

**“HELPING THOSE LEFT BEHIND: ARE WE DOING  
ENOUGH FOR THE PARENTS, SPOUSES, AND  
CHILDREN OF VETERANS?”**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON DISABILITY ASSISTANCE  
AND MEMORIAL AFFAIRS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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**“HELPING THOSE LEFT BEHIND: ARE WE  
DOING ENOUGH FOR THE PARENTS,  
SPOUSES, AND CHILDREN OF VETERANS?”**

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**TUESDAY, APRIL 24, 2007**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON DISABILITY ASSISTANCE  
AND MEMORIAL AFFAIRS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:06 a.m., in Room 334, Cannon House Office Building, Hon. John Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall, Lamborn, Rodriguez, Hare, Berkeley, Turner, Bilirakis

**OPENING STATEMENT OF CHAIRMAN HALL**

Mr. HALL. And the Subcommittee will proceed with the hearing on helping those left behind, are we doing enough for parents, spouses, and children of veterans.

And our first panel will be the Honorable Brad Ellsworth and the Honorable Tom Latham, who will both present testimony on behalf of their constituents.

Let me just say before we go to our witnesses that I am pleased so many of you could attend this oversight hearing on this most important topic.

I would like to call attention to the fact that several individuals interested in today's hearing have asked to submit a written statement for the record.

If there is no objection, I ask for unanimous consent that those statements which have been submitted by the following be allowed to be inserted for the record and those requesting to insert statements are the Honorable Solomon P. Ortiz from Texas; Mr. Peter S. Gaytan, Director of the Veterans Affairs Rehabilitation Commission of the American Legion; and Ms. Priscilla Piestewa, I hope I am pronouncing that correctly, mother of Lori Piestewa, the first female casualty in Operation Iraqi Freedom/Operation Enduring Freedom (OIF/OEF).

Hearing no objections, so entered.

[The statements submitted for the record appear in the Submissions for the Record on p. 67.]

Mr. HALL. As the title suggests, I would like this hearing to examine how effective our government has been in assisting the families of our veterans.

I have noticed on several occasions that when we begin a discussion about taking care of veterans, we sometimes bypass or overlook the veterans' families. And when we do get around to the veterans' families, we are apt to apply a cookie-cutter, one-size-fits-all approach.

For example, we assume that the veteran is a male and that the children live with both biological parents. However, this is not always the case. The current military is made up of many so-called mixed or blended families in which children do not necessarily live with one or both of their biological parents.

Furthermore, the population of women serving in the military continues to grow. More than 160,000 women have been deployed to Iraq and Afghanistan. As of February 2007, over 143 single parents have died in Iraq and the majority were women.

As a result, we are witnessing a new phenomenon of grandparents raising grandchildren that have been orphaned due to the Iraq War. We will hear from some of those grandparents today.

I also hope that today's hearing will allow the Subcommittee to look at how we can better assist those whose spouses have died on active duty. One recurring theme that I have heard on this topic is the difficulty in navigating the bureaucratic maze immediately after that servicemember's death.

And I want to say at the outset that this is no critique of the U.S. Department of Veterans Affairs (VA) because I think they try to be helpful, but the nature of the dual system in which both the VA and the U.S. Department of Defense (DoD) provide benefits makes it very hard for an individual who has just lost a loved one.

I would be interested in learning more about the proposed idea to create an Office of Survivors which combines VA and DoD resources in one location.

In addition, I am concerned about those veterans who are facing a terminal condition and/or who die before the completion of their benefits claim. This is of great importance to the families of veterans, especially those of the Vietnam era who in many instances get overlooked because of the ongoing wars in Iraq and Afghanistan.

I would like to know the current law with respect to an individual who files a claim but dies before the claim is fully adjudicated. Can the spouse or the children of that individual continue the claim. In the 108th Congress, legislation was introduced to permit such action. I am curious if such legislation is still necessary.

I am also interested in learning more about possible fixes to Survivor Benefit Plans (SBPs) and Dependency and Indemnity Compensation (DIC), so spouses stop getting the short end of the stick.

In closing, I would just like to say that when we speak about our veterans, we must always remember to include their families.

And now I will yield to Ranking Member Lamborn for an opening statement.

[The statement of Mr. Hall appears on p. 41.]

#### **OPENING STATEMENT OF HON. DOUG LAMBORN**

Mr. LAMBORN. Thank you, Mr. Chairman, for recognizing me and for holding this hearing.

We are here today to discuss how we can best care for the family members of our veterans. The emotional demands that descend onto their loved ones are immense and we have a sacred responsibility to help them bear that burden.

In reading the witnesses' testimony, I have learned about a number of issues that are facing survivors and the failings of DoD and VA in this area.

I was especially troubled by the situation that the Heavrin family has described in their testimony. Their daughter, Hannah, lost her life in Iraq. Because of the way her servicemember's group life insurance and indemnity compensation policies were written, her husband became the sole beneficiary. However, a son she has from a previous relationship receives nothing. Even worse, her current husband apparently has done nothing to help support the child.

It is now up the Heavrin family to raise their grandchild and find the money to do so. I am not sure what course of action should be undertaken in this situation, but I suspect that something can and should be done to reduce the possibility that this happens to any other family.

I am also very interested in the concerns of the Gold Star Wives and the National Military Family Association. Sitting here with these deserving families about to speak to us, I must note that this session we have heard promises to provide billions of dollars to valiant Merchant Marine and Filipino veterans of World War II. We have also noted dozens of other deserving veterans of that war such as the Woman Air Force Service pilots.

These families have made great sacrifices for our freedom. It is my hope that as we consider compensation and other legislation, these families here today will also be accorded due consideration.

I would like to thank the witnesses for their testimony. I know many of you have traveled from far away to come educate us on this issue, and I thank you. Thank you especially for your sacrifice and your fidelity to our Nation.

Mr. Chairman, I yield back.

[The statement of Mr. Lamborn appears on p. 41.]

Mr. HALL. Thank you, Mr. Lamborn.

Our first panel, Mr. Ellsworth and Mr. Latham, thank you for being here. And, Mr. Ellsworth, I will now recognize you for your statement.

**STATEMENTS OF HON. BRAD ELLSWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, PRESENTING STATEMENT OF RON NESLER, NEW HARMONY, IN (CAREGIVER OF ADULT DEPENDENT); AND HON. TOM LATHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

**STATEMENT OF HON. BRAD ELLSWORTH**

Mr. ELLSWORTH. Thank you, Mr. Chairman, Ranking Member Lamborn, the rest of the Subcommittee. I appreciate you holding this important hearing on all the aspects that you will hear about today.

I would like to thank you on behalf of my constituent, Honey Sue Newby, and the Nesler family of New Harmony, Indiana. Today I

will read a heartfelt testimony prepared by Honey Sue's stepfather, Ron Nesler.

Mr. Nesler has detailed his family's daily struggle to provide care for Honey Sue as a complicated neurological disorder rooted in spina bifida.

Honey Sue and the Neslers were invited to testify before your Committee today, but were unable to travel due to her condition and the constant care that she needs. And in the interest of time, I will read portions of his letter to the Committee, and I have submitted that for the record.

And this is a quote from Mr. Nesler. I am Honey Sue Newby's stepfather, Ron Nesler. My wife, Suzanne Nesler, is Honey Sue's birth mother. Suzanne and I are Honey Sue's court-appointed guardians and full-time caregivers.

Honey Sue is a beautiful 36-year-old child with complicated neurological disorders rooted in spina bifida. She requires around-the-clock aid and attendance care and extensive medical care.

The VA concedes that Honey Sue's condition is the result of her birth father's exposure to Agent Orange while serving three separate 13-month tours in combat as a Marine rifleman in the Vietnam War.

Honey Sue is very bright, happy, gregarious, but emotionally she operates at the 10- to 12-year-old level and always will. She is the greatest joy in our lives and we are grateful for the opportunity to care for her.

When the VA's spina bifida program was started, her mother and I applied for VA compensation for Honey Sue. The VA acknowledges about 1,200 children of the Vietnam veterans have some degree of disability caused by spina bifida as related to the birth parents' exposure to Agent Orange in Vietnam.

The children are rated as Level I through Level III according to their degree of disability with Level III being the greatest degree of disability.

Honey Sue is one of the only two hundred out of the twelve hundred children rated as Level III. We are told by the VA that this is the approximate equivalent of a hundred percent service-connected disability rating for a military veteran themselves.

All 1,200 children are paid monthly monetary compensation by the VA at this time. The amount of the monthly compensation is based on their degree of disability. As a Level III totally disabled Agent Orange spina bifida child, Honey Sue receives about \$1,500 per month in VA compensation. A hundred percent disabled military veteran whose situation seems to mirror Honey Sue's situation exactly receives about \$2,500 per month.

Honey Sue and the other Level III children receive only scraps of very difficult to access healthcare coverage from the VA. And these bits and pieces of healthcare specifically exclude Honey Sue's greatest need which is aid and attendance care. The disabled veteran receives full medical care including aid and attendance when needed.

Since Congress created the law recognizing the 200 Level III children as totally disabled as a direct result of the birth parents' military service, Congress should ensure full healthcare benefits including aid and attendance care for the children.



Our greatest concern is that who will care for her and protect Honey Sue when her mother and I are gone. We feel the Congress owes a debt to provide full healthcare coverage for the Level III children including aid and attendance care. These children should receive the same care as provided for a hundred percent service-connected disabled veteran, no more and no less.

We think the Congress intended things to be this way when the VA's spina bifida program was created. The government has admitted the total disability of these Level III kids as a result of their parents' military service. They should not have to fight for their medical care.

The financial cost of paying the debt to these children would be very small due to the fact that there are only 200 of them. Ironically we feel the reason that this sad situation is allowed to persist is exactly that, that there are only 200 of the Level III children.

We include with this testimony a legislative memorial passed by New Mexico's State Legislature. The memorial recognizes the plight of the Agent Orange spina bifida children and urges Congress to pay its debt to these children by providing full healthcare coverage and aid and attendance care through the VA's spina bifida program.

We have included the copy of the memorial to demonstrate the others besides our family recognizing the lack of probable healthcare for coverage for the Level III children.

This concludes Mr. Nesler's testimony. I would like to thank the Veterans Affairs' Subcommittee on Disability Assistance and Memorial Affairs for allowing me to testify in front of this group today.

Honey Sue and the Nesler family asked me to thank you also for including their remarks and what you heard today.

Thank you very much.

[The statement of Mr. Nesler appears on p. 42.]

Mr. HALL. I thank the gentleman from Indiana.

And I forgot to mention before to the other Members of the Subcommittee that if you have an opening statement, you can have it inserted directly into the record so we get to questions. You need not feel that you have to start from the beginning of your statement.

And now we will move to Congressman Latham.

#### **STATEMENT OF HON. TOM LATHAM**

Mr. LATHAM. Chairman Hall, Ranking Member Lamborn, and Members of the Subcommittee, I am honored and privileged to have the opportunity to testify before you today and to introduce two of my constituents who will appear shortly.

And may I inquire, are they going to be testifying immediately after?

Mr. HALL. They will be in the next panel.

Mr. LATHAM. OK.

Mr. HALL. Would you like to bring them up next to you while you talk about them?

Mr. LATHAM. Yeah.

Mr. HALL. OK.

Mr. LATHAM. Thank you.

I will proceed while they——

Mr. HALL. Could you introduce them to us, please?

Mr. LATHAM. Sure. Excuse me?

Mr. HALL. Could you introduce them to us? Is this Susan and——

Mr. LATHAM. I will.

Mr. HALL. OK. Thank you.

Mr. LATHAM. OK. Thank you.

This is Susan and Kayla Jaenke from Iowa Falls, Iowa.

Mr. Chairman, many of our Nation's servicemembers are single parents who rely upon grandparents or their relatives to care for their children while they are deployed. It has been reported that out of the 3,323 U.S. servicemembers killed in the War on Terror, more than 143 were single parents.

Unfortunately, the families of these soldiers have unintentionally been excluded from important benefits intended to help them.

Under current law, the \$100,000 gratuity paid upon a soldier's death must go to any surviving children if there is no surviving spouse. If the surviving children are minors, the money is put into a trust account according to the laws of their State which they cannot access until the age of 18.

This oversight in the original law excludes grandparents or other relatives from access to the benefit of this payment to help raise the servicemember's children even if it was that servicemember's wish.

As we will hear shortly, the Jaenke family from my district knows firsthand the difficulties these restrictions cause.

To address this flaw in the death gratuity benefit, I have introduced House Resolution 1115. If enacted, this legislation would allow servicemembers the option of voluntarily designating a parent, brother, or sister who would have custody of the servicemember's children as the recipient of all or part of the death gratuity.

For deaths occurring before enactment, the bill provides an opening for courts to redistribute death gratuity funds to caretakers if a clear expression of intent regarding the use of the funds was left by the servicemember.

While the situation may not affect a large number of our men and women serving in the Armed Forces, I believe a change in the law is needed as a matter of fairness to our servicemembers who put themselves in harm's way and to their families.

That is why I encourage the Subcommittee to give this issue its full consideration, and I look forward to working with each of you in furthering the cause of our Nation's veterans and their families.

Now I would like to introduce Susan Jaenke from Iowa Falls and her granddaughter, Kayla.

Susan's daughter, Naval Petty Officer, 2d Class, Jaime Jaenke, served as a Reservist with the Seabees. Tragically she was killed last summer while serving freedom's cause by a roadside bomb in Iraq. Our Nation will be forever grateful for Jaime's dedication and service and the sacrifice she made for our Nation.

As Commander David Marasco said of Jaime during the memorial service for her last year, Jaime, quote, willingly accepted risk

in order to put herself in a better position to help others, end quote.

She was the type of dedicated soldier that we use as an example to our children and grandchildren when we talk about the definition of a true American hero.

We welcome Susan and Kayla, and thank you for making the long trip from Iowa to share your personal story with my colleagues here today.

And I thank you, Mr. Chairman.

[The statement of Congressman Latham appears on p. 45.]

Mr. HALL. Congressmen Latham and Ellsworth, you were our first panel. Would you like to answer some questions or would anybody here like to address the Congressmen directly or should we move directly to Susan and the rest of panel two?

Mr. HARE. Mr. Chairman.

Mr. HALL. Yes, Mr. Hare.

Mr. HARE. I would just like Mr. Latham to know that I would be very interested in cosponsoring your bill. So if I can get a hold of your office later today, that would be great. I think it is a wonderful piece of legislation.

Mr. LATHAM. Thank you very much.

Mr. HARE. You are welcome.

Mr. HALL. Mr. Turner.

Mr. TURNER. Mr. Chairman, similarly I would like to recognize Mr. Latham's efforts and indicate my support for his legislation.

Mr. HALL. Not to be a copy-cat, but I also say the same thing.

Mr. Rodriguez also.

Mr. RODRIGUEZ. Yes. Let me just thank you for bringing that forward because there is no doubt that that needs to be corrected, so congratulations to you and thank you for bringing that forth.

Mr. LATHAM. It is because of them.

Mr. HALL. Well, Congressmen, we get to see you all the time, so we will save our questions for you for later. And in the interest of alacrity, we will move on.

Susan, you can stay where you are and we will excuse our distinguished two gentlemen from the Congress here and move on to panel two which includes Amy Clark and Kimberly Hazelgrove.

You are welcome to stay, Mr. Latham.

Oh, I am sorry. And Matthew Heavrin.

As I understand it, we may be joined by Congressman Jerry Lewis. And if he arrives, we will just have him join our panel.

Susan Jaenke, would you like to start us off, please.

**STATEMENTS OF SUSAN JAENKE, IOWA FALLS, IA (MOTHER OF DECEASED VETERAN AND GUARDIAN OF GRANDCHILD); AMY CLARK, BARTOW, FL (SPOUSE OF TERMINALLY-ILL VETERAN); MATTHEW B. HEAVRIN, REDLANDS, CA (FATHER OF DECEASED VETERAN AND GUARDIAN OF GRANDCHILD); AND KIMBERLY DAWN HAZELGROVE, LORTON, VA, (WIDOW) AND MEMBER, GOLD STAR WIVES OF AMERICA, INC.**

**STATEMENT OF SUSAN JAENKE**

Ms. JAENKE. My name is Susan Jaenke. This is my granddaughter. She is 9 years old. She is watching a movie. It is a good thing. It is a good thing.

On June 6th, I got about the worst news that any parent could ever get. My daughter, Jaime, was killed in Anbar Province, Iraq. I had no idea what would happen after that. We were treated very well by our CACO Chief Erdman.

As the days went by and things progressed, we found out that there was a \$100,000 gratuity that was supposed to have come to me, but because of a clause that was put into this we could not get this gratuity. What happened after that is a nightmare that I do not like to relive, but I am going to for you.

The bills that Jaime had, had to come from somewhere. They came out of my pocket. They had to be paid. I did not have that \$100,000 that was supposed to come to the families.

After that, I was told I had to get Social Security for Kayla. That took three months. In that 3 months, I had no money whatsoever because everything went into bills to pay back for whatever she had.

We had in that 3 months, we had two vehicles repossessed because I could not afford them. I could not afford to buy groceries. I could not afford to do anything. I had no money.

By the time Social Security came, I had it, I did not have, I had it, I did not have it. Finally by September, I got it. By that time, I was 3 months in debt with my house payment. I was behind on my electric bills and I had a little girl that had to go to school. And that takes a lot of money to get her ready for school.

If it had not been for the organizations, the MN Seabee 25, the Seabees and other Seabee units that came forward and got us money and Congressman Latham who let us vent on him and who let us vent on his people, I do not know what would have happened.

By January, I could not afford anything. There was no money at all for Christmas. I had nothing. If it had not been for a VFW group that gave us \$1,000, we would not even have had a Christmas.

In between all that, I had to work with Defense Financing and Accounting Center (DFAC) and I had to work with the VA. Calling Millington became such a terrible thing you cannot imagine. The people in Millington, I kept the record beside my telephone book and I put down names of people in Millington not to ever speak to again and people that I could speak to.

I finally tracked down the person that was supposed to get us money from DFAC. He said he had the papers on his desk and it would take 30 days. That 30 days is kind of a mantra from these

people. You are kind of afraid after a while to ask when that 30 days begins. You are afraid they are going to say the second Tuesday of next week.

The gentleman that I tracked down in Millington that had Kayla's paperwork, he said give him a call in 2 weeks and he would tell me how long it would take before the benefits would come from them.

In two weeks, I called him back. He said he never got the papers. I called him back again and he said, well, I will fax you the papers. He faxed me the papers. I filled them out, sent them back to him.

Two weeks I waited again. He called me up and he said I have got three sets of papers that you filled out, what are you trying to pull. And he was very angry with me because now he had three sets of the same paperwork that I filled out sitting on his desk and he thought that I was trying to pull something and get more money. It was not that. It was not that at all.

I had one lady in Millington that made me feel so bad that I interrupted her day that I actually apologized to her for trying to get benefits for my granddaughter.

I got off the phone and I just shook my head. I thought, oh, my goodness. I am apologizing to a woman because I interrupted her day and she was supposed to be helping me. I could not believe it.

I had a Commander that we got in touch with that was in charge of some of the money that Kayla was supposed to get. He said after giving me his sympathy, he told me about himself, that his daughter could not have what she wanted because he had gotten through a divorce and Kayla would have to learn to deal without and do without.

And to me that was just disgusting because Kayla lost a mom. His daughter might not have been able to have everything she wanted because he went through a divorce, and I could care less about his divorce, but here he was telling me that Kayla would have to do without. His daughter still had her mom and dad. His daughter still had siblings. My granddaughter has got nothing.

These are some of the things that I have run across. The bright areas have come from people like Congressman Latham's office that put in this bill for us which, please, please help us get through.

My granddaughter does not need to do without. My daughter's business that she started does not need to do without. This is not right.

My daughter, when she passed away, left this money to me and you know what? It is kind of like a will. This is what she wanted. Maybe she did not understand it. I do have a letter from her telling me what to do and how to spend that \$100,000, how to invest Kayla's money, and her money comes from that insurance policy. And I have done all that for her.

The \$100,000 I cannot do for her because of this clause that is in there. Please, gentlemen, do not ask my granddaughter to do without anymore.

[The statement of Ms. Jaenke appears on p. 46.]

Mr. HALL. Thank you, Ms. Jaenke.

And thanks to your daughter, Jaime, for her service and sacrifice, and all of your sacrifice for our country.

Ms. JAENKE. Thank you.

Mr. HALL. And I have two things to say. One is on behalf of our government, I want to apologize to you and to Kayla. I am really sorry you had to go through this.

And we will do what we can to try to make sure that your problems are resolved, but perhaps as importantly, to make sure that there are not more cases like yours which cannot be what the American people intend or Congress intends, but more likely is the outgrowth of the mine field of bureaucratic mazes and turf delineations and fiefdoms that we are trying to sort our way through.

I also would ask you before we go on to our next witness if you would be willing to share in writing or not or after the meeting the names of the staff that you spoke to who were not helpful to you.

And, Congressman Latham, would you like to comment further?

Mr. LATHAM. No.

Mr. HALL. OK. Well, ordinarily we would go through the rest of the witnesses and then come back, but if you would like to address Ms. Jaenke briefly?

Mr. HARE. I do. I just want to say a couple things in your testimony. There is never a need for you to ever apologize ever to anybody for interrupting their day. They have absolutely no idea what you went through and most people never will.

And I just made another note. When you said your granddaughter has nothing, she indeed does. She has you and she is incredibly lucky. And I will tell you—

Ms. JAENKE. I am the lucky one, sir. I am the lucky one.

Mr. HARE. She is a beautiful young lady. And let me just say this to you too. The \$100,000 is, you know, a stipend. What value do you ever place on somebody's life? And I will just say this to Representative Latham again, the bill, this is something you do not have to beg us for. I mean, we owe this to you and to other people who have done this.

And so I am honored just to be on this Committee this morning. I am glad I made it and I will tell you that we will do everything we can to get this remedied. Thank you.

Ms. JAENKE. Thank you.

Mr. HALL. We will probably have more questions for you later, but first we will hear from the other two witnesses.

Ms. Amy Clark. Good morning. Could you speak into the microphone? Push the button to make sure it is on.

#### STATEMENT OF AMY CLARK

Mrs. CLARK. I am here to speak on behalf of all veterans, not just my husband, Russell E. Clark, who is a Vietnam veteran himself.

I at the time did not know what Vietnam was as I was a child, so, therefore, I did not live Vietnam. But I am now living Vietnam each and every day of my life with my husband, Russell.

I cannot tell you how much it pains me to see a once vibrant man now just a skeleton of what he used to be and I would like you to please take a look at these pictures of my husband as he was before and as he is now.

On January 8th, 2007, my husband, Russell, was in the hospital. I went in to see him not knowing what was going on. There was a card from a doctor at a bedside table. I called the doctor. He said,

Mrs. Clark, I am so sorry to tell you your husband now has lung cancer.

And I said to the doctor, well, since you have now ruined my anniversary, my day in my life, why don't you just tell me how bad the situation really is. He declined to do so saying he would speak to us at a later date which was the next day.

Of course, totally distraught, I went in to my husband on our anniversary like nothing was wrong and he said what did the doctor want. I said he wants to speak with us tomorrow.

The problem with the VA is there is too much red tape when a situation such as this arises. My husband is terminal and has very little time left. That is why claims sit on someone's desk or just get completely ignored until it is too late.

And as my husband said to a reporter and some friends, my wife is like a bulldog on someone's butt and she is not getting off any time soon. OK.

There is a bureaucratic double speak. This phrase I take from the Lakeland Ledger dated Sunday, April 15th, 2007.

Yes, the VA offers you a book on benefits that you may be entitled to, but just try and get those benefits. It is ridiculous. There are so many forms and questions to answer even for the most minimal benefits.

I can tell you that to date I have over 400 pages of documentation that I have turned to the VA just for Mr. Clark, thus leading to the next point that the system must be changed so that justice can be given to all veterans and their families without the bureaucratic red tape.

The paperwork is so overwhelming. There is no communication set up to help a civilian such as myself to understand what needs to be done. I have spent countless days without sleep, nights without sleep, searching the Internet.

However, I was fortunate enough to run into Ernie Roberts, a Bartow, Florida, Veteran Service Officer, and Donna Adams in Congressman Adam Putnam's office which have helped me to overcome some of these hurdles that I have had to overcome.

I have had to quit my job and college to stay home to care for my husband who needs care 24 hours a day, 7 days a week. I am the one doing the care and I left him to come here to be able to speak with you.

I cannot speak to the VA unless they speak to Mr. Clark first which, quite frankly, at times is difficult for anyone to speak to Mr. Clark because he is on such heavy medication due to his cancer. OK? And I am speaking for Mr. Clark as well as other veterans.

Mr. Clark has requested me to be his fiduciary. I have been turned down every single day for months, been told by certain Members of the Florida Department of State Veterans Affairs, well, you need to have this approved by a judge.

I called the judge, personal friend, and I called a lawyer, read them the form, and said it does not say anything about that. They have also threatened to take away some of the benefits that they have given him while the fiduciary is granted. How ridiculous is this?

The older veterans, especially Vietnam veterans, have been shoved under the carpet for many years. And the veterans now

coming home seem to get their benefits more quickly. This is wrong.

No one should have to produce documentation, such as a morning report, which is what I was requested to do. Needless to say, Mr. Clark does have a morning report which civilians may not be familiar with what that is.

The nonsense about having this medal or that medal is totally ridiculous when, in fact, John Kerry threw his medals over the fence at the White House quite some time ago for all the world to see.

When a veteran has a DD214, that should be sufficient information to show what time they put in the service and where they were. Does it not matter what their job was? Of course not. They gave so that we may live in the United States of America, land of the free and home of the brave.

Life insurance policy issued by the Veterans' Life Insurance Co. must be changed so that they can be assignable to a funeral home. My husband is going to pass away very shortly. I do not have that kind of money. The life insurance policies they issue are unassignable, so what do I do to bury my husband? I do not have that money. Do you have it?

Buddy letters should not be requested because there are too many veterans that have been killed in action or have died along the way. This is just someone's idea of a joke.

Mr. Clark has been fighting a separate issue for PTSD for many, many years. OK? And, yet, Mr. Clark has been denied his PTSD. Mr. Clark has documentation in his possession from the veterans' hospital in Tampa, Florida, stating his main diagnosis is PTSD. Imagine that?

One of the things stated in the documentation is you do not have all the symptoms. Well, if I am depressed, do I have to have all the symptoms of depression to be depressed?

The issues of the stressors that I am told that the VA looks for just seems to be more bureaucratic double speak. I was told the stressors could be things like gunfire, picking up dead bodies, shooting women and children, and so forth. And Mr. Clark himself was part of an assassination. If that is not a stressor, I do not know what is.

Then they come up with new stressors stating that if they have heart disease or have had strokes, and so forth, then that is another stressor that leads to PTSD.

They claim they are too overworked and too underpaid to handle all of these themselves, so why put up a stink when it comes to the documentation? If the documentation is presented even from a civilian physician, that should be proof enough.

I was told I could get a rent a doctor by someone in the Florida Department of Veterans Affairs to sign the paperwork my husband needs and then it would be accepted.

When a veteran dies, his or her spouse or children are entitled to DIC, so let us stop the nonsense and just have a short form and provide the quickest documentation and not be told this will take 6 to 8 months or longer to complete. It is no wonder the Department of Veterans Affairs cannot get their jobs done. They make it more difficult on themselves.



Each veteran should be given a packet the first time they ever enter into the VA system and tell them, here, these are things you may need along the way.

We have had the most awful time to get me added as my husband's dependent, which I well should be, which finally has come about. When we went to the VA in 2004, they filled out a form making me his dependent but only in the event he should die in a VA facility.

The man that did this was Alex Benjamin who I understand is no longer with the VA. He never told us that because Mr. Clark's first wife died and that I had been married before we would have to present a death certificate for Mr. Clark's first wife and my divorce decrees.

And every day my plea is a phone call to someone. I have contacted the media. I am going to continue to do what I need to do to make sure my husband gets his benefits as well as all veterans and as this lady is with her grandchild. This is ridiculous. It must be changed.

Another person in the B66 cannot get any benefits because they cannot get a buddy letter or find anybody that is alive. What is wrong with this system? It is just unjust.

[The statement of Mrs. Clark appears on p. 47.]

Mr. HALL. Thank you, Mrs. Clark. And I appreciate your testimony.

And we on this Committee are intent on trying to simplify this process that you have had such a difficult time with and have several pieces of legislation pending and others, I am sure, that will be drafted which will attempt to do that. And we will come back, I am sure, to you with questions.

But first we will go to our next witness, Matthew Heavrin. Just pull that microphone over closer to you.

#### **STATEMENT OF MATTHEW B. HEAVRIN**

Mr. HEAVRIN. Mr. Chairman and Committee members who are hearing my testimony today, my name is Matthew B. Heavrin. My wife, who could not be with us today, her name is Barbara Jean Heavrin. We live in Redlands, California. We have four children.

Matthew, who is our oldest, is at the Naval Academy in Annapolis, Maryland. He will graduate this May.

Our daughter, Hannah Leah, served in the U.S. Army as a Quartermaster in Iraqi Freedom until she was killed on September 4, 2006.

Our third child, Philip, serves in the Marine Corps and is currently based in Camp Pendleton, California.

Our fourth child, Ruth Ann, she will be graduating from Redlands High School this June and will be attending Cal State San Bernardino this fall.

I myself am a U.S. Navy veteran. I work as a power plant operator for Los Angeles County. My wife is a registered nurse and is employed by the San Bernardino County Sheriffs.

As you can see, our family has served, will continue to serve this country and mankind. My wife and I have instilled in each of our children importance for love of country and to make this world a better place through service and responsible living.

Our daughter, Hannah, had aspirations to go to college after school. We have some money saved up but not nearly enough to afford her tuition. Our goal is for Hannah to go out and look for grants, scholarships, and other financial aids that would fill the gap.

She came home one afternoon with an Army recruiter. We listened to him and asked Hannah if this is what she truly wanted and she said yes. Off to the Army she went.

After her basic training, she went to individual training and met another young man there who was also in the Army. The two began a relationship and had planned on marriage and Hannah became pregnant. Their relationship failed and Hannah returned home after being discharged from the Army.

Shortly after giving birth to her son, Todd, on November 2d, 2004, she returned to the Army against our wishes. I personally got on my knees and pled with her not to go back into the Army, that she would most certainly end up in Iraq. She told me that the Army does not send single mothers on deployment. And I really do not know where she got that idea. I can only speculate it was the Army recruiter.

She did indeed reenlist and went to another Army specialized school to become a quartermaster and left Todd in our care. Well, at quartermaster school, she met Chris McKinney, someone who she had gone to high school with in Redlands.

After Hannah finished the quartermaster school, she was assigned to Fort Lewis, Washington. I moved all of Hannah and Todd's personal belongings from Redlands to Fort Lewis in July of 2005 and helped her find a town home in Tacoma, Washington, and assisted her in securing child care on base.

A few weeks later, she told us that she was assigned to the 542d Maintenance Company as a quartermaster. In September, I learned that the 542d would be deployed to Iraq. My heart sank. I almost knew her fate right then.

I flew up to Tacoma to stay with my grandson while Hannah went with her unit for maneuver training in Oregon. While staying in her town home, I could not help but notice all the love letters that Chris McKinney had written to Hannah. They were pasted on the wall like wallpaper.

Just before the 542d Maintenance Co. deployed, Hannah brought Todd home and some of his things down with us with a power of attorney so we can make decisions for Todd on Hannah's behalf. That is when I learned that Hannah had gotten married to Chris McKinney. We had not even met Chris at this point and only had a brief description of him.

It was late October 2005, and Hannah's unit deployed to the fort operating base in Taji, Iraq, in the middle of November 2005. While in Iraq, Hannah would phone home and occasionally write. She would tell us how she was reassigned from the quartermaster's office to security. She spent nearly all of her time up in a guard tower along a perimeter road around Fort Taji.

She also sent home some photographs to show the desolation where she was posted and the conditions that she served in. What stood out to me was how lonely she was and how much she wanted

to get home. She missed her son, Todd, and her new husband, Chris.

In May of 2006, she was flown home for 2 weeks R and R. She was so happy to be home and did not want to go back. Todd recognized her almost immediately. Chris, Hannah, and Todd rented a convertible and had a wonderful time as a newly formed family and spent their time together.

We had talked and began preliminary plans for Chris and Hannah to have a church wedding and that Chris would adopt Todd. A few days before she was to return to Iraq, Hannah's demeanor changed. She was regretting separating from us and Chris and Todd again. She even asked me if I would break her arm for her so that she would not have to return. Of course, I did not and Hannah did return to Iraq. Chris returned to Fort Lewis. Todd stayed with us in Redlands.

On the morning of September 4th, which is Labor Day, on 2006, I was at work when I received a phone call from Barbie. She explained to me that I needed to get home right away. There were two Army chaplains at our door.

I cannot describe to you the range of emotions that I personally endured and grieved with Barbie as she went through hers. From the time of the chaplain visit to planning a funeral to sorting out Hannah's life and that relation to Todd's, we have shed buckets of tears, felt guilty, angry, inadequate, and generally depressed.

Through it all, we have endured it through our faith, our friends, and each other. We have been taking care of our grandson since the day he was born. We videotaped in various stages of his young life so that we can share those moments with Hannah in Iraq. The video CDs were packaged and ready to be mailed out as they would have been if that Monday were not a holiday.

The cause of Hannah's death was under investigation and was difficult to determine how or why she died. As the investigation progressed, we learned that circumstances revolving around Hannah's death were criminal in nature. Never before have I felt this way. It is as though we were betrayed by our sense of honor and service that we adhered by.

Our daughter died for one man's selfish satisfaction. As an NCO in the Army, he was to be about the business of looking after his subordinates. He did otherwise. We feel cheated. Todd's mother is gone. He was cheated. Chris lost his wife. He was cheated. Hannah's siblings have lost a wonderful friend, confidant, and sister. They were cheated.

While it has come to our attention that each soldier had a \$100,000 death gratuity and a group life insurance policy of \$400,000, we were not aware of these policies until of recent.

We also learned that Chris McKinney received both. I do not know if my daughter so designated Chris or it was automatically paid out to Chris as a survivor since he is the husband. We believe that the assumption was made that Chris is caring for Hannah's son, Todd, which he is not.

The burden of raising our grandson has been on us only. We receive support from no one, nor has Chris McKinney offered his \$500,000 to us or to Todd. We are not in the business of taking anything that does not belong to us, but to have our daughter

taken from us in this manner that she was and for Todd to grow up without his mother, without her death benefit is just plain wrong.

We believe this is an anomaly that needs to be remedied to benefit the surviving sons and daughters of deceased soldiers, sailors, and airmen and assist the grandparents who raise them.

[The statement of Mr. Heavrin appears on p. 49.]

Mr. HALL. Thank you, Mr. Heavrin, for your testimony. And once again, my sympathies and support and I am sure that the hearts of all the Subcommittee Members go out to you and your family. Rest assured that we are going to try to find legislative ways to prevent such problems from occurring in the future.

We will move now to our next witness and recognize Kimberly Hazelgrove.

#### **STATEMENT OF KIMBERLY DAWN HAZELGROVE**

Mrs. HAZELGROVE. Thank you, and good afternoon, everybody.

I just want to say that I love everybody who is sitting here beside me and behind me today who share in what I have experienced over the last 3 years.

Chairman Hall, Representative Lamborn, and Members of the Subcommittee, I would like to thank you for the opportunity to testify before you today on behalf of all Gold Star Wives regarding the importance of addressing critical services for America's military widows and widowers and their children who are left behind.

My name is Kimberly Hazelgrove. I am the widow of Chief Warrant Officer Brian Hazelgrove, U.S. Army and a native of Edinburg, Indiana. My husband entered the Army shortly after graduating high school and served over 10 years.

Brian was an energetic and charismatic leader. His soldiers and superiors always had the utmost respect and admiration for his ethics, compassion, and abilities. Above all, he was a career soldier and he was full of ambition, dedication, and potential.

Brian was also a husband and a father to Taylor, Zachary, Brandon, and Kaitlin. He was a gentle and loving father who never failed to prove that he adored his children. At times we both had to endure single parenthood while the other was deployed and understood the important balance of mission and family. And Brian was dedicated to both.

He faithfully deployed to Iraq in support of America's mission in November of 2003. On January 23d, 2004, Brian was flying a mission in support of ground troops in Iraq with pilot Chief Warrant Officer Michael Blaise when their helicopter crashed. Both Brian and Michael were killed. Brian was 29. Our youngest child was just 7 months old.

I was a Sergeant First Class in the U.S. Army stationed at Fort Drum where Brian was stationed as well and the mother of an infant and our toddler, stepmother to two children who live in Indiana currently, and the wife of a deployed soldier. Life was difficult, but with the support of our unit and families, I was independently managing the household and raising our family as he had at times, always with the hope that he was safe and anticipating his return. Our lives were changed forever the day that Brian was killed.

I am here before you as a representative of America's military widows and widowers and as a Member of Gold Star Wives. My hope is by the end of my testimony you will see the need to act immediately to rectify the unfair and inadequate resources that Gold Star families endure after notification of their servicemember's death.

I feel that adequate training and resources are still lacking for all personnel who function in the various roles while supporting a casualty's family. Across the spectrum of DoD and VA, there is not one single dedicated office to the military survivor.

It is left to the various representatives of these organizations to do their best, and I mean their best to inform, assist, and support family members in their times of need and they can only do so much within their respective subject matter area of expertise.

After the initial response of support has ended and it always does, family members struggle to research, understand, and stay informed of changes to benefit entitlements and legislative actions.

For the widow or widower of an active-duty servicemember like myself, the military expects a transition of responsibility from the military component in which they served to the Veterans Affairs within approximately 6 months.

This is a very short time to require a family that has experienced a traumatic life-altering event even under the best circumstances to be able to navigate the complexities of the military's survivor system.

A family previously established in family housing accustomed to living on military bases have increased financial burdens to absorb and a new identity to grasp. The response to family members is critical within the first year after the loss of their loved one. However, it is imperative that there be continuity of service and support to the families of our servicemembers after that initial response has faded away.

As a widow, I receive monetary supplements because of my husband's death while serving his country. I applaud our government's success in increasing that initial death payment and Servicemembers' and Veterans' Group Life Insurance (SGLI) payments to the families of the deceased servicemembers. I would like your support in fulfilling the commitment to fully sustain the benefits of our widows and widowers and those of our children for the future.

The SBP payment, the survivor's benefit pension payment that I receive and worked so hard for for 2 years brings \$99 a month into my household. My full entitlement a month as a surviving spouse is \$1,166. The dollar for dollar offset generated by the income I receive from the VA's dependency and indemnity compensation reduces my entitlement by over \$1,000. Ninety-nine dollars does not even buy groceries for a week.

Because of my husband's rank and years of service when he died, I actually receive a little bit of money left over where most spouses receive no money at all. This offset does not benefit any military survivor. And, in fact, it especially victimizes those families whose deceased servicemembers were junior enlisted or with less years of service. And that is a crime.

Most of these families are young families like mine is. My \$99 a month helps supplement increased child care expenses due to my husband's death, healthcare which I now incur after my 3 years' period has ended, and household expenses because I am a single, working mother and raising two children and the sole provider for those children.

I would like this panel to realize the entire scope of inequity of this offset. Disabled military retirees, Federal retiree annuitants and their survivors receive their full benefits without offset of the VA's DIC. I ask you here today how is the military survivor any different?

I ask the panel to understand that many widows and widowers are not able to make the monetary sacrifice that I have made here today in order to testify before you. Fortunately, I am here with the blessing of my company to enlighten you of the burden that my family has endured over the past 3 years of service commitments.

I ask you to remember the young widows and widowers who are at home caring for their young children who cannot be here before you. I ask you to remember the widows and widowers in the other States who cannot afford to be here before you. Your decisions make a difference in their lives.

As my children grow older and our lives change, so do our benefits. I continually need to seek out subject matter experts within the benefits arena on my own. Healthcare, education, Social Security, survivor's benefit annuities, and dependence indemnity compensation all have different requirements that need to be met.

Legislative actions on benefits continue to influence entitlements. Tracking these changes is time consuming and tedious as the information and experts in the field currently are compartmentalized and geographically dispersed.

I work a full-time job and raise my two small children. This has not left me much time to track down the exact person I need to talk to. And to make a note on what these people have said, those civilians in those jobs are generally rude and inadequate and untrained.

Gold Star Wives of America has been a source of support and information beyond anything I have received thus far. The ladies volunteer their time and efforts into educating me on the process that forever lies ahead of me as a widow.

I firmly stand behind and support Gold Star Wives' request that regional survivor's offices be established to meet the needs of military survivors during and more importantly after the casualty assistance officer has finished their duties.

This office would provide oversight to policy issues of survivors, provide transitional assistance, legislative feedback, and act as a main coordinator between the Department of Defense and Department of Veterans Affairs. This is a key component to ensuring the commitment to our servicemembers that their families will be taken care of.

As a servicemember entering military service, nowhere are you told that your family will have to fight to receive the adequate benefits upon which they are entitled in the event of your death. Families plan for financial stability in the event of tragedy based on your promise that they will be taken care of. And, yet, I testify be-

fore you here today as an example that this has not happened to the full extent.

I implore our leadership to immediately cease the DIC offset to SBP for all widows and widowers with no restraints on time of service or rank.

I thank the Subcommittee for using this hearing as one more avenue of awareness and education and for giving me an opportunity to share my thoughts and experiences as a Gold Star Wife. I will be happy to work with you further on any initiatives and thank you for your time and consideration.

[The statement of Mrs. Hazelgrove appears on p. 50.]

Mr. HALL. Thank you, Mrs. Hazelgrove. And thank you to the Gold Star Wives of America and to your representation of them.

I want to mention that we had requested the President of Gold Star Mothers of New York State to join us and she was unable to do that today. But you just gave us some powerful, direct, and emotional perspective on the difficulty of navigating this bureaucratic system that is supposed to be helping you and helping other survivors and families of those who have given their lives for our country.

And I would say to you as well as to all of the witnesses once again that an apology is due and as the Chairman of this Subcommittee, I am offering mine.

I wanted to ask Mrs. Hazelgrove since we just heard your testimony how would you best consolidate or streamline the benefit process for survivors considering that there are so many different benefits, processes, and forms to try to understand?

I mean, I guess that not offsetting one benefit against the other is your first priority that you would suggest, but beyond that, how would you suggest that we consolidate the benefit process?

Mrs. HAZELGROVE. Well, Chairman Hall, to answer your question, going through the experience myself, there definitely needs to be an office established, a regional office with oversight to the active military components who are handling the cases initially.

And why I say that is because within that 6 months, the military components do a good job for the most part. You will find that there are very few cases in which that did not happen, but they do do a good job. The casualty officers do a good job. There is still more training that needs to be done as well as outreach from survivors such as myself who are willing to participate in that office.

The streamlining process will come in with that office that has the oversight ability. They will oversee the initial casualty case. They will watch the transition process. And when that family more importantly moves away from the active-duty military component, and it does not necessarily apply to the National Guards and Reserves because generally they are at their home station where they prefer to be, but we move away. We do not generally stay in the active-duty world which again raises our costs.

Those regional offices can take oversight of our transition and when a family moves into an area, that regional office becomes responsible for that case.

As an example, my husband's casualty and his case was handled at Fort Drum, New York. If you were to call to Fort Drum, New York's Casualty Assistance Office at this moment, it was like it

never happened. There is no trail of paperwork. People would not even know what you are asking about. It has been over 3 years.

I, as a grieving spouse, am supposed to have my wits about me to keep copies of all this paperwork, to understand that process fully when it is happening to me. Now, I am a very together person. I do command attention and I give orders. However, I do not remember a single thing that was said to me within the first few months that I was going through that and I really thought I had it together.

A regional office would have helped me with that. I could have gone to that person for legislative information, benefits information instead of wasting my time tracking down the RSOs within those active components, the Retirement Services Office, who do not even know what my benefits are and cannot help me fill out that paperwork.

Mr. HALL. Thank you, Mrs. Hazelgrove. Excuse me for cutting you off, but I am trying to stay to 5 minutes here.

And I wanted to ask Mr. Heavrin would you favor legislation that would require that a biological child of a servicemember receive a percentage of the SGLI regardless of what the servicemember states on his or her insurance form?

Mr. HEAVRIN. I would support such legislation, yes, sir.

Mr. HALL. OK. And, Ms. Jaenke, I wanted to ask you what help has been provided to you in navigating and completing the paperwork that you have needed to do for benefits to be received?

Ms. JAENKE. Nancy Trempi is our ombudsman for MN Seabee 25. She was extremely instrumental in helping me with everything. Without her, I would have been nowhere. She guided me through everything that I did. She told me about keeping a notebook by my phone. She helped me when I did not have money to buy a new washer and dryer. She did everything she could for me. She cried tears with me. That ombudsman for me was one of the key things.

My CACO was amazing. Chief Erdman from the Des Moines office was amazing. But without Trempi, that ombudsman—

Mr. HALL. So would you suggest we need more ombudsmen or women?

Ms. JAENKE. Yeah. The ombudsman really works well if they are willing to work. And Nancy Trempi is a 24/7 worker.

Mr. HALL. Thank you. And I am sorry. I just want to rush through because I see the yellow light on here and I am trying to set a good example for the rest of the Subcommittee.

I wanted to ask Mrs. Clark how much of the VA paperwork that you completed was duplicative of other information? How much time, how many different forms do you think you spent filling out to finally get through and start getting benefits?

Mrs. CLARK. How many forms?

Mr. HALL. Right. How much duplication of information on the forms you had to fill out?

Mrs. CLARK. Very much duplication and I went through the same process as this lady down here said. I would send them forms and they would say I am sorry, we never got the forms. As I had stated to you, I have probably turned in over 400 pages of documentation just trying to get benefits for Mr. Clark.



Mr. HALL. Were any of them able to be filed electronically or are they all actual paperwork?

Mrs. CLARK. Very few of them could be electronic and even electronic, I would get a call from the Department of Veterans Affairs going I am sorry, we never received that information.

So I had to go to the expense of going to the post office, paying for faxes which are \$2 each, plus a \$1 per page after that, and register return receipt mail to ensure that, in fact, someone did receive that information.

Mr. HALL. Thank you very much.

And my time is expired. I will now recognize Ranking Member Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman.

Every one of these witnesses has spoken forcefully and persuasively and at this time, I have no further questions.

Mr. HALL. Thank you, Mr. Lamborn.

Mr. Hare.

Mr. HARE. Thank you, Mr. Chairman.

It is mind boggling that we have hearing after hearing here, Mr. Chairman, and we continue, you know, there is a common theme, the burden of proof always seems to be upon the veteran or upon the veteran's spouse. And I know I have had all I can take of that. And I think we really need to be very proactive in terms of being able to do things for our veterans and for their families.

I wanted to ask you, Mrs. Clark, you were talking about your husband's post-traumatic stress claim? Are you still going through that process despite all of this?

Mrs. CLARK. Still going through that process since the '80s.

Mr. HARE. Since when?

Mrs. CLARK. Since the '80s.

Mr. HARE. And, yet, you said he has documentation from the VA hospital stating that his main diagnosis is PTSD?

Mrs. CLARK. That is correct.

Mr. HARE. So from their perspective, can you tell me what the holdup is?

Mrs. CLARK. I am sorry. I could not hear you because of the buzzer.

Mr. HARE. I guess what I am asking is, I am having a very difficult time understanding why the VA has not ruled favorably in your husband's claim.

Mrs. CLARK. The PTSD claim?

Mr. HARE. Uh-huh.

Mrs. CLARK. It is simple. First, they say we do not have enough information. Second, they said that he does not have all of the stressors which I told you were combat related at one time. He unfortunately took part in assassinations.

And now the new stressors that have come up which my husband has all of, heart disease, peripheral artery disease. He has strokes. Those are the new stressors. The old ones were the combat-related issues and because he does not have certain medals, but what are those medals worth?

And Mr. Clark's time, I cannot stress enough to you, he has been given 6- to 8-months to live and I have just recently found out he has more cancer. He is not going to see that 6 to 8 months. And

he has been fighting since the '80s. So you tell me. What is the problem when we have the paperwork and it has been presented?

Mr. HARE. Well, I will tell you, Mrs. Clark, I think the problem is you have a VA that is out of touch with reality. That is one thing. And I would think it is a bureaucracy that for the life of me again does not err on the side of the veteran. And we are quick to put people in harm's way and very slow, it seems to me, to be able to do anything to help that veteran or their family. It is inexcusable.

I just wanted to say to you, I know I do not come from your State, but I would be interested in helping you with that claim. I do not know if you have talked to your Member, but, from my perspective, and maybe perhaps after the hearing, if I could talk to you about it, we could see what we could do to move it along. But it should never come to that.

Mrs. CLARK. I would appreciate that very much, sir.

Mr. HARE. Not a problem.

Ms. Hazelgrove, you talked about, and I think this is a really important thing, in creating that office. And what do you see that office doing if you could elaborate just a little bit?

You talked about dedicated to the military survivor. You have a unique perspective from both sides, so the establishment of that office, I think it is a wonderful idea. I would be willing to work with your organization and you to do that. Could you expand a little bit on what you see that doing?

Mrs. HAZELGROVE. What I see it doing is really streamlining the process and it will take care of a lot of the gaps that we have in the education and the training of these personnel instead of throwing people who do not have a lot of military experience and are not familiar with all of the programs and services within the different military components that can help the casualty's family.

So it will bring a much more broader wealth of experience and education to the platform as well as keeping the families within their respective regions after the active-duty families have relocated and the National Guard and the Reserve's family are staying in that area, it will help those families have that continuity of service to get legislative updates.

It will be an office in which I as a mother can go to and say please help me, my children are now 16, we are looking at college. And by the way, they are only 3 and 6 right now and my step-children are 13 and 14. I am not worried about education. But in time, I will be very worried about education and how is that going to change between now and then?

I have to right now go research the process, find the appropriate people, and it is DoD, it is also VA, and it is also State dependent. So I have to look at three different separate areas to find out what my children's education entitlements are and the time lines and how it has changed over the years. So it will really help with that continuity of service.

Mr. HARE. I would be again honored, and I would say to the Chairman I think this would be something that this Subcommittee and the full Committee would look at because I think it is a tremendous idea. I think it would be a wonderful help to people when they need the help the most.

And so, whatever we can do and perhaps even after the panel is adjourned if we could talk about that too. I know I am making extra work for my staff, but that is why I have got them. So I would be happy to talk to you about that.

I do not know if there is anything pending, is there, Mr. Chairman, on this?

Mr. HALL. Not yet.

Mr. HARE. There will be.

Mr. HALL. But there will be.

Mr. HARE. Thank you very much. I yield back.

Mr. HALL. And I would encourage you to talk to your Member of Congress and also, as Mr. Hare said, one of the main things that we do in terms of in our district constituent services is assisting veterans and helping veterans' claims get moved through the system. So, perhaps, if you have not already, going through your member of Congress may be an additional aid.

And at this point, the Chair will recognize the gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. Thank you so much for holding this hearing.

Susan, I wanted to ask you a question. As far as the gratuity, you have no access to it at this point; is that correct?

Ms. JAENKE. That is correct.

Mr. BILIRAKIS. Did your daughter name a beneficiary on the gratuity? Can you put the microphone on? I am sorry. Thank you.

Ms. Jaenke. Me.

Mr. BILIRAKIS. You.

Ms. JAENKE. Yes.

Mr. BILIRAKIS. And you have no access to it?

Ms. JAENKE. No.

Mr. BILIRAKIS. And what explanation did you get from the VA of why you do not have access?

Ms. JAENKE. When Chief Erdman told me about the \$100,000 and that it was left to me, he says there is a clause in there that says unless there is a spouse or child. He said that has to go into a trust fund then for Kayla.

And at that point, I told him I could not understand that because, after all, it had my name on it and along with a letter that she had sent me telling me exactly what she wanted me to do if something had happened to her.

Chief Erdman told me at that time that that \$100,000 had to go in her trust. There was no ifs, ands, or buts about it. And I said what if I fight it. Well, he said I already talked to somebody in Millington and the lady in Millington said that it had to go in a trust fund which, of course, I cannot touch because nobody could ever win against this. This was something that was unwinnable.

So the \$100,000 went in there. If it had not been for people, strangers that I do not even know that had sent us money over the past 10 months, I would have lost my house. I was 2 weeks away from losing my house. It was strangers that helped me, not my government, and that really does hurt the worst of everything, you know.

My daughter served her country well. She loved the Navy. She loved the Seabees. But it was not my government that helped me. It was strangers. And that did hurt.

Mr. BILIRAKIS. Yeah. It is so unfair, so unfair. I wanted to ask you a question. Are you the legal guardian?

Ms. JAENKE. Yes, I am.

Mr. BILIRAKIS. You are the legal guardian?

Ms. JAENKE. Yes, I am the legal guardian of Kayla.

Mr. BILIRAKIS. And you still have no access to that?

Ms. JAENKE. No.

Mr. BILIRAKIS. Very unfair, Mr. Chairman. We need to do something about that.

Thank you very much, Susan.

Ms. JAENKE. Yes.

Mr. HALL. Thank you, Congressman. I agree, Mr. Bilirakis, with what you just said.

And the Chair will now recognize the Honorable Ms. Berkley.

#### **OPENING STATEMENT OF HON. SHELLEY BERKLEY**

Ms. BERKLEY. Thank you, Mr. Chairman. And I along with the other Members of the Subcommittee thank you for holding these hearings.

But I particularly want to thank our witnesses. I have been a Member of Congress for 8 years now, going on 9. I cannot recall in the entire 9 years that I have served more eloquent and more important testimony than I have heard today. And each and every one of you has provided us very important information that we need to have in order to do our jobs and do our jobs appropriately.

It seems that the longer I serve in Congress, the more disillusioned I become of our government. This to me, when I sit here and I listen to each and every one of you, I cannot believe that these problems have not been remedied years ago and here we are listening to you sharing with us things that we have already heard are occurring.

And I will pledge to you along with our Chairman's apology, which I think is always important to hear, let us apologize to you by taking care of the problems that you are experiencing. And I think that is the best apology that we can make to each and every one of you.

And I am sorry for your losses. I am sorry for your sacrifices to this Nation. But more importantly I am sorry that our government has not responded in an appropriate way that would make all of us proud instead of ashamed. And I will work with the Members of this Committee and with all of you to ensure that this does not happen to future generations of our service men and women and their families.

And I thank you again for being here.

Mr. HALL. Thank you, Congresswoman.

I would just also add my thanks once again and especially thanks to Kayla for being here. And rest assured we heard you and we will do our best to take whatever action we can to make the road smoother for you and for those who are following after you and experiencing similar problems.

Thanks for being here and testifying. Panel two is now excused.

[Two news articles, "The Forgotten Families: Grandparents Raising Slain Soldiers' Children Are Denied a Government Benefit Intended to Sustain the Bereaved," The Washington Post, February 16, 2007, by Donna St. George, and "Help Needed: Grandparents Raising the Children of Fallen Soldiers," AARP Bulletin, April 2007, by Carole Fleck were submitted by the witnesses and are included in the record, which appear in the Appendix.]

Mr. HALL. And we will move to panel three. Rose Lee, the Chair of the Government Relations Committee of Gold Star Wives of America; Patricia Montes Barron, Deputy Director of Government Relations for National Military Families Association; and Christine Cote, Staff Attorney for the National Veterans Legal Services Program.

Thank you for joining us, and we have Members coming and going for activities on the floor or other Committee meetings, but we are going to forge ahead.

First, the Chair would like to thank you all again and recognize Ms. Rose Elizabeth Lee representing the Gold Star Wives of America.

**STATEMENTS OF ROSE ELIZABETH LEE, CHAIR, GOVERNMENT RELATIONS COMMITTEE, GOLD STAR WIVES OF AMERICA, INC. (WIDOW); PATRICIA MONTES BARRON, DEPUTY DIRECTOR, GOVERNMENT RELATIONS, NATIONAL MILITARY FAMILIES ASSOCIATION; AND CHRISTINE COTE, STAFF ATTORNEY, NATIONAL VETERANS LEGAL SERVICES PROGRAM**

**STATEMENT OF ROSE ELIZABETH LEE**

Ms. LEE. Thank you, sir.

First of all, I would like to say my heart goes out to the personal testimonies that I heard just a few moments ago. It was heartwrenching to say the least.

Mr. Chairman, Representative Lamborn, and Members of the House Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee, I would like to thank you for the opportunity to testify before you today on behalf of all Gold Star Wives regarding the importance of addressing critical services for America's military widows and their children.

My name is Rose Lee. I am a widow and I am here before you as the Chair of the Gold Star Wives Committee on Government Relations.

In my testimony, I will respond to your request for our views on helping those left behind. Are we doing enough for the grandparents, spouses, and children of veterans?

In doing so, I will present to you the collective goals of Gold Star Wives with the hopes that they will alert you to certain discrepancies and inefficiencies that you may be able to alleviate in your deliberations this year.

I do want to thank the Members of the Subcommittee and the staff for your continued support of programs that directly support the well-being of our servicemembers, widows, and their families.

Let me be clear, however, from the start. We are not doing enough. We are unmistakably in a time of war. Warriors are dying and leaving behind young families. If there is one message I would

leave with you today it is that there is never enough good communication.

The casualty assistance officers and casualty assistance call officers have a difficult mission in a difficult time. They act to assist survivors, from the death notification to assistance with coordinating funeral arrangements, to applying for benefits and entitlements. They do a valiant job, but they are not trained enough to be the subject matter expert for the benefits and entitlements managed by the VA or the Department of Defense.

Getting the right information to the right people at the right time is important. Getting the right benefit is important as well. There are gaps in the benefits for survivors that we have called for corrective action over time. If we are serious about addressing the question, "are we doing enough," then it is time to respond to these issues where we clearly fall short of "enough."

The survivor benefit plan, the acronym SBP, annuity payments are still offset dollar for dollar by the veterans' dependency and indemnity compensation, the DIC benefits. This offset is wrong. It should be eliminated. The SBP was meant to provide income protection for survivors.

We recognize you must act with your colleagues on the Committee on Armed Services on this issue. All we seek is equity with Federal civilian workers. Federal retired annuitants and their survivors receive their benefit without offset of VA benefits. The military benefits should be similar.

The current law allows for surviving spouses who remarry after age 57 to retain their VA DIC survivor benefit. For those who remarried before the law was enacted, there was a 1-year period to apply for reinstatement. Communication in the form of outreach was lacking during the retroactive period.

Therefore, we request two changes to the law. A, allow survivors to retain DIC on remarriage at age 55 in order to bring this benefit in line with rules for SBP and other Federal survivor programs. And, B, open up the reinstatement period with renewed outreach efforts to make survivors aware of their eligibility.

There is a grievous oversight concerning the \$250 child DIC. The program evaluation of benefits study recommended that surviving spouses with dependent children receive the \$250 for 5 years instead of 2 years and that amount should be indexed to inflation to avoid a devaluation of the benefit. Unfortunately, those receiving the \$250 child DIC are not receiving it for 5 years and are not receiving even a small \$10 cost-of-living adjustment.

CHAMPVA, the Civilian Health and Medical Program of the Department of Veterans Affairs, currently does not carry with it a dental plan. In order to increase beneficiaries' access to dental care at a reasonable cost, Gold Star Wives seek for widows and all CHAMPVA beneficiaries the ability to purchase a voluntary dental insurance plan. It may be similar to the model of the TRICARE program for military service retirees for dental care in which the payment of premiums for services is completely funded by the enrollee. This would require a modification to Title 38, Chapter 53.

We would like to begin the process of reviewing how the DIC rate is established which is currently a flat rate. The SBP is calculated at 55 percent of retired pay. We recommend that the DIC be cal-

culated in a similar manner, at 55 percent of the disabled veteran's 100 percent disability compensation amount which will provide more equitable compensation to our survivors. Currently DIC is 41 percent of the 100 percent disability compensation rate. We firmly believe that an office should be established that would provide oversight to the policy issues of survivors and be a transitional assistance to survivors and the main coordinator between the Department of Defense and the Department of Veterans Affairs. Without such an entity, widows are left to make their own way through a bureaucratic maze at a time in their life that could be no worse.

Complications arise in this current conflict because it presents issues that we had not had to deal with before in that there are National Guard Members whose families are not near a military installation and find it difficult to learn about their benefits and burial information and so forth.

There are other important issues that we have included in our written statement that we request your attention.

In conclusion, we do not want our widows forgotten whether they are experiencing their losses currently or whether they are Members of the so-called greatest generation and experienced their loss many years ago during World War II. When the ultimate sacrifice is given, there is a family left behind. Let us show the spirit of this Nation by not forgetting these widows whose numbers grow daily.

I regret if I show some frustration in this next remark. These are issues we have addressed to the Congress over many years before. We have faith that when you ask the question, "Have we done enough?" that you will, with determination, try to close the gap to "enough." It is time to move forward with these issues.

I thank the Subcommittee for using this hearing as one more avenue of awareness and education and for giving me an opportunity to share my thoughts and the goals of Gold Star Wives. We are happy to work with your Subcommittee on any of these initiatives. Thank you so much.

[The statement of Ms. Lee appears on p. 53.]

Mr. HALL. Thank you very much, Ms. Lee.

And the Chair will now recognize Patricia Barron. Push the button on your microphone, please.

#### **STATEMENT OF PATRICIA MONTES BARRON**

Ms. BARRON. Chairman Hall and distinguished Members of the Disability Assistance and Memorial Affairs Subcommittee, the National Military Families Association would like to thank you for the opportunity to present testimony today on whether we are indeed doing enough for the survivors of those who have sacrificed their lives in service to this Nation.

The families here today have eloquently raised the difficulties they have encountered in the awarding of survivor benefits to the children of single servicemembers. NMFA has always emphasized that servicemembers and families must understand there is a package of survivor benefits. More details can be found in our statement submitted for the record. But that gratuity was originally intended to act as a financial bridge to help with living expenses until other benefits such as the dependency and indemnity com-

pensation payment, the survivor benefit annuity, the Social Security benefits begin to be paid.

The servicemembers' group life insurance, as its name implies, is an insurance plan. The death gratuity is not an insurance payment even though its \$100,000 amount is bigger than many civilian life insurance payouts.

The law as it is currently written, the death gratuity must be awarded to the next of kin. When the beneficiary is a minor child, it would be placed in a trust for that child subject to State laws. The servicemember may designate multiple beneficiaries for the SGLI and there is no stipulation in the SGLI regarding the use of that money for any particular purpose.

It is of utmost importance, and I say that again, of utmost importance in light of increased value of the survivor benefits that the servicemember be informed about the difference between the death gratuity and the SGLI payment.

It is also important that servicemembers and their families discuss the implications and disposition of these payments prior to their deployment, especially when there is a minor child involved or when there are children from a prior marriage or relationship to consider. This is just absolutely imperative.

With the increased amount of the survivor benefits, it is incumbent upon single servicemembers with children or dual servicemember couples with children to create not only a family care plan but estate planning as well. That might seem a little odd when we are talking about young adults in our Nation's military, that they would have to go and do estate planning, but when we are talking about a sum of \$500,000, it is absolutely imperative that they pay attention to this before they leave, before they are deployed.

NMFA is concerned that the legal necessities of appointing a guardian for a minor child upon the death of their single servicemember parent may cause a delay in accessing the death gratuity at a time when a family may need this bridge payment the most.

Legislation to change the way the death gratuity is awarded must meet two goals, assist with immediate financial needs following the death of the servicemember and protecting the benefits due to the minor child.

NMFA would support legislation to allow designation of a servicemember's parent or sibling as the recipient of a portion of the death gratuity payment if there is a guarantee that payment would be used as that financial bridge for the minor child until other benefits are awarded, with the remainder being placed in trust for that child.

The protection of the financial future of the child is paramount. If the servicemember wants to provide for other family members, there are proper mechanisms to designate those family members as beneficiaries to the SGLI.

The VA provides a monthly transition benefit of \$250 for 2 years following the death of the servicemember for surviving spouses with children. NMFA would support the extension of this benefit to the guardians who are caring for the minor child of the deceased servicemembers.



NMFA believes the surviving children of single servicemembers who die on active duty require special protections to ensure the proper financial disposition of the enhanced survivor benefits.

NMFA asks Congress to provide the proper protections for the children if allowing a guardian to receive the death gratuity and to remember the original intent of the death gratuity payment was to serve as a financial bridge until the initiation of the payment of the survivor's benefits.

While survivors can never be fully prepared for the news their loved one has died in the line of duty, certain preparations can and should be made to assume casualty assistance is rendered and benefits are awarded quickly.

At this time, Mr. Chairman, I would like to thank you for recognizing the need to fix the DIC offset to the SBP and for the very real need of creating an Office of Survivors within the VA, combining both VA and DoD resources.

Talking about the what ifs is not pleasant, but preparation in this time of war is necessary. NMFA appreciates the responsiveness of the VA and DoD to surviving families when needs arise and their continued support. These families deserve no less for the sacrifice they have made for our Nation.

Again, Mr. Chairman, thank you for the opportunity to testify before you today, and I welcome your questions.

[The statement of Ms. Barron appears on p. 56.]

Mr. HALL. Thank you, Ms. Barron, for your very specific suggestions and written testimony and your oral testimony will be very helpful to this Subcommittee.

And now the Chair will recognize for her testimony Christine Cote, Staff Attorney of the National Veterans Legal Services Program.

#### STATEMENT OF CHRISTINE COTE

Ms. COTE. Good morning, Mr. Chairman, and members of the Subcommittee.

Mr. HALL. Good morning.

Ms. COTE. I am Christine Cote from the National Veterans Legal Services Program. I am a litigator for them.

I am here today to talk about what happens to a VA claim for benefits when the claimant dies during the claims adjudication process and to offer some NVLSP recommendations on some legislative changes that might improve this area of the law.

I am sure a lot of you are aware that if a person is seeking VA benefits and dies while the claim is pending before the regional office, the Board of Veterans Appeals, or the Court of Appeals for Veterans Claims, the Veterans Court, that claim dies with the claimant.

Congress has provided a limited opportunity for survivors to obtain the benefits that the veteran would have been entitled to at his death. But as I will describe, they are exceedingly limited.

NVLSP urges that qualifying survivors should be able to step into the shoes and continue the claim started by the deceased veteran or the deceased claimant because it is unduly harsh to require a survivor to file a brand-new claim. It is a brand-new claim for entitlement to accrued benefits. And the survivor has to file this

claim all the way back at the regional office level regardless of where the claim had progressed in the claims adjudication process.

So the claimant, the survivor, who is often elderly or infirm, has to start all over again, go to the back of the line, and this can add years to the VA claims process which is already a painfully slow one.

Another problem is that only very specific family members may qualify as claimants for accrued benefits purposes under the statute, 5121. If there is a surviving spouse, the surviving spouse may qualify as a claimant for accrued benefits. If there is no surviving spouse, the children can qualify as survivors for accrued benefits purposes but only if they are unmarried and under the age of 18 or under the age of 23 and enrolled in a course of study in higher education at the time of the grant of benefits.

This requirement is very harsh for the surviving children. We urge a change in this area. If a child was a qualifying child under the accrued benefits framework at any time during the pendency of the parent's claim for benefits, then that child should be permitted to qualify as a claimant for accrued benefits purposes. It is not fair to penalize the children because of the slow VA claims process. And we ask for a change in that area.

Another limitation is that there is a time limit for filing claims for accrued benefits. A survivor has to file this brand-new claim within 1 year of the veteran's death or the claimant's death. And this filing deadline is much too short.

Family members may not be knowledgeable about VA claims law and VA procedure, plus, more importantly, they are probably pre-occupied with funeral and burial issues and just the grieving process itself.

So we would suggest that something more in the line of 5 years or so, something that is more—five years or so from the date of the veteran's or the claimant's death would be a more realistic and a more fair deadline. We certainly would not want VA to be liable, ad infinitum, but something more fair. One year is just not a fair deadline for that.

Another limitation in these claims is that no new evidence may be provided, may be introduced for consideration by these survivors in an accrued benefits claim. It is our position that if a veteran or claimant who had this derivative claim and then died would have been able to submit the evidence that could establish his or her claim while he lived, the surviving family member should be able to introduce that favorable evidence as well.

So in that situation, survivors would be foreclosed from introducing evidence, even medical nexus evidence that could have served to show that the veteran was due benefits at the time of his death; surviving family members are not free to do that under the current structure.

Another limitation with which we take issue is the requirement in the accrued benefits statute that the derivative claim, the underlying claim, was one for periodic monetary benefits. The Court of Appeals for Veterans Claims (CAVC) has defined periodic monetary benefits as recurrent payments occurring at fixed intervals. So that would include monthly disability benefits and the like.

But a good example of why this does not work is the case Pappalardo v. Brown, in which the benefits court had no choice but to deny reimbursement for a specially adapted housing reimbursement payment.

The 20-year service-connected veteran has lost the use of both legs. He had worked with the Boston regional office to make sure that the plans to modify the house passed muster and he died during the pendency of his claim for reimbursement. And it was too bad the family had already paid the money and because of this requirement of periodic monetary benefits, the family could not collect. That is not fair. We urge that 5121 be modified in that area. If a family has already borne the financial burden, then the family should be reimbursed for that cost.

And, finally, I just do want to highlight the case of Padgett v. Nicholson. The Federal Circuit last month carved out a very narrow exception to the general rule that a claim dies with the claimant.

For 12 years, Mr. Padgett, who was a World War II combat veteran, he had been service connected back in 1945 for a leg disability, was seeking service connection for a related hip disability.

So he battled the RO and appealed to the Board. It went from the Board to the RO, back to the Board, up to the Court of Appeals for Veterans Claims, back down to the Board, and finally 12 years later it made it back up to the court, briefs were filed, went to oral argument, supplemental briefing happened.

It was finally submitted to the court for full decision in September of 2004. In April 2005, we were pleased as punch when the court reversed the Board's denial as clearly erroneous, which would have meant a full grant of benefits. The trouble was that Mr. Padgett has passed away in November 2004.

VA immediately moved to have the favorable decision dismissed, rescinded, and we moved to have Mrs. Padgett substituted as a party to the appeal. CAVC, bound by this rule that the claim dies with the claimant, dismissed the appeal.

We took it to the Federal Circuit. The Federal Circuit has this limited exception now where: the veteran or the other claimant had appealed his claim to the CAVC; where all briefs were filed; where there was nothing left to do but issue a decision; and where there was an identifiable survivor for accrued benefits purposes, the CAVC would not be forced to remove the decision from the books making it retroactive to the date of the veteran's death, nun tunc, and the survivor could substitute.

So it is great for Mrs. Padgett, but a lot of survivors would not be able to fit into this very limited exception and we would urge that qualifying survivors be able to keep the claim going if they choose to do so.

And I see I have gone over and I apologize.

[The statement of Ms. Cote appears on p. 60.]

Mr. HALL. Thank you very much for your testimony. That is the most unfortunate record, out of the many tales, many stories that I have heard, that we have heard in testimony before this Subcommittee. So far for me 12 years I think is a record. And it is unfortunate whenever the recipient passes away before the claim is granted.

And it actually reminds me a little bit of what many people say about the private insurance industry, health insurance industry, which is that they are looking to deny, deny, deny as long as they can because that way they hold on to the money as long as possible.

And during that time, people die or those with the least education, the least persistence, the least means to hire attorneys or to put their lives aside to keep pursuing a case or pursuing a reimbursement give up or those of an older generation who are used to listening to an authority figure and going, gee, I guess they told me that I am not covered, I guess I am not covered.

I hear that in the private insurance field, it is somewhere around 50 percent of those who are initially denied a claim for health insurance coverage just go away and pay it and that that is a wind-fall that is currently accruing to all of the health insurance companies.

I am ashamed to think, and dread to think, that our VA might be following a similar policy. But all of your stories and those of the other panelists lead me to believe that there may be a systematic attempt to pay late, to underpay, to avoid paying what the full disability may warrant.

I just wanted to ask a couple of quick questions. Ms. Barron, how would you address the issue of a mother or father who leaves SGLI to a spouse mistakenly believing that the spouse would take care of his or her child from a prior relationship? The spouse does not take care of the child and has no legal responsibility to do so. Should Congress get involved and, if so, how in resolving this issue?

Ms. BARRON. I think your first line of defense would be the actual deployment briefs that the servicemember attends prior to deployment and that is where I was talking about the estate planning.

The misconceptions that are out there among our servicemembers, they do not fully understand their benefits. They do not fully understand the package of benefits and what goes to whom.

I think if you made that very clear and you somehow enforced that estate planning just as you enforce a family care plan before they are allowed to deploy, I think you would see some success with that. It really is a matter of explaining what the benefit package is and making sure that they are adequately addressing the needs of their children.

Mr. HALL. And could I ask you also are survivors offered formal financial services counseling to include benefits counseling in any part of their survivor benefit process?

Ms. BARRON. If I am not mistaken, I think financial counseling is available through the VA, but I can get back to you on that.

Mr. HALL. OK. Any other panelists want to comment on that? In your experience, is there financial counseling provided as part of survivor benefit process?

Ms. LEE. Chairman Hall, there are facilities available through the VA. They have the vet centers and they do provide counseling, all kinds of counseling, counseling for PTSD, and I believe they would also take care of financial counseling as well.

And I think the Department of Defense has recently improved some of their offices' services and financial counseling is going to be one of them as well.

Mr. HALL. Thank you, Mrs. Lee.

Could I also ask you, based upon the survivors you have been in contact with, what percentage are affected by the SBP DIC offset?

Ms. LEE. Well, I think there is probably about 61,000 total. The ones whose husbands did pay into it, they had to be eligible for retirement. And those who did retire of disabilities and when he dies, his widow is also eligible for DIC.

And by the way, SBP is an optional premium-based insurance type program. Not everyone buys into it. But those who do buy into it, they have this offset because they also receive the DIC.

The new widows, I might say those who are from the current war since 9/11, are given the SBP without having to serve at least 20 years. Obviously most of them are much too young to have served 20 years.

But there was a law that has passed since 9/11 that permits these new widows to also be eligible for SBP. And, of course, since their husbands died, then their SBP is offset and oftentimes it is offset completely because of the lower grade or rank of the soldier who died.

Mr. HALL. Thank you, Mrs. Lee.

And, Ms. Cote, would you support legislation that permitted spouses and children to pursue claims after the veteran has died and why or why not?

Ms. COTE. Certainly. I think the biggest problem with this whole—and it is not just a problem for the survivors, it is an undue burden on VA as well. You can have a claim that has been developed and adjudicated and moved on. Would it not make more sense for the agency even from an efficiency standpoint to just continue the claim, keep developing evidence as you would if the survivors want to do that?

Maybe it is my economics background, but it just seems like that is the most logical course. And if the families want to choose that route, why would you not? I mean, first there was one claim that progressed through the adjudication process. All of a sudden, you start all over again from scratch back down at the regional office level. It just does not make any sense. So certainly we would support that.

Mr. HALL. Thank you very much.

And my time has been unfortunately consumed, and we are now going to ask our Counsel for the Minority to ask questions on behalf of Mr. Lamborn, who had to go to his other duties.

Mr. PHILLIPS. Thank you, Mr. Chairman.

On behalf of Mr. Lamborn, ladies, thank you for being here, and all of our panelists, thank you for being here today.

This question is for Mrs. Lee and, Rose, good to see you today. This question was going to be posed by Mr. Bilirakis, who cannot be here, but he wanted me to ask. He was pleased to see in your written testimony that the Gold Star Wives support legislation that would allow the surviving spouses of veterans to remarry after age 55 and retain their DIC benefits.

As you know, Mr. Bilirakis introduced House Resolution 704, which would achieve this important legislative goal. If House Resolution 704 were enacted, do you have an estimate on how many surviving spouses might want to take advantage of the reduction in age and remarry at age 55 instead of age 57 as current law allows?

Ms. LEE. Well, no, I do not have an estimate, I am sorry to say, but we do constantly get letters from various Members who ask when is this going to pass. But I am sorry I do not have an estimate of how many.

Mr. PHILLIPS. But you certainly have—

Ms. LEE. We do have some, right, right, right.

Mr. PHILLIPS. Thank you.

Mr. Chairman, one more question if I may.

Mr. HALL. Mr. Phillips, go ahead.

Mr. PHILLIPS. And this is for any one of our panelists. We have today heard testimony about a grossly disappointing lack of responsiveness and sheer courtesy from government personnel who are supposed to help.

Aside from matters of just an equitable compensation, do the people you have interacted with at VA or DoD or any other department truly act as if they want to help and are focused on your needs? In other words, is there an attitude among them of service and stewardship?

Ms. BARRON. I will go ahead and try to answer that question. I do feel strongly that DoD and VA, the overall impression is that they do really want to help. There is no one out there that wakes up every morning and says today I am really going to make someone's day bad.

But as information trickles down and you go to I would say the soldiers of those two agencies that deal with family members, you do not always get the proper type of responses. You do not get the type of attitude that you would like to see.

And I see this as an active-duty spouse myself, I see this in a lot of different areas, not just dealing with the kinds of issues that we are dealing here.

So I think part of the problem again is that our tempo is incredibly high. We are going full speed ahead in a lot of different directions. And that includes the people that work for the DoD and VA as well. So someone has to stop for a minute and remind themselves or the people that they work with that these are special people out there that deserve special treatment.

Mr. PHILLIPS. Thank you very much.

Thank you, Mr. Chairman.

Mr. HALL. Thank you, Mr. Phillips.

And I want to thank our three panelists very much for your testimony. And I will add my voice to those other Members of the Subcommittee who are aghast that we are so good at starting a war and sending our men and women in uniform out and they do such a fantastic job when it is asked of them, but when they come home, they and their families are not handled with that same efficiency and competence and, frankly, with the respect that they are due in getting them all the help and assistance that they need.

So we are going to work very hard to try to improve this process. And this panel is now excused. Thank you for being here.

And we will call our fourth panel, which consists of Jack McCoy, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration of the U.S. Department of Veterans Affairs; accompanied by Director Thomas M. Lastowka, I presume I am putting the right emphasis on the right syllable, Mr. Lastowka, Director of the Philadelphia Regional Office and Insurance Center, Veterans Benefits Administration, the U.S. Department of Veterans Affairs.

Thank you for your patience and for being with us throughout this morning's hearing. And the Chair will now recognize Mr. McCoy for his testimony. Good morning.

**STATEMENT OF JACK MCCOY, ASSOCIATE DEPUTY UNDER SECRETARY FOR POLICY AND PROGRAM MANAGEMENT, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY THOMAS M. LASTOWKA, DIRECTOR, PHILADELPHIA REGIONAL OFFICE AND INSURANCE CENTER, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS**

Mr. MCCOY. Thank you. Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the important issue of survivor benefits. Providing benefits for the surviving family members of our veterans is one of the core responsibilities of the Department of Veterans Affairs. I am pleased to be accompanied by Mr. Thomas Lastowka, Director of VA's Philadelphia Regional Office and Insurance Center.

VA provides a wide range of benefits to the surviving spouses, dependent children, and dependent parents of deceased servicemembers and veterans. We have experienced counselors ready to help survivors to understand the benefits to which they may be entitled and to assist them in filing claims.

Veterans Benefits Administration casualty assistance officers positioned at each VA Regional Office work closely with military casualty assistance officers. They visit survivors of servicemembers who die on active duty at a time appropriate for the family and assist them in applying for all benefits.

Dependency and indemnity compensation is paid to the surviving spouse, children, and parents of a servicemember who died in the line of duty in active service or a veteran who died after service as a result of a service-connected or compensable disability.

We are currently paying this benefit to 328,000 survivors. The DIC application has been streamlined for in-service deaths through the use of a special worksheet and claims processing has been centralized to the VA Regional Office in Philadelphia. The goal is to process all in-service death claims within 48 hours of receipt of all required documents.

Surviving spouses currently receive \$1,067 a month with additional amounts payable for children under the age of 18 or if the surviving spouse is in need of regular aid and attendance.

A surviving spouse who has a child or children under age 18 and receives DIC is also entitled to a transitional benefit of \$250 per month. The surviving spouse receives this additional benefit for 2

years after entitlement to DIC begins or until all of the surviving children have reached 18 years of age, whichever is earlier. Surviving spouses may continue to receive DIC benefits upon remarriage if the remarriage takes place after the spouse's 57th birthday.

VA also pays DIC benefits to parents of deceased veterans if the parents' income is below a certain amount. The maximum rate currently payable to a sole surviving parent is \$524 per month. If a sole surviving parent is in need of aid and attendance to perform daily activities such as bathing, dressing, or eating, an additional amount is payable. The maximum monthly benefit in these cases is \$808 per month.

If a veteran's survivors do not qualify for DIC because the veteran did not die in the line of duty in active service or after service as a result of a service-connected or compensable disability or was not totally disabled by a service-connected disability at the time of death, they still may be entitled to death pension. Eligibility for pension is based on financial need.

The general requirement for this benefit is that the veteran had served at least 90 days in active service with at least one of those days occurring during a period of war or at the time of death was entitled to receive compensation or retirement pay for a service-connected disability.

The Dependents Education Assistance Program provides up to 45 months of educational benefits to surviving spouses and dependent children of servicemembers who died on active duty or veterans who died or became permanently and totally disabled as the result of a service-connected disability.

The Dependents Education Assistance Program was recently expanded to include the child or spouse of a servicemember who was hospitalized or receiving outpatient treatment for a permanent and total disability. This change was effective December 23d of 2006.

VA is authorized to pay up to \$2,000 toward burial and funeral expenses in cases of service-connected deaths. Veterans Administration administered and supervised life insurance programs provide over \$1.1 trillion of coverage to nearly 7.3 million veteran servicemembers and their families. In fiscal year 2006, the VA life insurance programs paid \$2.3 billion in death benefits to nearly 144,000 beneficiaries.

Servicemembers' group life insurance covers active-duty servicemembers and Reservists, including the Coast Guard and uniformed Members of the Public Health Service and the National Oceanic and Atmospheric Administration. The servicemembers' group life insurance participation rate is 98 percent for active-duty servicemembers and 92 percent for Reservists.

An analysis of the beneficiaries who have received payment under the service group life insurance program indicates that 42 percent of beneficiaries are parents, 28 percent are spouses, 10 percent are children, and 10 percent are siblings.

Mr. Chairman, this completes my statement. We will be happy to answer any questions you or other Members of the Subcommittee may have.

[The statement of Mr. McCoy appears on p. 64.]

Mr. HALL. Thank you, sir.



And we have a statement for the record from Congressman Solomon Ortiz which will be added to the record.

Mr. Lastowka, are you here to answer questions or would you like to make a statement also?

Mr. LASTOWKA. I am here to help Jack with questions.

Mr. HALL. Okay. Great. Just checking.

All right. So thank you very much for your testimony, Mr. McCoy. And my thanks to you and to everybody at the VA who I know are working very hard and trying to cope with the need to do so much with what seems like less all the time.

What percentage of in-service death claims achieve the goal of a 48-hour processing time and how long does it take after processing to communicate results back to the survivor?

Mr. MCCOY. Ninety percent of those claims that we receive with all the documentation are processed within 48 hours. And I believe the notification to the beneficiary is immediate, mail time.

Mr. HALL. So it is 90 percent as long as all the documentation is there?

Mr. MCCOY. Yes, sir.

Mr. HALL. What changes can and should be made to the current process of administering benefits for survivors in your opinion?

Mr. MCCOY. I think we strive to and I think we can always do better on outreach. I think we heard a number of times today that one of the things that beneficiaries complain about is the fact that they are not notified timely or they do not know what benefits they are entitled to. So we are striving to do that.

We have created very recently a new Web site for beneficiaries that literally can walk you through what you actually need to do to file a claim for death benefits. And, of course, we take over ten million phone calls a year. We do have trained counselors at all of our regional offices to help someone file a claim.

Mr. HALL. You just listed off a dozen or so benefits for survivors. Is there separate paperwork required for each benefit, SGLI, DIC, SBP, and so forth? Could these be consolidated as suggested by Amy Clark into an initial packet?

Mr. MCCOY. I do not believe it could. The one reason that comes to mind is that, so often, the benefits are applied for at different times. Someone who comes in to apply for education benefits might not apply at the same time for DIC benefits.

Mr. HALL. OK. And how many survivors approximately take advantage of the beneficiary financial counseling service? Has there been an upward trend since 1999 and how much is spent on education and outreach for this program?

Mr. MCCOY. I will ask Tom to address that.

Mr. LASTOWKA. And if I could interject something quickly, sir.

Mr. HALL. While you are crunching numbers, I will ask Mr. McCoy while you are looking that up if you have an opinion on House Resolution 67, which would enable States to help with the outreach. Are you familiar with the bill that is in the Subcommittee?

Mr. MCCOY. Yes, sir. I personally think it is something that has to be looked at very closely. If I am on the right subject, we are talking about the States who would develop claims. This would not—

Mr. HALL. This is for helping with outreach.

Mr. MCCOY. For helping with outreach?

Mr. HALL. For States to help with outreach.

Mr. MCCOY. States do that now. County Service Officers, State Departments of Veteran Affairs, they all help us with outreach. We work very closely with them to do outreach.

Mr. HALL. This is \$25 million, approximately one dollar for each veteran.

Mr. MCCOY. I guess I would say I would want to know more about it.

Mr. HALL. About where that goes?

Mr. MCCOY. How that money is going to be distributed and to whom.

Mr. HALL. OK. And then did the Blackberry or calculator come up with its—

Mr. LASTOWKA. Yes, sir. I am sorry, sir. I was checking that. I thought I had that information.

Mr. HALL. Maybe you could just get that information to the Subcommittee if you could, please, how many survivors are taking advantage of the beneficiary financial counseling service, has there been an upward trend since 1999, and how much is spent by the VA on education and outreach for this program. This is information we would like to have at whatever time you could get it to us.

[The following was subsequently received from the U.S. Department of Veterans Affairs:]

**1. How many survivors are taking advantage of the BFCS?**

In calendar year 2006, 13,875 individual beneficiaries were eligible for Beneficiary Financial Counseling Services (BFCS) as a result of payments they received from one of the following programs:

- Servicemembers' Group Life Insurance (SGLI)
- Traumatic Injury Protection under SGLI (TSGLI)
- Family SGLI (FSGLI) (spousal coverage)
- Veterans' Group Life Insurance (VGLI)

If there are multiple beneficiaries, each is entitled to counseling.

Of the 13,875 eligible beneficiaries, 1,344 contacted Financial Point:

- 450 individuals requested the Financial Point kit/application
- 29 completed the process and received written financial plans.
- 894 additional individuals called to ask questions.

Based on these figures, the overall SGLI utilization rate of BFCS is 9 percent. That includes phone calls, receipt of the Kit, and other contacts in addition to completion of the full Financial Plan.

Regarding the utilization rate, the following points should be noted. First, the BFCS utilization rate for the SGLI Programs compares very favorably to that of Prudential's other corporate customers, for whom the participation rate is less than 1 percent. Despite the relatively high utilization rate, we are continually looking for ways to increase it. We are currently conducting a survey of beneficiaries to improve awareness of and participation in the program, especially among beneficiaries who have the greatest need for this service. We periodically meet with representatives from the military casualty offices to solicit feedback and suggestions for improvement, and we plan to do the same with the Gold Star Wives and others.

**2. How much is spent by VA on education and outreach for this program?**

The counseling services are free to beneficiaries. There are also no costs to VBA, VA, or the Government for the actual BFCS services. Like all SGLI Program administrative expenses, the costs are borne by the SGLI program. Total 2006 Financial Point costs were \$227,960. This is comprised of:

- The cost of the 450 kits that were requested, which are charged to the Program @ \$415 per kit (\$186,750).

- There is also a charge to the Program for any face-to-face meeting requested by a beneficiary. There were 26 face-to-face meetings in 2006, charged at \$1,585 per meeting (\$41, 210).

The BFCS expenses are low enough that they have no impact whatsoever on the premium charged to servicemembers.

**3. Has there been an upward trend since 1999?**

No. The utilization rate has remained stable since 1999.

Mr. HALL. And that is it for my time, and ask Mr. Phillips if he would like to ask questions.

Mr. PHILLIPS. Thank you, Mr. Chairman. I just have a couple of questions.

Mr. McCoy, good afternoon. Thank you gentlemen for both being here today.

We see how in some cases a surviving spouse gets SGLI, other payments and then leaves, remarries, and so forth, and leaves a child and the guardian, whether that is a grandparent or an aunt or uncle or someone else, high and dry.

Would VA have any suggestions for remedies, assuming that there are remedies? I would assume that there must be.

Mr. MCCOY. We have had a lot of discussion. Tom?

Mr. LASTOWKA. First of all, I think you have to put into perspective what numbers we are talking about. We have done a review of the SGLI payments made within the last 2 years. There was a total of over 5,000 paid. There were 11 where there was some kind of contest involved. And in some of them the child of the previous marriage had been made the beneficiary.

So in terms of absolute volume, there is not a lot. The services do counsel members on beneficiary designations. Obviously the marriage and family situation today is not what it was 50 years ago, so you have more blended families.

And I think there is evidence in what married servicemembers do to suggest that they are making the distinction. While 75 percent designate only their spouse, another 11 percent are designating their spouse and someone else, often a dependent, the child of a previous marriage or previous encounter. And another 15 percent make another designation completely.

So I think there is strong evidence that servicemembers in general are addressing individual situations. I think what would be best is to improve counseling at the point when people are making their decisions as to who should be their beneficiaries.

Mr. PHILLIPS. Thank you, sir. Mr. Lastowka, you have a sterling reputation in the community and I am sure you do not need to be reminded that one veteran, one instance of this is 100 percent to the people going through it and it is too much. So we have to be very careful about it.

Mr. LASTOWKA. I understand that. But as we have looked at who is the "right" beneficiary, it is a very difficult question for someone other than the servicemember to answer.

Mr. PHILLIPS. Thank you.

Thank you, Mr. Chairman.

Mr. HALL. Thank you, Mr. Phillips.

And I have just one more question, are veterans' life insurance programs assignable to funeral homes?

Mr. LASTOWKA. No. There is no assignment in any of the VA government life insurance programs for veterans. The testimony that I heard earlier today referred to the Veterans Life Insurance Company, which is a private firm. I have no idea what they do.

Mr. HALL. In that case, I have one more question. Mr. McCoy, how would you address the issue of a mother or father who leaves SGLI to a spouse, mistakenly believing that that spouse would take care of his or her child from a prior marriage, the spouse does not take care of the child and has no legal responsibility to do so? Should Congress get involved and, if so, how?

Mr. MCCOY. That is a very tough question obviously. And I would only say that we have always made it a right of the servicemember to designate who that life insurance goes to. And I would like to see that abided by.

Mr. LASTOWKA. If I can, sir. When a servicemember dies, there are several streams of money that are paid to survivors. Some are paid with public funds and then there is the SGLI insurance funds, which are paid for by the servicemember.

I think if we were to review which funds should have a designated guaranteed beneficiary and which ones should be at the discretion of the servicemembers, those that have been paid for by the servicemembers may be the last that we would want to designate.

Mr. HALL. Thank you very much, Mr. Lastowka and Mr. McCoy. I appreciate your testimony very much and your patience waiting to go last.

And thank you, and this hearing is now adjourned.

[Whereupon, at 12:23 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### **Prepared Statement of the Honorable John Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs, and a Representative in Congress from the State of New York**

Thank you all for coming today. I am pleased that so many folks could attend this oversight hearing on "Helping Those Left Behind: Are We Doing Enough for the Parents, Spouses and Children of Veterans?"

As the title suggests, I want to use this hearing to examine how effective our government has been in assisting the families of veterans. I have noticed on several occasions that when we begin a discussion about taking care of veterans, we sometimes bypass or overlook the veterans' family. And, when we do get around to the veterans' family, we are apt to apply a cookie cutter, one size fits all approach. For example, we assume that the veteran is a male and the children live with both biological parents; however, this is not always the case.

The current military is made up of many so-called mixed or blended families, in which children do not necessarily live with one or both of their biological parents. Furthermore, the population of women serving in the military continues to grow. More than 160,000 women have been deployed to Iraq and Afghanistan. As of February 2007, over 143 single parents have died in Iraq and the vast majority were women. As a result, we are witnessing a new phenomenon of grandparents raising grandchildren that have been orphaned by the Iraq War. We will hear from some of those grandparents today.

I also hope today's hearing will allow the Subcommittee to look at how we can better assist those whose spouses have died on Active Duty. One reoccurring theme that I have heard on this issue is the difficulty in navigating the bureaucratic maze immediately after the servicemember's death. And, I want to say at the outset that this is no critique of the VA because I think they try to be helpful, but the nature of the dual system in which both the VA and DoD provide benefits makes it very hard for an individual who has just lost a loved one. I would be interested in learning more about a proposed idea to create an Office of Survivors, which combines VA and DoD resources in one location.

In addition, I am concerned about those veterans who are facing a terminal condition and or who die before the completion of their benefits claim. This is of great importance to the families of veterans, especially those of the Vietnam era who in many instances get overlooked because of the ongoing wars in Iraq and Afghanistan.

I want to know the current law with respect to an individual who files a claim but dies before the claim is fully adjudicated. Can the spouse or the children of that individual continue the claim? In the 108<sup>th</sup> Congress, legislation was introduced to permit such action. I would like to know if such legislation is still necessary.

I am also interested in learning more about possible fixes to SBP and DIC, so spouses stop getting the short end of the stick.

In closing, I just want to say that when we speak about veterans we must always remember to include their families.

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### **Prepared Statement of the Honorable Doug Lamborn, Ranking Republican Member, Subcommittee on Disability Assistance and Memorial Affairs, and a Representative in Congress from the State of Colorado**

Thank you Mr. Chairman for recognizing me, and for holding this hearing.

We are here today to discuss how we can best care for the family members of our veterans.

The emotional demands that descend onto their loved ones are immense, and we have a sacred responsibility to help them bear that burden.

In reading the witnesses' testimony I learned about a number of issues that are facing survivors and the failings of DoD and VA in this area.

I was especially troubled by the situation that the Heavrin family has described in their testimony.

Their daughter, Hannah, lost her life in Iraq. Because of the way her Servicemembers Group Life Insurance and indemnity compensation policies were written; her husband became the sole beneficiary. However, a son she has from a previous relationship receives nothing.

Even worse, her current husband apparently has done nothing to help support the child.

It is now up to the Heavrin family to raise their grandchild and find the money to do so. I am not sure what course of action should be undertaken in this situation, but I suspect that *something* can be done to reduce the possibility that this happens to some other family.

I am also very interested in the concerns of the Gold Star Wives and the National Military Family Association.

Sitting here with these deserving families about to speak to us, I must note that this session we have heard promises to provide billions of dollars to valiant Merchant Marine and Filipino veterans of World War II. We have also noted dozens of other deserving veterans of that war, such as the Woman Airforce Service Pilots.

These families have made great sacrifices for our freedom. It is my hope that as we consider compensation and legislation, these families will also be accorded due consideration.

I would like to thank the witnesses for their testimony today. I know many of you have traveled from far away to come educate us on this issue and I thank you.

Thank you especially for your sacrifice and your fidelity to our Nation.

Mr. Chairman, I yield back.

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**Statement of the Honorable Brad Ellsworth, a Representative in Congress from the State of Indiana, on behalf of Ron Nesler, New Harmony, IN (Caregiver of Adult Dependent)**

Mr. Chairman, thank you for the opportunity to testify on behalf of Honey Sue and the Nesler Family of New Harmony, Indiana. Today, I will read the heartfelt testimony prepared by Honey Sue's father, Ron Nesler. Mr. Nesler has detailed his family's daily struggle to provide care for Honey Sue who has a complicated neurological disorder rooted in Spina Bifida. Honey Sue's condition is the result of her birth father's exposure to Agent Orange while he served three tours of duty as a Marine Rifleman in the Vietnam War. It is my hope that Honey Sue and the estimated 200 children with Level III Spina Bifida as caused by a parent's exposure to Agent Orange receive the same full health care coverage as the 100% Service Connected military veterans.

**Statement of Ron Nesler (Father of Deceased Veteran)**

I am Honey Sue Newby's stepfather, Ron Nesler. My wife Suzanne Nesler is Honey Sue's birth mother. Suzanne and I are Honey Sue's court appointed guardians and full time care givers. Honey Sue is a beautiful 36-year-old child with complicated neurological disorders rooted in Spina Bifida. She requires around the clock aid and attendance care and extensive medical care. The VA concedes that Honey Sue's condition is the result of her birth father's exposure to Agent Orange while serving three separate 13 month tours in combat as a Marine Rifleman in the Vietnam War.

Honey Sue is very bright, happy, and gregarious. But emotionally she operates at about the 10- to 12-year-old level and always will. She is the greatest joy in our lives. We are grateful for the opportunity to care for her.

Honey Sue's birth father was a 3 tour combat Marine Rifleman in the Vietnam War. Honey Sue is diagnosed with Spina Bifida as the root cause of her neurological problems. When the VA Spina Bifida Program was started, her mother and I applied for VA compensation for Honey Sue. The VA acknowledges about 1200 children of Vietnam Vets as having some degree of disability caused by Spina Bifida as related to a birth parents exposure to A/O in Vietnam. The children are rated as Level I through Level III according to their degree of disability with Level III being the greatest degree of disability.

Honey Sue is one of only about 200 of the 1200 children rated as Level III. We are told by the VA that this is the approximate equivalent of a 100% Service Connected Disability rating for a military veteran. All 1200 children are paid monthly

monetary compensation by the VA. The amount of the monthly compensation is based on their degree of disability. As a Level III totally disabled A/O Spina Bifida child, Honey Sue receives about \$1,500 per month in VA compensation.

A 100% Service Connected (SC) military veteran whose situation seems to mirror Honey Sue's situation exactly as to cause and result receives about \$2,500 per month. Honey Sue and the roughly 200 other Level III children receive only scraps of very difficult to access health care coverage from the VA. And these bits and pieces of health care specifically exclude Honey Sue's greatest need which is aid and attendance care. The 100% SC military veteran receives full medical care including aid and attendance when needed.

Our position is that since the Congress created the law recognizing the 200 Level III children as totally disabled as a direct result of a birth parents military service, Congress should ensure full health care benefits including aid and attendance care for these 200 children.

Our greatest concern is who will care for and protect Honey Sue when her mother and I are gone? We feel the Congress owes a debt to provide full health care for the Level III children including aid and attendance care. These children should receive the same care as is provided for a 100% service connected disabled veteran. No more and no less.

Both Honey Sue and the 100% SC disabled military veteran are conceded to be totally disabled as a result of military service. They should be treated the same.

While the VA does provide some level of health care to the totally disabled Level III A/O children it is very difficult to access. The first hurdle is to find a doctor who is willing to write a letter to the VA prior to treatment stating that the necessary medical care is needed as a direct result of Spina Bifida. After the letter is sent we typically have to wait several months to get approval for the VA payment. Then even if the care is finally approved the same daunting process is required the next time the same condition requires treatment. This is a bureaucratic nightmare.

This obviously does not work in the emergencies which frequently arise in caring for Honey Sue. The best way we have found to deal with this is to pay out of pocket for Honey Sue's care and then battle it out with the VA after the fact for reimbursement. Or, we depend on welfare or private charities to provide the needed care. Honey Sue has received more and better health care through the years as charity from the Shriners and the Elks than she has as compensation through the VA. We feel that this is a national shame.

We wonder what happens to Level III children like Honey Sue whose parents do not have the money to pay up front and then fight a battle for repayment with the VA. What if the parents do not have the verbal or paper work skills to fight the battles with the VA or they do not know how to access care from private charities? Without strong advocates, these children will not receive the necessary care. We also wonder what happens when we finally face a need for care for Honey Sue that we are unable to fill "By Hook or By Crook" through welfare or private charity as we are presently forced to do. We know that day will likely eventually come. The fact we are becoming elderly and less able makes it even more likely and frightening.

To exacerbate our situation, the local Social Security Administration (SSA) office is at this very moment engaged in forcing us to apply for Medicare benefits for Honey Sue that even they admit it may cost her the loss of a significant amount of her Medicaid coverage and leave her with even less health care protection than she currently has. We are told that this is "the law" and we must comply or they will cancel all of Honey Sue's SSI and Medicaid benefits as a penalty for noncompliance. SSA says we have no recourse even though they agree that to do this is obviously against Honey Sue's best interests. I am worried. Honey Sue's mother is sick and distraught over this threat to Honey Sue's well-being.

This is not how things should be. We do not think it is how the Congress intended things to be when the VA Spina Bifida Program was created. The government has admitted that the total disability of these 200 Level III kids is the result of military service. They should not have to fight like dogs competing for scraps to get needed medical care. It should be automatic just like the 100% service connected disabled veteran who has the same situation as Honey Sue's.

We include with this letter a legislative Memorial passed by the state legislature of the State of New Mexico. The memorial was sponsored by State Representative Nate Cote in the New Mexico House of Representatives and by Senator Leonard Lee Rawson in the New Mexico State Senate. It was supported by Secretary John M. Garcia the Secretary of New Mexico Department of Veteran Affairs and backed by the national office of the Vietnam Veterans of America (VVA). The intent of the Memorial is to recognize the plight of the A/O Spina Bifida children and their families and to urge Congress to finally pay its debt to these children who are victims of

friendly fire from the Vietnam war by providing them full health care coverage and full aid and attendance care through the VA Spina Bifida Program. We have included the copy of the New Mexico state legislative Memorial to demonstrate that others besides our family recognize the injustice of the treatment dished out to the Level III children.

The people to whom I am very grateful for being involved in passing this New Mexico state legislative memorial for Honey Sue are:

1. Rep. Nate Cote originally sponsored the memorial in the New Mexico House of Representatives. Rep. Cote's phone number is (505) 202-1872 and his e-mail is NCote@Zianet.com.

2. Senator Leonard Lee Rawson sponsored the memorial in the New Mexico State Senate. Senator Rawson's phone number is (505) 647-3568 and his e-mail is LRAWSON@Rawson-inc.com.

3. Secretary John M. Garcia, Secretary of the Department of Veteran Affairs for the state of New Mexico supported the memorial for Honey Sue and is a true friend of veterans. His phone number is (505) 469-4986 and his e-mail address is JohnM.Garcia@state.nm.us.

4. Lou Helwig is an assistant to Secretary John M. Garcia in the New Mexico Department of Veteran Affairs. He is very knowledgeable of Honey Sue's situation and testified in support of the memorial in the New Mexico state legislature. Mr. Helwig's phone number is (505) 827-6312 and his e-mail is lou.helwig@state.nm.us.

5. Rick Weidman (RWeidman@vva.org), Sharon Hodge (SHodge@vva.org), and John Rowan (jrowan@vva.org) of the Vietnam Veterans of America were all supportive of the memorial for Honey Sue they may be reached by phone at (301) 585-4000.

6. Richard Curry is a writer for the "Veteran" the magazine of the Vietnam Veterans of America. He has contacted our family about doing a story in the near future about the many challenges facing Honey Sue as a Level III Agent Orange Spina Bifida child. Mr. Currey's e-mail address is richcurr54@yahoo.com.

The financial cost of paying the debt to these children would be very small due to the fact that there are only about 200 of them. Ironically, we feel the reason that this sad situation is allowed to persist is exactly because only 200 such Level III children exist.

We ask that Congress create legislation providing full health care coverage including aid and attendance care for the fewer than 200 Level III Agent Orange Spina Bifida children currently acknowledged by the VA. Thank you for your interest.

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#### HOUSE JOINT MEMORIAL 5

48TH LEGISLATURE—STATE OF NEW MEXICO—FIRST SESSION, 2007

INTRODUCED BY

NATHAN P. COTE

A JOINT MEMORIAL

URGING CONGRESS TO FULLY FUND MEDICAL CARE AND AID AND ATTENDANT CARE SERVICES FOR HONEY SUE NEWBY AND THE OTHER LEVEL THREE SPINA BIFIDA CHILDREN OF PARENTS WHO SERVED IN VIETNAM AND WHO ARE TOTALLY DISABLED.

WHEREAS, the Federal department of veterans affairs acknowledges that one thousand two hundred children of Vietnam war veterans have some degree of disability resulting from their birth parents' exposure to agent orange during military service in the Vietnam war; and

WHEREAS, approximately two hundred of these children of war veterans are designated as level three spina bifida children, who are considered to be totally disabled; and

WHEREAS, these children, designated as totally disabled as a result of their birth parents' exposure to agent orange during military service in Vietnam, are in a situation that is indistinguishable from that of any one hundred percent service-connected disabled veteran who is totally disabled as the result of military service; and



WHEREAS, these two hundred level three spina bifida children of Vietnam war veterans are not treated equally with the disabled military veterans as regards compensatory medical care and aid and attendant care; and

WHEREAS, the financial cost for families of these children can be crippling, and many proud American military veterans and their families must depend on welfare or charity to provide the vital medical care and attendant care their children need; and

WHEREAS, at least one of these children, Honey Sue Newby, whose birth father served three tours as a marine infantryman in Vietnam, resides in New Mexico; and

WHEREAS, the legislature seeks to honor and encourage fair treatment of all persons who have made personal sacrifices in the military defense of our Nation;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that it urge the United States Congress to provide full medical care and attendant care to Honey Sue Newby and the other level three spina bifida children who are totally disabled as a result of their birth parents' military service in Vietnam; and

BE IT FURTHER RESOLVED that the New Mexico congressional delegation be requested to work vigorously for adequate funding to provide full medical care and aid and attendant care to all level three spina bifida children who are totally disabled because of the effects of agent orange used in Vietnam; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to each member of the congressional delegation, the chief clerks of the United States House of Representatives and the United States Senate and the United States Department of Veterans Affairs.

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**Statement of the Honorable Tom Latham, a Representative in Congress  
from the State of Iowa**

Chairman Hall, Ranking Member Lamborn, Members of the Subcommittee, I am honored and privileged to have the opportunity to testify before you today and to introduce two of my constituents who will be appearing shortly.

Many of our Nation's service members are single parents who rely upon grandparents or other relatives to care for their children while they are deployed. It has been reported that out of the 3,323 U.S. service members killed in the War on Terror, more than 143 were single parents.

Unfortunately, the families of these soldiers have unintentionally been excluded from important benefits intended to help them. Under current law, the \$100,000 gratuity paid upon a soldier's death must go to any surviving children if there is no surviving spouse. If the surviving children are minors, the money is put into a trust account according to the laws of their state, which they cannot access until the age of 18. This oversight in the original law excludes grandparents or other relatives from access to the benefit of this payment to help raise the service member's children, even if that was the service member's wish. As we will hear shortly, the Jaenke family from my district knows first hand the difficulties these restrictions cause.

To address this flaw in the death gratuity benefit I have introduced H.R. 1115. If enacted, this legislation would allow service members the option of voluntarily designating a parent, brother or sister who would have custody of the service member's children, as the recipient of all or part of the death gratuity.

For deaths occurring before enactment, the bill provides an opening for courts to redistribute death gratuity funds to caretakers, if a clear expression of intent regarding the use of the funds was left by the service member.

While this situation may not affect a large number of our men and women serving in the armed forces, I believe a change in the law is needed as a matter of fairness to our service members who put themselves in harms way and to their families. That is why I encourage the Subcommittee to give this issue its full consideration. I look forward to working with each of you in furthering the cause of our Nation's veterans and their families.

Now I would like to introduce Susan Jaenke from Iowa Falls, Iowa and her granddaughter Kayla. Her daughter, Naval Petty Officer 2nd Class Jamie Jaenke, served as a reservist with the Seabees. Tragically, she was killed last summer while serving freedom's cause by a roadside bomb in Iraq. Our nation will be forever grateful for Jaime's dedication and service, and the sacrifice she made for our nation. As Commander David Marasco said of Jamie during a memorial service for her last year, Jamie "willingly accepted risks in order to put herself in a better position to help others." She is the type of dedicated soldier that we use as an example to our

children and grandchildren when we talk about the definition of a true American Hero. Welcome Susan and Kayla, and thank you for making the long trip from Iowa to share your personal story with my colleagues today.

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**Statement of Susan Jaenke, Iowa Falls, IA (Mother of Deceased Veteran  
and Guardian of Grandchild)**

In January of 2006, my daughter Jaime was deployed on the first tour of Iraq. A Navy Corpsman, Jaime was excited to be heading overseas. Always one for adventure, she knew that she was heading into harms way, but she was confident that she would make it home. As she prepared to leave, I whispered to her "Please don't go where I can't follow." She just laughed at me and reminded me to take care of her daughter and her horses. That was the last time I saw my daughter. She was killed by a roadside bomb on June 5th of 2006.

I have tried to keep my promise to her, but the road to where we are today has come with a price tag that I don't have the finances to cover.

When Jaime was deployed, she left me money that was to come from the gratuity that all families that lose a warrior in combat. Unless you are a family as ours. In a letter that she sent me, she wanted me to use \$75,000 of that \$100,000 for the raising of Kayla and \$25,000 for a business that we had started together. Thanks to a clause that was put into that gratuity, we were not able to get it but it was put into a trust for my granddaughter that cannot be accessed until she is 18. I have 9 years before that happens. Then as it is set up it will be issued to Kayla.

Without that money I have been faced with bills that far exceed my income. I have tried to keep up my end of the deal that I made with my daughter but that has failed. Not by my hand, but by the hand of our government.

In the days and weeks that followed her death, we had to get permanent custody of Kayla that took an attorney. We had to file for Social Security and fill our files of paperwork for the Navy so that we could get some help in raising Kayla. These papers were filled out by me and given to our CACO Chief Erdman. These papers took a good part of an hour. After doing all this, I said it was a relief that we had that done. He laughed at me and told me that it would not be the only time that I have to do it. I thought that that statement was a strange thing to say. He was right, I was wrong. Over the next 6 months, I filled out the same paperwork over and over again. Sometimes up to 6 times. Calling Millington became a distasteful thing.

I kept a journal at my phone and got names and extensions just so I got the same person all of the time or wrote down names of people never to call again. Two of the most memorable was the lady that had me apologizing to her for interrupting her day and the gentleman that said he got the papers, two days later didn't get the papers, faxed me the papers which I faxed back. Two days later, he called me back to yell at me because now he had 3 copies (my originals and two more), and he wanted to know what I was trying to pull. Amazing isn't it?

Or the Commander that is second in charge of the funds that Kayla gets every month. A retired General that I know from Iowa Falls found his name and wanted him to explain to me what a parent who was given the gratuity from her daughter that was killed in action could not get that money. After receiving his sympathy, he proceeded to tell me that it was my government's fault that we could not get this money and that Kayla would have to learn to do without. That she would not be able to get things that she wants. He also told me that he had a daughter from a second marriage, and she couldn't have the things that she wanted because he had to pay child support and spousal support. I thought that was really strange. After all, his daughter still has parents and brother and sisters. Kayla has no parents and will never have any siblings. Some of these things have just amazed me.

In the mean time it took 3 months to get any money and the first was Social Security. This I had, then didn't have, and had, and didn't have, because the woman, Thai, was to take care of that made a mistake. By the time I was 3 months behind on my house payments and the money that Jaime was sending me to take care of our business was cut off and her death, so I got behind there and I had a little girl that needed food and new clothing to get ready for school. You see, I am myself disabled and cannot work to make money to have ends meet. By the time we got the Social Security, I was further behind.

It took a month more to get money from DFAC and from the VA. By December, I had everything that we were to get for help with Kayla, and at that time, I was so far behind that I didn't even have money for Christmas. If it weren't for a local

VFW, we would not have had a Christmas. They and Target came up with \$1,000. Any money that I got after that was like sand of a fire. It just smoked.

Then came that day that I got a call from the Washington Post and Donna St. George. I call her our guardian angel because with a story by her everything started to change. People got to know of our trouble and with the help of strangers (not my government), I was able to get my house payments caught up, our electric bills and heating bills and so many bills that I couldn't pay since my daughter's death. At that time, I was 2 weeks away from foreclosure. Now I am caught up. I guess no one knew that if I lost my house, where would Kayla live? My struggles are not over yet, I still have a long way to go. Every month I am still worrying.

I know that the money for the gratuity changed to protect the children of the warriors that have fallen, but that doesn't always work. I have heard where it still is going to the wrong people. All it would take for this to be fixed so that it did work, would be for counselors to be brought in and lawyers to be brought in when there is a deployment. For these people who are already on staff to help our warriors make the right decisions and to fill our wills so that the people who need to be protected are protected. In my daughter's case, a little help in that area would have made the difference.

It is obvious that she thought she was doing the right thing. She wouldn't have written the letter to me telling me what to do with that \$100,000 if she had known that there would be complications. So through all of this attention that we have gotten, I get emails on a regular basis that come from our enlisted people saying that they have looked at their paperwork and found things that are wrong. I have had tearful conversations that tell of how the wrong person would have gotten their money in case of their death, most of these coming from single parents. Most of them not knowing about the clause.

I am grateful for this opportunity to talk to you. I am grateful that there is someone listening. But it is time to start listening and time to start hearing and making a difference. Because I have already lost a daughter. What else do you want me to lose?

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#### **Statement of Amy Clark, Bartow, FL (Spouse of Terminally Ill Veteran)**

Dear Members of the Subcommittee on Disability Assistance & Memorial Affairs of the House Committee on Veterans' Affairs. I am here to speak on behalf of all Veterans not just my Husband Russell E. Clark whom is a Viet-Nam Veteran himself. I, at the time didn't know what Viet-Nam was, I was just a child so therefore I didn't live Viet-Nam, but I am living it now every day with my husband Russell. I can't tell you how much it pains me to see a once vibrant man, now just a skeleton of what he used to be. Let me share with you why I say I am now living in Viet-Nam. On January 8th, 2007, Russell was in the hospital and I went to see him and Russell said, "There is a card from a doctor he wants you to call him." Which the date I just mentioned is our wedding anniversary. So I stepped outside to return the call to the doctor. The doctor said, "Mrs. Clark I am sorry to inform you that your husband has Lung Cancer." I said "Well since you have ruined my day, my life and my anniversary why don't you just tell me how bad the situation is?" He declined and said he would come the next day to the hospital and talk to Mr. Clark and me. Of course I was shattered and didn't tell my husband.

The problem with the VA is that there is too much red tape when a situation arises such as this. That is why claims sit on someone's desk or just get ignored completely until it is too late. There is bureaucratic doublespeak (taken from the article in the Lakeland Ledger Dated Sunday April 15th 2007). More truer words couldn't have been spoken. Yes, the VA offers you a book of benefits that you may be entitled to. But, try and get them. It is totally ridiculous that there are so many forms and questions to answer for even the most minimal benefits. I can tell you that to date I have over 400 pages of documentation that I have turned into the VA just for Mr. Clark, thus leading me to the next point that the system must be changed so that justice can be given to all veterans and their families. I have had to stop working and quit going to college to stay home and care for my husband. This system is just so unqualified. People need education on how to apply for benefits. It is extremely overwhelming to have to wade through the mountains of paperwork that the VA requires. There is no communication set up to help civilians understand what needs to be done and the proper procedures to go through. I was fortunate to find Ernie Roberts and Donna Adams two very knowledgeable people to help me with my husband's situation which is still not resolved. Mr. Clark's time is short and we need to change things now. I can't even speak to the VA unless

they speak to Mr. Clark first due to privacy issues, is what I am told. Well to be quite frank about the matter, there are days when Mr. Clark can't speak clearly because of the medication he is on for his cancer.

1. When a veteran requests a fiduciary it should be granted. No one should be threatened and told that whatever benefits you are getting will be stopped while that process is being taken care of—How terrible to be threatened that way.

2. The older veterans, especially the Viet Nam veterans, who have been shoved under the carpet for many years and the veterans coming home now, seem to get their benefits at the drop of a hat.

3. No one should have to produce documentation such as a morning report which is what I was requested to do. Needless to say, Mr. Clark happens to have just that in his possession, of which I am sure not many veterans do.

4. The nonsense about having this medal or that medal is totally ridiculous, when in fact John Kerry threw his medals over the wall at the White House some time ago for all the world to see.

5. When a veteran has a DD2-14, that should be sufficient information to show what time they put in the service and where they were.

6. Does it matter what their job was? Of course not. They gave so that we may live in the United States of America the land of the free and the home of the brave.

7. The Blue Water Act was a good thing, but still there are veterans that flew B66's and can't get benefits, because they can't prove they were in Viet Nam.

8. Life insurance policies issued by the Veteran's Life Insurance Co. must be changed so that they can be assignable to a funeral home. Most people don't have the money for funeral expenses just sitting in the bank.

9. Buddy letters shouldn't be requested as too many veterans have been killed in action or died along the way.

Mr. Clark himself was told we are just going to keep burying the paper work until all the Viet Nam veterans are dead and then we won't have to pay off on any claims. This is just stupid; someone's idea of a bad joke. Mr. Clark has been fighting a separate issue for PTSD for quite sometime and each time he is denied because they say there isn't enough information to prove he has PTSD. Yet Mr. Clark has documentation in his possession from the Veterans Hospital in Tampa Florida stating his main Diagnosis is PTSD. Imagine that if you will. One thing stated in that documentation is you don't have all the symptoms. Well if I am depressed, do I have to have all the symptoms of depression to be diagnosed with depression?

The issue of stressors that the VA looks for just seems to be more bureaucratic doublespeak. I was told the stressors could be things like gunfire, picking up dead bodies, shooting women and children and so forth. Mr. Clark himself was part of assassinations—If that isn't a stressor I don't know what is.

Now the new stressors have come out just recently, such as diabetes, heart disease, and strokes and on and on. So if the documentation is provided by civilian doctors that should be good enough. Why torment these veterans any more? Give them what they deserve.

It is my understanding as well that the VA doesn't like when a veteran gets a civilian doctor or any civilian information for that matter. They claim they are too overworked and too underpaid to handle all of these themselves so why put up a stink when it comes to the documentation. If the documentation is presented that should be good enough. I was told I could get a "rent a doctor" to sign any documentation that Mr. Clark might need and it would be accepted. What is all this craziness? Let's take care of all the veterans but let us take care of the older veterans first and make the younger ones wait just like the Viet Nam veteran's have had to wait. This system is just wrong.

1. When a veteran dies and his/her spouse and children are entitled to DIC. Let's stop the nonsense and just have a short form for them to fill out and turn in the necessary documentation and not be told this will take 6-8 months or longer to complete. It is no wonder the Department of Veterans Affairs can't get their jobs done. They make it more difficult on themselves.

2. Each veteran should be given a packet the first time they ever walk into a VA office with all the forms that they may need all in a nice little packet since the VA is so big on paperwork.

I had the most awful time getting added to be my husband's dependent as when we went to the VA in 2004. They filled out a form making me his dependent, but only in the event that he should die in a VA facility. The man that did this was Alex Benjamin, whom I understand is no longer with the VA. He never told us that because Mr. Clark's first wife was deceased and that because I had been married before, that we would have to present the former Mrs. Clark's death certificate, our marriage certificate, as well as my divorce decrees. How insane is this? Had we been told in 2004, we could have done so then, and not go crazy now trying to scramble

for this information. All of the information that they requested is of course a matter of public record, thus they have access to it already. I feel that the only documentation that should have to be presented in this situation is the marriage certificate. That is an official document, thus being all that is needed. What about the young mother that was just recently killed in action and the grandparents have the child now and can't get benefits because they don't have proper documentation such as a will? For heavens sake, this is nuts. The young mother wrote on a paper that her benefits were to go to her child. What does it take to get someone to listen? The first and most important step in communication is listening. Can you tell me is anyone listening?

My sincere thanks, Amy M. Clark.

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**Statement of Matthew B. Heavrin, Redlands, CA (Father of Deceased  
Veteran and Guardian of Grandchild)**

My name is Matthew B. Heavrin. My wife's name is Barbara Jean Heavrin. We live in Redlands, California. We have four children, Matthew, our oldest is at the Naval Academy in Annapolis, MD. He will graduate this May. Our daughter Hannah Leah served in the U.S. Army as a quartermaster in Iraqi freedom until she was killed September 4, 2006. Our third child Philip, serves in the United States Marine Corp and is currently based in Camp Pendelton, California. Our fourth child is Ruth Ann, she will be graduating from Redlands High School this June and will be attending Cal State San Bernardino this fall. I, myself am a U.S. Navy veteran. I work as a Power Plant Operator for Los Angeles County. My wife is a Registered Nurse and is employed by The San Bernardino County Sheriffs. As you can see, our family has served and will continue to serve this country and mankind. My wife and I have instilled in each of our children the importance of love for country and to make this world a better place through service and responsible living.

Our daughter Hannah had aspirations to go to college after high school. We had some money saved up but not nearly enough to afford the full tuition. Our goal was for Hannah to go out and look for grants, scholarships and other financial aids that would fill the gap. She came home one afternoon with an Army recruiter. We listened to him and asked Hannah if this is what she truly wanted. She said yes and off to the army she went. After her basic training she went to AIT (individual training) and met a young man there who was also in the Army. The two began a relationship and had planned on marriage and Hannah became pregnant. Their relationship failed and Hannah returned home after being discharged from the Army. Shortly after giving birth to her son Todd on November 02, 2004, she returned to the army against our wishes. I personally got on my knees and pleaded with her not to go back into the Army. That she would most certainly end up in Iraq. She said that she was told that the army does not send single mothers on deployment. She did indeed reenlist and went to another Army specialized school to become a quartermaster and left Todd in our care. While at quartermaster school she met Chris McKinney, someone she had gone to high school with in Redlands. After Hannah was finished with quartermaster school, she was assigned to Fort Lewis, Washington. I moved all of Hannah and Todd's personal belongings from Redlands to Fort Lewis in July of 2005, and helped her find a townhome in Tacoma, Washington and assisted her in securing childcare on the base. A few weeks later, she told us that she was assigned to the 542<sup>nd</sup> Maintenance Co. as a quartermaster. In September I learned that the 542<sup>nd</sup> would be deployed to Iraq. My heart sank, and I almost knew her fate right then. I flew up to Tacoma to stay with my grandson while Hannah went with her unit for maneuver training in Oregon. While staying in her townhome I couldn't help but notice all of the love letters that Chris McKinney had written to Hannah. They were pasted on the wall like wallpaper. Just before the 542<sup>nd</sup> Maintenance Co. deployed, Hannah brought Todd and some of his things down to us along with a power of attorney so that we could make decisions for Todd on Hannah's behalf. It was then that I learned that Hannah had gotten married to Chris McKinney. We had not even met Chris at this point and had only a brief description of him. It was late October 2005 and Hannah's unit deployed to FOB Taji, Iraq in the middle of November 2005.

While in Iraq, Hannah would phone home and occasionally write. She would tell us how she was re-assigned from the quartermaster office to security. She spent nearly all of her time up in a guard tower along a perimeter road around FOB Taji. She also sent some photographs to show the desolation where she was posted and the conditions that she served in. What stood out to me was how lonely she was and how much she wanted to get home. She missed her son Todd and her new hus-

band Chris. In May of 2006, she was flown home for 2 weeks R&R. She was so happy to be home and did not want to go back. Todd recognized her almost immediately. Chris, Hannah and Todd rented a convertible and had a wonderful time as the newly formed family spent their time together. We had talked and even began preliminary plans for Chris and Hannah to have a church wedding and then Chris would adopt Todd. A few days before she was to return to Iraq, Hannah's demeanor changed. She was regretting separating from us and Chris and Todd again. She even asked me if I would break her arm for her so that she wouldn't have to return. Of course I did not and Hannah did return to Iraq. Chris returned to Fort Lewis. Todd stayed with us in Redlands.

On the morning of September 04, 2006, I was at work, when I received a phone call from Barbie. She explained to me that I needed to get home right away. There were two army chaplains at our door.

I cannot describe to you the range of emotions that I personally endured and grieved with Barbie as she went through hers. From the time of the chaplain visit, to planning the funeral, to sorting out Hannah's life and that in relation to Todd's. We have shed buckets of tears, felt guilty, angry inadequate, and generally depressed. Through it all we have endured through our faith, our friends and each other. We have been taking care of our grandson since the day he was born. We videotaped Todd in various stages of his young life so that we could share the moments with Hannah in Iraq. The video CD's were packaged and ready to be mailed out and they would have been if Monday weren't a holiday.

The cause of Hannah's death was under investigation and it was difficult to determine how or why she died. As the investigation progressed, we learned that the circumstances revolving around Hannah's death were criminal in nature. Never before have I felt this way. It is though we were betrayed by the sense of honor and service we adhered by. Our daughter died for one man's selfish satisfaction. As an NCO in the army, he was to be about the business of looking after his subordinates. He did otherwise. We feel cheated. Todd's mother is gone. He was cheated. Hannah's siblings have lost a wonderful friend, confidant, and sister. They were cheated. Chris lost his wife. He was cheated.

It has come to our attention that each soldier had a \$100,000 "death gratuity" and a group life insurance policy for \$400,000. We were not aware of these policies until of recent. We also learned that Chris McKinney received both. I do not know if my daughter so designated Chris or if it was automatically paid out to Chris as the survivor since he is the husband. We believe that the assumption was made that Chris is caring for Hannah's son Todd, which he is not. The burden of raising our grandson has been on us only. We receive support from no one. Nor has Chris McKinney offered any of his \$500,000 to us or to Todd. We are not in the business to take anything that does not belong to us, but to have our daughter taken from us in the manner that she was, and for Todd to grow up without his mother, without her death benefit, is just plain wrong. We believe this is an anomaly that needs to be remedied to benefit the surviving sons and daughters of deceased soldiers, sailors and airmen to assist the grandparents who raise them.

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**Statement of Kimberly Dawn Hazelgrove, Lorton, VA (Widow), and Member Gold Star Wives of America, Inc.**

"With malice toward none; with charity for all; with firmness in the right, as God gives us to see right, let us strive to finish the work we are in; to bind up the nation's wounds, *to care for him who has borne the battle, his widow and his orphan.*"  
—President Abraham Lincoln, Second Inaugural Address, March 4, 1865

**INTRODUCTION/BACKGROUND**

Chairman Hall, Representative Lamborn, and Members of the House Veterans' Affairs Disability Assistance and Memorial Affairs Subcommittee, I would like to thank you for the opportunity to testify before you today on behalf of all Gold Star Wives regarding the importance of addressing critical services for America's military widows and widowers and their children.

My name is Kimberly Hazelgrove. I am the widow of CW2 Brian D Hazelgrove, a native of Edinburg, Indiana. My husband entered the US Army shortly after graduating high school and served over ten years. Brian was an energetic and charismatic leader. His soldiers and superiors always had the utmost respect and admiration for his ethics, compassion and abilities. He was a career soldier full of goals, ambition, dedication and potential.

Brian was also a husband and father to Taylor, Zachary, Brandon and Katelyn. He was a gentle and loving father who never failed to prove he adored his children. At times we both had to endure single parenthood while the other was deployed and understood the important balance of family and mission. And Brian was dedicated to both. He faithfully deployed to Iraq in support of America's mission in November 2003. On January 23, 2004, Brian was flying a mission in support of ground troops in Iraq with pilot CW2 Michael Blaise when their helicopter crashed. Both Brian and Michael were killed. Brian was 29. Our youngest child was just 7 months old.

I am here before you as a representative of America's military widows and widowers and as a Member of Gold Star Wives. My hope is that by the end of my testimony; you will see the need to act immediately to rectify the unfair and inadequate resources that Gold Star Families endure after notification of death of their service member.

I was a Sergeant First Class in the U.S. Army stationed at Fort Drum, the mother of our infant and toddler, step-mother to two children and the wife of a deployed soldier. Life was difficult, but with the support of our units and families, I was independently managing the household and raising our family, always with the hope that Brian was safe and anticipating his return. Our lives were changed forever when Brian was killed.

A year passed before I was able to present the Department of the Army's Casualty Assistance Office feedback on the various aspects of my case. They responded with appropriate measures to correct discrepancies and implemented procedures to ensure further training of personnel and strict adherence of policy within their area of responsibility. However, much still needs to be done to secure quality of life for all survivors.

#### **PERSONNEL TRAINING**

I feel that adequate training and resources are still lacking for all personnel who function in the various roles while supporting a Casualty's family. Across the spectrum of DoD and VA, there is not one single dedicated office for the Military Survivor. It is left to the various representatives of these organizations to do their best to inform, assist and support the family member in their time of need. And they can only do so much within their subject area of expertise. After the initial response of support has ended, family members struggle to research, understand and stay informed of changes to benefit entitlements and legislative actions.

Notification Officers face the most daunting task of all; informing the family of their loss. These brave men and women face a number of scenarios of reactions, ranging from avoidance to violence, and will likely come face to face with multiple reactions during their time with the family. Unfortunately for these personnel, notification procedures across the military are still inconsistent. Unsuspecting Notification Officers (Primarily a Chaplain and an Assistant) are sent to the wrong address. In my case, the Notification Officers received the wrong address from Fort Drum's Casualty Assistance Office and actually had to call me in the middle of the night before arriving at my house. By the time they arrived, I knew why they were coming. I was a soldier and had received training on this scenario. Now, I was the recipient. I know my husband filled out all of the appropriate paperwork that was required before his deployment because I was present at the time. In addition, copies of this paperwork was kept at the unit, sent home with him and also put into his personnel file. Where was the breakdown in communication and procedures that provided these soldiers the wrong address?

Casualty Assistance Officers (CAO) provide initial and essential support to meet any need within their power of the grieving family members. My Casualty Assistance Officer (CAO) was an extraordinary person and I owe most of my recovery from this tragedy to him. I met CPT Brian Batchelder early the next morning at my home. With very little training, inadequate resources and at times minimal support from outside personnel, he loyally devoted himself to meet our needs. He escorted me throughout the application process to initiate my benefit entitlements, tracked my sister's safe and prompt arrival back into the country from her own deployment, helped facilitate funeral arrangements, assisted in the relocation of my family and provided unlimited emotional support. Although extremely helpful and intuitive, CPT Batchelder was not an expert on benefit entitlements or transition procedures.

As a Casualty Assistance Officer, CPT Batchelder was not provided the basic resources to perform the essential duties of the task he had. Adequate workspace with communication equipment was not provided. Many times he was forced to return to his office within his unit to work on my case. While there, he was tagged with responsibilities outside of his Casualty Assistant duties. Left with no options, he worked out of his home or car to minimize the impact on my family.

CPT Batchelder was assigned to my case for a period of about 6 months and then reassigned for a deployment tasking. A new CAO was assigned to my case to complete outstanding issues, including the formal results briefing on my husband's death and lingering benefit entitlements that had been interrupted. This new CAO, a very young lieutenant inexperienced with the various military programs and services, demonstrated a lack of motivation or initiative and lacked the exposure to the events that had transpired over the previous months. After a couple meetings with this person and lack of assistance, I did not pursue further communication.

Like many widows or widowers, I moved away from where I was stationed with my husband to start a new life. I gave up my Army career and moved to Lorton, VA in January 2005. At this time, I had not received Survivors Benefit Plan payments from the Defense Finance and Accounting System for which I was entitled since May 2004. The payments had stopped just 3 months after he was killed because of a clerical issue with my original documentation. Repeated attempts to correct my Survivors Benefit Plan entitlement through two local Retirement Services Officers (RSO) also failed. The Retirement Services Officers that I contacted were unfamiliar with the procedures or policies affecting these types of benefits and I found myself educating them on what needed to be done.

I eventually contacted the Department of the Army's Casualty Assistance Center. I recruited the help of Dan Ruiz and LTC Logan. With their help, I made contact with the correct office and person within the Defense Finance and Accounting Office and was able to reactivate my Survivors Benefit Plan in September 2005, 18 months after I was entitled to the benefit.

#### **BENEFIT ENTITLEMENTS**

Six months is a very short time to require a family that has experienced a traumatic life altering event, even under the best circumstances, to be able to navigate the current complexities of the military survivor system. For the widow or widower of an active duty service member, like myself, the military expects a transition of responsibility from the active military component to Veteran's Affairs. A family previously established in family housing and accustomed to living on the military base has increased financial burdens to absorb and a new identity to grasp. The response to family members is critical within the first year after the loss of their loved one. However, it is imperative that there be continuity of service and support to the families of our service members after the initial response has faded away.

As a widow, I receive monetary supplements because of my husband's death while serving his country. I applaud your success in increasing the initial death payments and SGLI payments to families of the deceased service member. I would like your support in fulfilling the commitment to fully sustain the benefits of our widows and widowers and those of our children for the future.

The SBP payment that I worked so hard to receive for almost 2 years brings a total of \$99 a month into my household income. My full entitlement a month as a surviving spouse is \$1166. The dollar for dollar offset generated by the income I receive from the VA's Dependency Indemnity Compensation reduces my entitlement by over \$1000 a month. Because of my husband's rank and years of service when he died, I actually receive a little left over money, where most spouses receive no money at all. This offset does not benefit any military survivor and especially victimizes those families whose deceased service members were junior enlisted and/or with less years of service. Most of these families are young families like mine. My \$99 a month from my Survivors Benefit supplements increased child care, healthcare and household expenses that I incur as a single working mother and sole provider for my children. I would like this panel to realize the entire scope of inequity of this offset. Disabled military retirees, Federal retired annuitants and their survivors receive their full benefit without offset of VA benefits. I ask you here today, how is the military survivor any different?

I have reached the 3 year milestone of widowhood and my dental and healthcare coverage under TRICARE PRIME have ceased. I am currently researching my options through my local TRICARE Representative. There are increased costs associated with continued coverage that did not exist while I was covered under the Active Duty Tricare Prime program.

#### **CONCLUSION**

I ask the panel to understand that many widows and widowers are not able to make the monetary sacrifice that I have made here today in order to testify. Fortunately, I am able to be here before you with the blessing of my company to enlighten you of the burden that my family has had to endure over the past 3 years and the continued inequity of entitlements directly related to inconsistent years of service commitments. I ask you to remember the young widows and widowers at home car-



ing for their young children who can not be here before you. I ask you to remember the widows and widowers in other states who can not afford be here before you. Your decisions make a difference in their lives.

As my children grow older and our lives change, so do our benefits. I continually need to seek out subject matter experts within the benefits arena on my own. Healthcare, Education, Social Security, Survivors Benefit annuity and Dependents Indemnity Compensation all have different requirements. Legislative actions on benefits continue to influence entitlements. Tracking these changes is time consuming and tedious task as the information and experts are currently compartmentalized and geographically dispersed. I work a full time job and raise two small children. This has not left me with much time to track down the exact person who is going to help me get a specific benefit.

Gold Star Wives of America has been a source of support and information beyond anything I have received thus far. The ladies volunteer their time and efforts into educating me on the process that forever lies ahead of me as a widow. I firmly stand behind and support the Gold Star Wives request that Regional Survivors Offices should be established to meet the needs of military survivors during and after the Casualty Assistance Officer has finished his duties. This office would provide oversight to the policy issues of survivors, provide transitional assistance, legislative feedback and act as the main coordinator between the Department of Defense and the Department of Veterans Affairs. This is a key component to ensuring the commitment to your service members that their families will be taken care of.

As a service member entering military service, no where are you told that your family will have to fight to receive adequate benefits upon which they are entitled in the event of your death. Families plan for financial stability in the event of tragedy based on our promise that they will be taken care of. And yet I testify before you here today as an example that this has not happened to the full extent. I implore our leadership to immediately cease the DIC offset to SBP for all widows and widowers.

I thank this Subcommittee for using this hearing as one more avenue of awareness and education and for giving me an opportunity to share my thoughts and experiences as a Gold Star Wife. I will be happy to work further with the Subcommittee on any initiatives. Thank you for your time and consideration.

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**Statement of Rose Elizabeth Lee, Chair, Government Relations Committee,  
Gold Star Wives of America, Inc.**

“With malice toward none; with charity for all; with firmness in the right, as God gives us to see right, let us strive to finish the work we are in; to bind up the nation’s wounds, *to care for him who has borne the battle, his widow and his orphan.*”  
—President Abraham Lincoln, Second Inaugural Address, March 4, 1865

**INTRDUCTION/BACKGROUND**

Chairman Hall, Representative Lamborn, and Members of the House Veterans’ Affairs Disability Assistance and Memorial Affairs Subcommittee, I would like to thank you for the opportunity to testify before you today on behalf of all Gold Star Wives regarding the importance of addressing critical services for America’s military widows and their children.

My name is Rose Lee. I am a widow and I am here before you as the Chair of the Gold Star Wives (GSW) Committee on government Relations. For many years now I have been working to achieve the overall goals of the Gold Star Wives, in various national and local positions, and more specifically to assist our young, new widows, one by one, wind their way through the maze that lies before them with first notification of the death of their loved one.

The Gold Star Wives of America, Inc. was founded in 1945 and is a Congressionally chartered service organization comprised of surviving spouses of military service members who died while on active duty or as a result of a service-connected disability. We could begin with no better advocate than Mrs. Eleanor Roosevelt, newly widowed, who helped make GSW a truly national organization. Mrs. Roosevelt was an original signer of our Certificate of Incorporation as a Member of the Board of Directors. Many of our current membership of over 10,000 are the widows of service members who were killed in combat during World War II, the Korean war, the Vietnam War and the more recent wars including the one we are currently in.

In my testimony, I will respond to your request for our views on “Helping Those Left Behind: Are We Doing Enough for the Grandparents, Spouses, and Children of Veterans?” In doing so, I will present to you the collective goals of the Gold Star

Wives with the hopes that they will alert you to certain discrepancies and inefficiencies that you may be able to alleviate in your deliberations this year.

I do want to thank the Members of this Subcommittee and the staff for your continued support of programs that directly support the well-being of our service members' widows and their families. It is imperative that the difficulty of the sacrifice of our husbands' lives should not be compounded by lack of information, confusing information and sometimes even erroneous information that prevent our widows from accessing the assistance she needs to begin the rest of her life without that core person who had been her most critical support.

#### **THE CHALLENGE**

Let me be clear from the start. We are NOT doing enough. We are unmistakably in a time of war. Warriors are dying and leaving behind young families. If there is one message I could leave you with today it is that there is never enough good communication. The Casualty Assistance Calls Officers (CACOs) have a difficult mission in a difficult time. They act to assist survivors from the death notification to assistance with coordinating funeral arrangements to applying for benefits and entitlements. They do a valiant job but CACOs are not trained to be the subject matter expert for the benefits and entitlements managed by the VA or the DoD.

Our widows need our help. We need to identify and reach out to them. The National President of the Gold Star Wives sends a condolence letter to new surviving spouses. In addition, we must coordinate with our counterparts in other agencies to ensure that the message given is thorough and consistent as they transition to their lives made forever different by the loss of a loved one.

#### **BRIDGING THE GAPS**

Getting the right information to the right people at the right time is important. Getting the right benefit is important as well. There are gaps in the benefits for survivors that we have called for corrective action on over time. If we are serious about addressing the question, "are we doing enough," then it is time to respond to these issues where we clearly fall short of 'enough.'

1. Despite valiant efforts over the past years, the dollar for dollar offset of Survivor Benefit Plan (SBP) annuity payments by benefits from the VA's Dependency and Indemnity Compensation program was not eliminated. The SBP was voluntarily purchased by the disabled retiree and provided by Congress to the servicemember who dies on active duty in order to assure a continuation of the retired pay for their survivor. This income is not protected when the DIC benefit offsets the SBP income to which a survivor is entitled, sometimes eliminating the entire SBP. We recognize you must act with your colleagues on the Committee on Armed Services on this issue. We encourage Congress to provide this real relief for our military surviving spouses now. All we seek is equity with benefits provided by Congress to the disabled military retiree and Federal civilian workers. Disabled military retirees, Federal retired annuitants and their survivors receive their benefit without offset of VA benefits. The military survivor benefit should be similar.

2. The law currently allows for surviving spouses who remarry after age 57 to retain their VA DIC survivor benefit. For those who remarried before that law was enacted, there was a 1-year period to apply for reinstatement. Communication in the form of outreach was lacking during the retroactive period. Therefore, we request two equitable changes to the law:

- a. allow survivors to retain DIC on remarriage at age 55 in order to bring this benefit in line with rules for SBP and other Federal survivor programs; and
- b. open up the reinstatement period with renewed outreach efforts to make survivors aware of their eligibility.

3. The additional monthly \$250 child DIC payment per family only applies to survivors of deaths after January 1, 2005. This too should be linked to October 7, 2001. It makes no sense that the survivors of those who died 'first' should be prohibited from accessing a benefit given to survivors of those who died later in the same war. This money was provided to the surviving spouse, and if there is no surviving parent, the child does not receive this money.

4. There's another grievous oversight concerning the \$250 child DIC. The program evaluation of benefits study recommended that surviving spouses with dependent children receive the \$250 for 5 years instead of 2 years and that amount should be indexed for inflation, to avoid a devaluation of the benefit. Unfortunately, those receiving the \$250 child DIC are not receiving it for 5 years and are not receiving even a small \$10 Cost of Living Adjustment (COLA).

5. CHAMPVA, the Civilian Health and Medical Program of the Department of Veterans' Affairs, currently does not carry with it a dental plan. In order to increase beneficiaries' access to dental care at a reasonable cost, GSW seeks for widows and

all CHAMPVA beneficiaries the ability to purchase a voluntary dental insurance plan. We are in agreement that the model of the TRICARE program for military service retirees for dental care in which the payment of premiums or services is completely funded by the enrollee is an acceptable model. Beneficiaries are simply looking for affordable dental care, which can be accomplished through a group plan. Allowing for assignment of VA benefits to cover the cost of dental insurance premiums would be an additional benefit to ease the payment process. This would require a modification to Title 38, Chapter 53.

6. We would like to begin the process of reviewing how the DIC rate is established, which is currently a flat rate. The SBP is calculated at 55 percent of retired pay. We recommend that the DIC be calculated in a similar manner at 55 percent of the disabled veterans 100 percent disability compensation amount. We would welcome the opportunity to work with the Committee in determining how to implement these changes, which will provide more equitable compensation to our survivors.

7. Importantly, we have long been aware that survivors are forced into a fragmented approach to determine their benefits and rights. We need to examine the coordination process between agencies more closely and work hard to prevent these widows and their children from encountering gaps in identifying benefits. Further complications arise in this current conflict because it presents issues that we have not had to address before in that there are National Guard Members whose families are not near a military installation and find it difficult to learn about their benefits, burial information, etc. We firmly believe that an office should be established that would provide oversight to the policy issues of survivors, and be a transitional assistance to survivors and the main coordinator between the Department of Defense and the Department of Veterans Affairs. Without such an entity, widows are left to make their own way through a bureaucratic maze at a time in their life that could be no worse.

Finally, there are three other issues that we want to bring to your attention:

1. Widows whose husband died in VA hospitals due to wrongful VA hospital care receive only DIC without any other VA benefits (Title 38 USC 1151). We urge the Subcommittee to support the measures necessary to allow these widows to be entitled to the same VA benefits as provided widows by wrongful deaths by friendly fire.

2. We recommend that the Subcommittee ensure that medical benefits be provided fairly and equitably to include surviving spouses and eligible children (i.e., seek legislation to remove part B penalties and interest for late enrollment and promote a feasibility study to convert VA facilities to Long Term Care facilities which would welcome widows/widowers).

3. Education benefits for surviving spouses who are on active duty should be able to use the education benefit derived from her deceased husband while still serving on active duty. Currently, the active duty widow must resign from the military in order to use the derived educational benefit.

4. There is a small group of widows whose husband died short of twenty years of military service between 1993 and 2001 without SBP or rank-based DIC. This small group should be considered for an equity benefit as support payments.

## CONCLUSION

In conclusion, we do not want our widows to be forgotten whether they are experiencing their losses currently or whether they are members of the so-called Greatest Generation and experienced their loss many years ago during World War II. Whenever the ultimate sacrifice is given, there is family left behind. In the same way we have asked some to give their lives, we have also asked some to continue their lives with a chasm so large it is difficult to transgress. Let us show the spirit of this nation by not forgetting these widows, whose numbers grow daily.

I regret if I show some frustration in this next remark. These are issues we have addressed to the Congress over many years now. We have faith that when you ask the question, "Have we done enough?" that you will, with determination, try to close the gap to 'enough.' It is time to move forward with these issues.

I thank this Subcommittee for using this hearing as one more avenue of awareness and education and for giving me an opportunity to share my thoughts and the goals of the Gold Star Wives. We will be happy to work with the Subcommittee on any of these initiatives. Thank you.

**Statement of Patricia Montes Barron, Deputy Director, Government  
Relations, National Military Family Association**

Chairman Hall, and Distinguished Members of the Disability Assistance and Memorial Affairs Subcommittee, the National Military Family Association (NMFA) would like to thank you for the opportunity to present testimony today on whether we are indeed doing enough for the survivors of those who have sacrificed their lives in service to this Nation.

With the increased number of casualties as a result of Operation Enduring Freedom and Operation Iraqi Freedom over the past several years, many aspects of the casualty notification process and the survivor benefits package have been changed and enhanced. Several Federal agencies have a part in providing benefits to survivors and it is important to view the benefits as a package, one crafted to help surviving families cope with the loss of their loved one and transition into a new phase of their life. They are many-faceted, encompassing not only financial but housing, educational, medical and counseling benefits. NMFA has included an appendix that gives an overview of the benefits at the end of this statement.

**Responding to the Needs of Surviving Families**

The different agencies, the Department of Veterans' Affairs (VA), the Department of Defense (DoD) and the Social Security Administration (SSA) have been most responsive in developing ways to smooth the process and respond to the concerns of the families when they raise them. Although we realize the focus of this Subcommittee is on the benefits the VA provides, it is important to see how those benefits and the improvements the VA has implemented are part of the broader package of changes being made by all the agencies.

The creation of the dedicated Survivor page on the VA website ([www.va.gov](http://www.va.gov)) has been a most welcome resource. Providing a one-stop, easily accessible site for survivors to learn about education benefits, Dependency and Indemnity Compensation (DIC), bereavement and financial counseling, and support available from other agencies, it simplifies the information-gathering process. The VA also developed a folder that describes all VA resources, which is included in the new DoD Casualty Organizing Notebook, *The Days Ahead*.

Many of the surviving widows of service members who have died in OEF and OIF are young and have very young children. It could be difficult for them to care for those children and take advantage of the VA education benefit at the same time. NMFA commends the extension of the eligibility period for accessing those benefits to twenty years for these widows. It makes good sense.

NMFA appreciates the work being done by DoD and the Services to provide training to casualty assistance officers and to make sure survivors are receiving accurate information in a timely manner. The survivor guide published by DoD and available online, *A Survivor's Guide to Benefits: Taking Care of Our Own*, has already been updated several times as new benefits were implemented or needs for information identified. The Army set up the Families First Casualty Call Center, recently renamed Long Term Family Case Management (LTFCM), a one stop resolution center to assist surviving family members with questions concerning benefits, outreach, advocacy, and support. This call center is available for immediate and extended family members. The other Services have also become more responsive in their outreach to surviving family members.

The DoD/VA Survivors forum is an example of this outreach. Made up of staff members from DoD, the VA and the Services and other stakeholders including the Service Aid Societies, groups like the Gold Star Wives, TAPS and NMFA, and surviving spouses, it meets three times a year, reviewing concerns as they arise. At the meeting just this week, a recent policy change on how the remains of deceased service members are moved from Dover was discussed. Since January, each escorted coffin is placed on a military or military contracted plane and transported to the location of the funeral. This was in reaction to a perception on the part of some families that the remains of their loved ones were being handled like cargo on commercial flights and not being treated with the respect they deserved. An honor guard meets each plane when it reaches its final destination. Also discussed was the implementation of a new policy extending the eligibility of the SBP child-only option to some surviving families who had been inadvertently left out of the original legislative language. Participants also learned of proposed DoD changes for FY 09.

NMFA has surfaced concerns from family members who have reached out to us to the appropriate chains of command within DoD and the VA and to Congress. We have been pleased at the response of all the specific DoD and Service casualty assistance offices to these families. Unfortunately, we still occasionally hear of widows or parents who still do not know who to call when there is a concern.

The advent of instant communication from the battlefield has made it more important than ever that the survivors receive the most complete information from the command in the most compassionate and efficient way possible. The next of kin should be the first to know of the casualty. In an effort to help their neighbors through a difficult time, some Army installations have created Care Teams to assist families when the unit has a casualty. The concept behind the Care Team is that rear-detachment commanders and Family Readiness Group leaders have volunteers ready to provide immediate support as the notification teams leave, rather than scrambling around. Care Teams—each with two or three members—train to do everything from looking after children, to anticipating potential crises, to fending off “concerned” neighbors at a vulnerable time. Each Care Team goes through careful screening and training, then undergoes debriefings after helping families to make sure they do not suffer themselves from what is always an emotional test.

NMFA also sees a need for specific training in bereavement and other counseling for family readiness group leaders, ombudsmen, and key volunteers. Many widows say they suddenly felt shut out by their old unit or community after the death of their service member. Often the perceived rejection is caused by a lack of knowledge on the part of other families about how to meet the needs of the survivors in their midst. Because they find contact with survivors difficult, they shy away from it. In some communities, support groups outside the unit family support chain have been established to sustain the support of the surviving families in the days and months after the death of the service member. As part of the standardization and improvement of the casualty assistance process, more effort needs to be placed at the command level on supporting the long-term emotional needs of survivors and of communities affected by loss. The implementation of the Care Team process on a broader scale not only supports survivors, but also those community volunteers who bear the burden of support.

Because the VA has as part of its charge the “care for the widow and the orphan,” NMFA was concerned about recent reports that many VA Counseling Centers did not have the qualified counseling services they needed to provide promised counseling to survivors, especially to children. Families are also concerned about distances from VA counseling centers. We were heartened to hear at the aforementioned DoD/VA Survivors Forum that many VA counseling centers are increasing their efforts to find local resources and provide case management for families who do not live near a center or when the center itself does not have counselors that are equipped to counsel children. DoD and the VA must work together to ensure surviving spouses and their children can receive the mental health services they need. The VA must also reach out to parents and siblings of deceased service members, who do not have access to mental health benefits through TRICARE.

New legislative language governing the TRICARE behavioral health benefit may also be needed to allow TRICARE coverage of bereavement or grief counseling. While some widows and surviving children suffer from depression or some other medical condition for a time after their loss, many others simply need counseling to help in managing their grief and helping them to focus on the future. Many have been frustrated when they have asked their TRICARE contractor or provider for “grief counseling” only to be told TRICARE does not cover “grief counseling.” Available counselors at military hospitals can sometimes provide this service and certain providers have found a way within the reimbursement rules to provide needed care, but many families who cannot access military hospitals are often left without care because they do not know what to ask for or their provider does not know how to help them obtain covered services. Targeted grief counseling when the survivor first identifies the need for help could prevent more serious issues from developing later.

NMFA applauds the enhancement of medical benefits included in the FY 2006 NDAA making surviving children eligible for full medical benefits to age 21 (or 23 if they are enrolled in college) bringing them in line with the active duty benefit for dependent children. To complete the benefit package we ask Congress to allow surviving children to remain in the TRICARE Dental Program until they age out of TRICARE and, in cases where the surviving family had employer-sponsored dental insurance, treat them as if they had been enrolled in the TRICARE Dental Program at the time of the service member’s death.

#### **Caring for the Youngest Survivors**

Recently, a story in the *Washington Post* raised concerns about some of the difficulties families encounter in the awarding of survivor benefits to the children of single service members. NMFA has always emphasized that service members and families must understand there is a *package* of survivor benefits. The death gratuity was originally intended to act as a financial bridge, to help with living expenses until other benefits such as the Dependency and Indemnity Compensation (DIC)

payment, the Survivor Benefit annuity, and Social Security benefits begin to be paid. The Servicemembers Group Life Insurance (SGLI), is, as its name implies, an insurance plan. The death gratuity is not an insurance payment, even though its \$100,000 amount is bigger than many civilian life insurance payouts. Service members may thus regard it as just another insurance plan.

As the law is currently written, the death gratuity must be awarded to the next of kin. The service member may designate multiple beneficiaries for the SGLI. If the parent or sibling of a service member is named as the single beneficiary or one of multiple beneficiaries, there is no stipulation in the SGLI regarding the use of that money for any particular purpose. It is of utmost importance, in light of the increased value of the survivor benefits, that the service member be informed about the difference between the death gratuity and the SGLI payment. It is also important that service members and their families discuss the implications and disposition of these payments, especially when there is a minor child involved or when there are children from a prior marriage or relationship to consider. With the increased amount of survivor benefits, it is incumbent upon single service members with children or dual service member couples with children to create not only a family care plan, but an estate plan as well.

NMFA is concerned that the legal necessities of appointing a guardian for a minor child upon the death of their single service member parent may cause a delay in accessing the death gratuity at a time when the family may need this bridge payment the most. Legislation to change the way the death gratuity is awarded must meet two goals: preserving the intent of the death gratuity as a payment to assist with immediate financial needs following the death of the service member AND protecting the benefits due the minor child. NMFA would support legislation to allow the designation of a service member's parent or sibling as the recipient of a portion of the death gratuity payment if there is a guarantee the payment would be used as that financial bridge for the minor child until other benefits are awarded, with the remainder placed in trust for the child. The protection of the financial future of the child is paramount. If the service member wants to provide for other family members, the proper mechanism is to designate those family members as beneficiaries of all or part of the SGLI.

The VA provides a monthly transition benefit of \$250 for two years following the death of the service member for surviving spouses with children. NMFA would support the extension of this benefit to the guardians who are caring for the minor children of deceased service members.

**The surviving children of single service members who die on active duty require special protections to ensure the proper financial disposition of the enhanced survivor benefits. NMFA asks Congress to provide the proper protections for the child(ren) if allowing a guardian to receive the death gratuity and to remember the original intent of the death gratuity payment was to serve as a financial bridge until the initiation of the payment of the survivors' benefits.**

#### **Eliminate the DIC Offset to SBP**

NMFA still believes the benefit change that will provide the most significant long-term advantage to the financial security of all surviving families would be to end the Dependency and Indemnity Compensation (DIC) offset to the Survivor Benefit Plan (SBP). Ending this offset would correct a longstanding inequity. Each payment serves a different purpose. The DIC is a special indemnity (compensation or insurance) payment from the VA to the survivor when the service member's service causes his or her death. It is a flat rate payment, currently \$1,067 for the surviving spouse and \$265 for each surviving child. The SPB annuity, paid by DoD, reflects the longevity of the service of the military member. It is ordinarily calculated at 55 percent of retired pay. Military retirees who elect SPB pay a portion of their retired pay to ensure that their family has a guaranteed income should the retiree die. If that retiree dies due to a service connected disability, their survivor becomes eligible for DIC.

If there is no surviving spouse, surviving children of a single service member, who are in the custody of the former spouse of the service member or a guardian, are eligible for SBP and DIC payments. The amount of the SBP annuity is divided among the children who are recognized as dependents of the service member. As children age out of eligibility, the portion provided to each of the remaining children increases. The DIC payment amount for these children is greater than for children with a surviving parent. The table of payments is found at [www.va.gov](http://www.va.gov). Disabled children receive the SPB and DIC payments for a lifetime.

Four years ago, survivors of service members killed on active duty were made eligible to receive SBP. The amount of their annuity payment is calculated as if the

service member was medically retired at 100 percent disability. The equation is the basic pay times 75 percent times 55 percent. The annuity varies greatly, depending on the servicemember's longevity of service.

Surviving active duty spouses can make several choices, dependent upon their circumstances and the ages of their children. Because SPB is offset by the DIC payment, the spouse may choose to waive this benefit and select the "child only" option. In this scenario, the spouse would receive the DIC payment and the children would receive the full SBP amount until each child turns 18 (23 if in college), as well as the individual child DIC until each child turns 18 (23 if in college). Once the children have left the house, this choice currently leaves the spouse with an annual income of \$12,804, a significant drop in income from what the family had been earning while the service member was alive and on active duty. The percentage of loss is even greater for survivors whose service members served longer. Those who give their lives for their country deserve more fair compensation for their surviving spouses. We urge Congress to intensify efforts to eliminate this unfair "widow's tax" this year.

NMFA believes several other adjustments could be made to the Survivor Benefit Plan. These include allowing payment of SBP benefits into a trust fund in cases of disabled children and allowing SBP eligibility to switch to children if a surviving spouse is convicted of complicity in the member's death.

**NMFA recommends the DIC offset to SPB be eliminated to recognize the length of commitment and service of the career service member and spouse and relieve the spouse of making hasty financial decisions at a time when he or she is emotionally vulnerable.**

#### **Preparing for the unthinkable**

While survivors can never be fully prepared for the news their loved one has died in the line of duty, certain preparations can and should be made to assure casualty assistance is rendered and benefits are awarded as quickly and as compassionately as possible. Talking about the "what if" is not pleasant, but preparation in this time of war is necessary. NMFA appreciates the responsiveness of the VA and DoD to surviving families when needs arise and the continued support these agencies provide. These families deserve no less for the sacrifice they have made for our Nation.

### **Overview of Survivor Benefits April 2007**

#### **Benefits paid by the Department of Defense (DoD):**

- **Death gratuity**—\$100,000 (increased in P.L. 109–163) This is paid to the designated next of kin and is not taxable. This is supposed to be paid within 24 hours of notification of death. The purpose of this payment is to help the survivors in their readjustment and to aid them in meeting immediate expenses.
- **Burial benefits**—DoD will process, transport and inter remains. A casket, vault and headstone are provided or costs of up to \$7,700 may be reimbursed if the family elects to make private arrangements. Transportation costs for the immediate family are reimbursed if they must travel for the funeral (but not for a memorial service).
- **Military Health and Dental Care Benefits**—All otherwise eligible spouses and children remain eligible for military health care coverage. For the surviving spouse, for three years from the date of death, TRICARE benefits, including co-pays, remain the same as active duty family benefits. After 3 years, the cost of TRICARE and TRICARE co-pays rise to those of retirees. With the passage of P.L. 109–163, surviving children remain eligible for active duty family member medical benefits under TRICARE until they reach age 21 or 23 if enrolled in college. In most cases, the surviving spouse and children receive dental insurance premium-free for 3 years, before becoming eligible for the premium-based Retiree Dental Program. The spouse loses eligibility for medical and dental benefits upon remarriage. They may not be reinstated.
- **Survivor Benefit Plan (SBP)**—Surviving spouses of service members who die on active duty are entitled to SBP benefits. SBP payments equal 55% of what the member's retired pay would have been had the member been retired at 100% disability, i.e. 75% of the basic pay (Basic pay times 75% times 55%). SBP is automatically adjusted annually for cost of living increases. SBP payments are subject to Federal income taxes. The spouse may decide to waive their payment and have payment made to children only until the children reach age 18 or 23 if enrolled in school. If the spouse remarries before age 55, SBP payments cease. If the subsequent marriage ends in death, divorce or annulment, SBP may be reinstated. If the spouse remarries after age 55,

the SBP payments continue. Spouse SBP payments are offset by Dependency and Indemnity Compensation (DIC) payments.

- Housing benefit—Surviving families may occupy government quarters or be paid housing allowances for 1 year effective with the passage of P.L. 109–163 in 2006. These allowances vary according to rank and geographic location. In addition, the family is eligible for one move at the cost of the government.
- Service member's Group Life Insurance (SGLI)—All service members are automatically enrolled for \$400,000 of coverage unless they explicitly decline the insurance or purchase lower levels of coverage. SGLI will be paid to the individual designated on the service member SGLI election and certificate form. If no beneficiary is elected by the service member, the proceeds are paid first to the surviving spouse; if none, the child(ren) (natural, adopted or illegitimate) in equal shares; if none, to the parents (natural or adopted).
- Other DoD benefits—Spouses are eligible for Commissary, Exchange, and Morale, Welfare and Recreation activities privileges indefinitely unless they remarry. Children maintain eligibility until age 18 or 23, if still enrolled in college.

**Benefits paid by the Department of Veterans Affairs (VA)**

- Transition Assistance—a monthly payment of \$250 paid to surviving spouses with children for two years from the date of death of the service member to help with transition.
- Dependency and Indemnity Compensation (DIC)—Surviving spouses and children (and some dependent parents) are eligible for DIC. The rate has been adjusted annually for cost of living increases. The 2007 spouse DIC rate is \$1067 monthly. The DIC payment is non-taxable. Additional amounts, also adjusted annually, are authorized for a surviving spouse with minor children. The current monthly benefit for 2007 is \$265 for each child. Unmarried children are eligible for the benefit until they reach the age of 18 (19 if still in secondary school), between 18 and 23 if they are attending a VA approved institution of higher learning or for life if they are disabled while still eligible for the benefit. Children of a deceased member, who did not have a spouse at the time of death, receive a different monthly benefit. If the spouse remarries before age 57, payment of the spouse's DIC ends. The children's DIC payment continues as long as they are eligible. If the subsequent marriage ends in death, divorce or annulment, DIC will be reinstated.
- Survivors' and Dependents' Educational Assistance Program—Surviving spouses and children are eligible for up to 45 months of education benefits. Beginning 1 July 2005, the surviving spouse of a service member killed on active duty has an extended eligibility for education benefits of up to 20 years after the date of the member's death. Children are normally eligible to receive the educational benefits between their 18<sup>th</sup> and 26<sup>th</sup> birthdays. The current monthly benefit is \$860 per month and increases every year.
- Home Loan Guarantees—An unremarried surviving spouse is eligible for GI home loans and retains eligibility if remarriage occurs after 57<sup>th</sup> birthday.

**Benefits paid by the Social Security Administration:**

- Social Security monthly benefits—paid to a spouse or a divorced spouse regardless of age if the children of the deceased service member are under age 16 or are disabled and meet Social Security requirements. The amount paid can only be determined by the Social Security Administration.
- Social Security Lump Sum Death Benefit—a payment of up to \$255 is paid to the surviving spouse living with the member at the time of death or to the oldest surviving child if there is no spouse.

Some states also pay death benefits or provide other support, especially to the survivors of National Guard or Reserve Members killed on active duty. The scope of these benefits and eligibility for them varies by state.

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**Statement of Christine Cote, Staff Attorney, National Veterans Legal Services Program**

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to appear before you on behalf of the National Veterans Legal Services Program (NVLSP). NVLSP is an independent, non-profit veteran service organization that has been assisting veterans and their advocates for 27 years. We publish numerous advocacy materials, recruit and train volunteer attorneys, and train service officers from such veterans service organizations



as The American Legion and Military Order of the Purple Heart in veterans benefits law. NVLSP also represents veterans and their families on claims for veterans benefits before VA, the U.S. Court of Appeals for Veterans Claims (CAVC), and other Federal courts.

My testimony today will focus on what happens when an individual, whose claim for VA benefits is pending, dies before the adjudication process is complete.

### **A. The Current Law**

If an individual, who has filed a claim for VA benefits, dies while the claim is pending before a VA regional office, the Board of Veterans' Appeals, or a reviewing court, the pending claim dies as well. This is true for claims for disability compensation, pension, dependency and indemnity compensation (DIC), and death pension. See *Richard v. West*, 161 F.3d 719 (Fed. Cir. 1998); *Zevalkink v. Brown*, 102 F.3d 1236 (Fed. Cir. 1996); *Landicho v. Brown*, 7 Vet. App. 42 (1994). A survivor may not step into the shoes of the deceased claimant to continue or to appeal the claim—no matter how long the claim has been pending in the VA claims adjudication process.

### **B. The Route Surviving Family Members Have to Travel to Obtain Benefits Based on the Deceased Claimant's Claim**

As a logical matter, some benefit claims that do not result in a final decision because the claimant dies before a final decision could be issued would result in a grant of benefits if the claimant had lived. Congress has provided a limited opportunity for certain specific surviving family members to obtain the benefits the deceased claimant had been seeking at the time of death. This opportunity for accrued benefits is quite limited however, as I will describe below.

#### **1. Only Certain Family Members May Apply for Accrued Benefits**

In order to obtain the benefits that the deceased claimant was seeking at the time of death, a brand new claim for benefits, called accrued benefits, must be filed. See 38 U.S.C. § 5121, 38 C.F.R. § 3.1000. Only certain surviving family members may pursue a claim for accrued benefits. An individual satisfying the definition of a surviving spouse may apply for accrued benefits. If there is no surviving spouse, a surviving child may qualify as a claimant, but only if he or she is: (a) unmarried and under the age of 18; or (b) under the age of 23, unmarried, and enrolled in an institution of higher education. If there is no surviving spouse or qualifying surviving child, a surviving parent may apply for accrued benefits but only if he or she was financially dependent on the claimant at the time of the claimant's death. No brothers or sisters or other family members may apply for accrued benefits. See 38 U.S.C. §§ 101, 5121; 38 C.F.R. § 3.1000(d).[1]

#### **2. Time Limits**

The application for benefits must be filed within one year of the date of the claimant's death. VA regulations do allow for extensions of time to file outside of the 1-year period, but only if the survivor is able to demonstrate "good cause". 38 C.F.R. § 3.109(b). Thus, the VA may allow for an extension of time, but is *not* required to do so.

#### **3. No New Evidence Can Be Submitted**

The survivor also cannot submit new evidence to show that the deceased claimant is entitled to the benefits sought. Accrued benefits determinations can only be "based on evidence in the file at date of death." 38 U.S.C. § 5121 The VA regulations provide that "evidence in the file" means evidence within the VA's constructive possession, on or before the date of death, but that would only include evidence like existing service personnel records or existing VA medical records. See 38 C.F.R. § 3.1000(a); 67 Fed. Reg. 65,707 (2002). [2]

[1] There is one narrow exception: Accrued benefits may be paid to reimburse any individual who bore the expense of the last sickness or burial—but only to the extent of the actual expenses incurred.

[2] The accrued benefits statute does provide that if a survivor's application "is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application." 38 C.F.R. § 3.1000(c)(1) However, this "evidence necessary to complete the application for accrued benefits" is information necessary to establish

#### 4. Limitations on the Types of Benefits that Qualify as Accrued Benefits

The opportunity for a qualified survivor to receive accrued benefits under section 5121 is restricted to pending claims of the deceased for “periodic monetary benefits.” To be a claim for “periodic monetary benefits”, the benefits must be the type that are “recurring at fixed intervals”, such as disability compensation.

Many claims are for benefits that are not periodic monetary benefits. For example, in *Pappalardo v. Brown*, 6 Vet.App. 63 (1993), the Court held that a claim for a one-time payment for specially adapted housing reimbursement assistance under 38 U.S.C. Chapter 21 did not qualify as a claim for periodic monetary benefits for purposes of section 5121. This is so even though the family had already incurred the expense of remodeling the home in accordance with standards approved by the Boston VARO to meet the needs of the veteran, who had lost the use of both lower extremities 20 years earlier due to service-connected post-encephalitic Parkinson’s disease, and who died while the housing assistance claim was pending. Thus, an accrued benefits claim may only be granted if the deceased claimant would have been entitled to a benefit like monthly disability compensation or special monthly compensation benefits.

#### 5. Limitations on the Amount of Benefits

The amount of accrued benefits available to a survivor may also be limited. For veterans who died prior to December 16, 2003 (the date of enactment of the Veterans Benefits Act of 2003), family members cannot receive more than 2 years’ worth of accrued benefits, even if, for example, the survivor is able to prove that the veteran was entitled to 10 years worth of benefits. The enactment of the VBA of 2003 removed the 2-year cap, but only when the claimant with a pending claim died on or after December 16, 2003. Pub. L. No. 108–183, § 104, 117 Stat. 2651 (Dec. 16, 2003).[3]

#### *C. The Recent Court Decision Carving Out an Exception to the Harsh Rules that Currently Exist*

Probably the harshest part of the rules that apply when a claimant with a pending claim dies before a final decision is rendered is that the survivor must start the claim all over again at a VA regional office, regardless of how far the pending claim had proceeded in the adjudication process. Even if the pending claim had made it up the chain to a reviewing court, which often takes many years, the survivor, who may be elderly or infirm, must still file a new claim at the VA regional office level and “go to the back of the line.” The inability of the survivor to substitute and pick up where the claimant left off can add years to the claims process and add to the burden of the agency, which must now address an entirely new claim where there had already been development of another claim raised by the deceased.

Frustrated survivors have long sought to continue to prosecute a deceased claimant’s disability compensation claim at the Court level. *See, e.g., Zevalkink, supra; Landicho, supra* at 47. In *Padgett v. Nicholson*, 473 F.3d 1364 (Fed.Cir. 2007), issued just last month, the Federal Circuit carved out a very limited exception to the harsh rule that a claim dies with the claimant.

#### 1. The facts

Mr. Barney Padgett, a World War II combat veteran, was awarded service connection by the VA for residuals of a left-knee injury in August 1945. In June 1976, service connection was granted by the VA for traumatic arthritis of the left knee and for a residual sprain of the left knee.

In March 1993, Mr. Padgett sought service connection for a right hip disorder—which he alleged was caused by the service-connected left-knee disability. The VA regional office denied the claim. On appeal, the Board, in an April 1997 decision, remanded the claim for further development, including a hearing. The regional office continued the denial in an August 1997 rating decision. In August 1999, the

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that the survivor is within the category of eligible survivors and circumstances exist that make the survivor the specific person entitled to the accrued benefits. That is to say, materials including the death certificate of the deceased claimant, marriage certificates demonstrating the status of an individual as a surviving spouse, birth certificates demonstrating the status of an individual as a child, or documentation of enrollment in studies at an educational institution are the only types of additional evidence that may be introduced. 67 Fed. Reg. 65,707 (2002).

[3] For deaths occurring on or after December 16, 2003, successful accrued benefits claimants are now entitled to the entire amount of benefits that would have been paid had death not occurred.

Board forwarded the claim to the VA Medical Center in Columbia, South Carolina for a medical opinion. The Board continued its denial in a December 23, 1999 decision.

On appeal to the CAVC, the Court remanded the claim back to the Board for re-adjudication on March 26, 2001. The Board issued a new decision on August 8, 2002, again denying service connection for a right hip disability.

Mr. Padgett appealed the matter for a second time to the Court of Appeals for Veterans Claims. Briefs were filed, and oral argument was conducted in April, 2004. The parties filed supplemental pleadings and briefs and the matter was referred to the full Court for disposition in September, 2004.

On April 19, 2005, *more than 12 years* after Mr. Padgett initiated his claim, the Court issued a decision reversing the Board's denial and ordering the VA to grant the veteran's disability claim for a hip condition. That same month, however, counsel for the veteran learned that Mr. Padgett died on November 3, 2004, before the Court's decision. The Secretary immediately filed a motion to rescind the reversal and dismiss the appeal. The veteran's surviving spouse, Mrs. Padgett, filed a motion to be substituted as a party to the appeal. The CAVC granted the VA's motion to dismiss and denied Mrs. Padgett's motion for substitution, following the normal rule that the claim died when Mr. Padgett died.

## 2. The Federal Circuit's Decision

NVLSP appealed the Veterans Court's decision on Mrs. Padgett's behalf to the U.S. Court of Appeals for the Federal Circuit. NVLSP argued that applying to the Padgetts the normal rule that a claim dies with the veteran would be exceedingly harsh. Mr. Padgett spent the last 12 years of his life battling the VA for disability benefits for his hip disability. He finally won that battle in April 2005, when the Court of Appeals for Veterans Appeals ruled that the Board's denial of his claim was clearly erroneous.

But merely because Mr. Padgett died a few months prior to the Veteran's Court decision, the Veterans Court wiped this victory off the books. For Mrs. Padgett to recover the 12 years of disability benefits that would have been owed by the VA to her husband if he had lived longer, the normal rule required her to start the process all over again by filing a new claim with the VA regional office for accrued benefits. And to add insult to injury, because the normal rule required the Veterans Court to wipe its April 2005 decision off the books as if it had never occurred, the regional office would not be required to grant Mrs. Padgett's claim for 12 years of accrued benefits. The regional office would be free to deny Mrs. Padgett's claim for the same reason that it had denied Mr. Padgett's claim on numerous occasions over the preceding 12 years.

Recognizing the harshness of the normal rule that a claim dies with the claimant, the Federal Circuit responded to Mrs. Padgett's appeal by carving out a *very narrow exception*. In a case like Mr. Padgett's, in which: (a) the veteran had appealed his claim all the way to the CAVC; (b) the CAVC issued its decision before it became aware that the veteran had died; and (c) the death occurred after all of the legal briefs had been filed with the CAVC so that there was nothing left to do but to issue a decision; then (d) the CAVC could keep its decision on the books by making it effective retroactive to the date of the veteran's death, and allow the surviving spouse to substitute for the veteran in the appeal before the CAVC.

As a result of the Federal Circuit's decision, Mrs. Padgett quickly received over \$50,000 in tax-free VA benefits—representing 12 years' worth of disability benefits for Mr. Padgett's hip disability. Because of the harsh rule that the claim dies with the claimant, most surviving family members of a veteran who dies while his claim is pending before the VA are not this lucky.

A recent VA General Counsel Opinion, VAOPGCPREC 2-2007, held that the decision in *Padgett* would have no effect on an appeal pending before the BVA when a claimant dies. The General Counsel held that 38 C.F.R. § 20.1302 would require the Board to dismiss an appeal pending before the Board when the claimant dies—and survivors of a deceased claimant seeking accrued benefits at the Board level will still have to go to the "back of the line".

Thank you for holding such an important hearing and allowing us to highlight some of the problems faced by survivors when a veteran or other claimant dies. I would be happy to answer any questions that you may have at this time.

**Statement of Jack McCoy, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration, U.S. Department of Veterans Affairs**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on the important issue of survivors' benefits. Providing benefits for the surviving family members of our veterans is one of the core responsibilities of the Department of Veterans Affairs (VA). I am pleased to be accompanied by Mr. Thomas Lastowka, Director of VA's Philadelphia Regional Office and Insurance Center.

VA provides a wide range of benefits to the surviving spouses, dependent children, and dependent parents of deceased servicemembers and veterans. We have experienced counselors ready to help survivors to understand the benefits to which they may be entitled and assist them in filing claims.

***Casualty Assistance Program***

Veterans Benefits Administration (VBA) casualty assistance officers, positioned at each VA regional office, work closely with military casualty assistance officers. They visit survivors of servicemembers who die on active duty at a time appropriate for the family and assist them in applying for benefits. Information is provided about Dependency and Indemnity Compensation, Insurance benefits, Dependents' Educational Assistance, home loan guaranty benefits, and the availability of bereavement, vocational, and financial counseling services, as well as other benefits available through the Department of Defense (DoD) and the Social Security Administration.

To ensure consistent delivery of services, VBA representatives at both the national and local levels provide training to newly assigned military casualty assistance officers to ensure accurate information about VA benefits is provided to survivors. VA, along with representatives from DoD and the various military service departments, serves on the Casualty Advisory Board. Through this strong working relationship, we are able to get information out quickly to all military casualty assistance officers to advise them of any changes in VA benefit programs or procedures.

***Dependency and Indemnity Compensation***

Dependency and Indemnity Compensation (DIC) is paid to the surviving spouse, children, and parents of a servicemember who died in the line of duty in active service or a veteran who died after service as the result of a service-connected or compensable disability. Under certain circumstances, DIC is also paid to the surviving spouses and children of former POWs and other veterans who were totally disabled at the time of death, regardless of the cause of death, if the death was not the result of the veteran's own willful misconduct. We are currently paying this benefit to 328,000 survivors.

The DIC application process has been streamlined for in-service deaths through use of a special worksheet, and claims processing has been centralized to the VA Regional Office in Philadelphia. The goal is to process all in-service death claims within 48 hours of receipt of all required documents. At the time of the initial visit, family members are in an acute stage of grief and are not always able to absorb and understand the full range of benefits available to them. To ensure that surviving spouses and children are aware of all benefits, a 6-month follow-up letter is also sent reminding them of the benefits and services. A special brochure, VA Pamphlet 21-02-1, Benefits and Services for Survivors of Servicemembers Who Die on Active Duty, is given to survivors.

Surviving spouses currently receive \$1,067 a month, with additional amounts payable for children under the age of 18 or if the surviving spouse is in need of regular aid and attendance. A surviving spouse who has a child or children under the age of 18 and receives DIC is also entitled to a transitional benefit of \$250 per month. The surviving spouse receives this additional benefit for 2 years after entitlement to DIC begins or until all of the surviving spouse's children have reached 18 years of age, whichever is earlier. Surviving spouses may continue to receive DIC benefits upon remarriage if the remarriage takes place after the spouse's 57th birthday.

In partnership with the Department of Defense, VA established the Survivors' Group Forum to work with agencies and organizations that work directly with survivors to develop procedures and programs to improve assistance to this special group of beneficiaries. Representatives in this forum include Gold Star Wives, military department Casualty Assistance Program Managers, the National Military Family Association, military relief societies, the Tragedy Assistance Program for Survivors, and the Retired Enlisted Association. A special Survivors Benefits website was activated in 2005 to provide complete information to survivors and other interested individuals about benefits and services available to survivors.

**Parents' DIC**

VA also pays DIC to parents of deceased veterans if the parents' income is below a certain amount. The maximum rate currently payable to a sole surviving parent is \$524 per month. If a sole surviving parent is in need of aid and attendance to perform daily activities such as bathing, dressing, or eating, an additional amount is payable. The maximum monthly benefit in these cases is \$808.

**Death Pension**

If a veteran's survivors do not qualify for DIC because the veteran did not die in the line of duty in active service or after service as the result of a service-connected or compensable disability or was not totally disabled by a service-connected disability at the time of death, they may still be entitled to death pension. Eligibility for pension is based on financial need. The general requirement for this benefit is that the veteran had to have served at least 90 days in active service with at least one of those days occurring during a period of war, or at the time of death was entitled to receive compensation or retirement pay for a service-connected disability. The maximum death pension benefit is currently \$7,329 per year for a surviving spouse with no child of the veteran in the spouse's custody, and \$1,866 for a surviving child of a veteran not in the custody of a surviving spouse. An additional amount is payable if the surviving spouse who is entitled to pension is in need of aid and attendance.

**Dependents' Educational Assistance (DEA)**

The Dependents' Educational Assistance program provides up to 45 months of educational benefits to surviving spouses and dependent children of servicemembers who died on active duty; or, of veterans who died or became permanently and totally disabled as a result of a service-connected disability. These benefits may be used for degree and certificate programs, apprenticeship, and on-the-job training. Remedial, deficiency, and refresher courses may be approved under certain circumstances.

The DEA program was recently expanded to include the child or spouse of a servicemember who is hospitalized or receiving outpatient treatment for a permanent and total disability. This change was effective December 23, 2006.

In addition to biological children, step-children and adopted children are also eligible to receive DEA benefits, and a child's marriage does not affect his or her eligibility. A son or daughter may generally receive benefits under this program from age 18 to 26.

Individuals receiving DEA benefits may also be eligible to receive tutorial assistance and work-study benefits from VA. The maximum monthly benefit for tutorial assistance is \$100, and the maximum total benefit is \$1200. Individuals participating in the work-study program are paid at either the Federal or state minimum wage, whichever is greater.

**Educational and Vocational Counseling**

VA provides a wide range of vocational and educational counseling services to qualified family members. These services are designed to help an individual choose a vocational direction and determine the course needed to achieve a chosen goal. Assistance may include interest and aptitude testing, occupational exploration, and locating educational or training facilities that might be utilized to achieve an occupational goal.

**Montgomery GI Bill (MGIB) Transfer of Entitlement**

Another option for spouses or children of servicemembers wishing to pursue an educational or vocational program is the MGIB Transfer of Entitlement Program. The Secretary of each military service has the sole discretion to determine if that service will offer the transferability of entitlement option.

Each branch of service may establish its own requirements for transferring entitlement. A servicemember may transfer a maximum of 18 months of Montgomery GI Bill entitlement to his or her dependents; however, a servicemember may not transfer more entitlement than he or she currently has remaining. Requests to transfer entitlement are handled by the appropriate branch of service, typically at the time of reenlistment. The death of an individual transferring an entitlement does not affect the use of the entitlement by his or her dependents.

**Home Loan Guaranty**

The VA Home Loan Guaranty Program provides veterans the opportunity to become homeowners and assists them in retaining those homes in times of financial hardship. Unlike some other VA benefits, a veteran's family is not granted home loan benefits separate and apart from those provided to the veteran. However, an unmarried surviving spouse of a servicemember or veteran whose death was related

to military service may qualify for home loan guaranty benefits in his or her own name.

VA requires a servicemember or veteran obtaining a VA guaranteed loan to occupy the property as his or her home. However, when he or she is on active duty and cannot personally occupy the house, VA permits occupancy by the spouse to satisfy this occupancy requirement. Spouses receive the same supplemental servicing benefits available to veterans during times of financial hardship.

***Burial Benefits (Headstones, Markers, Presidential Memorial Certificates)***

VA is authorized to pay up to \$2,000 to cover burial and funeral expenses in cases of service-connected deaths. VA also pays a burial allowance of \$300 and a plot and interment allowance of \$300 in cases where the veteran's death was not service-connected and the veteran was entitled to receive compensation or pension at the time of death, or died in a VA medical facility.

In addition, VA provides burial in national cemeteries, burial flags and markers for the graves of deceased veterans, and a Presidential Memorial Certificate, which honors their memory.

***Life Insurance***

VA's administered and supervised life insurance programs provide \$1.1 trillion of coverage to nearly 7.3 million veterans, servicemembers, and their families. These programs, while providing coverage to servicemembers, veterans and their families, are actually benefits for survivors. The purpose of life insurance is to provide financial security for one's dependents—to bridge the gap between the financial needs of dependents and the amount available to them from other sources, to ensure that they are not burdened with debt following the insured's death. In fiscal year 2006, the VA Life Insurance programs paid \$2.3 billion in death benefits to nearly 144,000 beneficiaries.

***Servicemembers' Group Life Insurance (SGLI)***

SGLI covers active duty servicemembers and reservists, including the Coast Guard and uniformed members of the Public Health Service and the National Oceanic and Atmospheric Administration. The SGLI participation rate is 98 percent for active duty servicemembers and 92 percent for reservists (reservists called to active duty are included in the 98 percent active duty participation rate). From October 7, 2001 through April 10, 2007, the SGLI program paid \$1 billion to more than 4,700 beneficiaries of servicemembers. An analysis of the beneficiaries who have received payment under the SGLI program indicates that 42 percent of beneficiaries are parents, 28 percent are spouses, 10 percent are children, and 10 percent are siblings.

***Spousal Notification in the SGLI Program***

Under Public Law 109–80, effective September 1, 2005, the uniformed services are required to notify the spouses of servicemembers insured by SGLI of changes to coverage amount or beneficiary that were elected by the member in certain specified circumstances. These notifications inform spouses if the servicemember designated as the SGLI beneficiary someone other than the member's spouse or the member's children, or if the member elected less than the maximum available amount of coverage. Congress enacted this law for the protection of the member's immediate family.

***Family SGLI (FSGLI) Program***

FSGLI is a program extended to the spouses and children of servicemembers insured under the SGLI program. FSGLI automatically provides up to a maximum of \$100,000 of insurance coverage for spouses, and \$10,000 for each child. While the premium rates for spouses are age-based, child coverage is provided at no cost to the member. Family SGLI provides \$123 billion in coverage to more than one million spouses and more than two million children. Although Family SGLI expires 120 days after certain life events, such as the servicemember's separation from service, spouses have the option to convert their coverage to a commercial policy. Child coverage cannot be converted.

***Traumatic Injury Protection under Servicemembers' Group Life Insurance (TSGLI)***

While TSGLI is paid directly to the servicemember, its intent was to provide financial help to families as well. TSGLI was designed to provide severely injured servicemembers who suffer certain losses as a direct result of a traumatic injury with monetary assistance to help the servicemembers and their families through what is often a long and arduous treatment and rehabilitation period.

***Veterans' Group Life Insurance (VGLI)***

Upon separation, servicemembers can convert their SGLI coverage to VGLI, which provides lifetime renewable term coverage without proof of good health. This program guarantees that separating servicemembers can continue to provide financial security for their families following separation, even if they are disabled. Currently, 11% of servicemembers convert to VGLI.

***Service-Disabled Veterans' Insurance (S-DVI) and Veterans' Mortgage Life Insurance (VMLI)***

Two of our programs were designed specifically to provide life insurance coverage to service-disabled veterans, to ensure they can provide financial security for their families. The S-DVI program provides \$10,000 in life insurance coverage to veterans with service-connected disabilities, and an opportunity for the most severely disabled veterans to apply for an additional \$20,000 in coverage. The VMLI program provides up to \$90,000 in mortgage life insurance to recipients of VA's Specially Adapted Housing grant to lessen the financial burden of surviving family members.

***Insurance Outreach***

Following separation from service, the Office of Servicemembers' Group Life Insurance (OSGLI) sends a series of three mailings to inform servicemembers about their opportunity to apply for VGLI. In addition to these mailings, since 2001 the VA Insurance staff has been conducting a special outreach effort to servicemembers who separate from service with a military disability rating of 50 percent or more. Staff members personally contact these veterans by phone or letter to ensure that they are fully informed about their post-separation life insurance benefits. As a result of our efforts, we have provided \$333 million in life insurance coverage and death benefits that otherwise may not have been provided.

***Beneficiary Financial Counseling Service (BFCS)***

VA instituted BFCS in October 1999 to provide comprehensive personal counseling to SGLI, VGLI, and TSGLI beneficiaries on managing their finances to meet future needs, such as mortgage obligations, retirement savings, and college costs. Beneficiaries receive several notifications about the availability of this benefit following payment of the insurance claim.

***Assistance in Filing Insurance Claims***

In the SGLI and Family SGLI programs, when a servicemember, spouse or child of a servicemember dies, the branch of service Casualty Assistance Office assists the beneficiary with filing a claim. It provides the beneficiary with the claim form, and certifies to OSGLI the amount of SGLI or Family SGLI coverage payable and, for SGLI, the designated beneficiary. In the TSGLI program, VA and military representatives assist wounded servicemembers who are hospitalized at major military medical facilities with their claims.

The VA Insurance website ([www.insurance.va.gov](http://www.insurance.va.gov)) has been available since mid-1999 and provides information on all VA Insurance programs including eligibility, how to file a claim, frequently asked questions, and forms.

VA strives to get needed benefits as quickly as possible to the family members of deceased servicemembers or, in the case of TSGLI, to the servicemembers themselves, to help support them and their families. Data from this fiscal year indicate that SGLI and VGLI death claims are paid, on average, within four workdays of receipt of the required documentation. Claims on servicemembers who were killed in Operations Enduring Freedom and Iraqi Freedom are expedited and paid within 2 workdays. TSGLI payments are paid within 4 days of OSGLI's receipt of the necessary documentation from the military branches of service.

Mr. Chairman, this completes my statement. I will be happy to answer any questions you or other members of the Subcommittee may have.

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**Statement of Peter S. Gaytan, Director, Veterans Affairs and Rehabilitation Commission, American Legion**

Mr. Chairman and Members of the Subcommittee:

Thank you for giving The American Legion the opportunity to submit its views on the topic of "Helping Those Left Behind: Are We Doing Enough for the Parents, Spouses and Children of Veterans?"

It should first be mentioned that there is nothing the nation can do to replace the lives of our heroes who fall as a result of their service to our country. Acknowledging this at the outset should set the tone of the discussion, that tone being one

of profound gratitude, sorrow and respect for the servicemember and those they leave behind. Many words to that effect have been spoken in the past, the most well known probably being those words from President Lincoln's Second Inaugural Address which culminate in the words that have rightfully become the mission statement of the Department of Veterans Affairs (VA), "*to care for him who shall have borne the battle, and for his widow, and his orphan . . .*" The former, and less quoted section of that address is fulfilled by this Subcommittee's hearing today, "*With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in . . .*"

Whether a veteran dies as a result of war, or non-combat injuries incurred in service, America should remain steadfast in its goal to properly provide for and honor those who served by caring for those left behind. Caring for the parents, spouses and children of veterans is part of the continuing costs of war and the continual defense of freedom.

The American Legion applauds the many VA programs currently in place for survivors including Dependency and Indemnity Compensation (DIC), Survivors' and Dependents' Educational Assistance (DEA), Death Pension, Work-Study Employment, Home Loan Guaranty, Burial Benefits (Headstones, Markers, Presidential Memorial Certificates), Vet Center Bereavement Counseling, Vocational Rehabilitation and Employment (VR&E) Services, and Education Program Refunds.

#### ***Improve the Disability and Death Pension Program***

After careful study, The American Legion has concluded that certain inequities exist in the pension program for survivors. Under the current Death Pension program, the annual benefit rate for a surviving spouse with no income and no dependents is \$7,329 or about only two-thirds of the amount received by a veteran with no income and no dependents. In addition, current regulations provide that surviving spouses are not entitled to pension benefits for the month in which the veteran dies, if they are found eligible for death pension. The American Legion recommends that pension rates of surviving spouses be established at 90 percent of the rate for a veteran without dependents and that spouses become immediately eligible to receive benefits the same month a veteran dies.

Under the current Death Pension program, the annual benefit rate for a surviving child with no income where there is no surviving spouse is \$1,866 or 17 percent of the amount received by a veteran with no income or dependents. This limited amount may impose a severe financial hardship on the surviving child or children. Under title 38, United States Code, section 1543 where the surviving child is residing with a person who is legally responsible for such child's support, the income and corpus of estate of that person is countable for the purposes of determining entitlement or continued entitlement to pension benefits. The American Legion recommends establishing the pension rate for a surviving child, where there is no surviving spouse, entitled at 90 percent of the rate of a veteran without dependents and to delete the requirement that the income and corpus of estate of a person legally responsible for the support of a surviving child be counted in the determination of annual income of such child.

Currently, when two veterans are married to one another where both meet the disability, service and income requirements, basic pension benefits are payable only at the rate of a "veteran with one dependent," which is currently \$14,313 annually. The American Legion believes that since each veteran in their own right meets the eligibility criteria for pension with the exception of being married to another veteran, this discriminatory provision of the law should be eliminated and each veteran should be paid at the basic pension rate of a single veteran without dependents which is \$10,929, reduced by the amount of countable family income.

In the determination of annual income, payments under all Government Life Insurance programs are countable, but proceeds from fire and casualty insurance policies may be excluded. Previous pension programs have excluded the proceeds of Government Life Insurance Policies in the determination of annual income. The American Legion recommends determination of annual income payments exclude all proceeds from Government Life Insurance policies.

Finally, the effective date of reduction or discontinuance of pension based on a change of income is the last day of the month in which the change occurred. The American Legion believes it would lessen the financial hardship of such adjustments to pension if any such change would be made as of the last day of the calendar year in which the change occurred.

#### ***Restore and Increase Burial and Plot Allowance***

The National Cemeteries Act (Public Law 95-73) enacted in 1973 established a burial allowance of \$250 for eligible wartime veterans, and a \$1,500 burial allow-



ance for veterans who died of a service-connected condition. The Omnibus Reconciliation Act of 1990 limited the payment of the burial plot allowance of \$150, which was previously paid to all honorably discharged wartime veterans, to only those veterans who are indigent or who are in receipt of VA disability compensation or pension. Although there have been subsequent increases in the allowances, the infrequent incremental increases have meant that the current \$300 burial plot allowance and respective \$300 and \$2,000 burial allowances have not kept pace with inflation and increases in the cost of living throughout the years. Today in the United States, the average cost of a burial plot is more than \$4,000, and with additional expenses, such as embalming and a casket, the total cost for a funeral and an in-ground burial, according to a survey of burial costs conducted by the American Association of Retired Persons (AARP), can easily reach \$10,000.

The American Legion urges Congress to make the following changes:

1. Return the burial allowances and burial plot allowance to all veterans who served during a time of war or conflict.
2. Increase, from \$300 to \$1,135, the burial allowance for veterans now eligible under 38 United States Code (USC) §§ 2302 and 2303.
3. Increase, from \$2,000 to \$3,712, the burial allowance for veterans who died as a result of a service-connected condition as set forth in 38 USC § 2307.
4. Increase the burial plot allowance from \$300 to \$670.
5. Require VA to annually adjust burial allowances and burial plot allowance for inflation by tying the increased allowances to the Consumer Price Index.

***Reduce the Number of Years of 100 Percent Service Connection Required for Dependency and Indemnity Compensation Purposes***

Title 38, United States Code, section 1318 provides that DIC shall be payable as if the veteran's death were service-connected, if at the time of death, the veteran has been rated continuously as totally disabled for a period of 10 years or more.

The 10-year rule, although a longstanding policy, is an arbitrary length of time. It is intended to recognize the fact that the veteran's severe level of service-connected disability over a period of years has significant impact on the economic welfare and well-being of the veteran and his or her family. If this situation persists for 10 years or more and the veteran dies of any cause, the family will continue to receive VA financial assistance through the DIC program. However, many veterans in this disability category, because of age and general ill health, die of causes not directly attributable to their service-connected condition before their total rating has been in effect for 10 years. This can leave the family in dire economic circumstances.

The American Legion seeks to protect the families of these severely service-disabled veterans by having the time limit for DIC entitlement reduced from 10 years to 5 years. Such a change would be consistent with the DIC policy currently in place for those continuously rated totally disabled from the date of military discharge for at least 5 years immediately preceding death.

***Eliminate the bar to DIC benefits of surviving spouses who remarry after age 55.***

Public Law 108-83 provided that DIC benefits would not be terminated if the surviving spouse remarried at age 57. Congress used age 57 as a "budget savings" tool rather than opting for age 55. The American Legion and VA have supported legislation to remove the remarriage penalty for those surviving spouses aged 55 or older who would otherwise have been entitled to DIC. This would better align DIC benefits with benefits provided to surviving spouses of military retirees under the Department of Defense's Survivor Benefit Plan, which uses age 55, and to surviving spouses under Social Security, which uses age 60.

The American Legion urges Congress to examine removing the bar on the payment of Dependency and Indemnity Compensation benefits to surviving spouses who remarry after age 55.

***Eliminating the SBP/DIC Offset***

Survivors of a military retiree are sometimes entitled to both the DoD's Survivor Benefit Plan (SBP) and VA Dependency and Indemnity Compensation (DIC). SBP is similar to a life insurance program that is paid whether or not the death is service related. DIC is a flat rate monthly payment available only to the survivors of veterans whose death is service related. When survivors are eligible for both SBP and DIC, one dollar of SBP benefit is offset by every dollar of DIC benefit. There is a clear difference in structure and intent between the two programs, thereby making it unfair to offset the two programs.

The American Legion urges this Subcommittee to work with the Armed Services Committee in eliminating the SBP/DIC offset.

In conclusion, The American Legion believes that we, as Americans, need to continually update and improve on the way we *“[to] care for him who shall have borne the battle, and for his widow, and his orphan . . .”* Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to present The American Legion’s view on this issue. This concludes my testimony.

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**Statement of the Honorable Solomon P. Ortiz, a Representative in Congress  
from the State of Texas**

Mr. Chairman and Members of the Subcommittee:

Last week, I introduced legislation (HR 1927) that provides relief for widows of U.S. service members in fixing a longstanding problem in our military survivors benefit system, by allowing widows to receive all the benefits to which they are entitled, without one benefit offsetting another. This affects 59,000 widows and is companion legislation to S. 935, introduced by Senator Bill Nelson (FL).

Like most matters that involve Federal payments, this is a complex yet pivotal matter of importance to the widows and dependents of our service members. Essentially, if service members purchase a benefit plan, the surviving spouse or dependents receive up to 55% of the service member’s retired pay. The VA also offers payments to survivors of service members who die from a service-connected cause. Currently the law subtracts the VA payment from the survivor benefits payment, and that’s the amount the widow or dependent will get. That’s just wrong.

For too long, the painful offset between two programs has done precisely the opposite of what its purchasers intended it to do—protect the surviving loved one. Where else is a personally purchased annuity program able to refuse to pay benefits based on the ground of another benefit being received? Nowhere. In fact, our Federal civil servants receive both their personally purchased income protection annuity and any disability compensation for which they may be entitled, without an offset.

Why are the spouses and children of those who have made the ultimate sacrifice for their country forced to have their benefits reduced, solely based on a decision by their husband, wife, father or mother to purchase future security for their loved ones? Retirees’ widows are being penalized for their husbands’ efforts to care for them after they die. My legislation corrects this reduction of benefits by eliminating the offset. The survivors of those killed defending our country deserve our very best support.

I urge this Subcommittee to support my legislation and work to correct these injustices to our military spouses and children this year. We owe it to them for the incredible sacrifices they have endured; it is our obligation to correct this wrong, and it is profoundly the honorable thing to do.

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**Statement of Priscilla Piestewa, Flagstaff, AZ (Mother of Deceased Veteran  
and Guardian of Grandchildren)**

Mr. Chairman and Members of the Subcommittee:

I am very honored and humbled to be able to have input into this topic. I’m sorry we won’t be able to attend in person.

In 1964 I met my husband. In 1965, he was drafted and served in Viet Nam. He came home in March 1967, and we married in November 1968. In December 1968, our oldest daughter was born. In March 1971, our son was born. In October 1978, our second son was born. In December 1979, our second daughter was born.

As God blessed us with our children we made investments in them. They each made us proud in their own ways, and thus thanked us for the investment we made in them.

Our youngest daughter joined the military and gave her life for us and our country. However, she left behind 2 children. We received her insurance money, and because we wanted to make life better for her children, we invested the money for them in their names.

I’m not complaining because our grandchildren are very precious to us. However, my concern is that the children have to file and pay taxes on the money they receive, and on the interest they make on their investments. They are only 7 and 8 years old. Was the death of their mother not payment enough?

A monthly check for the children is issued to us in the amount of \$649.00, which we invest in the children’s activities:

Tae Kwon Do	\$200.00 (monthly)
Piano Lessons	\$130.00 (monthly)
Gymnastics	\$79.00 (monthly)
Wrestling	\$69.00 (seasonal)
Softball	\$95.00 (seasonal)
Baseball	\$95.00 (seasonal)
Schooling	\$6,000.00 (yearly)

We are retired and live on our retirement pensions, and as my husband would say, like so many others we live pay day to pay day.

Their mother gave her life, and we are grateful for the support we do get, but why do the children have to pay taxes.

My husband and I are fortunate we can invest in and support our grandchildren, but I know that there are others who find it hard to make ends meet.

Thank you in advance for any other assistance you can give. It will be greatly appreciated.

### **The Forgotten Families: Grandparents Raising Slain Soldiers' Children Are Denied A Government Benefit Intended to Sustain the Bereaved**

By Donna St. George  
Washington Post Staff Writer  
February 16, 2007, A01

Her daughter was killed by a bomb in Iraq. Eight months later, Susan Jaenke is both grief-stricken and strapped—behind on her mortgage, backed up on her bills and shut out of the \$100,000 government death benefit that her daughter thought she had left her.

The problem is that Jaenke is not a wife, not a husband, but instead grandmother to the 9-year-old her daughter left behind. “Grandparents,” she said, “are forgotten in this.”

For the Jaenkes and others like them, the toll of war can be especially complex: They face not only the anguish of losing a son or daughter but also the emotional, legal and financial difficulties of putting the pieces back together for a grandchild.

They confront this without the \$100,000 “death gratuity” that military spouses ordinarily get—a payment intended to ease the financial strain as families await government survivors’ benefits.

“It really does get complicated for them,” said Joyce Raezer of the National Military Family Association. The load of responsibilities placed on that generation—both during deployment and if a service member is injured or killed—is a huge issue.”

The case of Petty Officer 2d Class Jaime S. Jaenke, a Navy construction-battalion medic killed last June in Anbar province, is particularly striking because she was a single parent who clearly meant to assign her mother the benefit. Jaenke, 29, filled in her mother’s name on a form and carefully spelled out her wishes in a letter.

But by law, the \$100,000 benefit goes first to a spouse or a child. So 9-year-old Kayla Jaenke collects the \$100,000—plus \$400,000 in life insurance—after she turns 18, leaving Susan Jaenke to ask, “What about the next nine years?”

In some other families, the \$100,000 death benefit has gone to neither the children nor the grandparents who are raising them.

In California, Barbie and Matt Heavrin are caring for a 2-year-old grandson without the death gratuity or life insurance. Their daughter, Pfc. Hannah McKinney, assigned her \$400,000 in life insurance to the man she wed just before deployment, her father said; by law, her husband also received the gratuity.

The Heavrins are happy to raise the boy—from an earlier relationship their daughter had—but wonder why he would get nothing. Five months after their daughter died last September, their only assistance is monthly benefits they expect will total about \$800, most of which goes to day care.

In Missouri, grandmother Gail Kriete is raising 9-year-old Taylor Purdy, the child of Lance Cpl. Erik R. Heldt, a Marine killed in Iraq in June 2005. His wife collected the full \$500,000. Kriete said none went to his daughter, from a previous relationship.

“It just needs to be thought out a little more carefully,” Kriete said. “There are so many blended families that the suffering is very spread out.”

The death gratuity, more than many other benefits, adheres to a strict next-of-kin rule, which Pentagon officials say makes it possible to pay out the \$100,000

within a few days. They say that, in the “vast majority of cases,” spouses are most in need when paychecks stop.

But there have been thousands of single parents deployed into combat zones since 2001. How many have died at war is unclear, but the Jaenke case shows that, in those cases, the benefit may be at odds with its original intent: to help the grieving family stay afloat when a service member’s income suddenly stops.

Susan Jaenke said her family fell behind shortly after Jaime died—and has never caught up.

Larry Jaenke is a truckdriver, and Susan worked as a letter carrier for 23 years until an accident left her disabled. Their daughter Jaime and granddaughter Kayla lived with them. Susan provided child care when Jaime worked, and Jaime contributed to the family income.

Jaime’s passion for horses led the Jaenkes to start a business with her on their 10-acre Iowa property. When Susan Jaenke got an insurance settlement from her accident, she put much of it toward building a horse stable on the property, which was Jaime’s dream. Jaime—energetic and skilled with power tools—did the drywall and flooring.

Not long afterward, Jaime—a reservist who was an emergency medical technician in her civilian life—went to war.

#### **Unable to Make Ends Meet**

It was a June afternoon last year, and the Jaenkes were returning from Kayla’s softball game. She had made her team’s only hit—and her first hit ever. In a celebratory mood, they stopped to buy ice cream.

When they pulled into their driveway, the scene was one that no parent of a deployed soldier wants to see: two uniformed Navy men, waiting.

They soon learned that a roadside bomb had exploded near Jaime’s Humvee, killing her and a fellow Seabee.

At the funeral, Kayla stood solemn next to her mother’s flag-draped casket, the folded flag laid into her small arms.

Then came the dawning of the family’s new reality—the emotional, the practical, the financial.

There was a lawyer to hire to get legal guardianship. There were survivors’ benefits to apply for. There was a trust to set up. There was health insurance to obtain for Kayla. Inexplicably, there was no official will left behind.

For the Jaenkes, the trouble was not that raising Kayla is so expensive but that their entire financial picture shifted with Jaime’s death. Jaime’s checks immediately stopped. Larry Jaenke was out of work for a time. The family paid \$2,800 for a handsome headstone. The stable was still losing money.

Last fall, Susan Jaenke watched as Jaime’s pickup truck, and then her car, were repossessed.

The family scraped by, thanks to acts of kindness, Susan Jaenke said. When the Jaenkes’ dryer broke, nearby Seabee units stepped up to replace it. The Seabees have come three times to do finishing work on the stable, which Susan Jaenke says she will not give up. Kayla is there all the time, she said, and giving it up would be like losing what is left of Jaime.

The local Veterans of Foreign Wars gave the family a \$1,000 Target gift card, which she said made the family’s Christmas.

Since October, the Jaenke family has been collecting monthly government benefits for Kayla’s care—\$1,700 in all—but not enough to replace Jaime’s contributions. From Iraq, she had been sending home \$3,200 a month, her mother said. The child’s father, long estranged, does not pay child support, Susan Jaenke said.

The Jaenkes can request money from Kayla’s trust for certain expenses related to the girl’s “health, education, maintenance and welfare,” but the process involves lawyers and court appearances. The court recently agreed to a \$200 monthly stipend for the family.

“The court is just very conservative here in Iowa,” said Mona Bowden, an attorney for the Jaenkes.

#### **Clear Wishes, Clear Rules**

Every now and then, Susan Jaenke rereads the letter that Jaime left behind for her:

“I have got all my paperwork done and here is what I did. My big policy [\$400,000] goes to Kayla. That has to be put away for when she gets 18. You will know what to do and how to handle it. There is a smaller policy that goes to you. That is for 100,000. That is for you to raise Kayla with and 25,000 goes to the barn. . . . I can’t wait to get home to my girl and my horses, so you had better take care of them all.”

Patrick J. Palmersheim, executive director of the Iowa Department of Veterans Affairs, explained that the problem came down to the fine print on death gratuities. Jaime had written in her mother's name as beneficiary, but in the same blank the form said "No spouse or child surviving."

Susan Jaenke could be awarded the benefit only if there were no spouse or child to receive it.

The tight regulations are meant to guard against fraud and abuse, said Chief Petty Officer Randy Erdman, the Navy casualty assistance officer who has worked closely with the Jaenke family. "I see the need for the money going to the right spot and being protected," he said, "but at the same time I see what the family needs."

In Washington, Lt. Tommy Crosby, a Navy spokesman, said the Navy "recognizes the significant loss the family has suffered" and has done all it can, within the law, to help.

The death gratuity, created in 1908, originally was equal to 6 months' pay and was intended to ease financial burdens after a military death.

During the war in Iraq, the gratuity was increased markedly; it had been at \$6,000, then grew to \$12,000 and finally \$100,000. Lawmakers had said the original award seemed offensively low, especially in contrast to the large settlements awarded to families of those killed in the attacks of Sept. 11, 2001.

Still, there was little rethinking about beneficiaries for the \$100,000 gratuity, several experts said. To troops, the large lump sum came to resemble life insurance, said Raezer, chief operating officer of the National Military Family Association.

Jaime's handwritten letter and possibly her form suggest she did not realize the gratuity could not go to her mother.

Whether that is because she misunderstood what was said during a benefits briefing or was not advised well is unclear. "They don't always get that kind of counseling that they need," Raezer said.

The problem could have been avoided altogether if Jaime had directed part of her life insurance money, rather than the death gratuity, to her parents.

Steve Strobbridge, government relations director of the Military Officers Association of America, said Jaenke's case suggests that the regulations should be reexamined.

"We certainly need to look at whether there needs to be some additional flexibility in who the member can assign the death gratuity to and whether we need to adjust the counseling requirements to help protect people from unintended consequences," he said.

In her three-bedroom house in Iowa, Susan Jaenke said she has been reduced to worrying about grocery money and dreading calls from creditors. "It just hurts bad in so many different directions," she said. "My girl was supposed to come back."

Some days, the whole episode overwhelms her. Three of her four children have served in the Navy, and she said she considers herself "a flag waver." But she gets angry that her daughter's wishes are not being honored and that the family now struggles.

"It's not bad enough that I lost my daughter," she said. "What else do they want me to lose?"



Kayla Jaenke's mother, Jaime, was killed in Iraq last June. The Navy medic wanted a death benefit to go to her parents, but it cannot. (By Linda Davidson—The Washington Post)

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**Help Needed: Grandparents Raising the Children of Fallen Soldiers, By  
Carole Fleck, AARP Bulletin, April 2007**

By Carole Fleck  
AARP Bulletin  
April 2007

Army Pfc. Hannah McKinney's young son, Todd, and new husband were waiting for her to come home from Iraq last September. But just weeks before they were to be reunited, McKinney, 20, was killed in action. Now her parents, Barbie and Matt Heavrin of Redlands, Calif., are raising 2-year-old Todd, McKinney's child from a previous relationship. "Some days I'm overwhelmed with sadness thinking about Hannah," says Barbie Heavrin. Despite the emotional devastation, grandparents and other relatives who are left to raise a loved one's child don't get the financial support from the government that a surviving parent would.

The Heavrins are rearing their grandson without the benefit of the \$100,000 "death gratuity" the government gives to next-of-kin—defined as spouse or child—to offset the financial burden when a service member is killed. Nor did the Heavrins, who have been rearing Todd since their daughter's deployment to Iraq, receive the \$400,000 from group life insurance in which soldiers are automatically enrolled. McKinney had chosen her husband of less than a year as the beneficiary of both, despite the fact that he was not living with or caring for the toddler.

"You have an awful lot of grandparents who are care givers while their children are deployed," says Kathleen Moakler of the National Military Family Association in Alexandria, Va. Of the 3,131 soldiers killed in Iraq as of Feb. 3, a total of 143 were single parents, according to the U.S. Defense Department.

To assist caregivers in these situations, Congress is considering legislation that would allow some or all of a soldier's death gratuity to go to the children's grandparents or other guardians.

"The death benefit system overlooks that people other than spouses would take care of a minor should the unthinkable happen," says James Carstensen, spokesman for Rep. Tom Latham, R-Iowa, who introduced the legislation along with Sen. Chuck Hagel, R-Neb.

"We need this legislation passed," says Susan Jaenke of Iowa Falls, Iowa, who cares for her granddaughter, Kayla, 9. Jaenke's daughter, who was a single parent,

died in Iraq, and Jaenke didn't receive the death benefits—they're set aside for Kayla to collect when she's 18.

"I'm having trouble making ends meet," Jaenke says. "It's pretty scary."

