreciate that, despite its difficulties, it, out of necessity to apply the principles of compensation evenly and harmoniously in diverse and problematic situations, is a very finely tuned and highly balanced mechanism which must be adjusted with great care to maintain consistency and uniformity of purpose and results, with the ultimate goal of equitable treatment of veterans. Features of the system which the Commission perceived as unintended side effects are in reality deliberate and calculated parts of the process. To discuss the many faulty premises and contradictions would require a lengthy analysis. Should the Committee doubt our assertions, we would be happy to provide such analysis. Much of this is easily seen by anyone who reads the Commission's report, however.

Here again, we are concerned that the Commission's misguided, unsupported, flawed recommendations seem so attractive to this Committee. We believe it would be a mistake to let a Commission that had little knowledge of the real workings of VA, prompt changes that are based on hypothetical remedies for assumed problems. The Commission lacked the insight to appreciate just how unsophisticated its understanding of VA was. Nonetheless, the Commission was not hesitant to accuse Congress of not understanding the system it created, not hesitant to accuse Congress of being negligent in failing to exercise its authority to fulfill its policymaking role, and not hesitant to question the VA's time-tested processes.

Just one example of the Commission's presumptuousness about its sudden expertise on VA matters was its formulation of diagnostic and evaluation criteria for knee conditions. The Commission stated that it developed this criteria "based on discussions with doctors in the C&P service and in consultation with an orthopedic doctor at the VARO [VA Regional Office] St. Petersburg, Fl." "Report to Congress" at 105. This group of laymen novices thought that it had enough expertise to develop better criteria for VA than is already available to guide physicians in the medical diagnosis and adjudicators in the disability evaluation of knee conditions. (It is inexplicable how the Commission thought this part of its mission.) The Commission's witness stated, however, that the Commission was aware of its limitations in expertise: "It is important to note, however, that the Commission was well aware of its limitations in terms of its expertise, time, and resources." "[T]he make-up of the Commission was not a group of in-house experts." Again, the Commission's witness stated: "I do not think we even approached the mandate that we were given by Congress, and the reason for that was primarily our lack of resources and time." The Commission found time and presumed the expertise to instruct VA on diagnosis and disability evaluation and found the time to exhaustively analyze the characteristics of cases of service-connected knee conditions and other populations of veterans for no purpose within its prescribed mission.

The Commission had time and assumed the qualifications to venture off on all sorts of other tangents unrelated to the efficiency of the current processes and procedures. For example, the Commission spent a whole section on comparing death rates among veterans receiving disability compensation but never stated any definitive object of that exercise and never made any connection between that data and the efficiencies of the processes and procedures. "Report to Congress" at Part I, Section 7. The Commission spent much time reviewing, criticizing, and making mistaken observations about what it referred to as the compensation "product." There

are numerous other issues addressed by the Commission that have little or nothing to do with processes and procedures. Veterans are justified in their outrage at this misuse of authority and resources, and they are rightfully concerned that no one else seems to care because they are so captivated by the Commission's ill-advised recommendations. The DAV submits that the Commission's report is not a credible, authoritative document and that it should not serve to guide the direction of either VA or the Congress, both of which have much more experience in the veterans' arena and knowledge of the system than the Commission.

Given a clean sheet of paper, I believe the DAV and the other veterans' organizations would design a system that would deliver benefits to veterans as fairly as a system can. The laws and regulations that govern the current system have that goal. Experience has obviously taught the VA and Congress a lot about how to administer veterans' programs over the greater part of this century, and adjustments have been made to incorporate improvements in the methods of benefits delivery. It is likely that we would therefore adhere to the fundamental characteristics of the current system in the design of any new system.

Question 5: "VVA suggested that attorney fees be authorized at earlier stages of the process. How do you feel about that idea?"

Answer: The DAV opposes any change to allow attorney fees in the administrative process. Veterans should not have to pay to receive benefits to which they are entitled, especially compensation for service-connected disability.

Veterans should not have to pay to be counseled about what benefits are available and what the entitlement rules are. Veterans should not have to pay to get assistance in completing an application, especially when the benefit might be one about which their is no dispute as to entitlement. A lawyer might charge to help file an application where legal representation per se may never be necessary. An attorney's hourly charge to assist a veteran or widow in filing for some benefits might consume most of the benefit. Some of these are clothing allowance, nonservice-connected burial allowance, etc. Veterans also need help in getting nonmonetary benefits and services such as help with medical care or assistance in straightening out an erroneous denial of prescription medication or medical supplies, for example. Because some benefit claims might have a potential for small fees, lawyers might tend to take only the larger fee producing cases and leave veterans on their own in other matters. In any event, VA benefits should go to the intended beneficiaries and should not come to be viewed as a source of fees for the legal profession. The government should ensure that the system is open and accurate enough so that attorney assistance is unnecessary.

Unlike an adversarial system, where the responsibilities are upon the parties to plead the pertinent law and produce the supporting evidence, the VA system is designed to put the ultimate burden on VA to ensure that all pertinent bases of entitlement are explored and considered and that all relevant evidence is obtained. When this system operates in the manner intended, veterans should be able to be confident that VA correctly disposed of their cases in most instances. Admitting attorneys would be an admission that VA is incapable of operating the system as designed. If that were ever to occur, the likely result would be an increase in money spent on administration because of the back and forth that would take place between lawyers and the VA on cases. Rather than do the right thing automatically, VA would have to be prodded along step by step by advocates, who charge for gathering evidence and arguing the case. The process might come to be viewed as a contest between the agency and the representative, with the veteran being the football. The result would be increased costs for the government and more benefits diverted away from the intended beneficiaries into the pockets of attorneys and agents.

Veterans service organization representatives already provide the full range of assistance from preliminary counseling and advice to appellate advocacy. If the system were improved to perform as intended, more of veterans service organization representatives' time could be spent in areas other than arguing cases and appeals, and more time could be devoted to those cases in which there were legitimate disputes about the weight of the evidence or the correct application of the law. Even with their large workloads, veterans service organization representatives spend much time in such areas as reassuring or calming down mentally ill veterans and related counseling roles. It is doubtful that attorneys would be willing to provide such a wide range of

assistance and engage in the "hand-holding" that veterans service organizations perform unless fees were charged for all of the time invested. Because veterans service organization representatives do not have the fee incentive that lawyers do and are not "on the clock" they view veterans more personally and are willing to give more personalized service.

The DAV opposes authorization of attorney fees for preappeal work on claims.

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