

LAW ENFORCEMENT RETIREMENT COVERAGE

HEARING

BEFORE THE
SUBCOMMITTEE ON THE CIVIL SERVICE
OF THE
COMMITTEE ON
GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

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LAW ENFORCEMENT RETIREMENT COVERAGE

THURSDAY, SEPTEMBER 9, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building. Hon. Joe Scarborough (chairman of the subcommittee) presiding.

Present: Representatives Scarborough, Cummings, and Norton.

Staff present: George Nesterzuk, staff director; Garry Ewing, counsel; John Cardarelli, clerk; Ned Lynch, senior research director; Jennifer Hemingway, policy director; Tania Shand, minority professional staff member; and Earley Green, minority staff assistant.

Mr. SCARBOROUGH. Good morning, ladies and gentlemen. I would like to call this hearing to order. Our purpose today is to delve into the details of one of the more sensitive subjects in our committee's jurisdiction—the Federal retirement benefit. The Federal Government is among the world's most generous employers in providing retirement benefits for employees who complete careers in public service. That benefit comes from annual cost of living adjustments that are unmatched in the private sector, and Federal employees are eligible to continue their health and life insurance coverage during retirement, with the government continuing to pay the employer's share of the expense.

Select groups of Federal employees qualify for even more generous retirement benefits. Because of the physical and mental strain associated with occupations classified as Federal law enforcement officers, firefighters, air traffic controllers, and nuclear materials couriers, these employees are eligible for enhanced benefits after as little as 20 years of service. Because these positions demand a young and vigorous work force, they carry a mandatory retirement age.

In crafting these benefits, a careful balance needs to be maintained between mandatory attrition and timely recruitment, between loss of experience and proper training of replacement workers, between safety requirements and program costs. The Federal retirement system is expensive in its generosity and totally unfunded in its asset base. The enhanced retirement for special occupations is even more expensive and much more of a liability on future taxpayers. It is our fiduciary responsibility to our citizens to make sure that these benefits are properly assigned and extra costs fully warranted.

During every session of Congress, the committee is deluged with requests to increase or otherwise improve on this generosity. This session of Congress is no exception. Some of the bills before us today, while well intentioned, contain provisions that work at cross purposes with agency missions. For example, forcing experienced employees into mandatory retirement, while Federal agencies complain of difficulties recruiting qualified professionals into public service, may not be wise public policy. And, of course, increasing the costs of retirement to agencies already at their spending caps simply makes it more difficult for them to perform their mission. Some might have to reduce other employment to fund this added benefit. We really must proceed cautiously.

I want to thank our witnesses today, and hope that the evidence compiled for today's hearing provides the foundation for a thorough examination of the many issues involved in the complex management of the retirement system for the Federal work force. Most importantly, we want to come up with something that is fair to the employees of these very difficult positions and is also something that we can afford as the Federal Government.

And with that, I would like to turn it over to the distinguished ranking member from Maryland, Mr. Cummings.

[The prepared statement of Hon. Joe Scarborough follows:]

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Opening Remarks of the Honorable Joe Scarborough
Chairman, Civil Service Subcommittee
Hearing on Law Enforcement Retirement Coverage
September 9, 1999

Good morning ladies and gentlemen. Our purpose today is to delve into the details of one of the more sensitive subjects in our Committee's jurisdiction -- the federal retirement benefit. The federal government is among the world's most generous employers in providing retirement benefits for employees who complete careers in public service. That benefit comes with annual cost of living adjustments that are unmatched in the private sector, and federal employees are eligible to continue their health and life insurance coverage during retirement, with the government continuing to pay the employer's share of the expense. ^{F2U2}

Select groups of federal employees qualify for even more generous retirement benefits. Because of the physical and mental strain associated with occupations classified as federal law enforcement officers, firefighters, air traffic controllers, and nuclear materials couriers, these employees are eligible for enhanced retirement benefits. They accrue retirement benefits at a higher rate than other employees, so that they become eligible to retire with unreduced benefits after as little as twenty years of service. Because these positions demand a young and vigorous workforce, they carry a mandatory retirement age.

In crafting these benefits a careful balance needs to be maintained between mandatory attrition and timely recruitment, between loss of experience and proper training of replacement workers, between safety requirements and program costs. The federal retirement system is expensive in its generosity and totally unfunded in its asset base. The enhanced retirement for special occupations is even more expensive and that much more of a liability on future taxpayers. It is our fiduciary responsibility to our citizens to make sure that these benefits are properly assigned and the extra costs fully warranted.

During every session of Congress the Committee is deluged with requests to increase or otherwise improve on this generosity. This session of Congress is no exception. Some of the bills before us today while well intentioned, contain provisions that work at cross purposes with agency missions. For example, forcing experienced employees into mandatory retirement, while federal agencies complain of difficulties recruiting qualified professionals into public service, may not be wise public policy. And, of course, increasing the costs of retirement to agencies already at their spending caps simply makes it more difficult for them to perform their mission. Some might have to reduce other employment to fund this added benefit. We really must proceed cautiously.

I want to thank our witnesses today, and hope that the evidence compiled for today's hearing provides the foundation for a thorough examination of the many issues involved in the complex management of the retirement system for the federal workforce.

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Mr. CUMMINGS. Thank you, Mr. Chairman. The purpose of this morning's hearing is to examine the classification of certain Federal employees as law enforcement officers and their resulting entitlement to special retirement benefits. This issue is important to me because it affects the law enforcement community.

Earlier this year I introduced H.R. 1769, the Federal Employees Benefits Equity Act of 1999. My legislation eliminates certain inequities under the Civil Service Retirement System and the Federal Employees Retirement System with respect to computation of retirement benefits for law enforcement officers, firefighters, air traffic controllers and others.

The legislation also provides an enhanced annuity to employees who, after 20 years of qualifying service regardless of age, are forced to retire due to involuntary separation or for disability. The measure also provides for a refund of the additional 0.5 percent retirement contribution with interest when employees in this occupation retire or die before obtaining eligibility for the enhanced annuity.

Federal officers in varying degrees and capacities uphold the Constitution and protect the public welfare. Over the years there has been much debate and controversy on which types of Federal employees should be classified as law enforcement officers, and, as such, should receive enhanced pay and requirement benefits.

In 1988 the Anti-Drug Abuse Act established a national advisory commission on law enforcement which studied the pay, benefits and other issues relating to the recruitment and retention of employees defined as law enforcement under Federal retirement laws.

The commission's report which was released in April 1990 made several recommendations for interim pay enhancements for law enforcement officers and suggested that the Office of Personnel Management conduct a further study on the need for a new pay system for Federal law enforcement. The commission's report did note, however, that the statute defining Federal law enforcement officers was broad, encompassing both traditional positions within the field and less traditional positions not generally considered part of the law enforcement community.

As recommended by the commission, the Federal Employees Pay and Comparability Act of 1990 enhance law enforcement pay and directed OPM to conduct a study of pay and job evaluation for the Federal law enforcement officers. OPM, along with a 45 member advisory committee drawing from law enforcement agencies and employee groups, produced a report entitled, "A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers" in September 1993.

Two months later, the Committee on Post Office and Civil Service held a subcommittee hearing on the report and its findings. At that hearing, Ms. Barbara Fisk stated that OPM determined at the outset that the definition of law enforcement officer used in the FEPCA provisions based on retirement law needed to be examined because it covered employees whose primary duties included such diverse jobs as health care, accounting and cooking, but excluded employees whose primary duties include maintaining law and order and protecting property and the civil rights of individuals.

OPM's fact-finding mission confirmed OPM's belief that the coverage issue had to be reconciled.

It is evident from the witnesses scheduled to testify today that the coverage issue has not been reconciled. There seems to be questions of both whether the definition of law enforcement officer should be expanded to include additional categories of Federal employees or whether it should be narrowed.

Finally, determining the definition of a law enforcement officer is clearly a very complex and controversial issue. This hearing is an opportunity for us to revisit this issue and find permanent solutions to the concerns that have been raised in the past and that are still lingering today. I want to thank our witnesses for being here and I look forward to your testimony.

Mr. SCARBOROUGH. Thank you, Mr. Cummings. We certainly appreciate your work on this important issue and the bill that you have offered.

I want to get to our first panel, which is a group of colleagues that care deeply about the issues before us today and have introduced bills that provide the background of this very important hearing. Let's start with the Honorable Tom Davis of Virginia who has introduced H.R. 583, which is a bill to provide law enforcement retirement coverage for assistant U.S. attorneys.

We also have the Honorable Ed Bryant of Tennessee. He is a former U.S. attorney and is cosponsor of H.R. 583 and is testifying today also on behalf of the National Association of Assistant U.S. Attorneys; the Honorable Bob Filner of California introduced H.R. 1228, a bill which would extend Federal law enforcement retirement coverage to several additional employment classifications, including immigration inspectors, Customs inspectors, Internal Revenue Service officers; the Honorable Jim Traficant of Ohio, sponsor of H.R. 424, a bill which would raise the mandatory retirement age of the U.S. Capitol Police from age 57 to age 60; and the Honorable Patsy Mink of Hawaii who introduced H.R. 1748, a bill that would raise the mandatory retirement age of all Federal law enforcement officers to the age of 60.

I would like to welcome all distinguished Members and thank you for coming by today. Why don't we start with you, Mr. Davis?

**STATEMENT OF HON. THOMAS M. DAVIS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF VIRGINIA**

Mr. DAVIS OF VIRGINIA. Thank you very much for holding this hearing. I will put my full statement in the record and I will abbreviate it.

Mr. SCARBOROUGH. Without objection, so ordered.

Mr. DAVIS. Let me say that I think law enforcement benefits should be extended to individuals who choose a career that places the safety and welfare of themselves and their families in jeopardy. I think that was the original intent of the law, and that is what we are trying to do by putting assistant U.S. attorneys under that, so that individuals who are tasked to uphold the laws of our country are the same individuals who are receiving the law enforcement benefits.

On a daily basis, assistant U.S. attorneys fight to enforce our code of Federal laws and are increasingly called upon to enforce a

wider range of criminal laws, to bolster the efforts of State and local governments in the fight against crime, and as we Federalize more and more crimes, we are finding they are tasked to do more with less. They carry their jobs on a daily basis without a lot of fanfare, but they have to prosecute criminals who are represented by defense attorneys who are getting hundreds of dollars an hour, who are much better paid than themselves, and they opt to stay in government and wear the white hat instead of going out on the other side where they could make much more money simply to be on the right side. But it becomes much more difficult when the pay differentials increase and increase.

Providing the full benefits I think would be a career enhancement that would keep more people in the Federal service for a longer period of time. Right now the average period is 10 years. The hours are long and the pay is low. AUSAs have placed themselves and their families in harm's way by prosecuting criminals.

I refer to a specific case, of which there are many in my testimony that I will not review with you here, but there are cases where the assistant U.S. attorneys are threatened by criminal elements and put their lives and their families at risk and sometimes need extra protection just for sitting out there and doing their jobs.

Under the Code, the duties of law enforcement officers are defined as primarily the investigation, apprehension, or detention of violators of Federal law.

If we were to use the broader definition of the original criteria behind creating enhanced retirement benefits, I think the assistant U.S. attorneys should be eligible for this additional benefit and should have been for a long time. When the enhanced retirement benefit was first created in 1948, it applied to those occupations that require great mental or physical stamina. Certainly the well-documented demands of the assistant U.S. attorneys' workload and schedule apply to that. As the recent class action suit filed by the AUSAs against the Department of Justice shows, these prosecutors are routinely called upon to put in significant amounts of overtime. DOJ illegally describes overtime as a necessary requirement of the job and assistant U.S. attorneys are fighting crime and sacrificing time with their families, putting them sometimes in jeopardy, and they receive very little tangible recognition for their work.

Let's touch briefly on the overtime issue that faces AUSAs as it affects or, more pertinently, does not affect their enhanced requirement benefit. Assistant U.S. attorneys are currently involved in a class action lawsuit against the DOJ. DOJ does not pay its attorneys overtime, as required by the Federal Employees Pay Act. For years, DOJ as the enforcer of this law in other agencies has knowingly violated the law by denying them overtime pay. To add insult to injury, the DOJ requires its attorneys to keep two sets of books, one that reflects a 40 hour work week, and one that shows the actual number of hours that are worked. The latter set of books is given to Congress for appropriations purposes. It is also provided to Federal courts and judges when requesting that fees be paid. The DOJ does not deny this overtime benefit to any other law enforcement division under its jurisdiction. It is a reasonable compensation that assistant U.S. attorneys are entitled to by law, and certainly their counterparts, the defense attorneys, are getting paid

by the hour, as they sit there through these lengthy criminal cases, instead of a flat fee.

I do not believe that the law enforcement retirement benefit should have any impact on the overtime benefit or the resolution of that, but the law enforcement officers receive overtime for much the same reason that they receive their enhanced benefit: They face an unusually high level of stress and danger in performing their jobs.

Since I introduced this legislation on February 4, we have been contacted by assistant U.S. attorneys across the country who have shared their harrowing experiences fighting crime and the very real threats that have caused them to change their life-style. We have shared this with some of the committee in our prepared testimony. The legislation has garnered significant support in this Congress. The number of inquiries that I have received about this in the brief period between the 105th Congress and the 106th Congress shows that they are widely recognized as an essential part of our Federal crime-fighting cadre. And we have 36 cosponsors. Some of them are former assistant U.S. attorneys, and you are going to hear from a very distinguished one, Ed Bryant, who is going to be testifying here today, who can testify firsthand what they face.

I am not going to attempt to move the legislation forward until reasonable, fair offsets are found. And I think the mandatory retirement is a good question when you get into this intellectual exercise, and I will be flexible in terms of working with you on that. But they ought to be compensated better or we will lose a good cadre of people that are up against the top-notch defense attorneys in some of these cases, and we get outgunned. I think this is an important step to keeping us on the front levels of law enforcement and keeping the best people we can find to go into the courtroom and prosecute criminals. Thank you.

Mr. SCARBOROUGH. I thank you, Congressman Davis. You are right. This is a very important issue. You have received a lot of inquiries. I know that I certainly have.

[The prepared statement of Hon. Thomas M. Davis follows:]

Under Title 5, United States Code, Sections 8331 (20) and 8401 (17), the duties of law enforcement officers are defined as "primarily the investigation, apprehension, or detention" of violators of federal law. Through the demands of their daily job, investigating and prosecuting criminals, AUSAs fit this definition and each of its specified categories. They are often called upon by federal law enforcement officers to assist in major investigations and offer their legal advice on grounds for apprehension, not too mention their integral role in the detention of criminals. Without the hard work of AUSAs across the United States, we would not be watching our violent crime statistics decline, and we would not be winning the War on Drugs.

If we were to use the broader definition of the original criteria behind creating an enhanced retirement benefit, AUSAs should have been eligible for this additional benefit long ago. When the enhanced retirement benefit was first created in 1948, it applied to those occupations that required a greater mental, or physical stamina. Certainly, the well-documented demands of an AUSA's workload and schedule would apply to that category. As the recent class action lawsuit filed by AUSAs against the U.S. Department of Justice (DOJ) shows, these prosecutors are routinely called upon to put in significant amounts of overtime. DOJ illegally describes overtime as a necessary requirement of the job. AUSAs fight crime and sacrifice time with their families, yet they receive very little recognition for their work.

I would also like to briefly touch on the overtime issue that faces AUSAs and as it affects or, more appropriately does not affect the enhanced retirement benefit. As I have previously mentioned, AUSAs are currently involved in a class action lawsuit against DOJ. DOJ does not pay it's attorneys overtime as required by the Federal Employees Pay Act. For years, DOJ, as the enforcer of laws, has knowingly violated the law by denying AUSAs overtime pay. To add insult to injury, DOJ has required its attorneys to keep two sets of books—one that reflects a 40 hour work week, and one that shows the actual number of hours worked. The latter set of books is given to Congress for appropriations purposes, and is also provided to Federal courts when a Judge requests that attorney's fees be paid. DOJ does not deny this overtime benefit to any other law enforcement division under its jurisdiction. It is reasonable compensation that AUSAs are entitled to by law. I do not believe that a law enforcement retirement benefit should have any impact on the overtime benefit, or the resolution of that class action lawsuit. Federal law enforcement officers receive overtime for much the same reason they receive an enhanced benefit. They face an unusually high-level of stress and danger in performing their job.

Today, over 4,500 individuals serve as AUSAs in 93 separate offices throughout the country. AUSAs are now enlisted in our Nation's efforts to combat drugs, domestic and foreign terrorism, along with other pressing social threats. Increasingly, Congress

calls on AUSAs to assist in fighting crimes that attract nationwide notoriety. In 1992, we passed the Anti-Car Theft Act, which created federal criminal penalties for the growing threat of car-jacking. Last Congress, we passed H.R. 3811, the Deadbeats Parents Punishment Act of 1998, which created criminal penalties for those parents who knowingly cross state lines in order to avoid paying court-ordered child support. When we enact these much-needed laws, we unwittingly add to the already increasing complexity of criminal investigations and litigation facing AUSAs. Congress, itself, has contributed to the growing need to employ career AUSAs who have developed a time-honed expertise in prosecuting criminals.

Since I introduced this legislation on February 4, 1999, I have been contacted by AUSAs across the country who have shared with me their harrowing experiences fighting crime, and the very real threats that have caused them to drastically change their lifestyle. Notably, the stories of threats against attorneys do not come from just the AUSAs working in federal districts in major urban areas, but from all 93 U.S. Attorneys offices across the country. The stories are all strikingly similar in one regard: an AUSA is threatened for prosecuting a career criminal and simply doing their job.

I would like to share one particular instance with you that demonstrates the threats that AUSAs must deal with on a daily basis as well as highlighting the fact that all other federal employees that work with an AUSA in the apprehension of criminals do receive the law enforcement benefit. In an anonymous letter I received the following story was shared with me,

"In 1993, a defendant was on pre-trial release in a drug case. Evidence indicates he was involved in the disappearance and apparent murder of five individuals who were witnesses or family members of witnesses involved in the case. The case was dismissed because of *lack of witnesses*. The same defendant was later charged in another drug case. While the defendant was again on pre-trial release, this time including electronic monitoring, a co-defendant disclosed the defendant's intention to kill a state narcotics agent, a Drug Enforcement Agency agent, and the AUSA handling the case. The defendant had offered detailed descriptions of the area around the AUSA's house, and children in the AUSA's neighborhood. Additionally, the defendant described exactly how he intended to acquire a firearm and the necessary electronic equipment to disable his electronic monitoring equipment so he would have an alibi when he killed the AUSA, and the law enforcement agents. The government was able to detain the defendant prior to his acting on his plans. However, while this defendant was incarcerated, he continued his plans to harm the agents, and the AUSA. He attempted to escape from custody, and attempted to enter into a contract with an individual out of jail to kill those who had placed him in jail."

This particular AUSA was forced to put a remote starter on his car, install an elaborate home security system, and tell his wife and three young children of the grave danger facing the family. Additionally, the AUSA and his family had to be protected by U.S. Marshals for a brief time period. This situation created an extraordinarily stressful and frightening situation for the AUSA and his entire family.

The other individuals who were threatened by this defendant did receive a law enforcement officer's benefit for the very real stress that they deal with on a daily basis, and the stress that their families also faced. Everyone that a criminal encounters from the moment they enter the federal criminal justice system until they are sent to jail receives a law enforcement officer's retirement benefit with the exception of AUSAs, and the federal judge who is life-tenured and attached to a different pay schedule. Often the AUSA becomes the last "potential scapegoat" for the hardened criminal searching for someone to blame because he/she must now go to prison for their crimes.

This legislation has garnered a significant amount of support since I first introduced it back in the waning days of the 105th Congress. The number of inquiries that I received about this legislation in the brief time period between the 105th and 106th Congresses showed that AUSAs are already widely recognized as an essential part of our federal crime-fighting cadre. H.R. 583 now has 36 co-sponsors, some of whom are former AUSAs, and know all too well the crime-fighting aspect of the job.

I would also like to address the costs associated with H.R. 583. I realize that the preliminary Congressional Budget Office (CBO) is prohibitive, and would require an offset. I am working with the National Association of Assistant United States Attorneys (NAAUSA) to address the cost issue. Furthermore, I will not attempt to move this legislation forward until reasonable, fair offsets are found, or the cost is lessened significantly. While H.R. 583 is a good idea whose time has come, now that we have restored fiscal responsibility to the federal government, we can not enact legislation simply on the basis that it is good. We must remember to address the cost issue, or we will soon end up with a new era of budget deficits.

Mr. Chairman, again, I would like to thank you for holding this hearing today. I believe this is a fair and open forum through which we can determine whether or not the extension of law enforcement benefits is truly beneficial to the affected federal employees, the federal government, and the American taxpayer. As you know, our distinguished colleague from Tennessee, a former AUSA, Representative Ed Bryant, is here today to testify on behalf of the National Association of Assistant United States Attorneys (NAAUSA) on H.R. 583. I would like to thank Mr. Bryant for testifying today, and thank him for all of his support for H.R. 583 again this Congress.

Mr. SCARBOROUGH. The genesis of this hearing is when a group of assistant U.S. attorneys came to my office and brought it up. It is an issue that needs to be addressed. It is critical to us.

Representing the group that first talked to me about it today is Congressman Ed Bryant who was a former U.S. attorney.

**STATEMENT OF HON. ED BRYANT, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE**

Mr. BRYANT. Thank you, Mr. Chairman. I thank you and the members of your subcommittee for holding this hearing today, and I am pleased to testify on behalf of the National Association of Assistant U.S. Attorneys in support of H.R. 583, the Assistant U.S. Attorneys Retirement Benefit Equity Act of 1999.

As a former U.S. attorney from the western district of Tennessee, I have firsthand experience and knowledge about AUSAs and the integral role they play in Federal law enforcement. I had 29 working for me at that time.

Currently there are more than 4,700 AUSAs who work in 93 separate offices throughout the country. These AUSAs are the U.S. attorneys' principal support for ensuring that laws are faithfully executed. In today's environment of sophisticated white collar crime, domestic and foreign terrorism, international narcotics trafficking, espionage, government program fraud, organized crime and labor racketeering, the role of the AUSA has evolved to include substantial investigative duties. AUSAs control and direct the most crucial investigative tool in the criminal justice system—the grand jury. AUSAs oversee and participate in the investigative activities of the Federal law enforcement officers working on major prosecutions and review and approve complex search warrants and applications for wiretaps. In multi-agency cases, the AUSA functions as a supervisor of agents' activities, particularly challenging since there is no line authority from the AUSA to an agent.

Civil AUSAs defend lawsuits brought against Federal agents in connection with their performance of their law enforcement duties. Prisoner litigation is an additional aspect of the civil AUSAs' practice. Civil AUSAs represent the government in suits brought by those who wish to obstruct government operations. AUSAs have been threatened in this context, had false liens filed against their property and have had false Form 1099s filed with the IRS.

The increasing complexity of Federal investigations and the resulting criminal and civil litigation has spawned a relatively new phenomenon—the career AUSA. Unfortunately, as more and more AUSAs seek careers within DOJ, the Department has not reacted to provide the professional benefits deemed routine in the highly stressful law enforcement community. As you know, under the current retirement system, Federal law enforcement agents are eligible to retire at 50 percent of their “high-three” salaries at age 50 with 20 years of service. Currently AUSAs are the only employees in the criminal justice system who do not receive this law enforcement retirement which recognizes the stressful occupations associated with fighting crime and the physical and mental challenges which wear down body and mind at an accelerated pace.

Originally authorized in 1948, Federal law enforcement retirement benefits were intended to liberalize retirement provisions in

order to enable agents and investigators to retire at age 50 while still physically fit. In enacting that legislation, Congress recognized the stressful, sometimes dangerous work performed by the law enforcement officers, as well as the need for career investigators in the Federal Government. At that time there were no career AUSAs and therefore there was no reason for their inclusion in the statute.

Back in those days the U.S. attorneys and the assistants all left every time there was a change of administration, but since that time circumstances have changed significantly. Only during the 1980's did the AUSAs begin to remain employed by the Department until retirement on any regular basis.

In the last 2 decades, the position of the AUSA has evolved from being largely political, where it was routine for all AUSAs to resign upon the appointment of a new U.S. attorney. Then the newly employed attorneys inherited entire caseloads of ongoing prosecutions, and this disruption badly damaged the continuity of the investigations and prosecutions, both civil and criminal. So it was important to have this continuity, and this is a good thing that we are going to, with more and more of our AUSAs becoming career oriented.

Congress has recognized the importance of maintaining an experienced force of career AUSAs. In 1990, the Civil Service Due Process Amendments extended the procedural protections of the Civil Service Reform Act to the AUSAs. No longer constantly in jeopardy of being replaced for practical reasons, more and more of our AUSAs are remaining with the DOJ for their career, thus ensuring the government is getting the best representation.

I have got a couple of more pages, but let me skip through this because I have my full statement in there. I do want to say, given the increasing complexity of the legislation dealing with offenses against the United States, and the increasing sophistication of the law breakers—and my colleague, Mr. Davis, alluded to this and their ability to hire the best and pay them at tremendous rates per hour to represent them—our own U.S. DOJ requires the services of experienced, seasoned AUSAs to protect the interests of the American people to be able to compete on a level playing field. The work is demanding and stressful and fraught with danger.

I too know of cases when I was a U.S. attorney where assistants were under physical threat and death threats. I know that they face threats and strain of mind and body to a degree equal to and in some instances exceeding that faced by others traditionally included in the Federal law enforcement retirement system.

The time has come for Congress to recognize AUSAs for what they are, an essential part of the front line defenders of safety and justice in America. The AUSA should no longer be the only member of the Federal criminal justice system denied law enforcement retirement. And I thank the Chair for listening.

Mr. SCARBOROUGH. Thank you, Congressman Bryant.

[The prepared statement of Hon. Ed Bryant follows:]

Statement of Representative Ed Bryant

Civil Service Subcommittee

H.R. 583, The Assistant United States Attorneys Retirement Benefit Equity Act of 1999

September 9, 1999

Mr. Chairman and Members of the Subcommittee. I am here today to testify on behalf of the National Association of Assistant United States Attorneys in support of H.R. 583, the Assistant United States Attorneys Retirement Benefit Equity Act of 1999.

As a former United States Attorney from the Western District of Tennessee, I have first-hand experience and knowledge about Assistant United States Attorneys and the integral role they play in federal law enforcement.

As you know, in recent years Congress has expanded federal criminal jurisdiction to combat, among other things, increasing threats from the distribution of illicit drugs, the threats of domestic and foreign terrorism, the illegal use of firearms and explosive devices, and the exploitation of children. This increased criminal jurisdiction is in addition to Justice Department initiatives in civil enforcement, particularly the investigation and prosecution of civil fraud such as Medicare and Medicaid fraud, and in other areas that reflect Congressional priorities.

Because of increased crime and increases in the types of crime being prosecuted in federal district courts, the Department of Justice has largely been exempt from current efforts to reduce the size and scope of the federal government. For several years now, Congress has increased both the number of law enforcement employees in federal service and the funding available to the Justice Department, while reducing expenditures in the rest of the federal government.

The increasing complexity of federal investigations and the resulting criminal and civil litigation has spawned a relatively new phenomenon - the career Assistant United States Attorney (AUSA). Unfortunately, as more and more AUSAs seek careers within the Department of Justice, the Department has not reacted to provide the professional benefits deemed routine in the highly stressful law enforcement community.

Federal law enforcement agents are eligible to retire at 50% of their "high-three" salaries at age 50, with 20 years of service. Currently AUSAs are the only employees in the criminal justice system who do not receive this law enforcement retirement, which recognizes the stressful occupations associated with fighting crime, and the physical and mental challenges which wear down body and mind at an accelerated pace. Whether designated civil or criminal by their employer, all AUSAs that litigate are part of that group of stressful occupations in which workers face accelerated wear and tear of mind and body. The attorneys who try this government's cases literally work night, day and weekends during trials, and do so because it is necessary in order to perform at the level expected, and demanded, by the Department.

Originally authorized in 1948 under PL 80-279, federal law enforcement retirement benefits were intended to liberalize retirement provisions in order to enable agents and investigators to retire at age 50, while still physically fit. In enacting that legislation, Congress recognized the stressful, sometimes dangerous, work performed by the law enforcement officers as well as the need for career investigators in the federal government. Approximately 12,000 employees were covered by the original act. At that time, there were no "career" AUSAs and, therefore, there was no reason for their inclusion in the statute. Since then, however, circumstances have changed significantly.

Only during the 1980s did AUSAs begin to remain employed by the Department until retirement

on any regular basis. As the numbers have continued to increase, the Department of Justice has done nothing to recognize that its attorneys are the only group of employees in the federal law enforcement community who do not receive law enforcement retirement. The long work weeks and the stresses associated with working in the law enforcement community, and with litigating some of the most complex cases in the nation clearly separate AUSAs from those in the federal workforce receiving non law-enforcement retirement. Today, several factors support the argument that AUSAs should be included in the federal law enforcement retirement system:

- Congressional and Department of Justice recognition of the investigative role of AUSAs.
- The documented threats and assaults on AUSAs and their families.
- The need to provide some form of compensation for the substantial loss of income associated with government employment.
- The governments need for **career** AUSAs to prosecute the new, complex laws passed in the last few years to combat crime, and the increased sophistication of crimes committed.

In the last two decades, the position of AUSA has evolved from being largely political, where it was routine for all AUSAs to resign upon the appointment of a new United States Attorney. Then, newly employed attorneys inherited entire caseloads of ongoing prosecutions. This disruption badly damaged the continuity of investigations and prosecutions, both civil and criminal. Additionally, mass turnover of AUSAs had the practical effect of ensuring that the most experienced attorneys doing federal criminal defense work were **former Assistant United States Attorneys** who had received training and experience while serving as AUSAs. Consequently, the government was routinely represented by less experienced AUSAs. In that era, the United States Attorneys Office often functioned as a training ground for its future opponents.

The Assistant U.S. Attorneys Role in Law Enforcement

Currently, there are more than 4700 AUSAs who work in 93 separate offices throughout the country. These AUSAs are the United States Attorneys principal support for ensuring that the laws are faithfully executed.

In today's environment of sophisticated white collar crime, domestic and foreign terrorism, international narcotics trafficking, espionage, government program fraud, organized crime and labor racketeering, the role of the AUSA has evolved to include substantial investigative duties. AUSAs control and direct the most crucial investigative tool in the criminal justice system - the Grand Jury. AUSAs oversee and participate in the investigative activities of federal law enforcement officers working on major prosecutions, and review and approve complex search warrants and applications for wiretaps. In multi-agency cases, the AUSA functions as supervisor of the agents activities, a particular challenge since there is no line authority from AUSA to agent.

Civil AUSAs defend lawsuits brought against federal agents in connection with their performance of their law enforcement duties. Prisoner litigation is an additional aspect of the civil AUSAs practice. Civil AUSAs represent the government in suits brought by those who wish to obstruct government operations. AUSAs have been threatened in this context, had false liens filed against their property, and have had false Form 1099s filed with the Internal Revenue Service.

Title 5 of the U.S. Code defines a law enforcement officer as follows:

"Law Enforcement Officer means an employee, the duties of whose position are *primarily* the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position."

An employee's primary position must include law enforcement officer duties to be classified as a "law enforcement officer." Title 5 of the U.S. Code further defines primary duties as follows:

"Primary duties are those duties of a position that-

(1)(I) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(ii) Occupy a substantial portion of the individuals working time over a typical work cycle; and

(iii) Are assigned on a regular and requiring basis."

Title 5 of the U.S. Code further states:

"In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties."

For retirement purposes, the "law enforcement officer" designation is not limited to only line agents who are on the street involved in day-to-day investigative work. The "law enforcement officer" designation includes:

- FBI agent-attorneys who are stationed at FBI headquarters
- Federal prison guards
- Federal Probation Officers
- Federal Pretrial Services Officers
- Accountants, cooks, secretaries, and attorneys of the Bureau of Prisons.

In fact, from the time that an individual first comes into contact with the federal criminal justice system until the time that individual leaves the federal criminal justice system, the only individuals that he comes into contact with who are not afforded "law enforcement officer" status

for retirement purposes is the Federal Judge who sentences him and the AUSA who prosecutes him. All other contact, whether it be the investigator, the pretrial services officer, the deputy U.S. Marshal, the probation officer, the prison staff, or finally his parole officer, are all designated "law enforcement officers" for the purposes of retirement. And, it should be noted, the federal judiciary has its own enhanced retirement system.

Congressional Actions to Define "Law Enforcement Officer"

In the years since Congressional enactment of the special retirement provisions for law enforcement officers, Congress has enacted a variety of statutes which define "law enforcement officer." A number of these laws have recognized the roles played by prosecutors in enforcing the nations laws by including them within statutory definitions of the term "law enforcement officer." A review of these provisions illustrates the Congressional view that AUSAs are law enforcement officers.

In protecting federal officials and their families from violent interference or retaliation in connection with their official duties, 18 U.S.C. § 115(a)(4)(c)(I) provides:

"Federal law enforcement officer" means any officer or employee of the United States authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law.

In proscribing a variety of activities related to civil disorders, 18 U.S.C. § 232 (7) provides, in pertinent part:

The term "law enforcement officer" means any officer or employee of the United States, any State, any political subdivision of a State, or the District of Columbia, while engaged in the enforcement or prosecution of any of the criminal laws of the United States....

In enacting a series of statutory provisions to address the serious problems of obstruction of

justice, the Congress included the following definition in 18 U.S.C. § 1515(a)(4):

The term "law enforcement officer" means any officer or employee of the federal government, or a person authorized to act for or on behalf of the federal government or serving the Federal Government as an advisor or consultant-

(A) authorized under law to engage in or supervise the prevention, detection, investigation or prosecution of an offense; or

(B) serving as a probation or pretrial services officer under this title.

A number of years ago, Congress gave the federal law enforcement community a potent weapon to be utilized in the fight against crime: the federal wiretap statute. In establishing a complex statutory scheme to regulate the use of electronic surveillance, 18 U.S.C. § 2510 et seq., Congress began with a series of definitions which, in paragraph (7) of 18 U.S.C. § 2510, included the following:

"Investigative" or "law enforcement officer" means any officer of the United States or of a State or political subdivision thereof who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

The federal law regarding the sentencing of defendants convicted of offenses against the United States, contains the following definition at 18 U.S.C. § 3673(3):

The term "law enforcement officer" means a public servant authorized by law or by government agency to engage in or supervise the prevention, detection, investigation, or prosecution of an offense.

Threats Against AUSAs and Their Families

A *USA Today* "snapshot" on Thursday, April 30, 1992 included the statistics on federal officials suffering the least and most physical assaults. The statistics, based on 1990 FBI data, for those most threatened were:

Immigration and Naturalization Service	409
United States Attorneys	269
Bureau of Prisons	185

In a recent survey, 45 percent of the responding AUSAs reported having been assaulted or threatened as a result of their work as an AUSA. The average number of threats/assaults they reported was 2.53.

In her statement before the House Appropriations Subcommittee on the FY 1997 budget, the Director of the Executive Office for U.S. Attorneys noted that the number of personal threats against AUSAs had increased 58 percent and bomb threats have increased 556 percent during the first half of 1995. Based on these threats, the Department of Justice requested \$10 million in the FY 1997 budget to enhance the security of the 93 United States Attorneys offices across the country.

FBI records document threats against AUSAs that include:

- An AUSA who was targeted by a drug dealer with a \$35,000 hit on his life.
- An AUSA's family who received threatening phone calls that detailed his children's exact time of departure from school and the school bus number.
- An AUSA who had U.S. Marshal on guard at her wedding.

I would like your permission to include several pages of examples of threats and assaults against AUSAs in the record

In two April 30, 1997, decisions by an administrative law judge of the Merit Systems Protection

Board, the dangerous nature of the job of two "diversion investigators" employed by the Drug Enforcement Administration was one reason to classify them as law enforcement officers for purposes of retirement. The judge's ruling is further evidence that the law enforcement community is not limited to those who carry guns or make arrests.

AUSA Retention

Congress has recognized the importance of maintaining an experienced force of career AUSAs. In 1991 the Civil Service Due Process Amendments (PL 101-376) extended the procedural protections of the Civil Service Reform Act to AUSAs. No longer constantly in jeopardy of being replaced for political reasons, more and more AUSAs are remaining in the Department of Justice for their careers, thus ensuring that the government is getting the best representation.

Data from the Department of Justice reveals that length of service for AUSAs was seven years for 1991 through 1992, and eight years for 1993 through 1996. This trend should be encouraged. By comparison, the length of service for other Justice employees was 19 years in 1996. The American public is best served by experienced, career oriented AUSAs, not only when prosecuting such cases as the World Trade Center and Oklahoma City bombings, but also in defending the United States against the drug traffickers, the perpetrators of civil health care fraud and the host of other violators who threaten the safety of our community and endanger the economy.

Second, historically, the number of AUSAs who stay with the Department of Justice until retirement is extremely low. Department of Justice data on AUSA retirements are as follows:

<u>FY1991</u>	<u>FY1992</u>	<u>FY1993</u>	<u>FY1994</u>	<u>FY1995</u>	<u>FY1996</u>	<u>FY1997</u>
7	9	3	31 ^{1/2}	29	23	13

^{1/2} Voluntary Separation Incentive Plan authorized.

During the same time period, an average of 200 AUSAs voluntarily left the Department of Justice

for the private sector. This turnover rate does not provide the cadre of experienced AUSAs needed to combat the increasingly more complex federal criminal and civil cases.

Conclusion

Given the increasing complexity of legislation dealing with offenses against the United States, and the increasing sophistication of lawbreakers, the United States Department of Justice requires the services of experienced, seasoned professional Assistant United States Attorneys to protect the interests of the American people. The work is demanding, stressful and often fraught with danger. Today, many AUSAs are involved in the most complex investigations from inception. The Assistant United States Attorney guides the investigation, prepares and presents witnesses to the grand jury, drafts the indictment and presents it to the grand jury, reviews and approves search and seizure warrants, supervises the seizure of assets, litigates the pretrial motions, tries the case face-to-face with the violators, and upon conviction, defends the verdict from post-trial motions and appeals. Civil AUSAs face similar stresses. AUSA, both civil and criminal, face stress and strain on mind and body to a degree equal to and exceeding that faced by others included in the federal law enforcement retirement system.

The time has come for the Congress to recognize AUSAs for what they are - an essential part of the front line defenders of safety and justice in America. The AUSA should no longer be the only member of the federal criminal justice system denied law enforcement retirement..

Thank you.

Threat and Assaults Against Assistant U.S. Attorney's

1.

In 1993, a defendant was on pre-trial release in a drug case. Evidence indicates he was involved in the disappearance and apparent murder of 5 individuals who were witnesses or family members of witnesses. The case was then dismissed because of a lack of witnesses. The defendant was later charged in another drug case. While defendant was on pre-trial release, including electronic monitoring, a codefendant disclosed defendant's plans to kill a CI, a state Narcotics Agent, a DEA agent and the AUSA handling the case. The defendant had generally described to his codefendant the area around the AUSA's house and children in the AUSA's neighborhood. The defendant was also making plans to acquire a firearm and electronic equipment to be used to defeat his electronic monitoring equipment so he could have an alibi when he killed the agents and the AUSA. The government was able to get the defendant detained prior to him taking further action on his plans. While incarcerated, the defendant continued his plans to harm informants, agents and the AUSA. He attempted to escape from custody and bonded an individual out of jail in an attempt to kill an informant.

The AUSA was forced to put a remote starter on his car and upgrade his home security system. He had to brief his wife and 3 children, ages 3, 7 and 10, of the real danger the defendant posed to the family. Needless to say, this threat created a very frightening and stressful situation for the AUSA's entire family.

2.

Two other AUSAs in our office were involved in prosecuting members of the Sons of Silence outlaw motorcycle gang. Because of threats to the AUSAs' safety, they were provided with remote starters for their cars and home security systems.

3.

Threats to AUSA's are not strictly a recent phenomenon. In 1985, the wife of an AUSA was at home caring for their eight-month-old child. She received a phone threat against the AUSA and immediately left with the child and went to the home of a neighbor while the FBI and the Marshals investigated the threat.

4.

During the motions of the case one of the defendants filed a motion that included a copy of a newspaper article related to the case. The obituaries were listed on the same page. Next to the one obituary someone had written "AUSA (name)." Considering that our victim, (the elected Stanislaus County Recorder) was brutally assaulted, and that the assault was also preceded by veiled threats, we took it rather seriously and brought it to the court's, USMS and FBI's attention.

This stems from the above example. The convicted defendant's have now filed a multi-million dollar lawsuit against me, CMF, the judge, the victim and others. Somehow the suit was allowed to be filed, so now we have to defend against convicting the defendants. Also, the defendants continue to bombard us with "claims" and "notices" saying they are going to collect against us. After a while this stuff gets pretty tiresome.

5.

I am assigned to the Organized Crime Drug Enforcement Task Unit (OCDETF) and was involved in the prosecution of three major cocaine traffickers. After the trial, two of the three defendants were convicted, with the third defendant being acquitted. One of the convicted defendants received a sentence of 240 months imprisonment. After the trial, I began to receive numerous telephone calls in which the person either hung up without leaving a message or asked for me by name. I have an unlisted telephone number and did not recognize the male caller's voice. One morning, at about 12:45 a.m. the telephone rang and I answered the call. An unidentified male on the other end of the line said "I am in your house and I am going to kill you!" I immediately hung up the telephone. (I am a female AUSA and was alone at the time.)

An investigation was opened and the telephone from which the call was placed was identified. The case agent later received information from a confidential source regarding a telephone call being placed to the AUSA in the case. The information obtained was that the call was not "random," but was related to one of the defendants prosecuted in the drug case. I subsequently obtained a security system at my house and caller identification. Substantial efforts were made to identify the actual caller. No arrests have been made to this date.

6.

I appeared in court on a case in which I was a prosecuting a career criminal for armed robbery. This was a regular calendar where a number of defendants were waiting to appear, and the courtroom was filled with the families and friends of all the defendants. I did not see it, but my defendant caught the attention of a couple of his friends who were in the audience, then pointed to me, then used his hand to make a slashing motion on his throat. The bailiff saw this, told me not to leave the court by the regular exit, then shuttled me out through the back of the courtroom. He then informed me of what he had seen so that I could take the proper precautions.

7.

I have had two death threats in the last six years-one left on my home telephone (which was an unlisted number) resulting in the Marhsal's transporting me to and from Court; the other threat to kill me was mailed to another district and involved the investigating agency asking me to relocate until it was solved-which cause great fear to me and my child.

Also we get harassment letters from defendants-that talk about finding us when they get out. And finally recently, we had to have the Marshals virtually pull a

defendant off of an AUSA when he lunged at her in court and we have had several instances of family members of defendants waiting in the halls for the AUSA and saying things to the AUSA-resulting in AUSA's having to wait to leave court until the family leaves of having to be escorted by agents out of Court.

8.

I had a bank fraud investigation going with FBI Akron. The subject, Kenneth S. Onapolis, fled to Canada with his family, apparently to dodge both our inevitable indictment as well as a Portage County warrant on a bed check charge. In February 1997 he was arrested at the Detroit airport while en route to the Cayman Islands. We filed a complaint to make certain he would be detained and, ironically, he was held in the Portage County jail by the Marshal's office. While there he made a statement to another inmate that he wondered how the prosecutor would like it if he never saw his family again. The inmate considered it a threat to the prosecutor (i.e. me) and reported it, ultimately, to the Akron Marshal's office. It became part of a subsequent hearing but he has remained in custody and was sentenced to 37 months incarceration. After that (which should be very soon) he goes off to Wisconsin to serve several more years. He fled from there, too, while on a 3-year home detention sentence after doing a 3-year prison sentence. In conclusion, if Onapolis intended it as a real threat, he has not yet had the opportunity to act upon it.

9.

I March 1996 I was threatened by an individual whose property was the subject of a land condemnation action that I was bringing on behalf of the National Park Service. Myself and several Park Rangers were on his property with his permission staking out the boundaries. From the beginning, he was not happy that the government was taking his property. As we surveyed the property that day, he became more and more agitated and eventually threatened to "blow my head off". I left the property at once.

10.

In 1993 I was advised that the FBI believed there was merit to a \$35,000 hit on me as a result of prosecuting a major drug dealer. My family and I were protected by the US Marshals for several days and then hidden in Virginia, Washington D.C., and Annapolis, Maryland for a couple weeks. During this time my wife and two and a half-year old son were also protected. Eventually we returned to the District of Columbia after the FBI determined that the threat was instigated by inmates I had prosecuted with no intent to actually carry it out. To this day I remember vividly trying to keep all this from our son. He thought it was great we had all these people at our house. He thought one of the US Marshals was Michael Jordan! While in Washington one night as I put my son to bed he looked at me and said, "don't worry daddy, I won't let the bad guys get you."

11.

In fall 1996, I received a voicemail threat from a diagnosed paranoid

schizophrenic who'd sued 10 judges and 15 other public officials in a pro per Bivens action, spinning a wild conspiracy theory about how they'd all conspired to torment him. (After I reported and recorded the threat, the FBI counseled with him.)

In February 1999, a violent state narcotics parolee arrived unannounced at the USAO demanding to speak with me (I refused to see him and had him escorted out by our security personnel). I'd earlier forfeited his one asset, a \$300,000 real property that he'd used as a club house for his fellow narcotics traffickers; it was a property where the SWAT team had seized machine guns and other weapons in three separate busts. (His parole was violated and new conditions were imposed that will land him back in prison for the remaining 6 years of his sentence should he ever come over here again.)

12.

In or about 1987, When I was an AUSA in San Jose, California, DEA and US Marshals confirmed that one of the two major cocaine dealers in a case that I was prosecuting, contracted a hitman from Detroit, Michigan to kill the DEA agent assigned to the case. The DEA agent was relocated out of the area. When the threat spread to others involved in the prosecution, including myself, DEA provided me with body armor for several months until the resolution of the case. The threat was investigated by the FBI. Support was provided by Marshals deputies, who made it clear that if anyone connected with the case was harmed, the defendants would be in a worse situation. The message from the Marshals got through to the defendants, who apparently called off the hitman.

In or about 1992, I prosecuted a major crack dealer. After a heated detention hearing, one of his associates threatened to kill me as I was leaving court. The person who threatened me was able to get out of the courthouse building and escape apprehension. I took the threat seriously as a witness in an earlier case against him had been killed in front of the witness' house and the defendant was suspected of ordering the killing. Also, during the prosecution of the defendant, the CI who informed against the defendant was sliced and diced such that the CI's intestines spilled out of his abdomen. The defendant's violent history was also corroborated by the defendant's involvement in an earlier gun battle.

13.

I was one of two AUSA's assigned to a racketeering prosecution brought against a street gang, whose members sold crack cocaine, committed at least seven murders and terrorized an Albuquerque neighborhood. Twenty-three gang members were indicted and incarcerated. Several of the members, including the gang's leadership, threatened to kill the prosecutors. These threats were passed on to the United States Marshals Service. There were numerous unindicted gang members remaining on the street who were available to carry out the threat. Most of the hearings in the case occurred in Santa Fe, approximately sixty miles from Albuquerque. My spouse felt extremely threatened and unnecessarily exposed to danger.

14.

At 5 a.m. on Friday, the FBI requested that Norman send an AUSA to the scene to assist in any legal issues which may arise. I agreed to go and was informed by the FBI that the defendant was still at large. I traveled in my own vehicle (FBI told me to drive a four-wheeled vehicle, but AUSA's have no access to the keys outside of business hours) and passed the road block. I went to crime scenes with the evidence response team, wearing a bullet-proof vest. When we returned to the chapter house, used as the command post, the defendant was spotted pacing along a mesa overlooking our location – rifle in hand.

The negotiator was able to talk him down without incident; however, he did present a potential danger – not much to lose after killing half his family. The defendant said he had been watching us all day.

I believe my presence was useful to the FBI and was glad to help. However, I feel I was at risk to the same degree as the FBI agents. Worthy of mention in light of fact that pretrial services officers have law enforcement designation, entitling them to the twenty-year retirement plan.

15.

A current AUSA and a former AUSA have learned that an incarcerated organized crime figure has made threats against them. The threats are currently under investigation. In this instance, the organized crime figure has threatened to "get" the current AUSA if it takes him the rest of his life. But, this figure noted that he would not attempt reprisal while the AUSA remained an AUSA.

16.

A civil AUSA, had a civil forfeiture case initiated in June of 1998 against assets in the possession of individuals and an organization in the south suburbs on the basis of their connection to the HAMAS terrorist organization. The case is United States v. One 1997 E35 Ford Van et al., 98 C 3548 (ND IL) (Judge Andersen). One of the individuals whose assets were seized, Muhammad Salah, although an American citizen living in Bridgeview, Illinois, spent five years in prison in Israel for providing material support to the military operations of HAMAS. The President by Executive Order, at the request of the State Department, designated Salah as a terrorist. Shortly after the case was filed, the AUSA learned that his neighbor is related by marriage to one of the principals of the organization whose assets were seized for forfeiture-the Quranic Literacy Institute. The AUSA's neighbor offered to look at the complaint for her brother-in-law, and upon seeing the AUSA's name and signature, duly informed her brother-in-law where the AUSA lived. Although there were no threats communicated, this shows that (1) civil assistants, particularly those prosecuting forfeiture cases, for example, may face many of the same issues as their criminal counterparts; and (2) the notion of risks faced by assistants is more often subtle, than overt. The AUSA's wife is very concerned that where they live is known to individuals deeply involved with HAMAS.

17.

A civil AUSA was threatened by the brother of a deceased plaintiff several years ago. Briefly, the facts were that a veteran committed suicide and his family sued the VA Hospital for releasing him while he was still a suicide threat. The government won that trial. The brother called and threatened the AUSA, the FBI was contacted, and the guards at the entrance to the federal building were notified to keep a look out for the man. Nothing more ever became of the threat.

18.

In approximately 1980 or 1981, while she was married to another AUSA, her husband was the subject of a death threat made by a Chicago Police Officer who he indicted, along with 9 other officers, in what was known as the Marquette 10. (They took bribes from dope dealers, and were convicted of aiding and abetting a narcotics conspiracy.) As a result of the threat, the FBI assigned agents to the family home 24 hours a day. The AUSA was home with a baby at the time. One agent would be inside (with a shotgun) and one outside. They had an alarm put on their car, and a tape recorder on their phone. This level of protection lasted for several weeks.

In about 1994, when the female AUSA was retrying one of the El Rukn cases (the El Rukns were a Southside street gang that controlled the cocaine trade in Chicago through murder, etc, and who had dealt with the Libyan government in an attempt to provide the Libyans with stolen stinger missiles) the office received information from someone locked up at the Metropolitan Correctional Center that one of the defendants was trying to get someone to kill the AUSA. The FBI investigated. She filled out forms for the Marshals Service for protection, if necessary and was told to vary her routine, be extra vigilant, etc. Nothing further developed.

19.

A current criminal AUSA, from 1989 through 1994 received a number of death threats as a result of the El Rukn investigation and prosecution. The office security manager dealt with several of them that were mostly reported by various Federal and Illinois inmates. However, in April 1991, one week before the first El Rukn trial began, the AUSA came home one night and found all the windows on the first floor of his house smashed in (about 20 of them); all the windows of his car smashed in; and several bullet holes through his upstairs windows. The Marshals and ATF investigated it, and he was authorized by his office and Main Justice to carry a gun. No one was ever arrested as a result of the investigation that was conducted.

20.

Several criminal AUSA's had threats against themselves and their families during the Gangster Disciples trials. The Gangster Disciples is one of the nation's largest black street gangs, over 30,000 strong and in several states. The threats were conveyed to the government by an inmate snitch at the Metropolitan Correctional Center who was learning of the threats from Gangster Disciple inmates.

21.

In 1991, a current criminal AUSA, was the lead prosecutor in United States v. Edward Mauerman, et al., a case charging 29 defendants, including David Buffington, with conspiracy to distribute cocaine. Buffington has been released pending trial. Buffington later pleaded guilty and was placed at MCC awaiting sentencing. In 1992, the office heard rumblings from cooperating defendants that Buffington had discussed having McKenzie and the FBI case agent killed. Some Latin Kings at the MCC reported that Buffington had discussed the killings with them. The FBI case agent contemporaneously observed Buffington's father circling around the FBI parking lot after hours in what appeared to be surveillance. McKenzie was instructed by the U.S. Attorney to get away from his house for the weekend to allow for more investigation. During the next week or so, the FBI provided McKenzie with escort service to and from work and would check out his house. He then declined further FBI escort protection and nothing else happened.

22.

A current AUSA and a former AUSA, after prosecuting tax protestor guru William Benson, were placed on a death list of the White Christian Aryan Nation. The list was turned up in a cell search in a federal prison. It was considered genuine because the no. 1 target on the list, an ATF agent, had in fact been the target of some intimidating overt acts by that group – being followed, threats to family etc., and because the investigation had determined that those who had the list had details about the prosecution of Benson and the aftermath. The Marshal directed the AUSA's to vary their travel patterns, provided them quick access numbers to the police, and provided cellular phones.

A second incident involved the same current AUSA as above receiving a very large cake in the shape of a coffin – black roses, purple frosting, with her name on the coffin – from a subject of a bankruptcy/tax fraud investigation who had owned the Gas Light Club, which he felt he had been cheated out of during the bankruptcy. By his view, it was the AUSA's fault for not going after the lawyers involved. The subject was living in Las Vegas and was regularly leaving messages on the AUSA's voice mail in the middle of the night. A visit from the FBI telling him to desist or he would be prosecuted for his behavior quieted him down. After having it tested, the Marshals ate the cake.

23.

A criminal AUSA prosecuted Mario Claiborne, a major narcotics dealer. Claiborne told a cooperating witness that he was going to have the AUSA killed. Another major narcotics dealer, Nate Hill, sent a very veiled threat to the AUSA via the mail.

24.

A criminal AUSA was assigned to handle the prosecution of Tyler Mills for sending numerous threats through the mails to several state and federal officers. Mills

is an extremely disturbed 19 year-old male who had been incarcerated since the age of 14 in state custody. As a result of his threatening letters, a federal detainer was placed on him and he was transferred to federal custody in August 1998. Mental health professionals have consistently concluded that Mills is capable of carrying out his threats and regard his threats as serious. On April 18, 1999, Mills sent the following letter to the AUSA – "(Name of AUSA) – You are going to die and I am going to kill you Bitch. Sincerely, Tyler Mills." Obviously this letter concerned her greatly.

25.

A criminal AUSA was involved with a case with a defendant Elmi Fejowski who was a drug dealer and had a history of leaving car bombs. While the AUSA was prosecuting Fejowski, cooperating witnesses and Fejowski's own attorney advised that Fejowski was talking about killing the AUSA and a cooperating witness. The AUSA was provided a remote starter for her car, an alarm system in her home, was trained in the use of a firearm and was authorized to carry a firearm. She also took steps to remove the record of her home address as much as possible and gets all of her mail at a Post Office Box or at work. Fejowski is currently still incarcerated and she is to be advised upon his release.

26.

A former AUSA, who is know a U.S. District Court Judge, was the prosecutor who had obtained the grand jury indictment charging a defendant by the name of Chaverra and others with narcotics violations involving over thirty pounds of cocaine. During the course of the narcotics investigation, the AUSA obtained the cooperation of a maid who had worked for Chaverra and who was willing to testify against him at trial. The information provided also enabled the AUSA to obtain a superseding indictment adding Chaverra's wife and his brother as defendants. While incarcerated at the Metropolitan Correctional Center (MCC) awaiting trial, Chaverra received a message from his wife saying that the maid had "snitched" on them: After received the message, Chaverra arranged a meeting with another inmate who, unknown to Chaverra, was a government informant. The two met on the rood of the MCC where Chaverra asked the informant to assist him in killing both the AUSA and the maid. Chaverra told the informant that he hated the AUSA for having his wife arrested and for inducing the maid to cooperate. Chaverra asked the informant to enlist professionals from Florida to do the killings and offered to pay \$50,000 for the murder of the AUSA, \$25,000 for the murder of the maid, and \$30,000 to the informant for his help. Chaverra additionally wanted the maid's two children killed because he thought it would look funny if the mother disappeared leaving the children behind. The men discussed the weapons, automobiles, and personnel from Chicago and Miami that would be needed to carry out the murders, and they talked about alternative methods of killing the AUSA, including stabbing him to death in the elevator of the federal building and shooting him in the head with a machine gun. Agents witnessed or participated in numerous conversations in which details of the plan were discussed, such as the timing of the kills, whether the maid should be poisoned with Colombian candy, and whether the

price of the hits included the cost of machine guns or whether the hitmen would use their own guns. As the result of this activity, the AUSA and his family were placed under protection for a period of time.

27.

In April 1988, two current AUSA's caused a search to be conducted of the Chicago On Leong's gambling casino and the subsequent June 1988 civil forfeiture seizure of the On Leong building, which the building was worth 1.8 million dollars. The On Leong is the largest Chinese tong in the United States and informants reported that a \$100,000 contract was put out by the On Leong to kill whichever prosecutor, agent or informant was the main person causing the search and forfeiture. Nothing ever developed from the threat. However, a New York witness that was subpoenaed to the criminal trial two years later was gunned down just outside his office upon orders of the leader of the On Leong.

28.

A criminal AUSA in the mid 1990's investigated and prosecuted a defendant for mail fraud. The defendant received a 51month sentence. Later, the defendant, while an inmate, made specific threats against the judge and also discussed driving a truck loaded with explosives into the federal building. The US Marshals provided door-to-door security for the judge for a while. FBI agents assigned to the case also learned of threats against them. The AUSA began receiving letters from the inmate that were inappropriate and appeared to be somewhat threatening. The inappropriate nature of the letters and the history of threats to the judge and agents resulted in her superiors taking the AUSA off the case and assuming personal responsibility for the cast themselves.

29.

Two criminal AUSA's in the early 1990's had investigated William Mauldin for various crimes. In January 1994, he sent a letter to the office, addressed "U.S. Attorney," with the following "Rather than commit suicide I'm going to stab you in the shoulder in one month."

30.

A criminal AUSA received a threat to kill on his office voice mail in 1992 and appeared to be surveilled for a short time thereafter.

31.

Three female criminal AUSA's received voice mail calls in early 1995 that were of a threatening nature. In one, the caller said 'Bitch, I'm going to come after you.' In another, the caller stated he was going "to fuck her up." In the third, it was an obscene phone call.

32.

A former AUSA, who is now on the court of appeals for Minnesota, was threatened. As a result of which, U.S. Marshals were ordered to attend her wedding.

33.

A current AUSA, who at one time directed the Organized Crime/Drug Enforcement Task Force between the years 1984 to 1987 and led the investigation into the Pagan Motorcycle Club in his district which eventually led to lengthy prison terms for many of the club's leaders. During 1987, after an initial round of prosecutions led to prison sentences for certain Pagans members, several of those members secretly began to cooperate and provide information to our investigators. One piece of information learned was that plans were then being developed by Pagans leaders in Pittsburgh to kill me and the FBI agent in charge of the Pittsburgh FBI Organized Crime Squad. The misguided motive for this plan was to disrupt the investigation sufficiently to cause the statute of limitations on certain offenses to expire before the highest ranking Pagans leaders were indicted.

After the informing Pagan member passed an FBI polygraph examination, I was assigned full time protection by the U.S. Marshal's office. Two deputy U.S. Marshals lived with me day and night for over one month creating, needless to say, a difficult and stressful situation. However, the protection detail was for me, not my wife. Throughout working hours, Monday through Friday of each week, and on trips to the supermarket, etc., my wife was totally unprotected.

I believed that I was unduly endangering my wife, and I requested to be re-assigned within the Criminal Division of the U.S. Attorney's Office, which did occur.

The murder plan could never be proven because the highest ranking Pagans leaders chose to go to jail rather than cooperate. These individuals are now gradually being released from prison, having served their sentence, and now concerns about retaliation by those persons are in the minds of the witnesses and investigators most responsible for their incarceration, including me.

34.

As an AUSA in the District of Alaska, I tried a case against a local dentist named Bobby D. Layman for violating the CSA by prescribing large amounts of highly addictive and abused medicine such as dilaudid, percocet and percodan to admitted addicts. In the usual fashion the jury trial was followed by a contentious sentencing hearing which resulted in incarceration for a period of five years. After the hearing the defendant's son, who was also a dentist, followed me out of the courtroom and down the hall. In an attempt to hit me lunged at me with a raised arm which would have made contact but for the quick action of a DEA Special Agent who stepped behind me to protect my back and stop the attack.

35.

In March of 1997, an inmate at the Metropolitan Corrections Center in San Diego, California reported a threat against the life of an AUSA. The threat originated

with a mid level member of the Arellano Felix Organization. The AUSA had been responsible for the extradition of the AFO member and overseeing the investigation of the AFO. During the course of overseeing the investigation, the AUSA had interviewed the threatening AFO member and his associates which was reported back to the AFO. As a result of the threat a wiretap order was obtained for the AFO member's cell which confirmed the threat. The threat developed during the course of a month where five murders or abductions of witnesses against the AFO occurred.

As a result of the threat, the AUSA was placed in a seven month United States Marshal protection detail which consisted of 24 hour protection at a series of safe houses whose locations were kept secret. The AUSA was not permitted to have company at the safe houses and had his movements strictly controlled by the USMS.

36.

I was threatened in 1991 during an 8 ½ week trial. The Toledo Police received information that one of the Texas defendants, who was at the County Jail, attempted to hire someone to kill me and a few of the witnesses. As a result, I was followed home every evening by the U.S. Marshals to make certain that I was not being followed, my license plate was registered as "not in file," and the Lucas County Sheriff did regular drive-bys and stationary surveillances at my residence. If I recall, I even rode into work for about a week with one of the deputies. Fortunately, our home address/phone number had always been unlisted. Nothing came of it, but it was a scary time particularly as it involved my children who were very young at the time. We even considered temporarily sending them to my mom's in Pittsburgh.

37.

I received a threat about a year ago. A defendant of mine allegedly looking through the MCC window, pointed a woman out as "his prosecutor" and told a fellow inmate he had figured out how to kill her. He said he knew where she parked, what her car looked like and what her pattern of activity was (when she arrived and left work). Unfortunately for some poor County Probation Officer, the woman he was pointing out was not me, but another blond who happened to work for County Probation. FBI investigated and eventually closed the case. I was given a photograph of the defendant and told to watch out for him. I think the County Probation Officer received some temporary relocation. The defendant's photo is still posted in the reception areas.

38.

I received a threat several years go and received 24-hour protection from the U.S. Marshals Office. FBI arrested the guy making the threat, and another AUSA prosecuted him. He was convicted and immediately deported back to Australia.

39.

Years ago, I handled a case in which the agents arrested someone and searched his house and business in Newport Beach. From what I remember, I made the decision either not to charge him or to dismiss the case. In any event, the search,

etc. was a big deal and for a long time afterward I received correspondence that was implicitly threatening, for example, how would you like to have your life ruined; perhaps this should happen to you, etc. I never reported it, and I have basically forgotten most of the details. I do know at the time, however, that I had some concern and viewed it as an implicit threat.

Statement of Representative Ed Bryant
Civil Service Subcommittee
H.R. 583, The Assistant United States Attorneys Retirement Benefit Equity Act of 1999.
September 9, 1999

Thank you Mr. Chairman,

Mr. Chairman and Members of the Subcommittee, I appreciate your holding this hearing today and I am pleased to be able to testify on behalf of the National Association of Assistant United States Attorneys in support of H.R. 583, the Assistant United States Attorneys Retirement Benefit Equity Act of 1999.

As a former United States Attorney from the Western District of Tennessee, I have first-hand experience and knowledge about AUSAs and the integral role they play in federal law enforcement.

Currently, there are more than 4700 AUSAs who work in 93 separate offices throughout the country. These AUSAs are the United States Attorneys principal support for ensuring that the laws are faithfully executed. In today's environment of sophisticated white collar crime, domestic and foreign terrorism, international narcotics trafficking, espionage, government program fraud, organized crime and labor racketeering, the role of the AUSA has evolved to include substantial investigative duties. AUSAs control and direct the most crucial investigative tool in the criminal justice system - the Grand Jury. AUSAs oversee and participate in the investigative activities of federal law enforcement officers working on major prosecutions, and review and approve complex search warrants and applications for wiretaps. In multi-agency cases, the AUSA functions as supervisor of the agents activities, a particular challenge since there is no line authority from AUSA to agent.

Civil AUSAs defend lawsuits brought against federal agents in connection with their performance of their law enforcement duties. Prisoner litigation is an additional aspect of the civil AUSAs practice. Civil AUSAs represent the government in suits brought by those who wish to obstruct government operations. AUSAs have been threatened in this context, had false liens filed against their property, and have had false Form 1099s filed with the Internal Revenue Service.

The increasing complexity of federal investigations and the resulting criminal and civil litigation has spawned a relatively new phenomenon - the career Assistant United States Attorney (AUSA). Unfortunately, as more and more AUSAs seek careers within the Department of Justice, the Department has not reacted to provide the professional benefits deemed routine in the highly stressful law enforcement community.

As you know, under the current retirement system, federal law enforcement agents are eligible to retire at 50% of their "high-three" salaries at age 50, with 20 years of service. Currently AUSAs are the only employees in the criminal justice system who do not receive this law enforcement retirement, which recognizes the stressful occupations associated with fighting

crime, and the physical and mental challenges which wear down body and mind at an accelerated pace. Originally authorized in 1948, federal law enforcement retirement benefits were intended to liberalize retirement provisions in order to enable agents and investigators to retire at age 50, while still physically fit. In enacting that legislation, Congress recognized the stressful, sometimes dangerous, work performed by the law enforcement officers as well as the need for career investigators in the federal government. At that time, there were no "career" AUSAs and, therefore, there was no reason for their inclusion in the statute. Since then, however, circumstances have changed significantly.

Only during the 1980s did AUSAs begin to remain employed by the Department until retirement on any regular basis. In the last two decades, the position of AUSA has evolved from being largely political, where it was routine for all AUSAs to resign upon the appointment of a new United States Attorney. Then, newly employed attorneys inherited entire caseloads of ongoing prosecutions. This disruption badly damaged the continuity of investigations and prosecutions, both civil and criminal.

Congress has recognized the importance of maintaining an experienced force of career AUSAs. In 1990 the Civil Service Due Process Amendments extended the procedural protections of the Civil Service Reform Act to AUSAs. No longer constantly in jeopardy of being replaced for political reasons, more and more AUSAs are remaining in the Department of Justice for their careers, thus ensuring that the government is getting the best representation.

For retirement purposes, the "law enforcement officer" designation is not limited to only line agents who are on the street involved in day-to-day investigative work. The "law enforcement officer" designation includes: FBI agent-attorneys who are stationed at FBI headquarters, Federal prison guards, Federal Probation Officers, Federal Pretrial Services Officers and even accountants, cooks, secretaries, and attorneys of the Bureau of Prisons. In fact, from the time that an individual first comes into contact with the federal criminal justice system until the time that individual leaves the federal criminal justice system, the only individuals that he comes into contact with who are not afforded "law enforcement officer" status for retirement purposes is the Federal Judge who sentences him and the AUSA who prosecutes him. All other contacts are all designated "law enforcement officers" for the purposes of retirement. And, it should be noted, the federal judiciary has its own enhanced retirement system.

Data from the Department of Justice reveals that length of service for AUSAs was seven years for 1990 through 1992, and eight years for 1993 through 1996. This trend should be encouraged. By comparison, the length of service for other Justice employees was 19 years in 1996. The American public is best served by experienced, career oriented AUSAs, not only when prosecuting such cases as the World Trade Center and Oklahoma City bombings, but also in defending the United States against the drug traffickers, the perpetrators of civil health care fraud and the host of other violators who threaten the safety of our community and endanger our economy.

Given the increasing complexity of legislation dealing with offenses against the United States, and the increasing sophistication of lawbreakers, the United States Department of Justice

requires the services of experienced, seasoned professional Assistant United States Attorneys to protect the interests of the American people. The work is demanding, stressful and often fraught with danger. AUSAs, both civil and criminal, face stress and strain on mind and body to a degree equal to and in some instances exceeding that faced by others included in the federal law enforcement retirement system.

The time has come for the Congress to recognize AUSAs for what they are - an essential part of the front line defenders of safety and justice in America. The AUSA should no longer be the only member of the federal criminal justice system denied law enforcement retirement..

And I thank the chair.

Mr. SCARBOROUGH. Congressman Filner.

**STATEMENT OF HON. BOB FILNER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. FILNER. Thank you. I want to start off with an ironic kind of note that drives me as I put forward this legislation. I am sure that you have visited the National Law Enforcement Memorial in Judiciary Square, which was established in 1991 to honor Federal, State, and local law enforcement officials. When they die, their names are inscribed on this memorial. Many of the people I am trying to talk about in my bill who do not have law enforcement status in life, if they get killed in action doing their work as inspectors, for example, their names are inscribed on the law enforcement memorial. So in death, they get the status that I think they ought to have while working to protect us.

I hope you keep that irony in mind as we proceed on this legislation because I am honored to be in the presence of valiant men and women who put their lives on the line to ensure our Nation's safety. Most are not recognized as law enforcement officers, like Inspector Robert Labrada who put his life on the line 2 years ago when a desperate marijuana smuggler opened fire on him and his partner, Inspector Lira, at the United States-Mexico border. Both men were seriously injured and hospitalized. Fortunately, they survived the gun battle, unlike the gunmen. If they had not, these valiant inspectors' names would have been put on the wall of that memorial.

I think it is a cruel and inhumane irony that this situation exists. It does not make sense. How can we not afford law enforcement status for these men and women? They daily encounter dangerous and life-threatening situations. I represent a neighborhood in San Diego, the home to the busiest border crossing in the world, the San Ysidro community of our city. Customs and INS inspectors work side by side with others who have law enforcement status, and they have, we might say, an equal opportunity to be exposed to danger and I have seen this firsthand. They exchange shots and are roughed up, forced to run after suspects, disarm them, just the same as their counterparts on the Border Patrol or INS who do have law enforcement status.

INS Inspector John La Cuesta who is also here with us from our Southern California District can similarly attest to the dangers of this job.

Others are in a similar position ranging from drug enforcement agency diversion investigators to Department of Defense officers in charge of law enforcement of our military bases. They do the job of law enforcement officers. They do not have the status or the benefits.

I know the work of the INS and Customs Inspectors at the United States-Mexico border. I live right at the border. These men and women make our community safer, but because of the current lopsided law, they are not given status and we lose, as a result, vigorous trained professionals to other law enforcement agencies.

The average length of Federal service according to reports is 15 years compared with 7 for the Inspectors in Customs. Why would Customs Inspectors and INS Inspectors who daily face threats from

drug smugglers upset after being arrested, who disarm thieves as they attempt to run across the border after robbing businesses in Mexico, who stop drunken revelers attempting to drive into the United States, why would they not want to work for some other organization that does recognize them as law enforcement officers? These Inspectors, like the others I deal with in my bill, carry guns and perform a great service in protecting us as they face a variety of dangerous folks.

Last year alone, aside from minor injuries, 25 INS Inspectors were seriously injured on the job in dealing with these situations. The Customs Service has the highest narcotics seizure rate of any agency in the United States, year after year, with the highest apprehension of fugitives and felons of any agency in the country, and that is a testament to these Inspectors. They face dangerous felons. They have been run over by cars. They have been shot at and disarm sawed-off shotguns, switchblade knives and handguns. Many have lost their lives. In fact, 43 Inspectors in U.S. Customs and INS have been killed in the line of duty. And as I said at the beginning, their names are inscribed on the National Law Enforcement Officers Memorial in their death.

I say, Mr. Chairman, it is too long for these Inspectors and other law men and women that I refer to in my bill to wait. I think the cost is way too high not to grant them this benefit.

I am heartened, Mr. Chairman, and Mr. Cummings, to learn and know of your interest in exploring this issue. I hope we find a way to do what is right. I know you and your staff have looked at numbers. There are obvious arguments against this, but I ask you to try to find a way to do it. If you tell me the cost is too high, besides some questions of the methodology, I will say let's find a way to phase in the benefit so that the cost is not as high. Let us deal with the base wage in a different way if the cost is too high, but let us grant these men and women the law enforcement status that they actually perform every day.

Mr. SCARBOROUGH. Thank you, Congressman Filner. You made some great points and I agree with you 100 percent. The purpose of this hearing and this committee should be to figure what is possible and what we can do to help those people that are working as law enforcement officers.

[The prepared statement of Hon. Bob Filner follows:]

STATEMENT OF CONGRESSMAN BOB FILNER

before the

**CIVIL SERVICE SUBCOMMITTEE
of the Government Reform Committee**

Sept. 9, 1999

**Penny Wise and Pound Foolish:
Denying Law Enforcement Status to those
Protecting our Nation**

Mr. Chairman and my colleagues, I come before you today honored to be in the presence of valiant law men and women in the audience today who literally put their lives on the line to ensure our nation's safety. Most here today, unfortunately, are not recognized as law enforcement officers. Like Inspector Roberto Labrada who put his life on the line two years ago when a desperate marijuana smuggler opened fire on Inspector Labrada and his counterpart, Inspector Nicolas Lira, at the U.S./Mexico border. Both men were seriously injured and hospitalized, one had numerous surgeries to his face and neck to recover. Fortunately, they, unlike the gunman, survived the gunbattle. If they had not, these valiant inspectors' names would have been inscribed on the wall of the National Law Enforcement Officers Memorial just blocks away here in Washington. This is a cruel and inhumane irony -- they would be recognized as law enforcement officers in death by having their name carved on the wall with other officers, but never given any recognition nor benefits in death nor in life!

Mr. Chairman, it just does not make sense to me. How can it be said that we cannot afford law enforcement status? We cannot NOT afford to provide law enforcement status to the law men and women across the country who daily encounter dangerous and often life-threatening situations. I became involved in championing the cause of broadening the law enforcement officer status because of my unique position representing a neighborhood that is home to the busiest border crossing in the world--the San Ysidro community of the City of San Diego. San Ysidro, where customs and Immigration and Naturalization Service inspectors work side-by-side with others who have the law enforcement benefit, provides an "equal opportunity" to be exposed to danger. There, the inspectors exchange shots and are roughed up, forced to run after suspects and wrangle them to the ground and disarm them **just the same** as their counterparts who do have the law enforcement status. INS inspector John La Cuesta from the Southern California District, who is also sitting behind me, can similarly attest to the dangers of the job.

In the course of fighting for my bill to grant law enforcement status to Customs and INS inspectors, I came across others who also enforce this country's laws and are put in harm's way doing so. Yet, like the inspectors, our country has not seen fit to protect them with this needed benefit. These other officers range from Drug Enforcement Agency diversion investigators, to Department of Defense police officers in charge of law enforcement on our nation's military bases.

But let me return to what I know best, the work of the valiant INS and Customs inspectors who protect our border. My community and communities throughout this country must be made safer by ending the unfair, unsafe and expensive practice of excluding the inspectors and other federal officers from the law enforcement category. Because of the current lopsided law, INS and Customs lose vigorous, trained professionals to other law enforcement agencies. The average length of federal service, according to Federal Employee Almanac of 1998 is 15 years, compared with 7 years for Customs inspectors.

Why would inspectors who face death threats from drug smugglers upset at being arrested, who disarm thieves attempting to run across the border with knives after robbing businesses in Mexico, who stop and hold drunken revelers attempting to drive into the United States obviously impaired NOT want to work for some other organization that would recognize them as law enforcement officers? These inspectors, like others in my bill, carry guns, have arrest authority, wear bullet proof vests, and, obviously, perform a great service in protecting us as they face a variety of dangerous people. Aside from the minor tussles in detaining people, last year alone, 25 INS inspectors were seriously injured and filed an injury report. And the Customs Service has the highest narcotics seizure rate of any agency in the United States year after year, with the highest apprehension of fugitives and felons of any agency in the country -- that is all a testament to inspectors.

Because the inspectors face dangerous felons daily, have been run over by cars and disarm people carrying sawed-off shot guns, switchblade knives and handguns, many are injured and some have lost their lives. Forty-three (43) courageous U.S. Customs and Immigration and Naturalization Service inspectors have been killed in the line of duty and their names inscribed on the National Law Enforcement Officers Memorial in their death. Mr. Chairman, I say this is too long for inspectors and the other lawmen and women in my bill to wait, and **way too high of a price to pay**.

I am heartened to learn, Chairman Scarborough and Ranking Member Cummings, of your interest in exploring this issue. Because this is such an important matter, I hope this is the first of several hearings on this vital protective issue for our country. We have much to explore to try to find a solution for the best way to protect our country by protecting those charged with this life-saving task.

Mr. SCARBOROUGH. Congressman Traficant.

**STATEMENT OF HON. JAMES A. TRAFICANT, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. TRAFICANT. Thank you, Mr. Chairman. I am here on H.R. 424, about the Capitol Police. It would extend the retirement age from 57 to 60. I think it is justified even though many are concerned that we may have to take other government agencies along with it, and that would be fine, but I think we should start here and recognize the impact.

First let me say that in the beginning, the Capitol Police were looked at as political patronage soft jobs, good jobs. Now, after Officers Chestnut and Gibson, we know this is a police agency.

Here is the dilemma we face, Mr. Chairman: having enough officers. Most Secret Service agents, Treasury agents, FBI agents, they are all excited with the status of their Federal employment, and they are not likely to lose their young members. Our young police officers are being recruited by suburban police departments for more pay after they have been qualified to the tune of \$150,000 taxpayer dollars to say this is a good recruit. Then at age 57, they are in perfect health, and we tell them they have to leave because we have set in place some type of an accelerated retirement program that did make sense at some point but now serves no purpose.

Since 1997, in a short 3 years, we will have lost 25 experienced police officers, most of them who would opt to stay. We are having our young officers raided, our qualified older officers raided. And let me say this: Officer Gibson was mortally wounded when he took the police action that was necessary to protect the lives here at the Nation's Capitol.

Experience is very important. I believe that there are merits to looking at the expansion of retirement age for all Federal agencies, but I believe that cost factor, which has everybody worried, could be set aside with an impact evaluation on the Capitol Police.

And let me say this: There are many of these police officers averaging 56 hours of overtime a month because of the shortage of personnel. Now I have to say it, beam me up there. They are taking our young ones and we are sending our old ones on a fast track out of here. We are spending millions of dollars on overtime. I would like for you to report this bill out. Use it as an evaluating mechanism for that which my good friend and colleague, Patsy Mink, is bringing forward that would deal with the same issue for all Federal agencies. Do not tie this up. We will lose 4 more good officers in the next 2 months.

I ask unanimous consent that my written statement be included in the record.

Mr. SCARBOROUGH. I don't think that anyone would dare object. Without objection, so ordered.

[The prepared statement of Hon. James A. Traficant follows:]

**Statement of the Honorable James A. Traficant, Jr.
Before the Government Reform Subcommittee on Civil Service
Hearing on Current Statutory Provisions Governing
Law Enforcement Retirement Benefits
September 9, 1999**

Chairman Scarborough, Ranking Member Cummings, and Members of the Subcommittee, I want to thank you for inviting me to testify at this hearing on law enforcement retirement. I am here today at the Chairman's request to talk about H.R. 424, legislation I introduced earlier this year to change the mandatory retirement age for U.S. Capitol Police Officers from 57 to 60.

I am not here to advocate changing the retirement age for other federal law enforcement officers. I have not adequately examined other agencies to determine whether or not, in my opinion, such a change would be prudent or warranted. I do believe, however, after close examination and experience with the Capitol Police, that such a change would have a positive impact on the department's ability to do its job.

As every Member of Congress knows, the Capitol Police is one the most professional and dedicated law enforcement agencies in the country. They perform a vital and important function. The force is blessed to have a large number of experienced and highly competent officers.

Unfortunately, every year the department loses talented and experienced officers because of the mandatory retirement rule. Since 1997, 21 officers have been forced into retirement. By the end of this year, the Capitol Police will lose another four officers.

Many of these officers are in excellent physical condition. Most important, they possess a wealth of experience and savvy that is difficult, if not, impossible to replace.

Raising the mandatory retirement age from 57 to 60 will provide the Capitol Police with the flexibility necessary to retain experienced, highly competent and dedicated officers. It will enhance and improve security by ensuring that the force experiences a slower rate of turnover.

I introduce this legislation at a time when the Capitol Police is struggling to increase the size of its force in the face of an increased workload. For example, I have spoken to a number of officers who are routinely working up to 56 hours of overtime a month. Plans by the Capitol Police Board to hire an additional 260 officers will not fully alleviate this serious problem. Raising the retirement age will certainly help to reduce the workload of the force.

Should this legislation become law, Capitol Police officers between the ages of 57 and 60 would still have to meet the standard requirements to remain on the force, including proficiency on the shooting range.

This legislation is a common sense measure that will go a long way in improving and enhancing what is already one of the finest law enforcement agencies in the world.

I recognize that there may be some cost associated with this measure related to increased retirement benefits, and the retention of officers who earn more money, because of their seniority, than rookie officers. But I think that the costs, which are hard to calculate because it is impossible to postulate how many officers would elect to continue working past age 57, would be well worth it.

My sense is that the costs would be minimal. Here's why. If all 21 of the officers who were forced to retire since 1997 elected to stay on the force (an unlikely proposition) the additional cost to the taxpayer would somewhat be offset by the savings related to recruiting and training replacements for those officers. The additional costs would also be offset somewhat by a reduction in overtime expenditures.

Here's the bottom line: you can't put a price tag on good security. The tragic shooting in the Capitol last year is a vivid reminder of how important it is to have well-trained and experienced officers patrolling the Capitol. As we all know, Officer Gibson was able to stop a crazed and armed intruder who had already fatally wounded one officer, with his weapon, even though Gibson himself was mortally wounded.

If not for Officer Gibson's bravery and experience, many more people could have been killed that day. That's what my bill is all about. It's about ensuring that the Capitol Police has the flexibility to retain good officers who have a wealth of law enforcement experience, savvy and training that is impossible to replace.

I applaud the subcommittee for examining this issue. I would hope that, should the subcommittee decide that it is not appropriate to change the mandatory retirement age for all federal law enforcement officers, you consider taking action on my bill.

Given the severe manpower shortages facing the Capitol Police, we cannot afford to lose even a single officer – especially those who are experienced and competent.

Once again, I urge the subcommittee to take a close look at changing the retirement age for the Capitol Police. Thank you for your time and consideration. I'd be happy to answer any questions you might have.

**STATEMENT OF HON. PATSY T. MINK, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF HAWAII**

Mrs. MINK. Thank you, Mr. Chairman and Ranking Member Mr. Cummings. I appreciate all of the comments made by my colleagues, and I support everything that they have said. I am here to support the bill that I introduced, H.R. 1748, and it is to underscore all of the comments that have been made about the importance of the work that law enforcement officers contribute to our communities and to the Nation as a whole.

My bill is very simple. It just raises the age of mandatory retirement of law enforcement officers from 57 to 60 years. This matter came to my attention by a constituent of mine who works for the Department of Treasury in Honolulu. Under current law, Federal law enforcement officers have to retire at age 57. This includes officers from all of the various Federal agencies, the FBI, Bureau of Prisons, DEA, INS, and so forth.

The current mandatory age I believe is too restrictive; 57 years of age is too young to force a dedicated officer into retirement. If we applied this same retirement to the House of Representatives, 159 of us would be forced to retire. Today, medical advances have dramatically improved health and longevity. Law enforcement officers at 57 years of age are still in their prime and capable of performing the physical demands of their job. They should not be deprived of the work they love merely because they have reached the age of 57. Raising the mandatory retirement age to 60 would provide them the opportunity to continue to work. It would not jeopardize the safety of the younger officers on the force, nor the citizens they are assigned to protect. Instead, the younger officers would continue to benefit from the senior officers' wealth of experience. Other demanding jobs like air traffic controllers have a mandatory retirement age of 60.

Furthermore, under current law the officer does not have to remain on the force until age 60. He can retire at the minimum age of 50 as long as that officer has completed 20 years of service. They cannot enter the law enforcement career after the age of 37. They put 37 as the maximum age for the initial employment, allow 20 years of service, and a person can go out at 57. That is the way that the current formula reads.

I want to note to this committee that the Federal Law Enforcement Officers Association opposes my bill, and I attach a letter of their opposition which states primarily that they feel that agent safety will be impacted; but I am told by the individuals who have supported my bill that one of the things that they fear is that the mandatory age debate will renew consideration of raising the minimum retirement age, which they all oppose and I certainly would oppose that also. I see no reason to deprive experienced officers of an opportunity to work.

We are facing an increasingly aging population and I am sure that the law community recognizes the experience that they bear into their various functions. I am told by this individual who came to me with this issue that in a 5-year period between 1998 and the year 2002 in just the criminal investigation division of the U.S. Treasury, they expect to lose between 40 to 45 percent of their special agents merely because of the mandatory age of 57.

And so when you ask me the question what is this going to cost, I want to raise the issue that my colleague, Mr. Traficant also raised and others, that to bring in a new person to fill that job costs hundreds of thousands of dollars for just that one person. And so if we are talking about money as the main factor against doing what is logical, I raise for your consideration the point that the loss of these experienced individuals who want to continue, who are physically able to continue to work, is a factor that has to balance off whatever additional costs it might be to retain them, as against the cost of training new officers to take that position which is being vacated at age 57 by senior experienced officers that only want an opportunity to continue to serve. All officers can retire at age 50 if they wish. They can retire at any age at which they choose to do so after 20 years of service.

It seems to me that this is a fair request and one that takes into recognition the superior quality of senior officers who merely desire to stay in, and I see no reason why they should be forced to retire at age 57. Thank you very much, Mr. Chairman.

Mr. SCARBOROUGH. Thank you, Congresswoman.

[The prepared statement of Hon. Patsy T. Mink follows:]

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TESTIMONY OF
CONGRESSWOMAN PATSY T. MINK
OF HAWAII
BEFORE THE CIVIL SERVICE SUBCOMMITTEE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
ON H.R. 1748
SEPTEMBER 9, 1999

Mr. Chair, thank you for calling this very important hearing on retirement benefits available to federal law enforcement officers.

Federal law enforcement officers provide an invaluable service to our communities. They risk their lives to protect our's. It is important that these dedicated individuals are adequately rewarded for their bravery and hard work.

I was invited today to testify on H.R. 1748, which I recently introduced, that raises the age of mandatory retirement for law enforcement officers from 57 to 60 years. This matter came to my attention by a constituent who works for the Department of Treasury.

Under current law, federal law enforcement officers must retire at age 57. This includes officers at the Department of Treasury, the FBI, the Bureau of Prisons, Drug Enforcement Administration, INS, ATF, U.S. Marshals, and U.S. Customs among others. My legislation, H.R. 1748, raises the mandatory retirement age of these law enforcement officers from 57 years of age to 60 years.

The current mandatory age requirement is too restrictive. 57 years of age is too young to force these dedicated officers into retirement. If we applied this same requirement on the House of Representatives, 159 of us would be forced to retire.

Today, medical advances have dramatically improved health and longevity. Law enforcement officers at 57 years of age are still in their prime, and are capable of performing the physical demands of their job. They should not be deprived of the work they love merely because they reach the arbitrary age of 57.

Raising the mandatory retirement age to 60 would provide them the opportunity to continue this work. It would not jeopardize the safety of the younger officers on the force nor the citizens they are assigned to protect. Instead, the younger officers would get the benefit of the senior officers' wealth of experience.

Other demanding jobs, like air traffic controllers, have a mandatory retirement age of 60 years.

Furthermore, under current law, an officer does not have to remain on the force until age 60. He or she can retire at the minimum retirement age of 50 as long as the officer has completed 20 years of service.

I was disappointed to learn that the Federal Law Enforcement Officers' Association opposes my bill. I have attached its letter of opposition, which states that the association is concerned that "federal agent safety will be adversely impacted." In conversations with various officers, I am told the real concern of the Federal Law Enforcement Officers Association is that it is afraid that raising the mandatory retirement age will renew debate over the minimum retirement age.

That is no reason to deprive experienced officers of working in the job they love.

Today, we are facing an ever-increasing aging population. As we enter into this new millennium, we will be faced with more and more retirements. Our law enforcement forces will be losing their most experienced officers. The Criminal Investigation Division of the U.S. Treasury will lose 1,350 special agents in the next 5 years due to this mandatory retirement age of 57 years.

Allowing law enforcement officers to stay on another three years, if they wish, will benefit the federal government.

Costs for allowing officers to stay on their jobs three more years if they choose will be far outweighed by retaining our most highly experienced officers in the workforce.

I urge my colleagues to support H.R. 1748.

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Representing Members Of:
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 AGRICULTURE
 OIG & Perv. Service
 COMMERCE
 Dept. International, OIG
 & National Marine Fisheries
 DEFENSE
 Air Force - OSI
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 ENVIRONMENTAL PROTECTION AGENCY - CID & OIG
 FEDERAL DEPOSIT INSURANCE CORPORATION - OIG
 FEDERAL EMERGENCY MANAGEMENT AGENCY - OIG
 FEDERAL SERVICES ADMIN.
 Federal Reserve Service & OIG
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September 3, 1999

Honorable Patsy T. Mink
 United States House of Representatives
 Rayburn Building, Room 2135
 Washington, DC 20015

Dear Representative Mink:

On behalf of the more than 16,000 members of the Federal Law Enforcement Officers Association (FLEOA), I wish to inform you of FLEOA's strong opposition to H.R. 1748, introduced by you. By amending Title 5 of the United States Code to increase the mandatory retirement age for law enforcement officers from 57 to 60, federal agent safety will be adversely impacted. We respectfully request you reconsider your support of this bill. There already exists an OPM mechanism for any agent an agency wants to retain after their mandatory retirement age (of course the agent must be willing to stay) up until the age of 60.

FLEOA, a volunteer, non-partisan, professional association, with 55 chapters across America including one in Hawaii, is the largest association representing exclusively federal agents. We sit on the National Law Enforcement Steering Committee, which is comprised of FLEOA, the Fraternal Order of Police, International Brotherhood of Police Organizations, Major Cities Chiefs, National Association of Police Organizations, National Organization of Black Law Enforcement Executives, National Troopers Coalition, the Police Foundation and the Police Executive Research Forum. FLEOA also sits on the Executive Board of the National Law Enforcement Officers Memorial, and has since its inception, FLEOA believes H.R. 1748 will compromise the safety of the agents in the field; whose jobs are already tough enough.

FLEOA is willing to work with you and your staff to ensure any individual federal law enforcement officers who want to stay on (with the approval of their agency) can. If you have any questions or need further information, please feel free to contact me at (212) 264-8400 or through FLEOA's Corporate Services Office at (516) 368-6117. Again, we respectfully request you reconsider your position on this issue. Thank you.

Richard J. Gallo

Mr. SCARBOROUGH. Mr. Filner, let me start with you. It sounds as if you and our other two witnesses who are still here are somewhat at odds with each other. You are wanting to allow more Federal employees to retire at the age of 57. You want to lower their requirement age. And Congressman Traficant and Congresswoman Mink are talking about raising the age up to 60.

Who is right and who is wrong?

Mr. FILNER. Obviously we are all right.

Mr. SCARBOROUGH. Can you explain that?

Mr. FILNER. Let me repeat. What we are arguing are whatever the rules are for law enforcement officers apply to these Inspectors. If the mandatory age were raised, it would be raised for those coming into that classification under my bill. The question is fairness and morale and good common sense. Give status to those who are doing the job of law enforcement, who just simply are denied that status mainly out of a bureaucratic classification; and whatever rules apply to those with law enforcement status—that is a different argument—would then be applied to them. They are not arguing for the lower retirement age, they are arguing for the status and the benefits that come to being a law enforcement officer.

Mr. SCARBOROUGH. So you would not have any objection if that age was raised to 60?

Mr. FILNER. Offhand I haven't thought about the legislation itself, but I doubt it. The question here is equity and training. And again my colleagues pointed out the costs involved in retraining new people, which are not calculated in some of your staff reports. The same applies here in even greater numbers. Without that status and retirement benefit, we are losing good men and women to other agencies. I see it in my own county where the local police departments and sheriff's department grab off these people and we have to train again. We lose money in that deal.

Mr. SCARBOROUGH. We are going to spend the next month or two, 2½ months, trying to figure out how to stay within spending caps, trying to figure out how to get out of here before Christmas and pass all of the appropriations bills without busting the budget agreement that we passed a few years ago. Obviously there are costs, there are some costs that are involved here. You and I think Congressman Traficant and Congresswoman Mink have made some arguments that say hey, there is another way to look at this.

Let me ask you to respond to what the Treasury Department is going to be saying later on. The Treasury Department witness is going to testify this morning that H.R. 1228 would cost that Department alone nearly \$750 million in payroll costs over the next 5 years and impose an unfunded liability of about \$1 billion on the Federal Employees Retirement Fund. Have you been made aware of that by the Treasury Department; and if so, what is your response to that?

Mr. FILNER. Well, we have to give you in more detail some of the criticism that we have of some of the methodology used. The Department used the worst kind of assumptions that everybody retires immediately, and that shoots up the unfunded liability. That shoots up the cost to the agency.

I think that is probably not a good assumption. If it were, as I said, we could talk about and I am sure folks would be happy to

explore different mechanisms to bring down that cost, whether it were a phase-in over 10 years even. Again the base pay is not the major issue, it is the retirement benefits, and so they included that base pay increase as part of their assumptions.

We will get you in writing our criticisms of the methodology. We calculated a much, much lower cost based on the figures that were given to us by the Treasury and other agencies in dealing with the employee associations that are involved in this. We came up with far different numbers. As I said, even with those lower numbers, we can get them lower by again taking some other steps as a compromise way. If we say this is our goal—and I think that is what this committee ought to do—the goal is equity and common sense. The costs have to be dealt with, but I would also argue that they did not factor in the savings that come from a lower turnover, lower loss of good people and productivity factors, without getting into philosophical agreements whether those caps mean anything or should mean anything anyway.

Mr. SCARBOROUGH. I appreciate the offer to send something in writing. That will help us out.

OPM has provided data that some of the intended beneficiaries of your bill have to face immediate mandatory retirement, that the agencies would no longer be able to hire applicants who are older than 37, thereby cutting off an important source of new employees that agencies would need to replenish their work force. H.R. 583 would have a similar impact on the Department of Justice. Can you address what we are going to be hearing from OPM and mandatory retirement?

Mr. FILNER. Again, my problem is some of what I call bureaucratic response, reasons why we can't do something instead of let's find ways to achieve what we want to.

Clearly you can be flexible in that. You phase in, phaseout. You do it in a gradual way so you are not faced with those downsides. So if I said to them, find me a way to do this in which we do not get the problems, I think then they will come up with that. But they tend to come up with reasons why you can't do something rather than giving them directions that say we want this equity. We have certain cost containment. We don't want to have these employee disruptions that you mentioned. Tell me how you do that, and I think everybody would be happy to sit down and figure it out.

Mr. SCARBOROUGH. When you say that you have agencies that are looking for ways to just say no, you are sounding a little bit like John Mica. You need to be careful there.

Mr. FILNER. Thank you.

Mr. SCARBOROUGH. Congressman Traficant and Congresswoman Mink, Representative Filner talked about flexibility, that we can be more flexible in the way that we deal with this issue. Under current law, agency heads already have the discretion to waive mandatory retirement provisions affecting law enforcement retirement coverage so that employees can work until the age of 60 with the approval of the agency head, and data shows that very few employees request such waivers.

Would you address why the ability to waive is not enough and why your approach is not overkill to a problem that some will argue on the next panel is.

Mrs. MINK. Because basically when you approach the question of selectivity, giving the agency head the option to waive the mandatory rule, you are opening up a very small window for selected individuals. And it seems to me that if it is OK for some to stay on until the age 60 or whatever age it is extended to, that we ought to renew the look at the whole situation.

Given the fact that not very many are going to stay, why not allow those who want to stay until age 60 an open window to do so? They already have the options to opt out at early retirement, at age 57, having come on before 37 and maybe at 27, and they can retire at age 50. That is a given option under the current rule.

For those that are reaching mandatory age, they have come into the service just before 37 to get out at 57, but looking at the character of the force, the degree of needs that they have for experienced personnel in a very short period of time, it seems to me that for those individuals that I have talked to who sincerely feel that they are being discriminated against by being kicked out so early, that this option of staying on until age 60 is a reasonable accommodation to those requests rather than having them go through this complicated system of seeking a waiver and seeking an option from their superiors.

Mr. SCARBOROUGH. I know that can be frustrating. I actually had an officer that handed me several times a Dear Colleague from Congressman Traficant telling me to take it to the appropriate authorities, and I just smiled and kept my mouth shut and kept walking.

Congressman Traficant, why don't you address that?

Mr. TRAFICANT. Let me talk about the waiver business and about a term that is involved with the art of elective politics, take elected out and talk politics. The one waiver that was granted was to a driver of one of the congressional leaders. A couple of other officers that sought it couldn't get through the front door.

My bill is straightforward, and let me tell you something. It opens up a cost analysis factor that Mr. Filner is now facing, that Mrs. Mink is now facing, but we can evaluate the impact of cost through a demonstration of something very significant where we need Capitol Police here. That is why my bill has been straightforward on the Capitol Police. It takes politics out of it. You don't have to know anybody or kiss anybody's ring, and everybody is treated the same.

Like old Vince Lombardi said, "Treat everybody like dogs, by everybody alike." That is what we need to do, Mr. Chairman. I am very concerned about the loss of Capitol Police personnel. We are out trying to hire them. I think Mr. Filner and Mrs. Mink's comment about training is justifiable because you have to look at the double training; the one that you train that leaves, and the one that you train to take their place. And then you put them in that situation where they are still prime targets for leaving. Then you take a look at the overtime you are paying and the impact on morale which no one has yet talked about. You begin to tear into the

morale and fabric of a police force. This is Capitol Police. It is no longer the country club program.

Let me just say this. The Metro area is here. Many of them have no retirement age limit at all and they pay more money. So I think these are justifiable concerns on a macro basis and also the micro initiatives which we face because our personnel are being recruited very heavily.

Mr. SCARBOROUGH. Mr. Cummings.

Mr. CUMMINGS. I have just a few questions.

I take it that when this 57 age limit was set, I imagine it was done for more than one reason. They thought that the people would not be fit to do the job at that age, and maybe it has something to do with economics, I am not sure. In Maryland a few years ago we increased the retirement age for judges. One of the things that was required, if I recall correctly, was that they had to go through a physical examination and mental examination to try to make sure that they were fit to do the job.

I am just trying to look at this whole picture. There is no doubt about it, when you look at a fellow like John Glenn going up in space and coming back and being in what appears to be great shape, and the fact that people are living longer and healthier lives and the fact that I am pushing 50 and not anxious to retire from anywhere.

I am just wondering in the legislation or in the rules are there provisions for that kind of thing? I am just trying to make sure that those concerns are covered. I have no doubt that there are people at 57 and 59 and 60 who can do a great job.

Mr. TRAFICANT. My bill calls for certain standards. They must be able to meet those standards and be tested relative to performance, both mental and physical. But keep in mind that the current policy that we are talking of expanding was initiated in 1948 when the average life span and the impact on health and performance was nowhere near the times. So we have gone now 50-plus years, 50-plus years with a system that we continued to maintain for a lot of reasons that I believe cannot simply be justified.

Our bill calls for these officers must be able to meet the standards of the younger and other employees of the division, and must be able to perform on the level consistent with that.

Mrs. MINK. I totally agree with that. I am told by those that I have talked to in this category that they are constantly taking medical and physical exams to stay qualified, so I don't tamper with that requirement at all. And for most of the ones that I have talked to, they have joined the law enforcement community well before age 37. They were probably 28, 30 years of age when they started, and can take advantage of early retirement at age 50. So if there is any problem, mental, physical or otherwise, they are able to get out at age 50 with 20 years of service, and so that opportunity is left available for these workers who are having difficulty maintaining themselves. And there are all sorts of medical disability considerations as well.

Mandatory retirement at age 65 even in many jurisdictions for a wide variety of occupations has been discarded as unconstitutional by the courts. Only for this community we maintain this very strict requirement that mandates retirement at age 57, even

though you are fully qualified mentally, physically and otherwise. I think that is unfair for those who are able to continue to contribute. I have a long list of those who work in my jurisdiction and the number of long distance marathon runs they have won and all of the physical prowess awards they have received because of their incredible physical ability, yet they are all at that age where they are going to be forced to retire. I think that is a dreadful loss and comes from an archaic provision that was inserted in the law many years ago, and should be modified.

Mr. TRAFICANT. Fifty-seven years 1 day and not competent and mentally unstable; well, 57 years and 1 day, where are we at 56, 364 days? Overnight did we develop incompetent officers? If we have an unstable officer, man or woman who is physically or mentally impaired before age 57, they should be removed.

An officer that attains the age of 57 that 1 day, certainly those are grounds and conditions that must be expected, but we have gone from 1948, we now have a whole different society and a whole different work force and I think that changes the dynamics of the whole situation very much.

Mr. CUMMINGS. I think Mr. Filner said it best. A lot of things make sense. The question is whether we have the will to do them. I want to thank all of you for what you have said, and we are going to do our best to come up with a reasonable solution to this problem. Thank you.

Mr. SCARBOROUGH. Thank you, Mr. Cummings. Just quickly, one last issue. Representative Traficant said that he had fitness standards.

Do you have fitness standards in your bill?

Mrs. MINK. No. I can make a change.

Mr. TRAFICANT. I simply make a change on that day. I don't know if we asked for qualifications of firearms, and I might be mistaken. That would be additional language that the committee could insert, more of an oversight.

Mr. SCARBOROUGH. I certainly appreciate all of your interest in this. Obviously I see the Capitol Police officers day to day and the great job that they do.

I understand, Mr. Filner, living out in San Diego you certainly see day in and day out the great men and women who do such a great job. We certainly want to do everything that we can. We have to make sure that we move forward in a way that we can afford, and also a way that does not discriminate against other people that are already there. We do not want to force one class of people out to help another class. It is going to take us all getting together and walking through it, but I do think that it can be done. We appreciate your taking time out of your busy schedules.

Let us call up the second panel. Hopefully we can get some testimony from our second panel before we have to go vote.

Our next panel includes Mr. William E. Flynn, Associate Director, Retirement and Insurance Services, Office of Personnel Management. OPM has primary responsibility for management of the Federal retirement systems, and the agency harbors the government's institutional knowledge about the coverage of this enhanced retirement benefit.

Ms. Kay Frances Dolan, Deputy Assistant Secretary for Human Resources, Department of the Treasury. Treasury would face the major effects of these proposals, since more than 16,000 of its employees would gain extended coverage if these bills were enacted.

Our third witness is Mr. John Vail, Deputy Assistant Attorney General for Management, Department of Justice. DOJ would also face major work force changes if law enforcement retirement coverage were extended to assistant U.S. attorneys, Immigration Inspectors and DEA Diversion Inspection Investigators.

Welcome all three of you here and thank you for coming to testify.

[Witnesses sworn.]

Mr. SCARBOROUGH. Mr. Flynn, welcome back. I have the feeling that you are going to say something that somebody agrees with on our staff because I don't know if you noticed your introduction, it says that OPM has primary responsibility and the agency harbors the government's institutional knowledge about the coverage of this enhanced retirement benefits.

Mr. FLYNN. Thank you, Mr. Chairman.

Mr. SCARBOROUGH. I think that is the kindest introduction that you have ever received. Certainly much kinder than any introduction John Mica ever gave to you.

STATEMENTS OF WILLIAM E. FLYNN, ASSOCIATE DIRECTOR, RETIREMENT AND INSURANCE SERVICES, OFFICE OF PERSONNEL MANAGEMENT; KAY FRANCES DOLAN, DEPUTY ASSISTANT SECRETARY FOR HUMAN RESOURCES, DEPARTMENT OF THE TREASURY; AND JOHN VAIL, DEPUTY ASSISTANT ATTORNEY GENERAL FOR MANAGEMENT, DEPARTMENT OF JUSTICE

Mr. FLYNN. Thank you very much. Speaking of harboring institutional knowledge, I was listening to the earlier panel, and of course have read the prepared testimony of others, and was thinking to myself that knowing what I know today, I sure wish I was around in 1947 when this thing got started; we might have gotten off on a different path.

I appreciate the opportunity to be here today to talk about special retirement provisions for law enforcement officers, firefighters and other special groups. As you know, Federal employees who perform these functions, like Federal employees everywhere, make many contributions to the Nation's welfare. As we discuss the desire by some groups to come under the special retirement provisions or otherwise modify them, I think it is important to emphasize that our views on that topic are not intended in any way to diminish the worth and importance of the contributions made by those who are seeking an enhanced retirement benefit.

Now, as has been said this morning, Mr. Chairman, special requirement provisions were first enacted in 1947 for special agents of the FBI, and over the years the provisions have been modified on a number of occasions. Groups have been added, including criminal investigators, prison guards, Capitol Police, air traffic controllers and, more recently, nuclear couriers at the DOE. These provisions exist to make it possible for the government to maintain the young and vigorous work force in occupations requiring such

employees. Special provisions have never been intended to reward or compensate employees for performing a certain type of work.

In most situations, the most effective way to recognize special factors associated with work is in the pay setting process itself. In this regard, it is noteworthy that prior to 1974 the benefit computation for these special groups was only marginally more generous than the regular retirement formula. The more liberal current formula was only added to the law in order to enable the affected individuals who were subject to mandatory retirement to retire without experiencing economic hardship.

Now, for a variety of reasons, the evolution of decisions granting special retirement coverage has created some situations that appear to have departed from the fundamental human resource management concerns that I have just mentioned. As a result, some coverage decisions are not always consistent and are regarded in some cases as inequitable. While attempts have been made to create consistency, even these efforts can in some cases create anomalous results. All of this has contributed to some confusion regarding eligibility, and that in turn naturally tends to create a situation where the primary reasons for establishing the provisions in the first place become further clouded.

Mr. Chairman recognizes this, and you have raised a number of questions related to those fundamental human resource issues. We agree that greater attention to these issues is needed. Without fully analyzing the underlying rationale for granting coverage or otherwise changing the provisions themselves, we run the risk of creating a situation where the government unnecessarily assumes added benefit costs.

Matters to be considered have already been mentioned: recruitment, retention, physical and mental demands of employment, and many other factors. While your letter asks a number of questions in these areas, we do believe that more study and analysis is needed to provide useful answers, particularly in the context of the specific changes you have under consideration.

One more point that I think is important to make, and that is that once those decisions have been made, we believe that it is essential that funding accompany any of them. It is important that prospective costs be financed as they are incurred and that provisions be established for the additional costs of benefits resulting from a change in the treatment of prior service. To create an expense without providing a funding mechanism fails to place responsibility for those costs where they belong and requires them to be addressed in the future.

The current dynamic normal cost of requirement is 11½ percent for regular employees under the Federal Retirement System, and 24.6 percent for law enforcement officers, firefighters and others covered under the special retirement provisions. In the Civil Service Retirement System, the comparable figures are 24.2 percent and 40 percent.

Now, obviously the rates are higher because of the enhanced benefit structure and earlier eligibility for retirement. Moreover, it is important to understand that the rates fund only the cost of the service to which they apply and do not fund credit for prior service.

Now, Mr. Chairman, you requested an estimate of what it would cost to cover all of the groups seeking inclusion today. A few months ago, our actuary's office prepared such an estimate. While some of the underlying assumptions are not quite current, I think the analysis will satisfy our purposes today. The groups that we looked at included police, guards, other than those who are currently covered, Inspectors at the Immigration and Naturalization Service, Customs Inspectors, park rangers, Alcohol, Tobacco and Firearm Inspectors and a few other groups.

To include such groups with credit for past service would add about \$1½ billion to the underfunded liabilities of the retirement fund. Now that estimate already takes into account the additional cost to employing agencies of retirement deductions at the higher contribution rates. In other words, to bring all of these groups in would cost \$1½ billion plus the future additional employing agency employee contributions at the higher rates.

I think that pretty well concludes my opening statement, Mr. Chairman. I would be happy to answer any questions you may have.

Mr. SCARBOROUGH. Thank you, Mr. Flynn.

[The prepared statement of Mr. Flynn follows:]

Flynn

STATEMENT OF
WILLIAM E. FLYNN, III, ASSOCIATE DIRECTOR
FOR RETIREMENT AND INSURANCE
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

RETIREMENT BENEFITS FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS,
AND OTHER SPECIAL GROUPS

SEPTEMBER 9, 1999

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO APPEAR TODAY TO DISCUSS THE SPECIAL RETIREMENT PROVISIONS APPLICABLE TO LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL GROUPS. THE ADMINISTRATION DEEPLY APPRECIATES THE MYRIAD CONTRIBUTIONS TO THE NATION'S WELFARE BY THE DEDICATED EMPLOYEES WHO ARE CURRENTLY COVERED BY THE SPECIAL RETIREMENT PROVISIONS, AS WELL AS THOSE WHO SEEK SUCH COVERAGE.

WE BELIEVE THAT TO SIMPLY CONSIDER WHETHER TO ADD CERTAIN SPECIFIED GROUPS TO COVERAGE UNDER THE EXISTING PROVISIONS IS MUCH TOO LIMITED AN INQUIRY. INSTEAD, IT IS TIME TO REEXAMINE THE PROGRAM AND ITS HISTORY. WE MUST FIRST DETERMINE WHAT HUMAN RESOURCES

MANAGEMENT NEEDS ARE INTENDED TO BE ADDRESSED. THEN, WE MUST ANALYZE HOW THOSE NEEDS CAN BEST BE ADDRESSED IN A COST-EFFECTIVE MANNER THAT IS FAIR TO BOTH EMPLOYEES AND THE TAXPAYERS.

WHILE I AM SURE YOU WILL NOT OBJECT IF I OMIT READING IT THIS MORNING, THE FOLLOWING MATERIAL IN MY PREPARED TESTIMONY IS A BRIEF CHRONOLOGY OF SIGNIFICANT ITEMS IN THE HISTORY OF THE SPECIAL RETIREMENT PROVISIONS.

1947 PUBLIC LAW 80-168 EXTENDED SPECIAL RETIREMENT BENEFITS TO SPECIAL AGENTS AND CERTAIN OTHER EMPLOYEES OF THE FBI. COVERED INDIVIDUALS COULD RETIRE WITH THE APPROVAL OF THE ATTORNEY GENERAL AT AGE 50 AFTER 20 YEARS OF SERVICE WITH AN ANNUITY OF 2% PER YEAR OF SERVICE AND A MAXIMUM BENEFIT OF 60% OF AVERAGE SALARY.

1948 PUBLIC LAW 80-879 EXTENDED THE PROVISION TO OTHER EMPLOYEES, THE DUTIES OF WHOSE POSITIONS "ARE PRIMARILY THE INVESTIGATION, APPREHENSION, OR DETENTION OF PERSONS SUSPECTED OR CONVICTED OF OFFENSES AGAINST THE CRIMINAL LAWS OF THE UNITED STATES. . ." EACH RETIREMENT REQUIRED

THE RECOMMENDATION OF THE AGENCY HEAD AND THE APPROVAL OF THE CIVIL SERVICE COMMISSION.

1956 PUBLIC LAW 84-854 EXTENDED THE PROVISION TO OTHER NON-CUSTODIAL CORRECTIONAL EMPLOYEES WITH FREQUENT AND DIRECT PRISONER CONTACT. IT ALSO INCREASED THE MAXIMUM ANNUITY BENEFIT TO 80% OF AVERAGE SALARY FOR ALL RETIREES.

1972 PUBLIC LAW 92-382 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO FIREFIGHTERS.

1974 PUBLIC LAW 93-350 MADE MAJOR CHANGES TO THE SPECIAL RETIREMENT PROVISIONS.

- MANDATORY RETIREMENT AT AGE 55 WAS REQUIRED.
- THE COMPUTATION WAS INCREASED TO 2 1/2% FOR EACH OF THE FIRST 20 YEARS OF SERVICE AND 2% PER YEAR OF ADDITIONAL SERVICE.
- FOR THE FIRST TIME, THE TERM "LAW ENFORCEMENT OFFICER" APPEARED.

- THE REQUIREMENT THAT THE AGENCY HEAD RECOMMEND AND THE CSC APPROVE EACH RETIREMENT WAS ELIMINATED.
- PROVISION WAS MADE FOR MAXIMUM ENTRY AGE SO THAT INDIVIDUALS WOULD COMPLETE THE REQUIREMENTS FOR RETIREMENT BY THE TIME THEY REACHED MANDATORY RETIREMENT AGE.
- THE EMPLOYEE DEDUCTION AND AGENCY CONTRIBUTION RATES WERE EACH INCREASED BY ½%, INCREASING TO 7 ½%. PREVIOUSLY, BOTH WERE AT THE REGULAR EMPLOYEES RATES.

1979 THE COURT OF CLAIMS OVERTURNED THE LONG-STANDING POLICY THAT SPECIAL RETIREMENT ELIGIBILITY COULD BE BASED ONLY ON THE OFFICIAL DUTIES OF AN EMPLOYEE'S POSITION OF RECORD. (*ELLIS V. U.S.*, 610 F.2D 760 (CT.CL.1979))

1986 PUBLIC LAW 99-335 ESTABLISHED THE FEDERAL EMPLOYEES RETIREMENT SYSTEM, UNDER WHICH THE SPECIAL RETIREMENT BENEFITS WERE MODIFIED WITHOUT CHANGING THE CSRS RULES. UNDER FERS--

- THERE IS RETIREMENT ELIGIBILITY AT AGE 50 WITH 20 YEARS OF SERVICE, OR AT ANY AGE WITH 25 YEARS OF SERVICE.
- THE BENEFIT IS 1.7% FOR EACH OF THE FIRST 20 YEARS OF SERVICE AND 1% PER YEAR OF ADDITIONAL SERVICE.
- EMPLOYEES WHO PROTECT FEDERAL OFFICIALS AGAINST THREATS TO PERSONAL SAFETY WERE ADDED TO THE CLASS.
- CERTAIN FEDERAL EMPLOYEES WERE ADDED TO THE CLASS WHO (PRIOR TO FERS) WOULD HAVE BEEN COVERED BY THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS' RETIREMENT SYSTEM.

1990 PUBLIC LAW 101-428 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO CAPITOL POLICE AS A SEPARATE GROUP NOT WITHIN THE DEFINITION OF LAW ENFORCEMENT OFFICER.

1990 PUBLIC LAW 101-509 RAISED THE MANDATORY RETIREMENT AGE FROM 55 TO 57 FOR LAW ENFORCEMENT OFFICERS BUT LEFT IT AT 55 FOR FIREFIGHTERS AND CAPITOL POLICE.

- 1994 PUBLIC LAW 103-283 RAISED THE MANDATORY RETIREMENT AGE FROM 55 TO 57 FOR CAPITOL POLICE.
- 1993-95 IN A SERIES OF CASES, THE MERIT SYSTEMS PROTECTION BOARD ESTABLISHES A NUMBER OF "INDICIA" OF LAW ENFORCEMENT EMPLOYMENT. APPELLATE REVIEW SHIFTS FROM EXAMINATION OF DUTIES TO REVIEW OF INDICIA.
- 1997 THE COURT OF APPEALS DENIES AN APPEAL FROM A DISALLOWANCE OF LAW ENFORCEMENT RETIREMENT, RELYING UPON THE MSPB INDICIA. AS A RESULT OF THIS DECISION, THE MSPB NOW USES THE INDICIA AS A BASIS TO ALLOW LAW ENFORCEMENT CREDIT WITHOUT REGARD TO THE OVERALL DUTIES OF THE INDIVIDUAL. (*BINGAMAN, V. TREASURY*, 127 F.3D 1431 (FED. CIR.1997))
- 1998 PUBLIC LAW 105-261 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO NUCLEAR MATERIALS COURIERS AS A SEPARATE GROUP NOT WITHIN THE DEFINITION OF LAW ENFORCEMENT OFFICER.

IN SUMMARY, SPECIAL RETIREMENT ELIGIBILITY AND COMPUTATIONAL PROVISIONS WERE FIRST ENACTED IN 1947 FOR FBI SPECIAL AGENTS. OVER THE YEARS, THE PROVISIONS HAVE BEEN MODIFIED ON A NUMBER OF OCCASIONS. GROUPS ADDED INCLUDE CRIMINAL INVESTIGATORS, PRISON GUARDS, NON-GUARD PRISON EMPLOYEES, FIREFIGHTERS, CAPITOL POLICE, AND NUCLEAR COURIERS.

THE STATED PURPOSE FOR THE SPECIAL PROVISIONS HAS BEEN TO MAKE IT POSSIBLE FOR THE GOVERNMENT TO MAINTAIN A YOUNG AND VIGOROUS WORKFORCE IN CERTAIN OCCUPATIONS REQUIRING SUCH EMPLOYEES. THE SPECIAL PROVISIONS HAVE NEVER BEEN INTENDED AS A REWARD OR COMPENSATION TO EMPLOYEES FOR HAVING PERFORMED A CERTAIN TYPE OF WORK. GENERALLY SPEAKING, THE APPROPRIATE MANNER TO CONSIDER FACTORS RELATING TO THE TYPE OF WORK PERFORMED IS IN THE PAY-SETTING PROCESS.

IN THIS REGARD, IT IS NOTEWORTHY THAT, PRIOR TO 1974, THE BENEFIT COMPUTATION FOR THESE SPECIAL GROUPS WAS ONLY marginally MORE GENEROUS THAN THE REGULAR RETIREMENT FORMULA. THE MORE LIBERAL CURRENT FORMULA WAS ONLY ADDED TO THE LAW IN ORDER TO ENABLE THE AFFECTED INDIVIDUALS WHO WERE SUBJECT TO MANDATORY RETIREMENT TO RETIRE WITHOUT EXPERIENCING ECONOMIC HARDSHIP.

FROM INCEPTION UNTIL 1974, EACH EMPLOYEE'S RETIREMENT REQUIRED THE RECOMMENDATION OF THE AGENCY HEAD AND THE APPROVAL OF THE CIVIL SERVICE COMMISSION (PREDECESSOR OF OPM). RETIREMENTS WERE APPROVED ONLY WHEN SERVING THE HUMAN RESOURCES MANAGEMENT PURPOSES OF THE LAW.

THE APPELLATE AND JUDICIAL AUTHORITIES REVIEWING COVERAGE ISSUES FORMERLY GAVE DEFERENCE TO THE INTERPRETATION OF THE LEGISLATION BY THE EXECUTIVE BRANCH, WHICH USED THE PURPOSE OF THE LEGISLATION AS A PRINCIPAL TOOL OF INTERPRETATION. HOWEVER, IN RECENT YEARS, THE APPELLATE AND JUDICIAL AUTHORITIES HAVE TENDED TOWARDS ANALYZING ELIGIBILITY MORE AS AN ENTITLEMENT ISSUE. ACCORDINGLY, THE GOVERNMENTAL PURPOSES OF THE PROVISIONS HAVE NOT RECEIVED THE CONSIDERATION THEY ONCE DID.

THE EVOLUTION OF SPECIAL RETIREMENT COVERAGE HAS CREATED A SITUATION THAT APPEARS TO HAVE DEPARTED FROM FUNDAMENTAL HUMAN RESOURCE MANAGEMENT CONSIDERATIONS. THERE ARE A VARIETY OF COVERAGE DECISIONS THAT ARE NOT ALWAYS CONSISTENT, AND ARE REGARDED IN SOME CASES AS INEQUITABLE. WHILE THE INDICIA OF ELIGIBILITY ARE INTENDED TO CREATE CONSISTENCY, IN PRACTICE THEY SOMETIMES YIELD ANOMALOUS RESULTS. A FURTHER RESULT IS CONFUSION

AS TO ELIGIBILITY AMONG AGENCIES AND EMPLOYEES. CONSEQUENTLY, THE USE OF THE SPECIAL RETIREMENT PROVISIONS AS A HUMAN RESOURCES MANAGEMENT TOOL HAS BEEN SUBSTANTIALLY UNDERMINED.

MR. CHAIRMAN, IN THE FACE OF ALL THIS, YOU RAISED A NUMBER OF QUESTIONS RELATED TO HUMAN RESOURCES MANAGEMENT IN YOUR LETTER OF INVITATION. WE AGREE THAT THE APPROPRIATE MEANS OF IMPROVING THE PROGRAM IS A RETURN TO AN EMPHASIS ON ANALYSIS IN THE CONTEXT OF HUMAN RESOURCES MANAGEMENT. OTHERWISE, EXPENDITURES FROM THE AGENCIES' BUDGETS AND THE RETIREMENT FUND MAY NOT SERVE TO CONSISTENTLY ADVANCE THE INTERESTS FOR WHICH THEY ARE INTENDED.

THE DETERMINATION OF WHAT TYPES OF POSITIONS ARE TO BE COVERED MUST BE BASED UPON OBJECTIVELY DEMONSTRATED NECESSITY AND EFFICACY. THERE SHOULD NOT BE A MAJOR CHANGE IN THE COMPOSITION OF THE COVERED CLASSES WITHOUT A CHANGE IN THE AUTHORIZING LEGISLATION. MOREOVER, IT IS IMPORTANT THAT WE BE CIRCUMSPECT IN THE PROCESS OF COVERAGE DECISION-MAKING. ALL MATTERS THAT MIGHT AFFECT OR BE AFFECTED BY A CHANGE IN THE RETIREMENT BENEFIT STRUCTURE SHOULD BE TAKEN INTO ACCOUNT. MATTERS TO BE CONSIDERED SHOULD INCLUDE RECRUITMENT, RETENTION, PHYSICAL AND MENTAL DEMANDS OF EMPLOYMENT, EFFECTS OF THE AGING PROCESS,

TREATMENT OF OTHER TYPES OF EMPLOYEES WITH SIMILAR CIRCUMSTANCES, WHAT HUMAN RESOURCES MANAGEMENT PROBLEMS (IF ANY) EXIST UNDER CURRENT PROVISIONS, AND HOW ANY PROPOSED MODIFICATION OF THE RETIREMENT PROVISIONS WOULD AFFECT THE CURRENT CIRCUMSTANCES. WHILE YOUR LETTER OF INVITATION ASKS A NUMBER OF QUESTIONS IN THESE AREAS, WE BELIEVE MORE STUDY AND ANALYSIS IS NEEDED TO PROVIDE USEFUL ANSWERS.

ONCE THE POLICIES HAVE BEEN DECIDED, THE LEGISLATION SHOULD BE DRAFTED IN SUCH A MANNER THAT APPLICATION OF THOSE POLICIES IS CLEAR-CUT AND OBJECTIVE. WHILE IT GOES WITHOUT SAYING THAT AFFECTED INDIVIDUALS SHOULD ALWAYS BE PROVIDED APPROPRIATE DUE PROCESS, THE FRAMEWORK OF THE PROGRAM SHOULD BE SUFFICIENTLY CLEAR THAT THE REVIEW PROCESS WILL YIELD CONSISTENT AND EQUITABLE RESULTS.

REGARDLESS OF THE BENEFIT AND COVERAGE DECISIONS THAT RESULT, IT IS ESSENTIAL THAT FUNDING OF THE COSTS BE PROVIDED FOR IN A RESPONSIBLE MANNER. IT IS IMPORTANT THAT THE PROSPECTIVE COSTS OF BENEFITS BE RECOGNIZED AT THE TIME THEY ARE INCURRED AS AN EXPENSE OF THE PROGRAM THAT BENEFITS FROM THEM. FURTHER, PROVISION MUST BE MADE FOR THE ADDITIONAL COST OF BENEFITS RESULTING FROM A

CHANGE IN THE TREATMENT OF PRIOR SERVICE. TO CREATE AN EXPENSE WITHOUT A FUNDING MECHANISM FAILS TO PLACE RESPONSIBILITY FOR THOSE COSTS WHERE THEY BELONG, AND REQUIRES THOSE COSTS TO BE ADDRESSED IN THE FUTURE.

THE CURRENT FERS DYNAMIC NORMAL COST IS 11.5% FOR REGULAR EMPLOYEES. THE CURRENT FERS DYNAMIC NORMAL COST IS 24.6% FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL RETIREMENT EMPLOYEES. UNDER CSRS, THE DYNAMIC NORMAL COST IS 24.2% FOR REGULAR EMPLOYEES AND 40.0% FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL RETIREMENT EMPLOYEES. THESE RATES ARE HIGHER DUE TO THE ENHANCED BENEFIT STRUCTURE AND EARLIER RETIREMENT ELIGIBILITY. MOREOVER, IT IS IMPORTANT TO UNDERSTAND THAT THOSE RATES FUND ONLY THE COSTS OF THE SERVICE TO WHICH THEY APPLY, AND DO NOT FUND CREDIT FOR PRIOR SERVICE.

YOU REQUESTED AN ESTIMATE OF WHAT IT WOULD COST TO COVER ALL OF THE GROUPS SEEKING INCLUSION. A FEW MONTHS AGO, OUR ACTUARY'S OFFICE PREPARED SUCH AN ESTIMATE. ALTHOUGH IT IS BASED IN LARGE PART UPON MATERIAL PREPARED IN THE EARLY 1990'S THAT HAS NOT BEEN UPDATED AND SHOULD NOT BE CONSIDERED AS PRECISELY ACCURATE, IT IS STILL MOST ILLUSTRATIVE OF THE SCALE OF THE COSTS INVOLVED.

THE GROUPS INCLUDED POLICE, GUARDS (OTHER THAN CURRENTLY COVERED PRISON GUARDS), INS INSPECTORS, CUSTOMS INSPECTORS, PARK RANGERS, ATF INSPECTORS, AND A FEW OTHER SMALL GROUPS. THE ESTIMATE IS THAT TO INCLUDE SUCH GROUPS WITH CREDIT FOR PAST SERVICE WOULD RESULT IN AN INCREASE IN THE RETIREMENT FUND UNFUNDED LIABILITY OF \$1.499 BILLION. THAT ESTIMATE TAKES INTO ACCOUNT THE ADDITIONAL COSTS TO EMPLOYING AGENCIES OF RETIREMENT DEDUCTIONS AT THE HIGHER LAW ENFORCEMENT CONTRIBUTION RATES. IN OTHER WORDS, TO INCLUDE ALL THESE GROUPS WOULD COST ABOUT \$1.5 BILLION PLUS THE FUTURE ADDITIONAL EMPLOYING AGENCY AND EMPLOYEE CONTRIBUTIONS AT THE HIGHER RATES.

IN CONCLUSION, MR. CHAIRMAN, I THANK YOU FOR INVITING THE OFFICE OF PERSONNEL MANAGEMENT TO TESTIFY ON THIS MATTER. I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. SCARBOROUGH. Ms. Dolan.

Ms. DOLAN. Mr. Chairman and members of the subcommittee, I am pleased to speak concerning H.R. 1228, a bill to extend law enforcement retirement benefits to certain occupations within the Treasury Department. As you know, the Department is comprised of 14 bureaus whose missions range from drug interdiction to international finance. The Department is committed to supporting every occupation in carrying out its mission while managing resources in a responsible manner. In my position as Chief Human Resources Executive for the Department, let me assure you that Treasury management takes a great interest in the welfare of our employees, and we strive to ensure that employees receive the maximum value from the available benefits package.

Both the Civil Service Retirement System and the Federal Employees Retirement System provide enhanced retirement benefits for certain classes of employees, including Federal law enforcement officers. These special retirement provisions, often known as 6(c) coverage, allow these classes of employees to retire earlier than other employees and were created because of a belief that the strenuous physical requirements of these positions mandate a young and vigorous work force.

The law also provides for a mandatory retirement age and the authority of agency heads to set a maximum entry age for appointment. Treasury has a maximum entry age and reentry age of age 37. Law enforcement officers are also granted other benefits such as higher entry level pay and higher rates of pay in some localities. The current statute does not specify the positions eligible for this enhanced retirement benefit. Rather, it defines a law enforcement officer as someone who primarily investigates, apprehends, or detains individuals suspected or convicted of criminal offenses. For the most part, this has been defined as positions falling within the criminal investigator or GS-1811 series.

Of the 127,000 full-time Treasury employees, more than 11,000 are GS-1811s or others covered under the special law enforcement retirement provisions. H.R. 1228 proposes extending law enforcement retirement benefits to nine specific occupational categories with Treasury: Customs Inspectors, Customs Canine Enforcement Officers, Customs Operations Enforcement Officers, Customs Detection System Specialists Airborne, Customs Flight Engineers, Police Officers from the Bureau of Engraving and Printing, Secret Service Special Officers and IRS Revenue Officers.

There are approximately 16,000 employees in these nine occupations. Under current statute, these occupations are not covered.

H.R. 1228 would change this by expanding these enhanced retirement benefits to a larger number of employees. The administration is in the process of reviewing the complex nature of compensation for law enforcement and, in particular, port of entry inspectors. This review is not yet complete, and therefore we cannot support extending law enforcement coverage at this time.

In addition, extending this coverage has significant budgetary impact which must be considered in making any determination to extend these special benefits. Enhanced law enforcement benefits cost employing agencies and the retirement fund more than regular employee benefits. In March 1998, the Treasury Office of Inspector

General published an analysis of the costs associated with granting law enforcement retirement benefits to 8,000 Customs Inspectors and Canine Enforcement Officers. This detailed analysis has been submitted to the committee for its review.

The annual increased cost for such coverage would be approximately \$75 million per year. If retroactive retirement service credit is granted, that would create an unfunded liability of \$538 million. Again these figures are based on an analysis of approximately 8,000 employees. And since H.R. 1228 covers about 16,000 Treasury employees, we could expect the cost to be roughly double, or \$150 million per year, which will increase over time and create, if retroactive retirement service credit is granted, an unfunded liability of \$1 billion. We haven't had time between the notice of the hearing and today's hearing to do a detailed analysis using the IG model, but we would be happy to do so and report the cost to the committee within 45 days.

Simply stated, we don't have the budgetary resources necessary to cover these costs. Because of the current statutory spending caps that were outlined in the 1997 budget agreement, the resources to pay for extending this coverage would have to be taken from other areas, and the resulting consequences need to be carefully thought through. Let me reiterate that the Department fully supports its work force and I believe this is evident in the caliber of the work we do and the people we employ.

The current statute established a standard for determining which positions are eligible. Changes to the statute by including a broader and more diverse range of occupations will have significant budgetary impact, with possible related but unintended consequences, requiring careful consideration.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have.

Mr. SCARBOROUGH. Thank you very much for your testimony.

[The prepared statement of Ms. Dolan follows:]

Dolan

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September 9, 1999

TREASURY DEPUTY ASSISTANT SECRETARY FOR HUMAN RESOURCES
KAY FRANCES DOLAN
HOUSE COMMITTEE ON GOVERNMENT REFORM
CIVIL SERVICE SUBCOMMITTEE

Mr. Chairman and Members of the Subcommittee:

I am pleased to submit testimony concerning H.R. 1228, a bill to extend law enforcement retirement benefits to certain occupations within the Treasury Department. As you know, the Department is comprised of 14 bureaus, whose missions range from drug interdiction to international finance. The Department is committed to supporting every occupation in carrying out its mission while managing resources in a responsible manner. In my position as chief Human Resources executive for the Department, let me assure you that Treasury management takes a great interest in the welfare of our employees and we strive to ensure that employees receive the maximum value from the available benefits package.

Both the Civil Service Retirement System (CSRS) and the Federal Employee Retirement System (FERS) provide enhanced retirement benefits for certain classes of employees, including federal law enforcement officers. These special retirement provisions (commonly referred to as "6(c)" coverage) allow these classes of employees to retire earlier (e.g., age 50 with 20 years of service) than other employees, and were created because of the belief that the strenuous physical requirements of these positions mandate a young and vigorous workforce. The law also provides for a mandatory retirement age (age 57 with 20 years of service) and the authority of agency heads to set a maximum entry age for appointment to law enforcement positions. Treasury has a maximum entry age (and reentry age) of 37 for appointment to law enforcement positions. I also note that law enforcement officers are granted other benefits, such as higher entry level salaries and higher rates of pay in some localities.

The current statute does not specify the positions eligible for this enhanced retirement benefit. Instead, it defines a law enforcement officer as someone who *primarily* investigates, apprehends or detains individuals suspected or convicted of offenses against the criminal laws of the United

States. For the most part, this has been defined as positions falling within the criminal investigator (GS-1811) series. Of the 127,000 full time Treasury employees, more than 11,000 employees are GS-1811s or others covered under the special law enforcement retirement provisions. H.R. 1228 proposes extending law enforcement retirement benefits to nine specific occupational categories within Treasury: Customs inspectors; Customs canine enforcement officers; Customs operations enforcement officers; Customs detection system specialists airborne; Customs flight engineers; Police officers from the Bureau of Engraving and Printing; Secret Service special officers; and Internal Revenue Service revenue officers. There are approximately 16,000 employees in these nine occupations. Under current statute, these occupations are not covered.

H.R. 1228 would change this by extending these enhanced retirement benefits to a large number of employees. The Administration is in the process of reviewing the complex nature of compensation for law enforcement and in particular port of entry inspectors. This review is not yet complete and therefore we cannot support extending law enforcement coverage at this time.

In addition, extending this coverage has significant budgetary impact which must be considered in making any determination on whether to extend these special benefits. Enhanced law enforcement benefits cost employing agencies and the retirement fund more than regular employee benefits. In March 1998, the Treasury Office of Inspector General published an analysis of the costs associated with granting law enforcement retirement benefits to 8,000 Customs inspectors and canine enforcement officers. This detailed analysis is submitted to the Committee for its review. The annual increased cost for such coverage would be approximately \$75 million per year. If retroactive service credit is granted, that would create an unfunded liability of \$539 million. Again, these figures are based on an analysis of approximately 8,000 employees. As I stated previously, H.R. 1228 covers about 16,000 Treasury employees. Therefore, we can expect the costs to be roughly double or \$150 million per year, which will increase over time, and create (if retroactive service credit is granted) an unfunded liability of \$1 billion. We have not had the time between the hearing notice and today's hearing to analyze the remaining occupations using our model, but we will be happy to do so and report the detailed costs to the Committee within 45 days.

Simply stated, we do not currently have the budgetary resources necessary to cover such costs. Because of the current statutory spending caps that were outlined in the 1997 budget agreement, the resources to pay for extending this coverage would have to be taken from other areas, and the resulting consequences must be carefully thought through.

Let me reiterate that the Department fully supports its workforce, which I believe is evident in the caliber of the work we do and the people we employ. The current statute established a standard for determining which positions are eligible for the special retirement provisions. Changes to the statute by including a broader and more diverse range of occupations will have significant budgetary impact, with possible related but unintended consequences, requiring careful consideration.

Thank you for the opportunity to appear before you today. I would be happy to answer

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any questions you may have.

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Mr. SCARBOROUGH. Mr. Vail.

Mr. VAIL. Mr. Chairman, thank you for the opportunity to testify about the Department of Justice's views on law enforcement retirement coverage for several classes of Department employees. With respect to H.R. 1228 and Immigration Inspectors, the Department views this legislation as part of an overall effort to ensure that Federal employees in border control positions with similar duties receive equivalent pay and other benefits. While we understand that this is an area of significant interest to Immigration Inspectors and the Immigration and Naturalization Service, it is also a complex issue that requires detailed planning and coordination among Federal agencies. As a result, the administration is studying the issue of parity in pay and benefits, and further work will be required before all of the policy questions raised by this matter can be resolved. Until that time, the Department cannot endorse amending title 5 to provide law enforcement retirement coverage to Immigration Inspectors.

The DEA Diversion Investigators play a vital role in the Nation's antidrug efforts by conducting regulatory investigations to detect the diversion of legal, controlled substances into the illicit drug markets. However, it is our view that they do not perform front line law enforcement duties, and the Department cannot support extending law enforcement retirement coverage to Diversion Investigators. They do not carry weapons or have the authority to execute arrest search warrants. They do not conduct surveillance or undercover work of any kind and they are not required to maintain a high level of physical fitness.

Like my colleagues, I am also concerned about the fiscal impacts of extending law enforcement coverage to this class of employees. We estimate that it would cost the Department about \$2.8 million in fiscal year 2000 to prospectively implement law enforcement coverage, while retroactive law enforcement coverage would cost more than \$30 million. We have not requested and do not anticipate funding for these potential obligations in the Department's fiscal year 2000 budget, and for these reasons we cannot endorse law enforcement retirement coverage for Diversion Investigators.

With respect to H.R. 583, the Department recognizes that assistant U.S. attorneys are hardworking, dedicated employees whose jobs are increasingly demanding and sometimes dangerous. Indeed, some assistant U.S. attorneys have received threats against their lives and against their families. We appreciate that some assistant U.S. attorneys confront greater risk in their jobs than other lawyers in the Department or elsewhere in the government.

However, we do not believe that law enforcement retirement coverage is appropriate for assistant U.S. attorneys. As counsel for the United States, they do not perform the kind of front line law enforcement duties anticipated by the statute. Assistant U.S. attorneys do not carry weapons as part of their duties. They do not have the authority to execute arrest or search warrants or conduct surveillance work and they are not required to maintain any level of physical fitness. Furthermore, the law enforcement coverage for assistant U.S. attorneys could significantly alter our work force. Current law enforcement retirement provisions would require the immediate mandatory retirement of more than 80 seasoned assistant

U.S. attorneys, and would give more than 400 the opportunity to retire on an immediate annuity, resulting in the potential loss of more than 500 highly skilled assistants. Applying physical standards could deprive the Department and the United States of the outstanding services of assistant U.S. attorneys and applicants with physical disabilities.

Finally, law enforcement coverage for assistant U.S. attorneys would be costly. The proposal in H.R. 583 would cost the U.S. attorneys' appropriation more than one-half billion in the first year, \$300 million to pay retroactive employer and employee contributions to the requirement system as required by section 3(e)(2) of the bill, \$220 million in interest, and \$60 million for the first annual agency contribution; the last, a cost which would recur every year. For these reasons, we cannot endorse law enforcement coverage for assistant U.S. attorneys.

In conclusion, I thank the subcommittee for giving the Department of Justice the opportunity to testify on this matter, and I will be happy to answer any questions you may have.

Mr. SCARBOROUGH. Thank you for your testimony.

[The prepared statement of Mr. Vail follows:]



Department of Justice

STATEMENT
OF
JOHN C. VAIL
DEPUTY ASSISTANT ATTORNEY GENERAL
JUSTICE MANAGEMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING
RETIREMENT BENEFITS FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS,
AND OTHER SPECIAL GROUPS
PRESENTED ON
SEPTEMBER 9, 1999

Mr. Chairman, thank you for the opportunity to testify about the Department of Justice's views on H.R. 1228 and H.R. 583, which would extend law enforcement officer retirement coverage to Immigration Inspectors of the Immigration and Naturalization Service (INS), Diversion Investigators of the Drug Enforcement Administration (DEA), and Assistant United States Attorneys. In addition, you have requested our views on H.R. 1748, which would raise the mandatory retirement age for law enforcement officers.

Law Enforcement Retirement For Immigration Inspectors

With respect to Immigration Inspectors, the Department views this legislation as part of an overall effort to ensure that Federal employees in positions with similar duties receive equivalent pay and other benefits. While we understand that this is an area of significant concern to Immigration Inspectors and INS as a whole, it is also a complex issue that requires detailed planning and coordination between Federal agencies. As a result, the Administration is studying the issue of parity in pay and benefits, and further work will be required before all the policy questions raised by this matter can be resolved. Until that time, the Department cannot endorse amending title 5 to provide law enforcement retirement coverage for Immigration Inspectors.

Law Enforcement Retirement Coverage for Diversion Investigators

Diversion Investigators review records of pharmacies, doctors, and pharmaceutical companies, and some are involved in investigation of DEA registrants suspected of diverting controlled substances into the illicit drug market. Their efforts support the criminal investigation program, but they do not perform front-line law enforcement work. They do not carry weapons; they do not have the authority to execute any arrest or search warrants; they do not conduct surveillance or undercover work of any kind; they are not required to maintain a high level of physical fitness. The front-line work is done by DEA special agents and state and local police officers. In short, DI's do not perform the kind of hazardous front-line duties typically performed by law enforcement officers (LEO's), they are not trained to do so, and the Department has no plans to change its policies regarding DI duties. Therefore, the Department does not support extending LEO retirement coverage to Diversion Investigators, because they do not and are not expected to perform front-line law enforcement duties.

The Department also has fiscal concerns about extending LEO retirement coverage. It is estimated that the full year cost to implement LEO coverage for DI's prospectively, based on fiscal year 1999 employment levels (488), would have been approximately \$2.69 million. In addition, DEA's hiring ceiling for DI's is 522. If it hired an additional 34 DI's, the cost to DEA of prospectively implementing LEO retirement coverage for DI's would increase to almost \$2.9 million. A retroactive application of

LEO retirement coverage would have a significantly greater impact on the Department's budget. Our estimates show that retroactive LEO retirement coverage for DI would cost the agency more than \$30 million. Again, these potential obligations are not included in the Department's FY 2000 budget. For these reasons, the Department opposes amending title 5 to provide LEO retirement coverage to DI's.

Law Enforcement Retirement Coverage for Assistant U.S. Attorneys

The Department recognizes that Assistant United States Attorneys (AUSA's) are hard-working, dedicated employees whose jobs are increasingly demanding and dangerous. Many work closely with their law enforcement counterparts on ongoing investigations. Every year since 1996, personal threats of death or injury made against AUSA's have increased by seven to eight percent. In 1998, 114 threats were made against AUSA's. As the threats of violence have increased, many AUSA's have had to install physical security devices in their houses, unlist their telephone numbers, receive Department permission to carry weapons, or obtain U.S. Marshals Service protection.

The Department, however, does not support extending law enforcement retirement coverage to AUSA's because they do not perform and are not expected to perform front-line law enforcement duties. As an initial matter, a number of AUSA's handle civil rather than criminal cases. Of those AUSA's who work on criminal cases, their primary duty is

the preparation and presentation of the Government's case in the prosecution of individuals suspected of violating Federal criminal laws. While they may participate in the investigative process, it is not in a front-line law enforcement capacity. They ordinarily do not carry weapons; they do not have the authority to execute arrest or search warrants; they do not conduct surveillance or undercover work of any kind; and they are not required to maintain a high level of physical fitness. In addition, LEO coverage would result in disruption to the AUSA workforce and extremely high costs, which the Department could not sustain.

While we recognize that some AUSA's may confront greater risks in their jobs than lawyers in other lines of work, we do not believe that LEO coverage is appropriate for AUSA's. Their duties are those of counsel rather than of law enforcement officers. As an illustration, even in situations where AUSA's have been threatened, it is the law enforcement officers such as U.S. Marshals and special agents or local law enforcement who are expected to perform the LEO duties of protection, investigation, and apprehension of the suspects. The enhanced retirement package provided to LEO's is simply not appropriate for this class of employees. That retirement package recognizes the physical hazard inherent in front-line law enforcement work and the need to assure that LEO's make up "a young, vigorous Federal law-enforcement organization." See S. Rep. No. 948, 93rd Cong., 2nd Sess., reprinted in 1974 U.S.C.C.A.N. 3698, 3705. As a matter of policy, the Department cannot endorse treating AUSA's the same as LEO's for

purposes of retirement benefits.

Moreover, the Department cannot justify the impact of LEO coverage on the AUSA workforce. Title 5, Sec. 8401(17) defines a "law enforcement officer" as:

"...an employee...whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia ...require frequent direct contact with the individuals in their detention *and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals...*(emphasis added)"

To assure a young and physically vigorous workforce, LEO-covered occupations include mandatory retirement age, and defined medical requirements that must be met in order to perform physically vigorous work. Covering AUSA's under these requirements, with a mandatory retirement age and therefore limiting the age of hiring in the case of an individual who wished to become a career AUSA, could significantly alter the AUSA workforce:

- **Maximum employment age.** In the last year (August 1, 1998, through August 21,

1999). 336 new AUSA's were hired nationwide, 96 (28.5%) of whom were 37 years of age or older. During the same period, 53 attorneys transferred from other Departmental components to Assistant United States Attorney positions, and of that group, 22 (41.5%) were 37 years of age or older. Under current LEO eligibility in Department of Justice Order 1338.1B, these talented lawyers may not have considered careers as AUSA's because of the limitations concerning their retirement coverage.

- **Mandatory retirement age.** There currently are 86 AUSA's who are over 57 years of age. This cadre of our most experienced legal talent could be lost under current LEO rules because they would have to retire, pursuant to 5 U.S.C. § 8335(b) for CSRS employees and 5 U.S.C. § 8425(b) for FERS employees.
- **Immediate retirement.** Approximately 420 AUSA's could elect LEO coverage under the proposed legislation and retire on an immediate annuity. This could result in a dramatic, and immediate, loss of talented and experienced prosecutors.
- **Physical Standards.** Physical standards defining a "physically vigorous" AUSA would need to be set in order to meet the definition under 5 U.S.C. § 8401 of a law enforcement officer. Although the effect of imposing such standards on the AUSA workforce is not yet known, we are concerned that their implementation might

deprive the Department of the services of outstanding AUSA's who have physical disabilities or who otherwise do not meet the standards. More importantly, there is no reason to impose stringent physical standards for the AUSA position.

The Department also cannot afford the cost of LEO coverage for AUSA's. The proposed change to law enforcement benefits in H.R. 583 would cost the United States Attorneys an estimated \$585 million in the first year. Of this, \$300 million would cover the agency's obligation to retroactively pay the employer and employee contributions to the retirement system as required by section 3(e)(2) of the bill, \$220 million would cover the cost of interest on the payment, \$60 million would cover the first of the annual agency contributions, and \$5 million would cover the lump sum leave payments to those who would be eligible to retire immediately if this legislation is passed. Without additional funding, the cost would be impossible to absorb – it is over 50 percent of the United States Attorneys' appropriation for FY 1999. The United States Attorneys are the principal litigators for the United States government. Despite technological advances, which can assist attorneys in case development, management, and presentation, litigation continues to be a personnel intensive function. Because 83 percent of the United States Attorneys' budget is devoted to payroll and rent, there is very little room left to absorb such a large, unexpected budget item.

In summary, despite the very important contributions to law enforcement by

Assistant United States Attorneys, the Department cannot endorse LEO coverage for AUSA's as a policy matter because they do not perform the kind of duties associated with front-line LEO's. The significant budget problems and disruption of the AUSA workforce resulting from LEO coverage similarly do not make it a viable option. The Department thus does not support this proposed amendment to title 5. (The Department wishes to emphasize that its position on this legislation is unrelated to pending litigation in which Department attorneys have filed a class action suit against the Department for overtime compensation. Because that litigation is ongoing, the Department has no comment on that matter.)

Raising the Mandatory Retirement Age for Law Enforcement Officers

H.R. 1748 would amend title 5 to raise the mandatory retirement age for LEO's from the current age of 57 years to 60 years of age. The Administration's position with regard to this proposal is under review. We will be pleased to apprise you of the results of that review when it is complete.

I thank the Subcommittee for giving the Department of Justice an opportunity to testify on this matter. I will be happy to answer any questions you may have.

Mr. SCARBOROUGH. Let me start with some questions regarding some data that OPM has given us. They have given us considerable data on the occupations that are covered by these proposals before us.

The data that they have given us show few difficulties in hiring of these categories, lower than average rate of attrition, and minor movement from occupations not covered by the enhanced retirement benefit to the jobs that are covered.

So I guess my question is: In your studies do you find that your agencies have difficulty recruiting and retaining employees in the employment classifications that are being proposed for enhanced retirement benefits? Do you see that there is a serious problem that needs to be addressed?

Mr. VAIL. I will be happy to answer, Mr. Chairman.

In the Department of Justice, as a general rule we have very little difficulty in recruiting for assistant U.S. attorneys, and I don't believe that there is any difficulty in recruiting for Diversion Investigators within the Drug Enforcement Administration.

There were certain data, or allusions were made in earlier testimony to the loss of Immigration Inspectors to other occupations, and indeed that is a fact. I think we are fortunate that most of those losses are within the Department and within the Immigration and Naturalization Service, but it certainly is true that there are some Immigration Inspectors who want to leave that occupation because of the absence of this benefit.

But at this point, as I say, while Department leadership has been supportive of law enforcement coverage for Immigration Inspectors, we recognize the need to deal with Treasury and other agencies which have border enforcement personnel and we simply cannot set the cost factors aside.

Ms. DOLAN. From the standpoint of Treasury, there might be one or two exceptions among the 9 occupations, but in general these occupations would not be characterized as ones that are particularly difficult to recruit for, nor that have unusual retention problems.

Mr. SCARBOROUGH. Mr. Flynn.

Mr. FLYNN. I think, Mr. Chairman, we have provided the aggregate information, and the testimony of the two witnesses, I think, breaks that down a little bit and makes it more understandable.

Mr. SCARBOROUGH. You have testified that granting law enforcement retirement to various groups would be very costly. Mr. Flynn and Ms. Dolan have estimated that it would exceed \$1 billion. Ms. Dolan, the subcommittee accepts your offer to provide a more detailed estimate. It will be helpful to have that, and so we will leave the record open 45 days for you to forward that to us.

What kind of impact would the costs have on Federal personnel generally, and in the Treasury and Justice Departments in particular?

Mr. VAIL. I would like to address the issue of coverage for assistant U.S. attorneys. We have indicated the one time cost of providing the retroactive benefit that this bill would provide is I think in the neighborhood of \$600 million. That is approximately half of the appropriation for the U.S. attorneys in any given year.

The additional benefit would also require ongoing costs. Our first-year estimate for additional contributions of approximately

\$60 million, which would have a significant effect on the ability of the U.S. attorneys to carry out their operations.

The Diversion Investigator impact, because Diversion Investigators represent a much smaller portion of the Drug Enforcement Administration, would be a less dramatic cost but certainly a concern. And as I have indicated, we are in the process of studying, along with the Department of Treasury and OMB, the impact of the cost of extending retirement coverage to Immigration Inspectors.

Ms. DOLAN. From Treasury's perspective, as Mr. Vail said, we are engaged in a study right now to look at the compensation package particularly for the Inspectors. The largest cost clearly is in the unfunded liability. We have not had discussions about how that cost might be met. The annual cost is also large and we have not identified the necessary offsets, as I testified, for that. So the costs are considerable and that is part of the review that we are engaged in.

Mr. SCARBOROUGH. Mr. Vail, did you say that the \$600 million that this would cost is half of what your annual appropriation is?

Mr. VAIL. For the U.S. attorneys, that is correct.

Mr. SCARBOROUGH. That is quite a mountain to climb.

Mr. VAIL. That is the one-time cost for providing retroactive coverage as the bill requires.

Mr. SCARBOROUGH. Right. All right. A few months ago at a legislative hearing that we had for a bill to improve participation in the Thrift Savings Plan—we had to include provisions to offset some mandatory cost effects—and the cost of that bill over 5 years was only a total of \$35 million governmentwide. That is \$35 million spread out over 5 years covering all agencies. At the time, employees unions argued that it would cause RIFs. If you want to use that sort of logic, let me ask you by their logic how many RIFs would be caused by the proposals that we have discussed today?

Mr. VAIL. I don't know that we can provide an answer, Mr. Chairman. There are any number of tools, if an agency had to absorb a cost like this, that the agency would look at in terms of absorbing \$60 million or \$2 million or whatever the effect on the individual appropriation was.

Personnel reductions would be one of those. There would be other areas that the agencies would have to look at as well.

Mr. SCARBOROUGH. Ms. Dolan.

Ms. DOLAN. A reduction in force would certainly not be a route that Treasury would want to embark on. The costs of a reduction in force I know have been studied by GAO very recently and they say you can actually end up spending more than you save. So a reduction in force is very, very disruptive, and you have to lose more people than you need to in the short run in order to make long-term savings.

Mr. SCARBOROUGH. If the employees unions stood up and screamed about \$35 million spread over 5 years over all agencies, and that was something that they opposed, I find it interesting that they are supporting these proposals that will, if fully implemented, cost over \$1 billion and will be devastating. And don't tell me that it is not going to cause a lot of RIFs because it is if it happens. There will be winners in these proposals, but there will defi-

nitely be losers unless we decide to spend an awful lot more money over the coming years.

Let me ask one final question and then turn it over to Mr. Cummings.

Each of you have said that the question who should be covered by law enforcement coverage is a complex one that is being reviewed right now by the administration. When did the administration begin the review, and when will it be completed? What is your agency's role in that review and what factors are you analyzing in the study?

Ms. DOLAN. We were just looking at each other trying to remember when it started.

Mr. SCARBOROUGH. 1947.

Ms. DOLAN. The current one. About a year ago?

Mr. VAIL. Yes. We have been involved, to the best of my recollection, since the last appropriation cycle, Mr. Chairman, and have been working particularly with respect to the issue of Immigration Inspectors. Our review has not included Diversion Investigators or assistant U.S. attorneys. Those are not classes of employees that we have considered as potentially subject to the retirement coverage.

In terms of the potential timing of the outcome, I don't think that I can answer the question, I am sorry.

Ms. DOLAN. Yes, I think we would need to defer to OMB as to when it will be completed.

Mr. SCARBOROUGH. OPM, when will it be completed?

Mr. FLYNN. I think Ms. Dolan's reference is to OMB, an organization I cannot speak for. I would simply add, Mr. Chairman, that in addition to the occupations that are under consideration at both Treasury and the Department of Justice, a number of other agencies employ individuals who have sought this or similar kinds of treatment for groups of their employees that we are engaged in discussions with as well.

These are important issues. It is interesting. Each occupation presents its own set of considerations and concerns. Likewise, I can't tell you when we will complete that, but we are working with the individual agencies with an eye toward reaching some resolution of this matter that works.

Mr. SCARBOROUGH. Thank you. Mr. Cummings.

Mr. CUMMINGS. Mr. Flynn, give me your opinion on this 57 age increase with regard to mandatory retirement.

Mr. FLYNN. Thank you, Mr. Cummings, for asking. It was stated by the early panel that mandatory retirement age at 57 came about in 1947 or 1948. It was actually in 1974, if I have this correctly. So that mandatory retirement age, while it is now 20 some years ago, is not 50-some years as you may have come to the conclusion from listening to the earlier testimony.

This is one of these very complex areas. If you think about the fundamental underpinning for the basis for this type of enhanced retirement coverage, young, vigorous, relatively healthy, mentally and physically agile work force, and the fact that the higher retirement accrual rates are there precisely for the purpose of making sure that people have income security in their retirement years, albeit they retire sooner than others, to then come back and today

look at the mandatory retirement age and suggest that it should be limited altogether, raised, what have you, a lot of different proposals, begins to question that very foundation that underlies the retirement credit in the first place. That is what makes this issue so complicated and complex.

I think that is just one of the factors that we are going to have to take into consideration, but the raising of the minimum retirement age, with the single exception perhaps of aligning the mandatory retirement age for firefighters with the general retirement age of 57 for others, is something that is quite complicated and will take more study.

Mr. CUMMINGS. If you can change one aspect of the current retirement benefit, what would that be?

Mr. FLYNN. Well, I think, Mr. Cummings, one of the things that has proved especially difficult in the evolution of retirement coverage with this particular type of situation is the fact that over the years, unlike position classification decisions that are made in terms of grade levels that also control compensation, there has been a tendency to regard retirement coverage as a matter of entitlement that is subject to external appeal and even review under the Federal courts.

If you think of this for a moment, that what we were trying to do in 1947 and throughout has been to make the right human resource decision with respect to a group of individuals aligned with what an agency is trying to do strategically in terms of the work of the Nation, I think you begin to regard this as first a human resource decision that can and should be made administratively.

Part of the difficulty that I think we have seen over the years has been the evolution of this into an issue of entitlement rather than an issue of how organizations get their jobs done well and compensate their people fairly. So that is probably the area of change, if I were back in 1947, I might offer a few suggestions on.

Mr. CUMMINGS. Back in 1993 when the Post Office and Civil Service Committee held a hearing on OPM's recommendations for new pay and job evaluation for Federal law enforcement folks, were any of those recommendations implemented?

Mr. FLYNN. If you don't mind, Mr. Cummings, I will have to go back and respond to that for the record. This predates my arrival in this area and I am sure that we have a good answer for that, but if you don't mind I would like to check on that.

Mr. CUMMINGS. No problem. Thank you.

Mr. SCARBOROUGH. Thank you, Mr. Cummings. We certainly appreciate you three testifying, and you certainly have given us some insight regarding the difficulties we face. Thank you, and we will be in recess until after the vote.

[Recess.]

Mr. SCARBOROUGH. We will begin the third panel now, and on the third panel we have Ms. Colleen Kelley who is newly elected national president of the National Treasury Employees Union, her organization represents many of the employees who are seeking the enhanced retirement coverage. She will be followed by Mr. Gilbert Gallegos, national president of the Fraternal Order of Police, and Mr. Peter J. Ferrara, chief economist, Americans for Tax Reform, an organization concerned about public expenditures at all levels.

As with all of our hearings, the record will remain open for 2 weeks to provide the submission of additional comments. Let me ask if our panelists will rise and take the oath.

[Witnesses sworn.]

Mr. SCARBOROUGH. Ms. Kelley, we will begin with you.

STATEMENTS OF COLLEEN M. KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION; PETER J. FERRARA, CHIEF ECONOMIST, AMERICANS FOR TAX REFORM; AND GILBERT G. GALLEGOS, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE

Ms. KELLEY. Thank you. Chairman Scarborough, my name is Colleen Kelley, and as you mentioned I am the newly elected national president of the National Treasury Employees Union. I was elected in August and I am very pleased that my first appearance in Congress is before your subcommittee to offer NTEU's strong support for 20-year retirement for U.S. Customs Inspectors and Canine Enforcement Officers as well as Revenue Officers of the IRS. These men and women put themselves in harm's way every day to uphold the laws passed by Congress. They are subject to the same perils, meet the same rigorous job standards and rely on the same investigative skills and techniques as other law enforcement officers who enjoy the significant benefits of law enforcement retirement, yet they do not receive these benefits. Common sense and simple justice demand an end to this inequity.

I know that Congressman Filner already introduced Customs Inspector Robert Labrada, but I would like to again recognize him and his fellow Inspector, Nicholas Lira, who were victims of a violent gun attack in April 1997. The horrifying scene of their attack was captured on the surveillance cameras at the Calexico port that day.

I have provided each subcommittee member with a video copy of the tape from that day. I urge each of you to watch the videotape and to ask yourself whether you think that Inspectors Labrada and Lira should be denied the benefits that other law enforcement officers enjoy. I ask the committee to ask what Congressman Filner already did. The irony, if Inspector Labrada had been killed that day in April 1997, his name would have been added to the wall at the National Law Enforcement Memorial here in Washington, DC. He would have been added as a Federal law enforcement officer who was slain in the line of duty. But in life he is denied the title and the benefits that befit that job.

Customs Inspectors and CEOs, Canine Enforcement Officers, make up our Nation's first line of defense on the war on drugs. The Customs Service continues to seize more illegal narcotics than any other Federal agencies combined, and Inspectors and CEOs seize more than any Customs employees. They are required to undergo training at the Federal Law Enforcement Training Center, where they must learn criminal law, arrest authority and techniques, self-defense tactics, frisk and pat down procedures, handcuffing and takedown techniques, antiterrorism and firearms use.

Inspectors carry guns and are required to qualify on the firing range three times a year. In the course of fighting the war on drugs, these men and women have been shot at, beaten, kicked and

dragged behind cars. Sadly, 23 Customs Inspectors have been killed in the line of duty. Customs Commissioner Raymond Kelly recognizes the dedication of Customs Inspectors and CEOs, and he told me just yesterday that he personally supports law enforcement status for these dedicated men and women.

The job of the IRS Revenue Officer is also one of the most hazardous in the Federal Government. Revenue Officers are required to call on delinquent taxpayers from crime-ridden city neighborhoods to remote and isolated rural areas. They have been held hostage, attacked by dogs, hit by cars, threatened with guns and knives, tire irons and bombs. Delinquent taxpayers are sometimes in very desperate financial or legal trouble. The neighbors and families of delinquent taxpayers have also threatened to shoot Revenue Officers if they don't leave the premises.

Revenue Officers must collect from drug dealers, organized crime figures and tax protesters. Many of these groups advocate violence against the IRS. One RO told me about the time he visited a taxpayer's home and saw a sign in the window that read "IRS personnel shot on sight."

All revenue officers can tell you about the times that they feared for their lives. In 1997 we asked ROs to describe these experiences. I would like the subcommittee's permission to have some of these responses included in the record. I have a package of these here, if I can do that.

Mr. SCARBOROUGH. Without objection, that is fine.
[The information referred to follows:]



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MEMORANDUM

March 18, 1995

SUBJECT : Federal Civil Service Retirement: Is There a Financing or Funding Problem?

FROM : Carolyn L. Merck
Specialist in Social Legislation
Education and Public Welfare Division

Two questions have been raised recently regarding the Federal Civil Service Retirement System (CSRS). First, is the "unfunded liability" of the CSRS a problem that needs to be fixed to avoid steep increases in outlays from the Treasury or increases in the deficit? Second, is the system now insolvent, or will it become insolvent in the future? The answer to both of these questions is "no."

BACKGROUND

From 1920 until 1984 the CSRS was the retirement system for most Federal employees. In 1935, Congress enacted social security for *private sector workers*. In 1983, when social security funding was running low, Congress brought cash into that system by mandating (among other things) social security coverage and payroll taxes for all Federal workers entering civil service employment on or after January 1, 1984. Because social security benefits would duplicate some CSRS benefits, Congress closed the CSRS to new participants at the end of 1983 and designed the Federal Employees' Retirement System (FERS) to coordinate with social security. A primary objective of Congress in designing a new system was to create a retirement plan like those commonly found in the private sector. Congress crafted FERS during 2 years of careful analysis of alternatives and planned for a smooth funding transition from CSRS to FERS.

Total annual benefit costs for current Federal retirees and survivors were about \$36 billion in FY 1994. About \$9.7 billion in receipts were credited to the retirement trust fund account of the Treasury from payroll withholding from current workers along with payments from the U.S. Postal Service and the Government of the District of Columbia.

This memorandum was prepared by the Education and Public Welfare Division to enable distribution to more than one congressional client.

These cash receipts are converted to Federal securities and are deposited in the one retirement trust fund that finances both CSRS and FERS. Other annual trust fund receipts in the form of Federal securities total about \$53.8 billion and are deposited according to formulas established in law to prefund partially future retirement benefits and to pay interest on the securities in the fund. In total, the trust fund received \$63.5 billion in FY 1994 and spent about \$36 billion for benefits. The deposit of securities in the trust fund is an "intragovernmental transfer" between accounts of the Treasury; it does not constitute an outlay from the Treasury and has no effect on the budget deficit. Benefit payments and administrative costs are the only expenditures of the Treasury for the retirement system. Because the trust fund receives more income each year than is debited for benefits, its balance continues to grow.

IS THE UNFUNDED CSRS LIABILITY A BUDGET PROBLEM?

The liabilities of a retirement system are the costs of benefits promised to workers and retirees. A retirement system is "fully funded" if a trust fund holds assets approximately equal to the present value of all future benefit promises to which retirees and vested employees are entitled ("vesting" in the Federal plans requires 5 years of employment covered by the system). "Unfunded liabilities" are earned benefits for which assets have not been set aside in a retirement fund. As of the end of FY 1993, the Federal retirement trust fund held \$276.7 billion in assets for the CSRS, or about 34 percent of long-term CSRS pension liabilities (the fund balance represents "funded liabilities"). Thus, the unfunded CSRS liability was \$538.3 billion. The unfunded liability developed because the CSRS funding laws have not required the Government to fund the system fully. Nevertheless, the primary purpose of the Federal trust fund is not to provide a source of *cash* for the Government, but to provide *budget authority* to allow the Treasury to disburse monthly annuity checks without annual appropriations. The trust fund balance is adequate to provide this budget authority on an ongoing basis.

The combined funded and unfunded liabilities of the CSRS, \$815 billion in FY 1993, is the amount the Government would have to pay *all at one time* if everyone who is or who ever has been a vested CSRS participant could demand a check for the present value of all the benefits to which they would be entitled from that time throughout retirement until their death (or their survivor's death), taking into account future pay raises they might receive (which affect the annuity at retirement) and cost-of-living adjustments after retirement. *This event cannot happen in the Federal retirement system.* Federal pension obligations cannot come due all at one time, unlike the situation that arises in the private sector when an employer goes out of business and must pay all promised pension obligations at once. Some of the Government's liabilities represent payments due to current retirees, who receive their benefits 1 month at a time throughout retirement; others represent payments that will not commence for years to come because the workers are not yet eligible for retirement. By the time they become eligible, others currently retired will have died. Thus, unlike private employers, the Government need not fully prefund the retirement system in order to insure against having to pay off all earned benefits simultaneously.

Some are concerned that the existence of unfunded Federal pension liabilities has, or will have in the future, an effect on the budget deficit and/or the need for tax revenues. The annual budget cost to the Government of CSRS (or any retirement system) can never be more than the sum of the checks written to annuitants 1 month at a time. Thus, the liabilities of the system, funded or unfunded, will never require payments from the Treasury in excess of the benefits payable to living, retired workers or survivors. However, the *cash* to pay monthly benefits comes from general revenues, and paying monthly benefits creates an outlay from the budget and therefore contributes to the budget deficit, as does any Government spending. Consequently, in times of tight budgets, Congress often considers benefit cuts in order to reduce spending. *This would be true if the program were fully funded and had no unfunded liability, or, conversely, if there were no trust fund and the program were totally unfunded.*

The CSRS is an employer-provided defined benefit system, which is the type of plan provided by many private employers for their employees and by most State and local governments. Under all defined benefit pension plans, public and private, the employer bears the responsibility for financing and paying most or all of the cost of benefits. Defined benefit pensions are *deferred compensation*, meaning the employer defers paying employees' compensation during their working years in favor of providing a specified level of compensation throughout retirement years. Private employers finance employees' pensions from invested income derived from the sale of goods or services. Analogously, the employer of Federal workers is the American taxpayer. The resources the Government has to meet its employer obligations to finance the current and deferred compensation of its employees are *Federal tax revenues*.

DOES THE CSRS FACE INSOLVENCY?

Currently about half of the Federal workforce participates in the CSRS and about half participates in FERS. Over the next two decades or so the number of CSRS workers will decline as they retire, and the workforce will include mostly FERS participants. As the number of CSRS-covered workers declines, the assets credited to the trust fund for CSRS will decline *not because of loss of payroll contributions from workers, but primarily because the Government's payments will decline*. Employee contributions "pay for" only about 12 percent of current annual benefit costs. However, the formulas by which the Government's share of CSRS costs are determined are based on projections of long-term benefits; as long-term benefit projections decline in anticipation of the demise of the CSRS, the Government's funding will decline, although there will still be CSRS retirees and survivors entitled to benefits. According to the Office of Personnel Management (OPM), CSRS benefit payments will begin to exceed the amount of assets credited annually to the trust fund for CSRS in about 2008, and the assets attributable to the CSRS will be depleted by about 2025.

When Members of Congress wrote the new FERS law in 1986, they understood that there would have to be a financial transition from CSRS to FERS in the next century, and they wrote the law to provide for that transition. First, the law provides for one trust fund in which CSRS and FERS assets are combined. *Therefore, there is no separate CSRS trust fund that will be depleted.* Second, Congress established a system whereby benefit

payments under the CSRS will be authorized by FERS trust fund securities as needed until there are no more CSRS benefits to be paid. Thus, the securities that are building up for FERS, and that are in excess of the amount needed to authorize FERS payments for some time, will be reduced each year by the amount by which CSRS benefits exceed CSRS assets. This will cause an increase in the FERS liability, but that liability will be "paid off" through a series of 30-year amortization payments. Using a 75-year projection period, OPM estimates that the total value of securities in the trust fund will grow throughout the projection period, ultimately reaching about 4.2 times payroll, or nearly 18 times the amount needed to pay annual benefits. This means that in the next century the trust fund will reach an ongoing steady state in which it will have a balance sufficient to *authorize* 18 years of benefit payments.

In summary, by definition, under the financing arrangements set out in current law, the system is not now and never will be "insolvent" or without adequate budget authority for payment of benefits. Again, because the budget cost of the systems can never exceed the cost of monthly benefits to living annuitants, the cash required from the Treasury or taxpayers will never exceed the cost of those monthly payments.



IRS

REVENUE OFFICERS

EXAMPLES OF

*THREATS AND
ASSAULTS*

[REDACTED]
memorandum

date: June 12, 1997

to: [REDACTED]

from: [REDACTED], Revenue Officer Group 1500,
Bend, Oregon

subject: SUBJECT: Hazardous experiences as Revenue Officer

1. While attempting to locate taxpayer in Santa Cruz Mountains, Zayante area, started to walk down driveway of house when a large dog charged me, fangs bared, obviously meaning business. I had to back one step at a time to my vehicle, all the while the charging dog threatening me.
2. Entered courtyard of house in Ventura area when a Chow dog chased me out, barely missing being bitten.
3. I was threatened by an angry taxpayer that "If I have to pay this bill, I am going to come down to the Federal Building and shoot you with my 357 Magnum".
4. During an interview in his home, taxpayer told me the American people were going to revolt and shoot all Federal employees and he would be on the front line.
5. Fieldcall to taxpayer, he came out to my truck and told me he was NOT going to pay and I'd better bring help next time I came around.
6. In interview room, taxpayer rounded on me, came up out of his chair, pounding fists on table between us.

These incidents took place between January of 1995 and March of 1997.

[REDACTED]

I N T E R
O F F I C E

MEMO

To: [REDACTED]
From: [REDACTED]
Subject: Twenty-Year Retirement
Date: June 10, 1997

On February 25, 1997 I made a field call in a rural Southern Oregon Coastal area. My taxpayer stated that he did not believe income tax was constitutional and that I was violating his rights. He and his wife decided that the best thing they could do was to pray for me, and proceeded to kneel down in the mud and block my car. Mr. taxpayer prevented me from leaving for about 1 hour and 15 minutes.

In March, 1996 one of my taxpayers disagreed with my action on a case and tried me before a peoples court getting a large judgement against me.

Every week I meet with convicted felons. I meet with these people at their residences or places of work. I have no one with me, and I have no background check. I demand money from these people, and take enforcement action against them. The crimes these people have committed range from delivering and manufacturing controlled substances, to assault and battery and murder. I have had to personally deliver notices and seize property from an individual who was on the US Marshall's "15 most dangerous felons" list. I have also interviewed and seized property from an organized crime hit man and from a drug lord who was subsequently convicted of 18 counts of murder. I currently have six convicted felons in inventory.

All of this is done without being armed, and without having radio communications or a government cell phone.

This does not count the continuous interviews in which the taxpayers yell, shout, gesture and make comments like "One of these days you are going to pay for this" or "Some how I am going to get even with you" or "If I were you, I would not sleep too soundly."

[REDACTED]
MEMORANDUM

DATE: JUNE 17, 1997

TO: [REDACTED]
UNION STEWARD

FROM: [REDACTED]

SUBJECT: 20 YEAR RETIREMENT

Revenue Officer [REDACTED] and I seized a vehicle from a protester. After we tagged the vehicle the taxpayer came out of his residence and tried to get in the vehicle. A verbal warning did not stop him and I had to physically restrain him from entering the vehicle. A subsequent search of the vehicle uncovered a loaded pistol under the drivers seat. Since [REDACTED] and I were unarmed our lives would have been in extreme danger if I had not stopped the taxpayer.



On another occasion I assisted a Revenue Officer [REDACTED] as he seized three semi tractors. As we were following the tow trucks to the storage yard the taxpayer the taxpayer used his vehicle to block the highway. The taxpayer was armed and the accompanying Special Agents drew their weapons. Revenue Officer [REDACTED] and I were unarmed and caught in the middle. Fortunately no one was harmed.

7-02-1997 9:39AM FROM IRS 5036558901

P. 2


memorandum

date: July 2, 1997

to: 
Chapter 40 Stewardfrom: 
Revenue Officer


subject: Twenty Year Retirement for Revenue Officers

During the past 12 months, I have encountered two situations where taxpayers have displayed threatening behaviour. One involved a known tax protestor and the other was simply a delinquent account I was assigned.

During the course of serving seizure paperwork for the seizure of a tax protestors personal residence, I noted "No Trespassing" signs on his property. Being prohibited from going onto the property, I was in the process of leaving the paperwork attached to the fence, while standing on the public roadway. The taxpayer confronted me and advised that I was on private property and told me to leave. Even though I was on public property, I left the paperwork attached to the fence and got in my vehicle. The taxpayer then appeared noticeably agitated, ran up and grabbed the paperwork then ran over to my vehicle and slammed the envelope up under the windshield wiper. At that point I drove away in order to avoid further confrontation.

The second incident involved a delinquent business account for which I made a regular field call. The call was to a residential duplex apartment. The door was ajar and I knocked at the door. A male resident of the apartment got up from the couch and appeared pleasant although somewhat evasive. After identifying myself, I stated the purpose of my visit. The taxpayer then said his accountant would handle this matter and gave me his name. I advised I would be happy to deal with the accountant directly as long as I have a power of attorney. When asked about the power of attorney, the taxpayer was unresponsive. At this point I stated that since the balance due was for unpaid trust fund taxes, I needed to resolve the matter without delay. The taxpayer then became infuriated saying that IRS caused the problem in the first place and for me to "Get the (expletive deleted) off his property," moving towards me in a threatening manner. I chose to leave rapidly. All further contact with this case has been handled through his representative.

The purpose for describing the second incident is to point out how a seemingly peaceful meeting can turn dangerous instantaneously without obvious provocation. I said or did nothing that I haven't said or done a hundred or so times before without incident.



August 28, 1997

National Treasury Employees Union
901 E Street, N.W., Suite 600
Washington, DC 20004

Attn: Mr. Robert M. Tobias
President

RE: LEO STATUS FOR IRS REVENUE OFFICERS

Dear Mr. Tobias:

I am a revenue officer at [REDACTED] Athens, GA 30601. The following are a couple of my encounters with potentially dangerous taxpayers:

1. The business owed several quarters' employment taxes. I had obtained a Writ from a Judge authorizing me and my co-workers to enter the premises to seize assets. When the owner arrived and realized the seizure was in process, he walked over and stood in front of me. He began playing with his pocket change which seemed pretty ordinary considering the tense situation. However, I then looked down and saw that he had a small pistol in his change pocket. He was at the same time pulling out the gun and displaying it just enough for me to see it. I asked him to put the gun in a file cabinet, which he did. However, he began pacing back and forth between rooms. I had to constantly watch to ensure he did not retrieve it. I had to call for a special agent from the Criminal Investigation Division to come provide protection.
2. I was working a rural section. I went to a house located down a long driveway, approximately a 1/2 mile back in the middle of the woods. I interviewed the taxpayer at the hood of my car. I had requested that he borrow to full pay, using the house as collateral. He had built it himself and only owed about \$15,000. It was worth about \$100,000. After I had given him my decision to borrow or I would seize the house, he indicated he had to give instructions to his son to do something. He proceeded to go back into the house. Only a few minutes later, he came out but was followed by his son and an employee. I was at the passenger side of my car. He walked down to my car and stood directly across from me, on the other side of the car. It appeared the son and the employee were leaving. However, one came up behind me and the other one stood at the trunk of the car. In summary, they had me surrounded. I diffused the situation and left shortly thereafter. I barely could press the gas pedal my legs were so weak from fright.

Sincerely,

[REDACTED SIGNATURE]

SEP 4 1997

MON, AUG-25-97 1:23PM

813 578 5511

P. 02

Law Enforcement Officers

From [REDACTED] (Revenue Officer, St. Petersburg, FL [REDACTED])

During my assignment as Revenue Officer in the Tampa Field Branch

- 1) Assaulted by a male T/P during a seizure. The T/P rescued seized property, shoved me and threatened strike me in the process of rescuing seized property.

This T/P received 18 months federal probation for the assault.

- 2) During the seizure of his residence, a taxpayer threatened to commit suicide by shooting himself. The seizure was aborted and the seizure team had to reverse its role and become a crisis intervention team.
- 3) During several field contacts, I have encountered taxpayers who have openly displayed easily accessible firearms; e.g., .357 cal. revolvers, M-1 carbine, 9mm semi-automatic pistol.
- 4) During seizures, it is now my custom to ask taxpayers whether any firearms or controlled substances are located within the premises or in the property being seized.
- 5) I have worked several cases involving members of organized crime families and convicted drug traffickers. It is interesting to note that the Special Agents who obtain the convictions are considered "law enforcement", but that the Revenue Officer who must collect, often by seizing the property of criminals, is accorded no recognition for his/her perilous assignment.
- 6) I have developed several criminal cases over the years. Revenue Officers who make CID referrals must often demonstrate technical and investigative abilities equivalent to other "law enforcement officers".

TUE, SEP-02-97 4:10PM

813 578 5511

P. 02

[REDACTED]

memorandum

date: August 29, 1997

to: [REDACTED] President of NTEU, Chapter 87

from: [REDACTED] Revenue Officer [REDACTED]

subject: *Examples of dangerous and potentially dangerous situations in support of LEO
Status for Revenue Officers*

I would like to provide you with two examples of dangerous situations that I have encountered while performing my duties as a Revenue Officer in the St. Petersburg POD. Please share this information with NTEU President, Robert M. Tobias, in order to support LEO Status for Revenue Officers.

In 1991, my first year as a Revenue Officer, I made a routine field call to a residence in the St. Petersburg area in order to collect back taxes on an individual 1040 account owed by a husband and wife. The husband was working in his driveway upon my arrival; therefore, I exited my vehicle, identified myself, and presented my credentials. The wife joined us outside soon thereafter. They invited me into their kitchen where I spread out my case file and commenced to inquire about payment of their tax liability. I also gave them my business card which contained my name, title, address, and phone number so that they could contact me. As soon as I stated that the nature of my visit was to collect payment of the back taxes, their demeanor changed. One was sitting on each side of me at the small rectangular table. They stood up and began loudly yelling and spouting their beliefs about the legality of the IRS. I quickly determined that they were Illegal Tax Protesters. Due to my position at the table, and with a wall behind my back, I determined it was going to be somewhat difficult to make a quick exit. I spoke to them as calmly as possible, quickly gathered my purse and file, told them I understood that they were Protesters and would notate their file to include their beliefs, and slipped past the husband and out the door.

The next morning when I arrived at the office, I was greeted by my Manager: [REDACTED] and [REDACTED] of the Inspection Division. Apparently, after I left the taxpayer's residence, they telephoned [REDACTED] and threatened to come to the office and kill him. Back then, we did not have pagers; hence, contacting me in the field was not possible.

Armed Special Agents from the Criminal Investigation Division guarded the office that day, but luckily, the taxpayers never came to carry out their threat. Inspection soon learned that the husband had a warrant out for his arrest for failure to appear in court on an unrelated matter. [REDACTED] and another inspector then joined with local law enforcement in order to carry out the arrest warrant and question the taxpayers about their threat upon [REDACTED]. When they arrived at the home, the husband resisted arrest and both the husband and wife assaulted [REDACTED]. Fortunately, they were quickly subdued and the arrest was carried out. No charges were ever filed against them for the threat or assault to my knowledge.

The taxpayers were not coded as an Illegal Protesters; hence, I had no way of knowing the situation that I was blindly walking into.

Then, in 1996, I was assigned a case on a corporation that owed delinquent employment taxes. Once again, I made a routine field call to the place of business. I was taken into the back of the complex, where I met with the corporate President in her office. I identified myself, showed my credentials, and was invited to sit down. Upon revealing the purpose of my visit, the taxpayer immediately became agitated and announced that two male IRS agents with the criminal division had previously visited the office to investigate a complaint filed against her by a former employee. She told me they left when she threatened to break their legs. She also informed me that I was lucky I was a woman or else I would have shared the same fate. She informed me she would not be intimidated by the government ever again. I was never able to have a productive conversation with her and left soon thereafter.

Due to her continued non-compliance, I had the case for approximately one year after our initial meeting. During this time, I experienced several telephone conversations where I was insulted and verbally abused. At one point, she called and said she was [REDACTED], a local newswoman. Upon taking the call, she proceeded to call me a whore, repeated that again, and told me that I was a Goddamn bitch. This occurred right after I attached a large amount of money in her bank account via levy. Unfortunately, this was not pursued by Inspection because I had no proof it was her on the phone and no threat was made. CID initiated a background check and learned that she had been previously jailed when she refused to sign a speeding ticket and then resisted arrest.

Ultimately, I had to seize the business assets. The seizure was made after obtaining the proper writ from a Federal Magistrate in order to enter the private premises without her consent, since she would not voluntarily give it. However, in order to execute the seizure, it took myself, two other Revenue Officers, a Special Agent from CID, an agent from Inspection, and eventually two local police officers who were called in when the taxpayer refused to leave the premises.

These are just two examples of my more memorable recollections of dangerous situations. I could give countless accounts of taxpayer intimidation and verbal abuse. All of my fellow revenue officers have had to endure similar situations or worse. Recently, two revenue


officers were forced to abandon a seizure of a vehicle at gunpoint. When Inspection officers went out to arrest this individual, they had to knock down the door, and caught the taxpayer while he was loading his gun. Another Officer was recently pushed and hit with a car door while a taxpayer was illegally rescuing his seized vehicle. Another officer had to take vacation time in order to guard her home with no IRS assistance when a taxpayer told her he knew where she lived and threatened to come to her house. She received no assistance because no actual physical threat was made.

Clearly, our job involves uncertainty and daily exposure to potentially violent situations. When you contact a taxpayer for the first time, you never know who will be there or what they have in mind. Many of us forego field calls when we're uncomfortable with a certain area or situation simply based on "a bad feeling". However, making these calls, taking enforcement actions, and seizing property is an integral and unavoidable part of our job.

I hope these examples will help demonstrate what Revenue Officers face while performing their daily duties. If I can be of any further assistance, please feel free to telephone me at

[REDACTED]

August 7, 1997


Bridgeton, Mo. 63044

Bob Tobias, President NTEU
901 E. St., N.W. Ste. 600
Washington, D.C. 2004

Dear Mr. Tobias,

I am a Revenue Officer with Internal Revenue Service. I have been an RO for 17 years. I appreciate you pursuing Twenty Year Retirement for ROs. It is greatly needed. I would like to share some of my thoughts and experiences.

In 1983 I had been an RO for only 1 and 1/2 years when I happened upon a farmer in Wentzville Missouri. I was making a field visit to collect delinquent income tax. This was a very isolated area I was in. The taxpayer farmed for a living and was struggling with many problems, I was just one of them. I had never met him prior to this field visit, nor had I had any other type of contact. As it turned out I arrived at his house just as he was coming in from the fields for lunch. I pulled into his drive right behind his p/u. I noticed a gun in the gun rack of the p/u, but paid little attention as that is common in the areas I work. I identified myself to him and attempted to discuss the debt. I demanded that he pay me in full, as I am required to do with each case. When I did that he became incensed. He started shouting about how IRS had already cleaned out his bank and now I was here demanding more. He asked what I would do if he did not pay, since he had no more money. I explained that we can pursue other assets like his equipment and Real Estate, but that I wanted to pursue other methods first like an agreement or Offer. He was not having any of that. He didn't even hear anything I said after I said we could pursue his equipment and home. He muttered that he was going to end this here and now. He then ran right past me to his truck. I then remembered his gun. I turned and ran to my car, which was further away than his truck. I was very lucky. He beat me to his truck, but when he tried to stop and reach for his gun, he slipped on the gravel and went to the ground, almost sliding under his truck. That allowed me to get into my car, and as luck would have it again, I had left my keys in the ignition. I was able to fire up my vehicle, throw it in reverse, and back out of the drive onto the blacktop. He got up and reached his gun at that time. He ran towards me with his gun in hand as I was shifting into drive. This was only 20-25 yards away, well within shotgun blast range and I was only hoping he had a shotgun. I wasn't sure as I did not get a good enough look. If he had a rifle, I was doomed. I sped away as fast as I could and looked in my rearview mirror as he raised the gun to his shoulder (I still did not know if he had a rifle). It turned out he did have only a shotgun and I was out of range, so he did not fire.

A110 4 11/11/97

This experience is still fresh in my mind some 14 yrs later. It scared the hell out of me. I went back there with inspection later and found out he was mad at the world. Everything was going wrong. I arrived at the wrong time. Had I not been 25yrs. old and very agile, I may not have gotten out. If I had been 50 yrs. old I may have been dead. I had no doubt that he would have pulled the trigger. I have no doubt that if he had not slipped he would have beat me to the gun and killed me. This sort of thing happens all the time in this day and age. When we walk in unannounced, as is our methodology, and demand huge sums of money, and threaten to take things some of these people worked their lives for, there will always be a possibility for violence. When inspection interviewed this guy, he told them he had no axe to grind with me, I was just the straw that broke the camel's back. I had acted professional and answered his questions quickly and accurately, it just didn't matter to him at that time. He wanted to take his frustrations out.

I have not had a weapon pulled on me since. I have been threatened since then, but no weapons were used. The threats, while taken seriously and reported to inspection, turned out to be idle. But how is one to know.

In recent years I have experienced forms of harassment that bother me almost as much as the threats. RUs work many types of cases these days. The most difficult are Tax Protestors. They can be extremely violent. I have been visited at my home, well after hours, by Tax Protestors. When I opened the door I had no idea if they were there to kill me, harass me, or resolve their tax problem. It is too easy to get access to us. These protestors were here to serve subpoenas on me for lawsuits they were filing against me. These lawsuits were a result my actions on the job. They were suing me for trespassing, harassment, improper seizure and sale, and even sexual harassment. All suits were won by IRS or dropped by the tax protestor, but they caused countless nights of worry every time the phone rang or there was a knock on the door. These lawsuits cause a huge amount of stress. We are never sure there will be IRS representation. We are expected to cross every "T" and dot every "I", and we are expected to know all the laws pertinent to these protestors. If we make an honest mistake, there goes our representation. Our job and home may follow. I actually feel more suited to handle threats and assaults than these forms of harassments by protestors.

In approx 1993 we had a CPE. One of the speakers was a St. Louis County Police Detective. He was specialized in gangs. He was speaking to us to help us recognize when we may be encountering gangs or gang members. After we explained to him what we did as far as enforcing the tax laws and collecting delinquent returns and money he asked us some questions. These questions were to familiarize him with how we went about enforcing the laws. He asked if we did this in person at the taxpayer residence or place of business, we responded YES. He asked us if we worked in teams or pairs, we responded NO. He asked us if we carried a weapon, we responded NO. He asked us if we had a radio, beeper, or cell phone, we responded NO. He asked us if we had special training in self defense, we responded NO. His next statement explains the need for Twenty Year Retirement, he said "I WOULDN'T DO YOUR JOB FOR ANY AMOUNT OF MONEY". This is an experienced police officer that had extensive gang activity training, and he wouldn't do our job. There needs to be no more said than that!


I realize that in order to convince Congress that Twenty Year Retirement is needed, we need to make it clear that this is a dangerous job and that is to be the main focus. I may be looking at this wrong, but perhaps we should couple the danger aspect with the cost saving aspect. This Congress is into cost cutting and Twenty Year Retirement, in the long term, cuts costs. IRS replaces high end of the pay scale ROs with low end of the pay scale Trainees. If the Trainees are brought in at the right times (while the experienced ROs are still there to train them), they will ease into the system with minimal loss in quality and \$ collected. IRS will have a younger, more vibrant work force that is working towards promotions to GS-9, 11, and 12. Currently we have, in our district an aging work force with GS-12s averaging 20 plus years as an RO. What do they have dangling in front of them to make them excel, a \$400 per year award. I think not. We are doing a good job, do not get me wrong. But what is our motivation? We are in a 3 year wait for step increases. Our motivation is to do the job without doing anything to jeopardize our grade and our future retirement. I am no longer in the "risk taking" mode I was in when I was starting out. I was willing to try anything to close a case then. Now I just want to avoid being sued.

Twenty years or age 50 is long enough to be expected to do this job effectively. We can and do, do the job longer when asked to. But there is some question to how effective we are after burn out. At age 50, I personally will have 27 years as an RO. Based on the current system I will need to put in an additional 5 yrs., and that may increase as I understand. How effective will I be those last 5-10 yrs? Wouldn't it be better to get a lower paid more vibrant employee to take my place? Better for me, better for IRS, better for a youngster in need of a good start to a career, and better for the tax paying public.

I make this offer with full sincerity, ask my Congressman, Jim Talent, and/or my Senators, John Ashcroft and Christopher Bond to accompany me for a day or two in the field. I can't guarantee a threat or assault, but I can guarantee they will understand what we go through. I voted for all three so they won't catch any grief during the ride.

Mr. Tobias, We have written each other in the past and we do not often agree, but on this we do agree. Thank you for pursuing this for us, we appreciate it greatly. I hope my experiences help. I apologize that I cannot put into words all the encounters, but frankly, after 17 yrs. I am approaching burnout, and my memory is not what it used to be.

Sincerely,


 Revenue Officer
 St. Louis, Mo.

DATE: August 15, 1997
TO: Robert M. Tobias, NTEU National President
FROM: [REDACTED], NTEU Chapter 85 [REDACTED]
SUBJECT: Congressional Initiative in Support of Law Enforcement Officer Status

As per your memorandum dated July 1, 1997, below I have listed some experiences the Las Vegas Revenue Officers have faced in their position.

1) Tax Protester gets eight years (Newspaper Article #1)

The taxpayer refused to pay his 1990 taxes despite the IRS' attempts to work with him. The taxpayer resorted to aiming a rifle at the revenue officers when they tried to seize his truck. The rifle was a semiautomatic assault rifle. The taxpayer brought dozens of other tax protestors to the court to show their support for him. The U.S. Marshal service provided extra manpower for security purposes. The Revenue Officers names are [REDACTED] and [REDACTED].

2) Tax protester in court after confrontation with IRS agents (Newspaper Article #2)

Tax protestor [REDACTED] was arrested outside his apartment after he resisted the agents attempts to seize his car. The taxpayer repeatedly closed the car door after the IRS agent's attempts to open it and remove him, and also the taxpayer grabbed the agent's hand and attempted to bite him.

3) Assault, Threat of Assault, or Harassment Report (#3)

Revenue Officer, [REDACTED] was speaking to a taxpayer about the liens that had been filed with the County recorder's office because of his business tax liabilities, when the taxpayer started yelling, kicking chairs, beating the table and walls with his fists. He called the Revenue Officer who put the liens on his business a F_____ Whore. CID had to be called and he was immediately escorted out. By the time the taxpayer left, his hands were bloody from hitting the wall. The taxpayers former occupations was as a professional kickboxer.

4) Memo from Revenue Officer [REDACTED] (#4)

Working collection cases can require making seizures of

personal assets and residences. In the past three years, this RO has had approximately 20 separate cases on convicted felons. This RO has been the subject of lawsuits, congressional complaints and false lien filing by the protestors. Most recently, he is being sued in the U.S. District Court in Las Vegas. The suit was filed in April, 1997 and is pending. This RO adds that everyday comments include references to possible consequences. RO states that in one case a local physician advised him not to come to his house to seize his vehicles. the taxpayer stated that if the RO stepped onto his premises, he would put a bullet in his head.

5) Liens

Many Revenue Officers have had liens filed on their homes, automobiles, etc with the county recorders office.



KO

*Hoots 21/
warping*

#1

Tax protester gets eight years Man brandished weapon at federal agents

By Warren Hates
Review-Journal

A Las Vegas tax protester who aimed a semiautomatic assault rifle at Internal Revenue Service agents attempting to enforce a levy was sentenced to nearly eight years in prison Friday despite his claim that U.S. District Judge Phillip Pro lacked the authority to do so.

Michael Louis Hutton, who has become a recent cause celeb for local tax opposition groups, demanded that Pro immediately release him from the Clark County Detention Center, arguing in part that he was "kidnapped at gunpoint ... within the Nevada republic" by authorities.

Dozens of Hutton backers crowded Pro's courtroom to show their support and the U.S. marshal's service provided extra manpower for security purposes.

A jury had deadlocked in an initial trial on whether to convict Hutton on a charge of assault on a federal officer. He was convicted July 21 in a retrial. Prosecu-

tors argued Hutton refused to pay his 1990 taxes and, despite the IRS' attempts to work with him, he resorted to aiming a rifle at agents and a tow truck operator when they tried to seize his truck.

Assistant U.S. Attorney J. Gregory Damm made no recommendation at sentencing, saying Hutton had no previous problems with the law and was a decent enough fellow who became "influenced by misfit."

"His friends are not the tax protesters who sit in the courtroom," Damm said. "It's easy for them to give gratuitous advice to Mr. Hutton because they're not the ones who suffer the consequences."

However Hutton later read off a lengthy interpretation of federal authority, claiming the IRS had "created a scheme" to steal property from citizens. He had previously named virtually everyone in the case in a \$28 million lawsuit, claiming in part that judges in the U.S. District of Nevada are mentally incompe-

tent and morally delinquent.

Also named in the suit was his public defender, Alex Modaber, whom Hutton says was never authorized to act on his behalf. Modaber won an acquittal for Hutton in the first trial on one assault charge.

The defense attorney asked Pro on Friday to require Hutton to serve only the minimum mandatory five-year prison term for his conviction of use of a firearm in a crime of violence.

Modaber said Hutton's act was out of character and the government was engaging in a "quantum leap" of logic as to whether he intended to fire the weapon, which was loaded.

Pro said the issue was not the irreconcilable philosophical differences, but Hutton's willingness to take the law into his own hands.

"I hope over the years you continue your study and consider the fact that you may be wrong," Pro said.

/

4B/Las Vegas Review-Journal and Las Vegas Sun/Saturday, April 8, 1995

Tax protester faces federal charges

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The charges are part of a larger federal investigation into tax protesters who have been charged with defrauding the IRS by claiming that they are not subject to federal income taxes.

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Re 20 YEAR Resurrections - #4

- working collected cases ^{can} require making seizure of personal assets and residences. In the past 3 years, I have had approximately 20 separate cases on convicted felons. In 3 of these cases, I was urged by management to include armed escorts (C.I.D.) as part of seizure teams. The seizures were made.
- I have been the subject of Lawsuits, compression complaints, and false liver films by tax protestors. Most recently, I have been sued in U.S. District Court in Las Vegas. The suit was filed in April, '97, and is pending.
- The everyday comments and mutterings of my "clients" have included references to possible "consequences". Several years ago, as seizure action loomed, I was advised by a local physician that I should not come to seize his vehicles. I was told that if I stepped onto his premises, he would "...put a bullet..." in my head.

MEMO TO [REDACTED], UNION STEWARD

FROM: [REDACTED] REVENUE OFFICER, MEDFORD, OREGON

DATE: JUNE 6, 1997

In reference to stories regarding Revenue Officer experiences regarding the 20 year retirement, I have the following stories to relate:

Since I do not have access to these files, the dates are only approximated, but the facts are well remembered.

1. Approximately 2 ½ years ago, a large dollar payroll tax case was issued involving approximately 20 different tax periods. The case had been transferred from California and the taxpayer was no longer in business.

The taxpayer had recently married and was expecting their first child. They were living in a very remote location and barely making ends meet.

Taxpayer then secured a new job long-haul trucking and began to make a very good income. Based on his new income, he was required to begin making payments. His feeling was that the liability was so large that he would never pay it off, so making payments would be useless.

He contacted the Problem Resolution Office and told them that he could not handle the stress and that he should be considered a *hardship* case and all collection actions be deferred.

Collection Division disagreed and while the *ATAO* was pending, taxpayer called our local office and left a message on the recorder cussing me and the agency out.

He also called the PRO and advised that if I ever came out to his residence that (I) would not be able to walk from there (or words to that effect). Due to taxpayer's mental state and other mitigating circumstances, no further collection action was taken.

2. I presently have in my inventory a taxpayer who has an interest in his former residence, but the present tenant who was supposed to be buying it, will not make payments nor leave. The taxpayer is adamant that the tenant is extremely violent and carries weapons both in his vehicle and on his person and he is trying to discourage me from making contact with him as he fears for my safety.

If the taxpayer is unable to come with the funds to full pay his large liability, we will have to pursue his equity position in the former residence. With the

knowledge that the person occupying the residence could be very dangerous, we will take all precautions before contacting this person.

As a general comment, Revenue Officers in our area are responsible for a large geographical area. My farthest contact area is a 5 hour drive. We make our initial field calls alone and very often are totally isolated from any sort of assistance should the need arise.

It is not uncommon to find out after the field call has been made that the taxpayer is considered armed and dangerous by the local law enforcement agencies. It is probably a matter of luck and timing that the taxpayer wasn't home at the time that Revenue Officers don't get into more trouble.

Several years ago, I make a field call (again to a remote location) and left a calling card. The taxpayer did call the next morning and, in an extremely agitated state, informed me that he was "nuts" and had just gotten out of the State mental hospital and that if he had been there, he probably would have killed me and "no one would have found my body".

We have one cellular phone for the use of our whole group in the Medford office. Two of us work areas which entail overnight travel and work very remote areas.

I can think of no other agency or private company that would send its personnel in such potentially dangerous situations, alone and with no way to call for help, yet Internal Revenue Service has done it every since its inception.

Needless to say Revenue Officers face some sort of adversity on an every day basis. Every State and local policeman or sheriff with whom I have spoken has said that he would not do what we Revenue Officers do "for all the tea in China", let alone the kinds of salaries we are paid.

Giving Revenue Officers 20 year retirement benefits is the right thing to do.



Date: June 12, 1997

To: NTEU

From: [REDACTED], Revenue Officer

Subject: Twenty-Year Retirement for Revenue Officer

I will describe below a few of the threats and other events which have occurred to me over the past years.

1. I had TDA's on a taxpayer totalling about \$200,000 resulting from a criminal investigation. The taxpayer had served a year in prison on income tax evasion. In addition, he had developed medical problems caused by his ~~tax~~ decision as a prominent member in the community.

The taxpayer was not happy to see me. After I identified myself + advised of my mission, the taxpayer invited me in. I secured a Collection Information Statement & had copied for verification of any item. The taxpayer left the room to secure some documents. As I was writing my history I heard a click like a gun being cocked. I turned quickly to the sound and the taxpayer quickly put what he had in his hand ~~into~~ into ^{his} the bathroom pocket. I was scared to death. I thought he was going to shoot me at any time. I kept my eyes on his hand the rest of the interview. I was ~~hesitating~~ ^{wondering} whether to confront the taxpayer but decided not to.

I threatened but did not shoot me physically, however.

all other contacts with the taxpayer were by phone. On rehashing the events several times I came to the conclusion that the taxpayer had stuffed a tape recorder in his pocket, not a gun.

2. I had large dollar accounts on a Chieftain. When I made a personal call, I met the taxpayer in his backyard. I identified myself & he tried to pull my credentials away from me (unsuccessfully). As I advised the taxpayer of the consequences for non-compliance, the taxpayer stated he was going to kill me (I forgot the exact wording). The taxpayer went into his house and I decided it was best for me to leave.

I reported the incident to Inspection. They interviewed him & he acknowledged the threat. The taxpayer had seven weapons registered to him.

3. I had seize the taxpayer's home & one of his vehicles. The taxpayer came into the Jenkintown office and threatened me and my family stating whatever hardships that I cause him, he'll take it out on me & my family. I reported the incident to Inspection.

I have other events that may support the 20 year retirement for Revenue Officers if you need them.

5-30-97 6-6-97

To: [REDACTED]

From: [REDACTED]

Re: Twenty-Year Retirement for Revenue Officers of S-30-97

1. In June of 1995, RO [REDACTED] was threatened by a tax protester whose house was sold in July of 1995 by the Service. The man making the threats, through at least two different letters, explained that if the Service were to sell his house, then his deity would retaliate against the IRS employees to the point of killing them and their families. The man had deemed himself a citizen only of the county in which he resided; not subject to any state or federal laws.

2. In March of 1996, RO [REDACTED] made a field call to the residence of a man who was labeled a tax protester, but not coded as potentially dangerous. RO [REDACTED] sat down in the man's home as invited to do so in his wife's presence. The RO and the man reached an impasse on the discussion of tax law within about 10 minutes. RO [REDACTED] got up to leave, at which time the man proceeded to get in the face of RO [REDACTED] and ordered him not to say another word while clenching his fist. The man, at about 6 feet and 250 pounds, presented a menacing image, even to the 6 feet 4 inches tall RO [REDACTED]. RO [REDACTED] believes that his own height and countenance, knowing that he would fight as necessary, helped to prevent a physical assault. The man told RO [REDACTED] that it would be his and his wife's word against that of RO Franken. RO [REDACTED] was clutching his briefcase in anticipation of the man's assault. The man moved in front of the closest exit door and stood in front of it to block the RO's exit. RO [REDACTED] slowly reached for the doorknob and the man moved out of the way. Then, after getting outside of the house, the man told RO [REDACTED] that he would use his 12 gauge shotgun on the RO if he were to show up again. RO [REDACTED] felt that he was in a totally losing situation; if he had prevailed in a physical encounter with the man, he risked losing a legal battle that would have followed; losing a fight with the man could have resulted in great physical injury or death.

The man was arrested in about September of 1996 for his in-person threat and subsequent threats made via telephone. It was discovered that he had threatened to kill his child-support collection officer as well as a local judge.

[REDACTED]
[REDACTED]
Medford, OR 97504
[REDACTED]

June 23, 1997

[REDACTED]
Union Steward

I am responding to the memo sent by [REDACTED] on May 30, 1997 to the IRS Chapter Presidents regarding 20 Year Retirement for Revenue Officers.

Over the past 3 years I have had numerous encounters with so many strange, weird and what I believe to be dangerous taxpayers that I can't possibly remember them all. However, I think the following limited examples will provide some idea as to what an R/O can face on a very routine and frequent basis.

The majority of the threats and the one assault have come, primarily, from tax protesters who, over the years, seem to have become increasingly more hostile. An example is a taxpayer in Applegate, Oregon. I made my field call to his residence to demand payment of his tax obligation. I was told to leave his property as he could not guarantee my safety. I have no idea what he meant by that. Later, I received a letter from the T/P stating that if IRS attempted to seize his residence, there would be a "mini-Waco." Since the Internal Revenue Code, Section 6335(a) requires that all seizure documents be handed to the T/P or left at his usual place of abode, a second field call would be necessary. The issue was discussed in depth with District Counsel and IRS management in attempts to safeguard me. But, the law is the law, and personal service would be required. For the second field call I was accompanied by 2 heavily armed CID agents. Since the T/P, luckily, was not home, everything went well. He did, subsequently, attempt to sue me personally. This suit was later dismissed.

Another incident involved an individual who attempted to hide assets under a nominee. When this asset was eventually seized by me, the T/P began to constantly call me and write letters threatening me. Inspection was notified but resulted in no action on their part. The T/P subsequently threatened a federal judge. Miraculously, he is now listed as a PDT, suspected of being armed and skilled in explosives. One of my last contacts with him he stated that I had ruined his family's life and now he was going to destroy mine.

Another T/P pushed me and threatened me during the seizure of his vehicle. He has since threatened me several times in writing.

Another T/P has sued me so many times I honestly can't remember if there is still a pending suit. I think all have been dismissed. However, one of the suits went

rather poorly for the IRS (and me) when the federal judge told the US Attorney that he was tired of the IRS winning on technicalities. The judge then told the T/P he might try suing me again. All of the T/P's suits against me have been purely for harassment to stop ongoing enforcement action. This T/P was later arrested by local sheriff's deputies for kidnap, assault, weapons violation and drug possession.

Another T/P recently placed an ad as a public notice in the local paper stating that any further contact by me will be evidence of trespass and subject me to the wrath of his church and his own private judicial system.

Recently a convicted felon and PDT tax protester was apprehended by federal agents. In his possession was an address book with my name and home address with the comment: IRS thug.

These are but a few of the incidents that I have dealt with recently. But all Revenue Officers are in the same situation. We travel in isolated areas, alone, no radio contact, no phones and no way to defend ourselves. Yet, the job does require personal contact. I feel the Revenue Officer position has become increasingly more dangerous and uncertain. And, I must admit, I am rather concerned for the safety of my family as public records tell the world where I live. I have received threatening letters at home and I am probably far more wary of strangers than the general public.

I have been working for the IRS for 22 years. I feel it is a very important job and demands increasingly greater skills to deal with our often dangerous non-paying citizens. The result, stress. And lots of it. For this reason, I feel a 20 year retirement for Revenue Officers has become mandatory.

[REDACTED]
MEMORANDUM

Date: June 2, 1997

To: [REDACTED] NTEU Chapter 14 President

From: [REDACTED], Revenue Officer

Subject: Twenty Year Retirement for Revenue Officers

During the fall of 1995, I seized a truck repair facility in St. Clair, MO. The owner of the business was documented a Potentially Dangerous Taxpayer due to a statement he had made to a previous revenue officer on the case. He had stated in response to being advised of a potential seizure of the business "You'll be dead along with a few others" (if you carry out the seizure).

Due to the history of this taxpayer, I notified the local police who also contacted Missouri State Highway Patrol to stand by. During the seizure, the taxpayer became very irate and began screaming and cursing as well as throwing his boots at me. He also left the area several times, causing myself and the accompanying revenue officers concern that he might be leaving to arm himself in some manner. I believe that due to the police standing by during the entire seizure (nearly an entire day) he did not attempt any further actions.

At the sale, a fight broke out between 2 of the bidders which was broken up by Internal Revenue Service employees (Inspection) whom I had asked to accompany us. I still have unresolved accounts with this taxpayer and collection is ongoing.

[REDACTED]
[REDACTED]

*Revenue Officer, St Louis Mo, Sunset
Hills Post of Duty*



[REDACTED]
[REDACTED]

Date: June 12, 1997

To [REDACTED]

From [REDACTED]

Subject: Taxpayer Threat-Twenty Year Retirement

Recently while working a case I received a threat from a taxpayer. I had made a visit to the taxpayer which consisted of a father and son running the business. The father visited the office and I secured a list of accounts receivable from him. He then became upset and stormed out of the office. Subsequently, the son faxed a letter to the White House complaining about my actions on the case and IRS in general. He stated that he "was not responsible for what he might do" and that he had enough life insurance to take care of his family if he were not around. This obvious threat was referred to Inspection by the Secret Service who immediately visited this taxpayer. He also threatened my Group Manager.

[REDACTED]

JUN 13 1997



[REDACTED]

Date: June 12, 1997

To: [REDACTED]
Chapter 86

From [REDACTED]

Subject: Taxpayer Harassment-Twenty Year Retirement

[REDACTED] I thought it would be okay for me to respond to this since managers are still revenue officers. While stationed in the Frederick office, I had numerous dealings with illegal tax protestors in our area. One particular taxpayer owned a large excavating company which we seized and eventually forced him into bankruptcy. This taxpayer was also a PDT and was associated with other protestors who also were designated PDTs. As a result, he sued me personally for \$330,000.00. On two attempts, associates of his visited my personal residence in an attempt to serve court papers on me.

As you can imagine, having these individuals come to my home was upsetting to say the least. On the first instance my wife was at home with our child, luckily her parents were there. On the second instance I ordered the person off of my property. Finally a Deputy Sheriff from the county served the papers on me. Counsel was very supportive and the case was dismissed, but not without going through about six months of receiving correspondence from the local courts and having my name listed in the local paper and local court records. This type of harassment is common when dealing with tax protestors.

Another tax protestor and PDT summonsed me for a deposition on a case and wanted to video tape the deposition as a form of harassment. Due to his proximity to my personal residence, I protested and forced counsel to not require the video portion of the taping since I was fearful of having my picture circulated among the local protestor community. Again, this was rather unsettling to me because this taxpayer was an associate of the first and was obviously trying to harass me. Because of these two incidents, I was concerned enough to apply for (but was denied) a permit to carry a concealed weapon while not working.


These are only incidents that are major in nature. During this same timeframe I have been yelled at, cursed at and insulted. Throughout my career I have been threatened and harassed more times that I can imagine and sincerely believe that revenue officers should have the twenty year retirement plan.

[REDACTED]


memorandum

date: June 4, 1997

to: IRS Chapter 33 President
Southwest District

from:  Revenue Officer
Southwest District



subject: Harassment on the Job

Just wanted to let you know of an incident that happened to me in the fall of 1995. On Christmas Eve, December 24th, 1995, I had my phone, electricity, cable, water all turned off by a taxpayer. My mail was to be sent to a new address in Reno Nevada.

The way that it worked once, I got everything turned back on was someone had called all the utilities in February 1995, and told them, they were an IRS employee and occasionally taxpayers would do things of this nature. What they wanted to do was get a password on the accounts, so if anyone would call asking for service to be discontinued they must know the password to the accounts. The Utilities then gave them a password for the accounts. On December 15, 1995 they then called the utilities and requested that their service be shut off on December 24th, as they had bought a new home in Nevada and were moving over the holidays.

This was a frightening experience for my wife as she was home taking a shower when the power went out and then tried to telephone and phone is also out. She believed that someone was getting ready to break into the house.

TO: NTEU

From: [REDACTED]

I recently worked a taxpayer who would clearly qualify as a protestor. He writes a Column in a local paper called " Fight Back". He refused to file current returns or pay taxes due on returns filed from years ago. When contacted, protest letters came in floods. Some of the letters made veiled threats that he would do whatever he needed to do to protect his assets.

He filed papers against me at the courthouse demanding ten million dollars, and stated that if not paid within X number of days, he would have a default judgement against me and could come to my house and seize my personal assets.

It took a judge to get the papers removed from courthouse, while the taxpayer continues to write his protest articles and refuses to pay what he owes.

It is one thing to have normal consequences in doing your job, but when someone can file papers to ruin your credit, or you have to worry that this person might go to your house, when you are away, and harass your family, the stress is burdensome not only to the employee, but his family (who must be warned)as well.

When someone is properly doing their job, as a revenue officer, threats and harassment are an on-going part of your every day work. Time takes its toll on how much a person should be asked to live with - isn't twenty years enough, wondering what is behind the next door you knock on?



Houston, Texas 77074

Robert M. Tobias
National President
NTEU
901 L. Street, N.W.
Suite 600
Washington, D.C. 20004-2037

Mr. Tobias:

This letter is in reference to your memo on twenty-year retirement. I do not have any specific events to relate but I would like to make a comparison between this job as a revenue officer and my former job as a parole officer.

I spent four years as a parole officer for the Texas Board of Pardons and Paroles. I supervised releasees from the Texas Department of Corrections who were living in the Third Ward area, which is a high crime area of Houston. I was responsible for men and women convicted for every kind of crime including drug possession, assault, rape and murder. These people had police histories dating back for years.

The point is, I knew who I was dealing with. I had their criminal histories, psychological records and family backgrounds. I knew who I was dealing with and what to expect. In my job as a revenue officer, I have no idea whose door I'm knocking on. I don't know their backgrounds; psychological or criminal. I have no idea what type of stress this person may be under. What is going to make this person snap. The unknown is far more stressful and dangerous than any known dangers.

Point number two: The criminals I dealt with were used to being in trouble. Prison is simply a price for doing business. Most of the taxpayers I deal with have never been in trouble before, they think we're going to send them to prison, they see everything they've working for being taken away from them and they don't know how to cope. They get upset, some get hysterical, and a few

Jul-02-97 10:21A NTEU Chapter 222 Houston 713-209-3801

I've had to stop enforcement action for fear they may go off the deep end. People do irrational things when they are under alot of stress. People get crazy when you start messing with their money.

I'm not sure if this letter will help your cause, but if you have any questions, please feel free to call me at [REDACTED]

Sincerely,

[REDACTED]

[REDACTED]
Houston, Texas 77074

Robert M. Tobias
National President
NTEU
901 E. Street, N.W.
Suite 600
Washington, D.C., 20004-2037

Ms. KELLEY. Thank you. They are truly indicative of the magnitude of physical danger that Revenue Officers are exposed to every day on the job. The adversarial nature of the Revenue Officer/delinquent taxpayer relationship means that danger and confrontation are part of their daily routine. These stresses can be exacerbated with age and lead to physical problems including high blood pressure, insomnia, depression and even suicide. The nature and hazards of these jobs clearly support a 20-year retirement benefit for revenue officers.

When law enforcement officers from different agencies join forces on a drug raid or search a boat for armed smugglers, Customs Inspectors and CEOs are often the only officers on the scene who are not eligible for law enforcement retirement. They are haunted by the same risk of death or injury, but when it comes to inferior benefits, the Customs Inspectors and CEOs stand-alone.

Revenue Officers of the IRS are subjected to the same gross inequities when they join with law officers from other Federal agencies and their State and local counterparts on dangerous and risky operations. These dedicated men and women are united by the violence and the threats that they bravely endure. But when it comes to retirement benefits, the revenue officers go to the back of the line.

I ask this subcommittee to consider the sacrifices that Inspector Labrada and thousands of others like him have made to enforce the laws of our country and to provide them with the benefits that they deserve by passing H.R. 1228. Thank you very much.

Mr. SCARBOROUGH. Thank you Ms. Kelley.

[The prepared statement of Ms. Kelley follows:]



**TESTIMONY OF COLLEEN M. KELLEY
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION**

ON

**H.R. 1228 -- TWENTY YEAR RETIREMENT ELIGIBILITY
FOR IRS REVENUE OFFICERS AND U.S. CUSTOMS SERVICE
INSPECTORS AND CANINE ENFORCEMENT OFFICERS**

BEFORE

**THE HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CIVIL SERVICE**

THURSDAY, SEPTEMBER 9, 1999

**ROOM 2154 RAYBURN HOUSE OFFICE BUILDING
UNITED STATES HOUSE OF REPRESENTATIVES**



Chairman Scarborough, Ranking Member Cummings and Members of the Subcommittee, my name is Colleen M. Kelley, and I am the National President of the National Treasury Employees Union (NTEU). On behalf of more than 155,000 federal employees represented by NTEU, I would like to thank you for holding this hearing on H.R. 1228. This bill would amend sections 8336(c)(1) and 8331 of Title 5 of the United States Code and specifically include IRS Revenue Officers, U.S. Customs Service Inspectors, and Customs Canine Enforcement Officers within the retirement provisions currently applicable to federal law enforcement officers.

The National Treasury Employees Union is the exclusive representative of almost 6,000 IRS Revenue Officers (ROs); 7,000 Customs Inspectors; and over 900 Canine Enforcement Officers (CEOs), all of whom would be affected by H.R. 1228. In addition, NTEU represents Inspectors at the Bureau of Alcohol, Tobacco and Firearms who we believe should be covered by the provisions of this bill. The record clearly supports inclusion of all these employees under the early retirement provisions for law enforcement officers. We are long overdue in granting these men and women the same benefits that other law enforcement officers currently have.

BACKGROUND

Special retirement provisions for federal law enforcement officers date back to 1947, when such benefits were given to agents at the Federal Bureau of Investigation. These retirement provisions were expanded in 1948 to cover any officer or employee whose duties are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the

criminal laws of the United States. Title 5 U.S.C. section 8336 (c)(1) allows law enforcement officers who fall under this definition to retire from the federal government at age 50 after 20 years of service. The law was amended in 1972 to include firefighters. In sum, Congress has found that the work of federal law enforcement officers and firefighters is extremely physically demanding -- far more taxing and dangerous than most jobs in the Federal Service. Further, Congress believed that the public interest is served when these jobs are held, insofar as possible, by younger men and women capable of meeting the intense physical demands of such arduous work.

In light of the special nature and intense stresses associated with their positions, Congress expanded twenty-year retirement eligibility to include air-traffic controllers and nuclear materials handlers. Presently, Members of Congress are also eligible to retire with twenty years of service. Just during the last session of Congress, you voted to give this benefit to special agents and security personnel of the Department of State. It is time to recognize the neglected positions within the IRS and Customs Service.

NTEU believes that IRS Revenue Officers, Customs Inspectors, and Customs Canine Enforcement Officers should receive the same twenty-year retirement option as other law enforcement officers. Every day, the men and women who hold these jobs face enormous physical challenges and constant emotional stress. Enforcing the laws they have sworn to uphold regularly exposes them to the threat of injury or even death. This is dangerous work with real and unrelenting hazards. For the safety of these officers and for the sake of the public they serve, we believe that a twenty-year retirement option for these officers is wise public policy.

THE MISSION OF CUSTOMS AND IRS

The Customs Service is a front line law enforcement agency, and its primary mission is to stop the flow of illegal drugs into the United States. Customs Inspectors and Canine Enforcement Officers (CEOs) make up our Nation's first line of defense in the war on drugs. They carry out the primary law enforcement activities for the agency by enforcing federal criminal laws and apprehending fugitives who are subject to state and federal warrants. Inspectors and CEOs are responsible for stopping sophisticated and dangerous -- narcotics smugglers, international money-launderers, arms smugglers, terrorists, and fugitives from justice who pose serious threats to our communities. Inspectors use a variety of investigative tools to perform their duties, including vehicle and personal searches and direct interrogation. They search aircraft, vessels, automobiles, railcars, travelers and baggage for violations of civil and criminal laws at hundreds of ports of entry. The Customs Service continues to seize more illegal narcotics than all other federal agencies combined, and Inspectors and CEO's seize more than any other Customs employees.

The mission of the IRS is to enforce the federal tax laws, and IRS Revenue Officers are responsible for collecting delinquent taxes. They are assigned a case only after the IRS has performed extensive background work and afforded a taxpayer numerous opportunities to pay his or her taxes or file a delinquent return. If a case is still not closed after an exhaustive campaign of letter-writing, telephone calls, and record-searches, it is forwarded to a Revenue Officer for a thorough, professional field investigation and appropriate action.

THE THREAT OF VIOLENCE

Customs Inspectors and Canine Enforcement Officers

The work of Customs Inspectors and CEOs involves substantial physical risks and personal danger. According to the FBI's 1998 Uniform Crime Report, Customs officers were assaulted in 1997 more often than any other federal law enforcement officer. The FBI found that four out of every ten assaults committed against a federal officer was committed against an officer of the Customs Service. Customs officers also accounted for 24 out of 41 Treasury Department officers injured in the line of duty in 1997. In recognition of the kind of work they are asked to perform, both the Department of Treasury and the Customs Service included Customs Inspectors and Canine Enforcement Officers as law enforcement officers when these statistics were compiled.

Inspectors and CEOs are required to undergo eleven weeks of basic training at the U.S. Customs Academy at the Federal Law Enforcement Training Center in Glynco, Georgia. Their training includes criminal law, arrest authority and arrest procedures, search and seizure authority and techniques, self-defense tactics, frisk and pat-down procedures, hand-cuffing and take-down techniques, anti-terrorism, and firearms use. In addition, all Customs Inspectors and CEOs are issued firearms to protect themselves, their fellow Inspectors, and the public. The decision to require firearms was the agency's necessary response to the constant threat of violence faced by Inspectors in the performance of their duties at all ports. Currently, all Customs Inspectors and CEOs are required to qualify on a firing range three times a year.

Training like this is a matter of life or death for Customs officers, all of whom must be ready to confront armed and hostile travelers and desperate felons and fugitives. Twenty-three Customs Inspectors have been killed in the line of duty. According to the agency, Inspectors and CEOs have been shot, stabbed, run over, dragged by automobiles, assaulted with blunt objects and threatened. Drug smugglers and fugitives do not hesitate to use violence to avoid being caught and arrested.

Inspector Roberto Labrada knows all too well how desperate and violent a drug smuggler can be. On April 17, 1997, he and another Inspector were shot at close range by a smuggler on the Southern Border in Calexico, California. Labrada suspected that a van was carrying drugs and he escorted the driver to the pat-down room for a closer examination. When Labrada told the van driver to put his hands on the counter for a pat down, the driver pulled a handgun from his coat pocket and fired directly at the Inspector, hitting him in his left side. The driver then turned the gun on Inspector Nicholas Lira, who was behind the counter, and shot him in the face and neck before turning back to Inspector Labrada on the floor and shooting him in the right arm. Both Inspectors returned fire and the shooter was killed. After two operations, Inspector Labrada returned to work in June 1997. Inspector Lira had to undergo extensive facial and neck surgery and took much longer to recuperate and return to work. For more than 15 years, Inspector Labrada has faced such hazards on the job. I ask the Committee to consider that if Inspector Labrada had been killed that April day in 1997, his name would have been added to the wall at the National Law Enforcement Officers Memorial in Washington, DC, as a federal law enforcement officer slain in the line of duty. And yet, despite this terrifying attack and the hundreds of other incidents of violence, assaults and hostility he has endured as a Customs Inspector, Inspector Labrada is denied the law enforcement status in life he would have

been granted in death. But he was a lucky man that day, and I am delighted and very proud that Inspector Labrada asked to join me here today. He has come from Calexico, California to represent the Inspectors and CEOs of the Customs Service.

Threats and attacks against Customs Inspectors are not limited to busy Southern border land crossings. Inspectors at every port face the hazards that come with trying to detect and detain drug traffickers and other felons. For example, the Canadian border is increasingly susceptible to gang activity and trafficking in a deadly strain of marijuana known as "BC Bud." Customs Inspectors working on the Northern border work regularly with local police to curb the flow of drugs and apprehend fugitives. And for Inspectors at Customs seaports, routine ship searches often turn into dangerous confrontations with armed stowaways trying to smuggle drugs into the United States.

Customs Inspectors are also responsible for working with the Treasury Enforcement Communications System (TECS), which is connected to the National Crime Index Center computer. TECS lists warrants for people who are wanted by federal, state and local law enforcement agencies. Inspectors are required to stop these fugitives at the border, who are wanted for such crimes as murder, robbery or rape, in addition to drug smuggling. Inspectors must detain these fugitives until they are transported to jail.

In most areas of the country, Customs Inspectors and CEOs work on task forces with state and local police departments to conduct special operations designed to detect illegal drugs, stolen vehicles and

money laundering. They try to stop illegal merchandise from coming into the country, and high tech equipment, illegal currency and weapons from going out.

Finally, Inspectors are also the first line of defense against terrorism. Many of our ports of entry have elaborate anti-terrorist plans in place, and Inspectors work side-by-side with Customs Agents, FBI Agents and local police to carry out contingency plans. Inspectors take the lead in boarding suspicious flights, searching the plane, and looking for stowaways. In these tense situations, fraught with danger, Customs Inspectors are the only enforcement personnel who are not covered by the twenty-year retirement provisions of section 8336(c)(1). Based on data provided to NTEU by the Customs Service, we estimate that Customs Inspectors were directly involved in the detention and arrest of almost 109,000 individuals between 1987 and 1997. The data also shows that Customs Inspectors made 77% of the total number of drug seizures made by the Customs Service over that ten-year period. In addition, between 1987 and 1997, Customs Inspectors seized \$3.8 billion in undeclared currency, which is 76% of the total amount of undeclared currency seized by the Customs Service. We believe that the status of Customs Inspectors and CEOs as law enforcement officers is clear and undeniable.

IRS Revenue Officers

Study after study performed by the IRS shows that the job of Revenue Officer (RO) is one of the most hazardous in the Department of Treasury, and that includes the Secret Service. Revenue Officers are required to call on delinquent taxpayers from crime-ridden city neighborhoods to remote and isolated rural areas. Revenue Officers have been held hostage, attacked by dogs, hit by cars,

threatened with shotguns, handguns, hunting rifles, knives, hammers, tire irons, and bombs. One RO I spoke to from Santa Ana, California suffered a broken thumb at the hands of an irate, delinquent taxpayer. Delinquent taxpayers are sometimes in desperate financial or legal trouble. And it is no longer surprising when Revenue Officers find themselves confronting delinquent taxpayers that belong to tax protest groups or a local militia.

It is not always the taxpayer who poses the greatest danger. The neighbors and families of delinquent taxpayers have threatened to shoot Revenue Officers if they don't leave the premises. Revenue Officers must collect from drug dealers, organized crime figures, and tax protesters. Indeed, the growing number of illegal tax protest groups poses a significant threat to IRS Revenue Officers. These groups collect names and addresses of Revenue Officers and release information to fellow protesters. Many of these groups advocate violence against the IRS. I have been told by Revenue Officers that they and their families were under surveillance by tax protesters. In some cases, contracts are put out on the lives of Revenue Officers. One RO told me about the time he visited a taxpayer's home in Nebraska and saw a sign in the window that read, "IRS Personnel Shot On Sight."

Revenue Officers must conduct seizures of taxpayer assets, including homes and cars. Many ROs wear bulletproof vests and are accompanied by armed police officers to safely perform this aspect of their jobs. Public sales of seized property can be dangerous as well. ROs sometimes need to move a sale location because they receive threats from tax protesters.

Every Revenue Officer could tell you about the times when they feared for their lives while working a case. These brushes with violent, threatening delinquent taxpayers are etched in their minds and easily recalled.

THE STRESS AND HAZARDS

Customs Inspector and Canine Enforcement Officer

Not many people recognize the sacrifices that Inspectors and Canine Enforcement Officers make for the Customs Service. Their lives are controlled by their jobs. They rarely work regular 9-5 schedules and they have little control over the schedules they do work in any given two week period. Staffing levels are not adequate to meet the needs of most ports, so Inspectors are frequently asked to work on their days off or to work beyond their regular shifts. The constant strain of performing dangerous, life-threatening work on an irregular and unpredictable schedule has a profound impact on the health and personal lives of many Inspectors and CEOs.

One recent study showed that U.S. Customs Service officers, including Inspectors and Agents, commit suicide at a rate of 280% higher than the national suicide rate. They must maintain control and authority, sometimes for 16 hours a day, knowing that a dangerous situation could arise at any moment. Coupled with the mental stresses, there are unusual physical demands placed on Customs Inspectors and CEOs. Their work requires bending, lifting or moving heavy containers, kneeling or stooping for prolonged periods, and crawling into cramped areas.

For instance, Inspectors at seaports are required to board vessels at sea if the vessel is too large to come into the port. They must ride smaller launch ships or Coast Guard cutters through eight-foot ocean swells and bad weather. After reaching the ship out in the harbor, often they board it by descending a long rope ladder and timing the wave swells with the ladder's movement against the vessel. Once aboard, Inspectors are exposed to all kinds of hazards. They must endure the intense heat and noise of the engine rooms, and must safely navigate high pressure lines, large machinery, cranes and fork lifts during routine searches.

Inspectors must search all manner of cargo coming into the United States. This includes chemicals and other hazardous materials. In some areas, Inspectors and CEOs are exposed to insect swarms and disease, and in some situations, they have undergone mandatory testing for hazardous exposure to asbestos and lead. They must stand for hours in awkward positions at border crossings where they breathe exhaust fumes and withstand driving rains, snow, ice and high winds, and the scorching heat of summer.

IRS Revenue Officers

The adversarial nature of the Revenue Officer/delinquent taxpayer relationship places significant strain on the typical IRS Revenue Officer, for whom danger and confrontation are part of the daily routine. Revenue Officers face crushing workloads, a hostile work environment, and the ever-present threat of physical attack, a danger that, sadly, extends to their families and loved ones. The stress associated with these conditions can exact a severe toll. According to one study, relied on by the IRS in 1985, these stresses are exacerbated with age and can lead to physical problems, including high blood pressure, stomach problems, insomnia, depression and in some cases suicide.

COST ANALYSIS

Granting early retirement to these officers will no doubt be costly, but we believe the costs are easily outweighed by the benefits to the officers, their families, and the American public.

No one could reasonably dispute the importance of the work done by these law officers. Whether stopping the flow of illegal drugs or enforcing our nation's tax laws, these hard-working men and women provide a critical public service. Given the significance of these jobs, it is vitally important for Customs and the IRS to be competitive with other state and local law enforcement agencies in the recruitment and retention of first-rate personnel. Yet we know that the combination of low starting salaries and second-rate retirement benefits does not always attract the best candidates for these difficult, dangerous and essential jobs. Recruitment and retention of capable personnel was a preeminent consideration behind Congress' establishment of the twenty-year retirement option for other law enforcement officers and firefighters. We believe the same compelling rationale exists here.

Any cost analysis of providing twenty-year retirement must look at such factors as the loss or quit rates of highly experienced employees, reduced training costs, and increased revenue collection. According to the IRS, a direct relationship exists between retirement benefits and personnel loss rates. As retirement benefits increase, loss rates decrease. More to the point, we understand that incumbents entitled to twenty-year retirement have a lower attrition rate than incumbents in the same series that do not. I believe that loss rates for incumbents with twenty-year retirement entitlement are more stable over time, and little change occurs from one fiscal year to another.

The high cost associated with turnover and training new employees must also be considered when weighing the costs and benefits of a twenty-year retirement. When Revenue Officers quit or leave the agency, their inexperienced replacements need extensive and costly training. It takes an inexperienced new RO some two years to learn the job and become as productive as the experienced RO that he or she has replaced. The existence of the twenty-year retirement option will not only help the IRS retain experienced personnel, but it will help the agency compete against other law enforcement agencies to recruit experienced and capable officers.

The situation at the Customs Service is no different. Currently, newer hires to the Customs Service are, on average, 40 years old with 7 years in the job. These young officers are highly susceptible to the pull of twenty-year retirement benefits and higher salaries offered by state and local law enforcement agencies. They have received costly training and on-the-job experience with the Customs Service, but they know they deserve to be rewarded for the dangers and risks they are exposed to every day. All too often, talented young officers treat the Customs Service as a stepping stone to other law enforcement agencies with more generous retirement benefits. When this occurs, both Customs and the war on drugs that the agency is expected to lead suffer as a result.

This Congress has recently passed a 792 billion dollar tax cut bill to be paid for out of the growing budget surplus. I would submit that the small amount needed to pay for fair treatment of deserving and dedicated enforcement personnel like Inspector Labrada, could also come out of the budget surplus that has come about at least in part from cuts in federal employee pay and benefits.

CONCLUSION

We are convinced that Revenue Officers of the IRS, and Inspectors and Canine Enforcement Officers of the Customs Service should receive the same early retirement benefits as those enjoyed by other law enforcement personnel. When law enforcement officers from different agencies join forces on a drug raid or to search a boat for armed smugglers, these Customs officers are often the only law officers on the scene who are not eligible for early retirement. They all face the same dangers and all are haunted by the same risk of death or injury, yet when it comes to inferior benefits, the Customs officers stand alone.

Revenue Officers are subjected to the same gross inequities when they join with law officers from other federal agencies and their state and local counterparts on dangerous and risky operations. These dedicated men and women are united by the violence and threats they bravely endure, but when it comes to retirement benefits, the Revenue Officer goes to the back of the line.

Customs and IRS law officers put their lives on the line every day to serve the American people. The work they do is as dangerous as it is important. In the course of fighting the war on drugs and upholding our tax laws, these men and women have been beaten, kicked, stabbed, and dragged behind cars; some have been killed. They are part of the brotherhood and sisterhood of law enforcement officers across this nation who put themselves in harms way to uphold the laws passed by this Congress. They are subject to the same perils, meet the same rigorous job standards, and

rely on the same investigative skills and techniques as other law enforcement officers who enjoy the significant benefits of early retirement. Common sense and simple justice demand an end to this terrible inequity.

Thank you for the opportunity to be here today on behalf of the IRS and Customs Service employees to discuss these very important issues.



September 21, 1999

Joe Scarborough, Chairman
Civil Service Subcommittee
Committee on Government Reform
B-371C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Scarborough:

Thank you for the opportunity to testify before the Civil Service Subcommittee on the issue of H.R. 1228 and twenty-year retirement for Customs Inspectors and Customs Canine Enforcement Officers and IRS Revenue Officers. This letter is a follow up to our discussions about the methodology for calculating the cost of enacting H.R. 1228 within the Department of the Treasury. The following is a general list of factors that I believe are important considerations for all cost discussions.

1. The Treasury Model for Estimating Cost of LEO Coverage (3/98) does not consider any of the potential cost savings that would accrue with a twenty-year retirement system for Customs Inspectors, Customs Canine Enforcement Officers or IRS Revenue Officers. These savings should be subtracted from the bill's cost. They include:

Twenty-year retirement leads to better retention of experienced employees which leads to fewer trainees and less training costs.

In the IRS, fewer trainees means increased revenue from avoided learning curve and reduced training opportunity cost. In addition, fewer trainees each year will mean a reduction in the cost associated with training, including travel, per diem, space rental, materials, etc. Cost savings can be seen in the form of additional revenue collected by experienced Revenue Officers, freed from instructor and coach responsibilities.

In the Customs Service, new hires require formal classroom training at the Federal Law Enforcement Training Center as well as costs for background checks and placement. They also require other Inspectors to perform on the job instructing which requires increased staffing needs at ports. These costs are high and must be considered in any application of a cost model.

2. The Treasury Cost Model is based on the assumption that the positions covered in H.R.

1228 will receive automatic increases to basic pay on the scale of federal law enforcement officers. While NTEU supports law enforcement officer pay for its members, our priority is twenty-year retirement.

The \$50.6 million estimated annual increase to the Customs Service is based on the law enforcement officer pay increases and corresponding increases in Medicare, Social Security and Thrift Savings Plan contributions. This number would be reduced by \$16.4 million, in just base pay and benefits if the pay scale were to remain the same or be phased in over ten years. All FERS and CSRS annual increases in the Treasury Model would be recalculated on a lower base pay if the twenty-year retirement option was considered separately.

3. The Agency witnesses testified that granting twenty-year retirement would create an estimated \$539.1 million unfunded liability to CSRS and FERS because the amount of both employee and employer contributions for past service will fund only a portion of the estimated costs under LEO status.

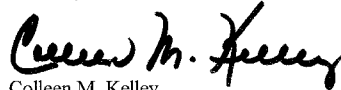
The current trust fund balances for both CSRS and FERS are adequate to provide annuity payments on an ongoing basis for potential retirees well into the future. I have attached a Congressional Research Service Memorandum that describes the issue in more detail and concludes that there is no unfunded liability problem to address.

The annuities for retiring law enforcement officers would never come due all at once. In fact, generally, only 42% of those eligible to retire at age 50 with 20 years of service do so within the first year of eligibility. Any legislation could focus on those currently eligible. In addition, a proposal could include phasing in the mandatory retirement age of 57 to reduce immediate pension obligations and ease the loss of experienced personnel.

It is important to recognize that an employee's entitlement to twenty-year retirement is not based on the additional costs of the benefit. The decision should be based on the requirement that the position be filled by a young and vigorous employee who can easily respond to the daily emotional and physical pressures and dangers of the job. I look forward to working with you and other Subcommittee Members to provide this benefit to Customs Inspectors, Canine Enforcement Officers and IRS Revenue Officers and to do so in a way that responds to the increased costs for doing what is right and fair.

Thank you.

Sincerely,



Colleen M. Kelley
National President

Mr. SCARBOROUGH. Mr. Gallegos.

Mr. GALLEGOS. Thank you, Mr. Chairman. My name is Gilbert Gallegos and I am the national president of the Fraternal Order of Police; and with more than 283,000 members, we are the largest organization of law enforcement professionals in the Nation. I am here to bring to your attention the concerns of the more than 25,000 Federal officers who are members of our organization regarding the issue of law enforcement retirement.

The issue of who is and who is not a law enforcement officer for retirement purposes is a source of great confusion for the tens of thousands of police officers employed by the Federal Government. For them, law enforcement status is not about bigger paychecks or enhanced benefits but about achieving parity with their fellow officers. And it was interesting to be here earlier when I heard the administration bureaucrats talk about further study, and I urge what we need is not further study but action on H.R. 1228. That is what we really need.

I also serve as a commissioner on the Commission for the Advancement of Federal Law Enforcement. I am not speaking today on behalf of the Commission, but in the last 2 years of the study that we have been doing that will be reported at the end of the month to Congress, I have never in my life seen such a mishmash of how police agencies operate as in the Federal Government. I come from the local agency, and if we operated in this way, we would be out of business. And I think it is all about parity.

In a local law enforcement agency like Pensacola or Tallahassee, the backbone of those departments are the uniformed police officers. If you have any chief of police with any integrity, they will tell you that the backbone of their Department is the front line uniformed officer. That is the way that I was taught, and I have always thought that way. In the Federal system we treat them differently. And I think it is the reverse.

I think we have to do something, and H.R. 1228 is the first step to deal with that and ensure that these uniformed officers are treated fairly. We know that the problems exist. We know that there is an increase in both domestic and international terrorism and that there are definite threats to the employees of the Federal Government and its facilities. We also know that the uniformed officer is the first line of defense to protect employees in the facilities of the Federal Government.

I am not here to argue that security guards should be entitled to 20-year retirement, but they are not viewed as law enforcement and they don't meet the definition of a law enforcement officer. That means the people who make arrests, have the authority to make arrests, conduct investigations, wear a uniform and can take action. That is the difference between a law enforcement officer and a security guard.

The majority of the officers who do not receive law enforcement officer status are GS-083's in the executive branch of the Federal Officer System.

The way that I look at it is if you look at a Pensacola police officer, whether he is a uniformed officer or a school resource officer or an investigator, each position has the same retirement. They are not treated any differently. You go to any State or local agency and

it is the same way. I think that is really the problem with the system that we have within the Federal Government.

The duties that we have talked about—the right to make an arrest, carry firearms, advise suspects of the Miranda rights, conduct criminal investigations—does not take into account the full scope of what the uniformed officers' job is all about. Customs Inspectors and Immigration Inspectors have also consistently been denied the additional retirement benefit. It is time that this changes, because the duties that a Federal uniformed officer performs, is the same as what 99 percent of the law enforcement officers do at the local level all across the country; but yet, Federal officers are treated differently.

The OPM bureaucrats talked about a study completed in 1993, and a subsequent plan to establish a new pay and job evaluation system for Federal law enforcement officers. That is why I say it is not time to study, it is time to act. And that is what we would try to encourage you, Mr. Chairman, to do.

The Merit Systems Protection Board has been extremely active in deciding on a case-by-case basis as to what qualifies an employee for enforcement officer and retirement status. If the present situation stays in place, as some people have advocated, you are going to see more and more cases going to the Merit Systems Protection Board. Already in California and in Virginia, the Board has ruled against the different agencies and said you have to give these officers 20-year retirement. If Congressman Filner's legislation does not become law, you are going to see more and more such appeals.

We also heard about cost this morning, and I challenge the Congress to really set aside this issue and consider the importance of public safety. I think that is the fundamental question: Do we want qualified officers, officers who are physically fit, officers who can at age 60 perform the same job as when they were age 30? And, believe me, I have been a cop since 1964. I am 55 years old, and I cannot do the same things I could as a 25-, 30-year-old police officer, and I challenge any Federal officer to say otherwise.

What they can say is "extend the mandatory retirement age and we can still do the job," and I challenge that because I don't believe it. I know in my own case I cannot do the same job as I did as a young patrol officer. It is a young person's profession. It has to be kept that way, and everyone has to be treated the same. And unfortunately under this system, we don't treat everyone the same.

I agree with what was said earlier when Congressman Traficant said certain people apply for exceptions to the rule at age 57 retirement. Some get it and some don't. I think that something has to be done to make it equitable, and I think that is the challenge for this subcommittee, to make sure that everyone is treated equitably and that is what I would implore you to do.

In the end, I think it comes down to the tradeoff of do we want a professional law enforcement group of uniformed officers or do we want security guards. And I think the American people and you in the Congress, and in the administration, want professional law enforcement officers, so we have to set aside the cost. And if agencies are unable to fill their staffing levels, I say that is poor planning, because if State and local agencies can do it, I am sure that the Federal system can.

The Department that I came from, we knew 2 to 3 years ahead of time how many people we had to plan for in retirement and how many we had to hire to replace those officers. State and local agencies do it all the time. Why can't the Federal Government? I don't think that the will has been there. Now we have to pass H.R. 1228, and I think that will be a big step in providing equity to the uniformed officers who are really the backbone of the Federal law enforcement system. Thank you.

Mr. SCARBOROUGH. Thank you, Mr. Gallegos, for your persuasive testimony.

[The prepared statement of Mr. Gallegos follows:]

TESTIMONY

Of

**Gilbert G. Gallegos
National President,
Fraternal Order of Police**

On

**Enhanced Retirement Benefits for Law Enforcement Officers,
Firefighters and Public Safety Personnel Under
Chapters 83 and 84 of Title 5, US Code**

Before the

**House Committee on Government Reform,
Subcommittee on Civil Service**

9 September 1999

Gallegos

Good morning Mr. Chairman and distinguished members of the Civil Service Subcommittee; my name is Gilbert Gallegos, and I am the National President of the Fraternal Order of Police. With over 283,000 members, the FOP is the largest organization of law enforcement professionals in the nation. I am here today to bring to your attention the concerns of the more than 25,000 Federal officers who are members of our organization regarding the issue of law enforcement retirement. This hearing focuses on proposals to expand law enforcement retirement coverage, specifically H.R. 583 introduced by Rep. Davis and H.R. 1228, introduced by Rep. Filner; and on legislation to increase the mandatory retirement ages for firefighters and law enforcement officers.

In recent years, the entirety of the discussion surrounding this issue *has* focused on the terms “law enforcement status”, “20-year retirement”, and the “mandatory separation” age contained in Chapters 83 and 84 of Title 5, US Code. It is an issue that, unfortunately, has not been discussed in terms of fairness and professionalism. Beginning today, how we choose to finally resolve this issue may well determine whether we will continue to place the safety of elected officials, employees and visitors in the hands of fully trained and qualified Federal police officers, or turn their duties over to the private sector in the hope of cost savings.

The issue of who is and is not a law enforcement officer for retirement purposes is a source of great confusion for the tens of thousands of police officers employed by the Federal government. For them, law enforcement status is not about bigger paychecks or

enhanced benefits, its about achieving parity with their brother officers. To the average citizen, they are police officers no matter the color of their uniform or the type of badge they wear; but, in the eyes of the government they serve, they are no more than second class law enforcement officers or high-priced security guards. They have trouble comprehending how they can perform the same functions as their State and local counterparts, yet receive none of the same benefits or respect.

And as we have seen over the past several years, the threat to Federal employees and facilities from terrorist or individual attack has grown exponentially, placing an added burden on the police officers who are usually our first line of defense. Such an event occurred in Oklahoma City in April 1995, and in the Capitol in July 1998 which claimed the lives of two of our brother officers. While we mourn the deaths of Officer Chestnut and Detective Gibson, we can take great pride in the knowledge that the United States Capitol Police were prepared and able to quickly bring the situation under control and prevent the further loss of innocent lives. The heroism and self-sacrifice displayed by these two brave officers and the entire US Capitol Police force exemplified the best of Federal law enforcement, and helped to raise the level of awareness of those in Washington as to the hazards associated with Federal law enforcement work.

Mr. Chairman, I am not here to argue that security guards, whether employees of the government or of a private contractor, be afforded the same status as law enforcement officers; the two positions are hardly worthy of comparison. But I do believe that there are certain responsibilities and authorities that would distinguish a police officer from a security guard to every person in this room. Why is it that this is not reflected in the laws governing law enforcement retirement? I cannot answer that question, but I do know that

the guidelines and criteria crafted by the Office of Personnel Management regarding the status of Federal police officers are outdated and in extreme need of repair.

Under Title 5, US Code, a law enforcement officer is defined as an employee whose duties are primarily the investigation, apprehension or detention of individuals suspected or convicted of violating the laws of the United States. Not included under this definition are the so-called "secondary" law enforcement officers, employees whose duties involve "maintaining law and order, protecting life and property, [and] guarding against or inspecting for violations of law;" in essence, performing patrol and response activities and acting as a deterrent to crime. However, the Merit Systems Protection Board (MSPB) ruled in *Ferrier v. OPM* that the "fact that a police officer spends the majority of his time patrolling does not necessarily disqualify him from receiving LEO retirement credit." In denying OPM's petition for reconsideration of this case, the Board interpreted OPM's regulations governing LEO retirement as "excluding those employees whose primary duties involve maintaining law and order and/or protecting life and property, but do not also involve the investigation, apprehension and/or detention of criminals and/or suspected criminals."

The majority of the employees who fall into this category are GS-083 Executive branch uniformed Federal police officers; and according to OPM, in 1997, there were over 6,000 of these officers alone who were not considered law enforcement officers under the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS). These officers attend the Federal Law Enforcement Training Center (FLETC), have the authority to carry firearms, make arrests and advise suspects of their *Miranda* rights, and conduct preliminary criminal investigations. Most are on call 24

hours a day, have frequent contact with criminal suspects, and are required to maintain a minimum level of physical fitness. In addition, these same individuals are asked to engage in instantaneous life and death decision-making and make decisions on the use of force. This does not even begin to take into account the law enforcement duties performed by other officers, such as Customs Inspectors and Immigration Inspectors, who have been consistently denied law enforcement retirement coverage.

The duties that I have just described would apply to over 99 percent of all police officers nationwide and would be more than enough evidence to provide these officers with law enforcement retirement. The only clear difference between the duties of Federal and State or local officers is that Federal law enforcement officers, as defined, have the added responsibility of conducting criminal investigations.

OPM found similar results in 1993. In a report to Congress entitled *A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers*, mandated by the Federal Employees Pay Comparability Act of 1990 (P.L. 101-509), OPM found that “[i]t is undeniable that uniformed police work is considered a core law enforcement function outside of the Federal Government.” In light of this revelation, OPM argued in this report that the definition of law enforcement officer for the purposes of a new job evaluation and pay system needed to be changed to include “all executive branch employees who meet the retirement definitions . . . plus all positions properly classified as police officers that are not now covered. This definition would provide greater consistency to the definition of ‘law enforcement officer’ since it would encompass only those positions in which the primary knowledge, skills, abilities, and duties are law enforcement.” Adding to the confusion surrounding the issue of law

enforcement status can be found in a recent email message received by one of our members from OPM in response to questions regarding VA Police Officers' lack of law enforcement status: "While a GS-083 police officer would likely be viewed as a 'law enforcement officer' if the term were used in its commonly held, popular sense, most of these officers do not meet the technical definition in the retirement laws."

The Merit Systems Protection Board has also been extremely active in deciding on a case by case basis the issue of law enforcement status and retirement. Under current law, the recourse for a Federal officer who believes that he or she has been improperly denied law enforcement status is to appeal their agency's or OPM's decision to the MSPB. In an April 1999 decision in the case of *Bremby v. Navy*, the MSPB ruled that GS-083 police officers and supervisory police officers stationed at the Norfolk Navy Base in Norfolk, VA, were entitled to CSRS law enforcement retirement coverage based on the duties they perform and as described in their official Position Description (PD). The Board ruled that these officers were entitled to coverage because they have full arrest authority and perform much of the same duties as city police officers with the addition of investigative responsibilities, the investigation of crimes has always been identified in their Position Description as a primary duty, and in this case, their base is immediately adjacent to a high crime area and is open to the public. The Board went on to note that a law enforcement officer covered by CSRS commonly has frequent direct contact with criminal suspects; is authorized to carry a firearm; interrogates witnesses and suspects, giving *Miranda* warnings when appropriate; works for long periods without a break; is on call 24 hours a day; and is required to maintain a minimum level of physical fitness. The existence or degree of physical hazard associated with a position is also a factor in the

determination of law enforcement officer status, however, the Board determined that no single factor mentioned above is essential or dispositive to the law enforcement officer retirement credit determination.

Therefore, we believe that Congressman Filner's legislation to expand law enforcement retirement coverage to additional investigative and uniformed police personnel begins to address the inequitable treatment of public safety officers under the Federal retirement laws. Some have expressed concerns that this legislation will have a detrimental impact on workforce management and personnel costs for the affected Federal agencies. I will let the agencies address these topics and instead focus on what our organization sees as the potential positive affects of H.R. 1228.

First, I do not believe that one can put a price tag on enhanced public safety, increased officer morale, and the improved officer retention rate that would inevitably be achieved through enactment of this legislation. The Bureau of Engraving and Printing Police, included in the provisions of H.R. 1228, lost approximately fifteen officers between January 1998 and January 1999. A majority of these men and women did not leave Federal law enforcement, but remained with BEP little more than a year before transferring to law enforcement retirement-covered positions with the US Capitol Police and the US Park Police. The Bureau thus paid a substantial sum of money to train, compensate, and equip these officers for their short term of service, and the USCP and USPP received a crop of fully trained and qualified law enforcement officers without spending an equal amount for new officer recruits.

Second, Congress and the agencies themselves must decide whether, in the long run, it is more cost effective to offer Federal police officers a slightly enhanced

retirement benefit or defend their determinations on a case by case basis before the MSPB, and possibly a Court of Appeals. The decision in *Bembry v. Navy* which I referenced earlier is merely one of literally hundreds of current cases brought or being considered by Federal uniformed police officers who have been wrongfully denied LEO status and retirement coverage.

Finally, Rep. Filner's legislation takes a step in the right direction towards finally resolving the question of whether or not a Federal employee with full police authority is a law enforcement officer for retirement purposes. As we have seen, under the current interpretation of the law, a position with law enforcement authority does not necessarily ensure law enforcement retirement. No other Federal civilian employee is required by his job to place his life on the line each and every day to protect their fellow citizens and coworkers; and their retirement benefits should adequately reflect the unique nature of the work performed by public safety personnel.

The second issue that has been addressed today regards a mandatory retirement and separation age for Federal law enforcement officers. Under 5 USC 8425, a law enforcement officer is separated from service after they reach the age of 57 or complete 20 years of service if they are then over that age. One of the concerns of Federal agencies is that the mandatory age is too low and that, as the workforce ages, they will lose valuable officers with no immediate way to fill their position. However, FERS, which covers most Federal law enforcement officers today, provides that an agency head has the right to exempt an employee from the mandatory separation and retirement age until that officer reaches the age of sixty. All that is required is written notice to and acceptance by the officer in question. Thus an agency which maintains a good working

relationship with the officers under their command should have no trouble retaining qualified officers until age sixty should the concern for public safety or understaffing in these positions so require.

An early mandatory separation age is vital to ensuring the continuity of the professionalism and quality of service for any uniformed police force. The 104th Congress recognized this fact when it passed a permanent exemption for public safety employers from the *Age Discrimination in Employment Act* as part of the omnibus spending bill of 1996. This law allowed State and local governments to again set and enforce maximum hiring ages for new employees and a mandatory retirement age without facing individual lawsuits alleging age discrimination. The Fraternal Order of Police strongly supported the enactment of this law to ensure that public safety personnel are able to meet the physical demands of their profession. I believe Congress also recognized this concern earlier when it included a mandatory separation age into the CSRS and FERS laws. Police and fire departments must always be prepared to meet the life and death challenges common to their work, and older officers gradually lose job essential skills, placing their lives, as well as those of their fellow employees and the general public, at risk. That is why having a young and vigorous workforce is essential to ensuring that when the need arises, every officer in a given department is ready and capable of subduing an individual resisting arrest or chasing a fleeing subject.

The MSPB reached a similar conclusion in *Hobbs v. OPM* (1993). The Board ruled that “the legislative intent behind the preferential retirement provisions for Firefighters and Law Enforcement Officers was to provide for their early retirement based on a determination that these positions should be ‘composed, insofar as possible, of

young men and women physically capable of meeting the vigorous demands of the occupation which are far more taxing than most in the Federal Service.”

Not only is an appreciation of the unique physical demands and abilities required in law enforcement work essential to understanding the need for an early mandatory separation age for public safety officers; but the health and physical risks associated with their particular occupation must also be taken into account. The names of over 800 Federal law enforcement officers killed in the line of duty adorn the wall at the National Law Enforcement Officers Memorial right here in our nation’s capital; and it is a testament to the dangers faced by these officers on a daily basis. The unseen risks, such as the prevalence of on the job injury or disability, constant stress, and the increased risk of heart and hypertension disorders, are all factors that need to be considered when looking at the necessity of a mandatory separation age for police officers and firefighters.

Mr. Chairman, as I stated earlier, the issue of law enforcement status and retirement is one that must be examined in terms of fairness and professionalism. With the increased hazards and dangers associated with modern day police work, and the rising threat to Federal employees and facilities, now is the time to decide what type of law enforcement service we expect from Federal agencies. If the intention is to save the maximum amount of money possible, then the Congress should move with all deliberate speed to outsource Federal law enforcement work to the lowest private bidder and hope that there are no more Timothy McVeigh’s or Russell Weston’s in the world today. Or we can follow the right track and do what is needed to ensure that the Federal government is protected by the most highly trained, qualified and professional cadre of law enforcement officers available. A simple way to move toward accomplishing this

latter goal is by simply granting law enforcement status and retirement to the Federal police officers who place their lives on the line every day. This will no doubt have a positive impact on agency recruitment and retention and ensure the unending professionalism of each Federal department. But when you make your final determination on this issue, Mr. Chairman, I would ask that this committee place more weight on the merits of expanding law enforcement status and retirement to uniformed police officers rather than the costs to the affected agencies. I believe the cost of doing otherwise would be greater still.

Thank you Mr. Chairman; I will be pleased to answer any questions you may have at this time.

Mr. SCARBOROUGH. We will now see if Mr. Ferrara is so persuaded to set aside the cost issue.

Mr. FERRARA. Thank you, Mr. Chairman. Let me focus on a couple of points. Ms. Kelley focused on the point that the people she would like to expand the benefits to are, "subject to the same perils as other law enforcement officers."

Well, in panel 2, the agencies themselves testified that is not the case. They said that in each case the people they wanted to expand the benefits to do not have the same front line law enforcement responsibilities that these benefits were designed for. They don't carry weapons and don't apprehend criminals, et cetera. The agency said they are not subject to the same perils as other law enforcement officers. And that completely displaces the parity issue. It is not the same job and therefore it is not the same—the same benefits should not apply.

Despite all of the issues raised by Ms. Kelley, the agencies also testified there is not an employment problem. They don't have problems filling the positions or retaining workers. And if there is not an employment problem, then from the perspective of taxpayers, it would be totally illegitimate to expand the pay and benefits further. We should not pay more than necessary to recruit the qualified personnel to fulfill these positions, and the agencies say with the current pay and benefits, they are achieving that goal and therefore it would be a waste of taxpayer funds to throw additional benefits on top of what is already being spent.

So it is not an issue, as Mr. Gallegos says, do we want professional law enforcement agents or not. We already have a professional law enforcement force that is performing the job quite well at the current pay and benefits. He argued that we should set aside cost and focus on public safety. We are already achieving the public safety goals with the current pay and benefits. So it would be a waste of hard-earned taxpayer dollars to throw additional pay and benefits on top of what we are already paying that are achieving the goal.

Another point I would like to raise is let's add into this discussion the fact that there is life after government employment. People who retire after 20 years, they go to work in the private sector. A perfect example is an assistant U.S. attorney. A U.S. attorney works for 20 years and retires from his Federal employment. He would be getting Federal employee retirement, and he goes to work for a private law firm based on all of the experience he had for 20 years as assistant U.S. attorney, making much more than he ever did as assistant U.S. attorney, and then he is getting taxpayer-funded retirement benefits on top of that pay? I would submit that falls into the category of waste, fraud and abuse that we have talked about as the kind of spending that should be eliminated.

The same is true of other Federal employees. They gain expertise as Customs Inspectors and Revenue Officers and they go out in the private sector and utilize that expertise to earn even more. And the idea that the taxpayer should be paying benefits to these people who are still working and still earning good pay in the private sector is completely unjustifiable.

So we would argue that—we strongly oppose this legislation and we strongly oppose expanding these benefits further. In fact, we

suggest that in any study being conducted, we need to study the issue of what people do after they leave Federal employment in these occupations. Do they leave Federal employment after 20 years and find that they cannot work? Or do they leave Federal employment after 20 years and then find that they are gaining better jobs in the private sector? I would submit that study would show again that this kind of pay is unnecessary.

I also want to bring up and focus on the point that these workers already have generous benefits in retirement. It is not like these workers have demanding jobs and are left bereft in retirement. We already have a more than adequate retirement system for these workers.

My final point is that the Federal Treasury Employees Union in their written testimony suggested that we should forego the tax cut that the Congress recently passed and instead use the money for higher pay and benefits for the employees they represent.

I would submit that this proposed legislation is in fact a good argument for a tax cut. It shows if we don't cut taxes, a long line of special interests will come before Congress with plenty of plans to spend the money. It shows the urgency to get this money out of Washington and get it back to the taxpayers where it belongs before it is spent on wasteful special interest spending. Thank you very much.

Mr. SCARBOROUGH. Thank you for your subtle remarks, Mr. Ferrara.

Mr. FERRARA. That is my job.

Mr. SCARBOROUGH. That is your job, and you are doing it well. [The prepared statement of Mr. Ferrara follows:]

Ferrara

Testimony of
Peter J. Ferrara
General Counsel and Chief Economist
Americans for Tax Reform
before the
Committee on Government Reform
U.S. House of Representatives
Washington, DC
September 9, 1999

Americans for Tax Reform opposes expanding the highly generous law enforcement retirement benefits as proposed in H.R. 583 and H.R. 1228. These benefits are currently limited to employees involved in physically dangerous or highly demanding activities requiring young and vigorous employees, such as apprehending violent criminals, fighting fires, or carrying nuclear materials. That is why the benefits provide for early retirement after 20 years of service.

The proposed legislation would expand these benefits to immigration and customs officers and others who do not face such physically threatening or demanding work. Employees in these occupations should not expect to retire after 20 years of work at taxpayer expense. Indeed, assistant United States attorneys, who would also be covered by some of the proposals, enjoy a professional expertise that can be pursued in the public or private sectors well past the normal retirement age for others.

Consequently, we view these proposals as an unjustifiable burden on taxpayers. Taxpayers expect their elected officials to spend their hard earned money prudently and only when necessary. These proposals to expand highly generous retirement benefits do not meet that test. Taxpayers today are highly organized and watchful of how public funds are spent, and Congressional representatives who waste taxpayer funds frivolously on special interest giveaways can expect to be held accountable.

I served as a Senior Staff Member in the White House Office of Policy Development under President Reagan and as Associate Deputy Attorney General of the United States under President Bush. I was an Associate Professor of Law at the George Mason University School of Law from 1987-1991, and I have practiced law in Washington and New York. I am a graduate of Harvard College and Harvard Law School.

I know of no federal grant, contract, or subcontract received by Americans for Tax Reform or myself currently or during the previous two fiscal years.

Mr. SCARBOROUGH. Ms. Kelley, let me ask you to touch on a couple of points, and that is the testimony of the agencies of the employees that you represent so well.

What do you say to those agencies whose main argument is that they are not having problems in recruitment, they are not having any problems retaining employees that you represent. What is your counter to that?

Ms. KELLEY. One, as far as the U.S. Customs Service goes, they currently have a work group looking at recruitment and retention, I believe, because they recognize that there is a problem. Perhaps it is not as large a problem today as it may be tomorrow, but one of the reasons that they are looking at this is because in the last 5 years there have been over 3,000 Customs Inspectors hired. And what we are hearing anecdotally is that the new Customs Inspectors that are being hired at the younger ages are not staying with the Customs Service. They are going to State and local law enforcement agencies where the 20-year retirement is available.

While there is no study, I would encourage that the Customs Service start tracking this issue very closely.

I would just make another comment. I unfortunately missed the testimony of the second panel, but I would be shocked to hear that the Customs Service said that the Customs Inspectors and CEOs do not carry weapons. Every one of them does.

Mr. SCARBOROUGH. I want to underline a point that you made earlier about IRS agents. I have heard from many, many IRS agents that even work in offices, that don't go out in the field, that they certainly do fear for their lives at times. It is obviously something that again we need to address and some issue. I guess the main problem today—and I certainly understand, Mr. Gallegos, your statement about let's worry about security first and cost later, but regrettably this year as we move toward adjournment, we are obviously up against some tremendous pressures regarding costs.

If the costs associated with these benefits were imposed on the agencies—they have testified that other functions would have to be cut back and perhaps fewer people would be hired in the favored employment categories or the measures could result in RIFs from the current work force levels—what effects do you anticipate for the increase in benefits that you have supported in your testimony today regarding RIFs or what other areas of the agencies that you represent would have to be slashed, Mr. Gallegos?

Mr. GALLEGOS. What I have seen in my experience in my own agency in New Mexico when we had a similar situation, they red-circled different employees so that they were not put into RIF status—and that could easily be done with this type of legislation—the people on the cusp, so to speak, who are in the position of having to leave or whatever status they are in, that there could be special provisions to account for those until through attrition and normal retirements they can catch up.

I think it is a challenge, and quite frankly my personal opinion on the position of Congress and with the moneys is that you have painted yourself into a corner by the ceiling levels that you have set. I don't think that they are realistic, but I understand your position on that and the position of Congress, and I think that is a

separate issue. But I do think that it is going to cause a ripple effect on down the line.

The last point I want to make is what was testified regarding attrition and the ability to hire people. It all depends who you talk to. I talk to the officers, front line supervisors, commanders, I talk to SACs of different agencies. You talk to them and you talk to the head of Customs or the head of DEA or the Bureau of Engraving Police, you get a totally different picture. And they are in fact—what they tell me is that they are having a hard time hiring people and maintaining the manpower levels that are required. It all depends on who you talk to. If you talk to the bureaucrats, they will tell you one thing, and if you talk to the front line people, they will tell you the real story.

Ms. KELLEY. We realize, Mr. Chairman, there is a cost attached to this. We do have some questions about the methodologies used by OPM to date and by those who testified in the second panel. We would join with Congressman Filner and offer to work with the subcommittee on what the appropriate costs would be and how they could be funded, because I would like to clarify that my testimony does not suggest that all of the tax cuts be foregone and used for this issue.

What we did suggest was that a very small piece of it would be a wise investment for the country and what we would hope is that while these issues are surely connected, that first the decision would be made based on the merits of whether these men and women should have law enforcement status, and then to jointly work together to find the means within the budget and without causing RIFs to make that happen. So we see that as two pieces, but we worry that the decision is being made solely on money and that the merit issue is not being fully discussed and decided and that is what we would ask.

Mr. SCARBOROUGH. Mr. Ferrara, any comments on this issue?

Mr. FERRARA. Well, the bottom line is that there is a market test here for government employment: Can you attract the workers or not? And if—as an advocate of taxpayers, I don't want to see the government pay any more in pay and benefits than necessary to fill the jobs. I don't want to see any sort of employment crisis be manufactured to justify these additional benefits. Once it is clear that you can attract these workers, there is no justification for higher spending.

A point that I would like to add is that the best way to address the problem that officers face is tax reform, and maybe Congress ought to get on with that, different types of tax codes which would not require the same level of enforcement burden that this one does.

Mr. SCARBOROUGH. God bless you, man. A lot more people talked like you in 1994. He is a blast from the past, ain't he?

Mr. FERRARA. And the future.

Mr. SCARBOROUGH. I had a lot of friends who spoke like you a few years ago. I don't know where they went.

Mr. FERRARA. They work for us now.

Mr. SCARBOROUGH. After they got defeated in 1996 and 1998.

Mr. FERRARA. Let me write that down.

Mr. SCARBOROUGH. A couple of months ago, we tried to do some things regarding Thrift Savings Accounts, and the total cost was something like \$35 million spread out over 5 years, very small compared to the one-time cost of possibly \$600 million or over \$1 billion.

The argument then by the unions was that could not be allowed because it would cause massive RIFs in the system.

What I would like you to help square up for me today is how employees unions could take that stance a couple of months ago, saying if we cut \$35 million, it is going to cause all of these RIFs. And yet we have costs that may run over \$1 billion, and the argument now is that possibly no RIFs will be caused. Is it possible to square those two arguments up?

Ms. KELLEY. Mr. Chairman, I think that with work and with time, that it is possible. I was not here a few months ago to address the specific issue that you are referring to, but I think there are options available. There are surely ways to look at if it were to be determined that less employees were needed, not just from a cost standpoint, attrition, a long-term plan rather than an immediate reaction is one way to accomplish that.

Another is to look at a proposal that law enforcement status and the costs associated with it—because as we all know you can do numbers a variety of ways and come up with a variety of conclusions. There are ways to phase in the cost. The current bill does suggest retroactivity and it raises the whole question of the unfunded liability. We would like to work with OPM on the numbers, and the subcommittee, and determine if there is a 5- or 10-year plan to look at this.

Mr. SCARBOROUGH. Let me tell you, just like I told the first panel and like I said earlier, we will be glad to sit down and talk about what options are possible and look forward to working with all of you as we move forward.

Let's talk about the question, the issue that Mr. Ferrara brought up in his last statement regarding whether this crisis regarding hiring and retaining and retention is actual or manufactured. Again your agencies have said that it is not an actual crisis, and we talked about this before. You talked about people on the front line telling you that there were problems with retention. Do you have any evidence, any studies that you can bring to the committee in the next 2 to 3 weeks that we can make as part of the record that would show that you are having problems recruiting or retaining people in any of these areas?

Mr. GALLEGOS. We can provide you that information from the FOP.

Again, the real question comes up as to how you set up a sensible level of staffing, and how you are going to keep that up and how you plan for the future. That is really what any law enforcement agency does. Through proper planning, which I don't think that they have done at the Federal level, I think you can address that.

The other thing, and I agree, I think you can hire anybody. I think you can go out on the street and hire a bunch of people, and if you just want to fill the slots, you get one quality of people. However, if you want to have highly professional people like we have

in the Capitol Police, you have to go after the best people available to fill those positions.

State and local agencies are having the same problem. A lot of local agencies are now requiring college degrees. I know that in my agency, that is required. We are having a hard time. We are having to compete with industry to bring in qualified people, and I think that is what really the Federal Government has to do. They have got to come into focus on how are they going to attract the best people, and you do it just like the private sector does. They have attractive packages.

You are providing a quality service now. I think the uniformed officers do that now. The FBI, DEA, everybody else does. I think that we can continue that. But we have got to look at really what is facing us ahead.

Mr. SCARBOROUGH. So is your view today, as you testify before this committee, that based on the current facts that we have, that we do have qualified law enforcement officers across the broad spectrum of the government, or are you concerned that the quality is slipping now because you don't think that the benefits package is attractive enough?

Mr. GALLEGOS. I have talked to high-ranking officials in various agencies who believe that; that it is starting to slip. I think when you are competing against the IBMs and the Intels and everybody else, I think we have to focus on how are you going to keep the people you have and attract new people. It is not a matter of just filling the slots with people who are security guards and can stand at a post and let people in or out or whatever. These are qualified law enforcement officers and they have to be viewed as such. When we view them seriously like that, I think it takes on a different tone.

And it was interesting to hear Mr. Ferrara talk about "they are here" and "they can stay." We don't have to worry about retirements. The Emancipation Proclamation took care of that. We don't have slave labor in the Federal work force either, and you do have to compensate them and they do have a life after the Federal system and they should have those privileges to go on to other things like anybody does.

Ms. KELLEY. Mr. Chairman, you had asked if there were any studies that the agencies have. The U.S. Customs Service is currently in the process of putting a request together that would request special hiring authority for just this reason, because they believe that they are running up against a lot of problems of identifying—not identifying, but recruiting the best and the brightest into the inspector and the CEO ranks. Once that report is finished and available, we will be glad to provide it to the subcommittee.

Mr. SCARBOROUGH. Let me say I have some people suggest that another option be put on the table. Part of the concern underlying this is what some people call the golden handcuffs. That is, people stay in their positions long after they have stopped advancing in their careers because they are attached to the retirement benefits. These benefits are not portable, and they hate to lose out on benefits earned because they didn't invest or they are just a few years away from eligibility. Rather than continuing to expand the golden handcuffs, these people suggest that we begin to migrate retire-

ment toward a defined contribution framework. That is, move the Federal retirement benefit into an investment account that people could take with them wherever they went, and change careers according to their interests rather than according to the constraints of their retirement plans. Have you heard this suggestion and how would you react to such a proposal?

Mr. FERRARA. Yes, I think that is a good alternative. Instead of saying we will give you retirement benefits so you can leave after 20 years, and we will give you this taxpayer subsidy, what you could do is make the retirement benefits more portable so that someone who wanted to leave after 20 years, instead of feeling that they were locked into Federal employment, would have a defined contribution account. In other words, instead of the Federal Government over years would make contributions to an account that would be invested and the worker—whenever the worker left, he or she would take that account with them. So after 20 years, people would be free to take that account with them, and they would not be locked into Federal employment when they might have better private opportunities. The taxpayers would not have to pay any more, but the workers could take that account and have those attractive benefits.

I think that is a more appealing alternative. We have been advocates of this for some time. We want to see people have more control over their retirement resources. We have studies which show that people can get at least as good benefits, if not better, in terms of the final retirement benefit through these types of plans, and they are often more fair because you don't have this redistribution from some workers to others. Each worker gets the money and they have the chance to reinvest. They can get good returns in the private market. We think that is a better way of approaching this issue. Instead of saying after 20 years we will give you this benefit and you can get out, say at any point you can take the money and go to the best employment opportunity, best employment opportunity you have.

I also want to state for the record in response to Mr. Gallegos, I think it is clear that Federal employees are compensated and they therefore are not slave labor and they do have attractive retirement benefits already.

Mr. SCARBOROUGH. What do you think about the portability concept?

Mr. GALLEGOS. Mr. Chairman, when you have portability, you have to stay basically within the same class. My experience has been if you have—let's say in the State of New Mexico, if you are a police officer in the city of Albuquerque for 10 years and move to Las Cruces, you carry that time and service and those contributions with you over to the other agency. Even if you become a public employee as a city planner or whatever other entity that you enter in the public sector, you carry those benefits and those contributions with you and you can apply that toward it. So there is some portability.

I guess the question is if you are working for the Federal Government, then you decide to go to work at Intel doing something else, I think that is what Mr. Ferrara is speaking to. I think you would have a lot of demands on the funding issue and the ability for re-

irement funds to be solvent over the long term. I think you would have a tremendous drain on that. If they stay within the same class, I would argue that is probably true.

If you are a Customs Inspector and you go to be an FBI officer, that should be portable and counted toward that, and I think in most cases it is.

Ms. KELLEY. I was a Federal employee for 15 years with the IRS under the CRS system. As I understand it, FERS addressed this golden handcuffs issue when it was created and the Thrift Savings Plan makes the Federal retirement system quite portable. So the retirement system does not need change, that is not the question that surrounds this law enforcement status in our opinion.

Mr. FERRARA. Can I address those two questions briefly?

Mr. SCARBOROUGH. Sure.

Mr. FERRARA. Some other State and local jurisdictions are starting to move toward these types of plans. In the private sector you have had a vast switch away from defined benefit plans to defined contribution plans so you can design this, it has been shown, so that you do not endanger the solvency of current retirement funds, as Mr. Gallegos suggests.

Moreover, unions that represent public employees, the notion of portability to go to nonpublic employment is anathema. So as long as you have portability within government employment, there is no problem. But for the worker, there is a problem because they may want to work in the private sector, outside the government, and there the portability issue has not been addressed. Particularly workers who work less than 20 years lose out on the retirement benefits and, again, a lot of studies show that. They are greatly disadvantaged by the traditional type of defined benefit plans like you have at the Federal level and at most State and local governments.

So if you go to a defined contribution plan, those workers have the same opportunity to benefit as longer-term workers, and so it is more fair and in many cases you can expect the benefits to be better over the long run for the longer-term worker with standard investment performance.

Mr. GALLEGOS. But in most public sector retirement programs, you pull your contribution out if you leave after 10 years and invest it into another program.

Mr. FERRARA. But not the employer's contribution. That is the problem. That is where you lose.

Mr. SCARBOROUGH. To be continued. Well, I appreciate your testimony. It certainly has been helpful and again I pledge that this subcommittee and the committee overall will be glad to work with you all, and the Members who put these bills forward, to see what we can do.

We will keep the record open for the next 45 days so any additional comments that you all may wish to add or any proposals for true income tax reform that you may want to put in that you think may make an IRS agent's life easier, feel free to put that in the record. Thank you again, and we are adjourned.

[Whereupon, at 12:55 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL
OF THE
American Federation of Government Employees

Affiliated with AFL-CIO

In Reply Please Refer To:

STATEMENT OF
CHARLES J. MURPHY
PRESIDENT
NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
CIVIL SERVICE SUBCOMMITTEE
ON
H. R. 1228
SEPTEMBER 9, 1999

TO DO FOR ALL THAT WHICH NONE CAN DO FOR ONESELF

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Mr. Chairman and Members of the Subcommittee:

On behalf of the members of the American Federation of Government Employees, and most particularly on behalf of my colleagues in the Inspections Branch of the Immigration and Naturalization Service (I&NS) I would like to thank you for scheduling this hearing. I am pleased to be able to testify on behalf of H.R. 1228, a bill to amend Title 5 of the United States Code, to include Inspectors of the I&NS, Inspectors and Canine Enforcement Officers of the Customs Service, and IRS Revenue Agents within the immediate retirement provisions applicable to employees engaged in federal law enforcement and other hazardous occupations.

I would also like to thank Representative Bob Filner of California, for his sponsorship of HR 1228.

Briefly, H.R. 1228 expands the provisions of Section 8336(c), Title 5, U. S. Code to cover Immigration and Customs Inspectors, Customs Canine Enforcement Officers and IRS Revenue Agents. The hazardous duty retirement provisions of the statute provide that officers working in certain occupations may retire at age 50 with twenty years of service under the Civil Service Retirement System, or at any age after 25 years of service if they are covered under the Federal Employee Retirement System. The early retirement provisions are intended to promote the maintenance of a young and vigorous workforce in the covered occupations. Employees covered under the statute contribute toward their pensions at rates higher than do non law enforcement employees. The law also provides for mandatory retirement at age 57 for employees who have completed twenty years of covered law enforcement service.

As the Subcommittee knows, Congress did not enact Public Law 93-350, providing for Hazardous Duty retirement, to reward federal employees who are exposed to hardship or danger on the job. Rather, these provisions were intended to serve as a personnel tool; to insure the ability of certain agencies within government to marshal a workforce physically capable of fulfilling the more dangerous and rigorous missions charged to these agencies.

Given this focus, the basic question regarding HR 1228 is whether the duties of the employees covered in this bill should mandate their coverage under this personnel policy? The answer to that question is a resounding yes.

During the years since 6(c) retirement first became law, the duties of Immigration and Customs Inspectors have changed considerably. The increased flow of illegal aliens and drugs into this country have created two of the greatest challenges faced by the country, and the Congress.

While we have recognized the need to address these vital questions, we continue to ignore the employees who deal with them on our behalf. In prior years and in earlier hearings before other committees earlier Administrations indicated that the duties of these employees' did not merit coverage. The situation has changed. The duties of these employees have become more hazardous and more rigorous, and as their duties have become more complex and more important they have become more dangerous. We ask these employees to serve on the front line in our wars against illegal immigration and the smuggling of drugs and our treatment of the employees should reflect what we ask of them. It does not.

Exclusion of these positions from early retirement creates a situation that is unjust and unwise. While I cannot speak in detail to the range of duties in the Revenue Agent's position, I can discuss those of the Immigration and Customs Inspectors. The I&NS and Custom share the inspection responsibilities at each port of entry. In many cities, but not all, Inspectors from each agency are cross designated to perform the duties of both positions. Secondary, or in depth inspections, for each agency would generally be performed by personnel from each. In practice the personnel of both agencies rely heavily on each other.

In performing their duties these Inspectors rely on their judgement, personal observations, questioning techniques, and electronic data bases. The information systems include data on individuals, stolen vehicles, merchandise, machinery, firearms and so forth. Every positive inquiry of the data bases must be investigated to determine if a seizure, an arrest or detention or further investigative activities are required. Their everyday activities demand a readiness to arrest wanted felons, smugglers, or aliens seeking admission to the U.S. illegally. These individuals may fall under the purview of Federal or State law. Both INS and Customs Inspectors are specifically given the power to search and arrest.

Many Inspectors are required, depending on their duty station, to carry weapons. All are required to qualify with their weapons quarterly in order to retain their positions. They work long hours, often alone on the front line of the war against the entry of illegal aliens, and drugs. In many states the Inspectors are designated Peace Officers by legislation. They are relied upon by local law enforcement agencies as members of the law enforcement community. Only their employer fails to treat them as such.

The Inspector's job is much like that of the Border Patrol Agent and Special Agents of both agencies. Like their colleagues Inspectors must recognize violations of the law. They must apprehend violators of the Immigration and narcotics and hundreds of other laws. They must detain those arrested and make seizures of property, vehicles, and other contraband. Their job entails investigative inquiry and differs from that of their brother and sister officers partly in that these officers are sitting ducks, and work in a fixed location. These officers must act on an instantaneous basis and do not have the advantage

of many of their other law enforcement colleagues who can choose when and where to arrest their quarry.

The fact of the matter is that the average Immigration or Customs Inspector will encounter not only far more people but also far more felony violators and illegal entrants than will many, if not most, of their colleagues. Violence and resistance to arrest are a constant threat to Inspectors of both agencies. Inspectors have been shot at, assaulted, and killed in the line of duty.

An OPM study conducted years ago summarized the Immigration and Customs Inspectors duties in the following fashion: "Inspectors perform their duties undaunted by the problems and dangers involved. Their hours of work far exceed the normal 40-hour workweek. And during those few hours they have off for rest and recreation, they are often called back to work, even though they may have just completed 12 to 16 hour shifts and are due back to work in less than 8 hours. At times, the work becomes monotonous and tiresome. However the Inspector cannot relax but must be constantly alert as to what might happen."

An Immigration Inspector, in the course of a career, reads the Miranda warning hundreds if not thousands of times. On a daily basis, the inspector faces people who have been convicted of the full range of criminal activities. As we have already indicated many of these officers work alone. The Inspector has full responsibility for carrying out the Government's ZERO TOLERANCE PROGRAM against drugs, including the interrogation of suspects and seizure of vehicles. Can we ask our Inspectors to inspect and seize a vehicle, and then to arrest its occupants, and-not extend to these employees the full protection we give to those in similar positions?

Clearly there is a need for a young and vigorous workforce capable of meeting the needs of the Immigration and Customs Inspector positions. Hazardous Duty Retirement would guarantee that older personnel who, because of the stringent physical and mental stresses in these positions, can no longer perform at peak efficiency, will be replaced.

An additional reason to cover Inspector personnel under the 6(c) provisions is to increase the willingness of other personnel to accept positions in this field. Many enforcement personnel in other I&NS branches decline to accept positions in the Inspections Program because of the lack of 6(c) coverage. While other branches of the I&NS are the beneficiaries of lateral movement across various branches the Inspections program is seldom if ever the beneficiary of such movement. In nearly 26 years of service with I&NS I can cite only a single example of a colleague moving from a covered enforcement position to one in Inspections. The fact of the matter is that many of our best Special Agents are former Inspectors who left their own branch for the grades and retirement benefits available in other areas of the Service.

Coverage of the Immigration and Customs Inspectors under the Hazardous Duty Retirement provisions of current law would help to attract other personnel to these occupations and to induce officers to stay in these critical positions. It would additionally lend renewed vigor to the Branch as a whole through attraction of a younger and more energetic workforce thereby reducing certain of the hazards of the job itself and increasing the effectiveness of the Service.

Are Immigration and Customs Inspectors excluded from 6(c) retirement because their jobs are not hazardous? No. The OPM report I mentioned earlier states "We are aware that there is a hazard inherent in these positions..."

Are these Inspectors excluded from 6(c) coverage because their jobs are not connected with law enforcement activities? No. the same report concluded "Without a doubt the duties of the Customs and Immigration Inspectors have changed in the past few years from the public image of meet and greet to an employee more involved with crime and law enforcement."

These officers are excluded from the current law solely because of the narrow definition of law enforcement officer contained in Section 8336. In closing I would draw to the attention of this committee to just a few statistics on enforcement activity by I&NS Inspectors in 1998 alone. During 1998 I & NS Inspectors arrested over 25,000 criminal aliens. They intercepted 126 terrorists. 42 inspectors were assaulted in the line of duty. They were responsible for the initiation of 23,000 prosecutions. They apprehended 3,900 drug smugglers. They seized over two thousand vehicles and made over 3,100 drug seizures. They prevented the illegal entry of 735,000 inadmissible aliens. They seized nearly 100,000 fraudulent documents. If the men and women who did all these things are not law enforcement officers who is?

In the name of economy the Congress has failed to properly recognize the efforts of these men and women. It is past time, long past time, for Congress to do the right thing. AFGE and the I&NS Council look forward to working with this Subcommittee to remedy this unjust situation.

Thank you for this opportunity to submit this testimony for the record.

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BERNARD SANDERS, VERMONT
 INDEPENDENT

September 3, 1999

TO: Members, Civil Service Subcommittee
 FROM: Joe Scarborough
 Chairman *JSC*
 SUBJECT: Background Paper: Law Enforcement Retirement Benefits: Who Qualifies and Why?

The Civil Service Subcommittee has received numerous bills and correspondence reflecting the desire of additional occupational series to obtain coverage under the so-called "law enforcement retirement" provisions of Title 5. As of September 1, 1999, five bills addressing these issues have been referred to the Subcommittee. These include two bills that would extend enhanced retirement coverage. One bill proposes to extend the benefit to assistant United States attorneys,¹ another includes a broad category of occupational series, chiefly immigration and customs inspectors, Internal Revenue Service revenue officers, and police employed by several different federal agencies.² Additionally, other individuals who are currently covered by these enhanced retirement provisions have pursued legislation that would waive the mandatory retirement provisions associated with this benefit. These bills include a measure to waive the age 57 retirement provision governing U.S. Capitol Police officers,³ a bill that would raise the mandatory retirement age for federal firefighters from 55 to 57,⁴ and a bill that would increase the mandatory retirement age for all covered employees from 57 to 60.⁵ In light of the interest in these proposals, and the differing effects associated with them, the Subcommittee will conduct a hearing to assess the merits of such proposals and to evaluate their potential consequences for federal workforce management and their costs to the government.

- ¹ H.R. 583, introduced by Mr. Davis of Virginia.
- ² H.R. 1228, introduced by Mr. Filner of California.
- ³ H.R. 424, introduced by Mr. Traficant of Ohio.
- ⁴ H.R. 460, introduced by Mr. Gallegly of California.
- ⁵ H.R. 1748, introduced by Mrs. Mink of Hawaii.

Characteristics of the Enhanced Retirement Benefit

As a result of Public Law 80-879, enacted in 1948, federal law enforcement officers, firefighters, and air traffic controllers gained an enhanced retirement benefit "primarily because of the physical and mental stamina required for those jobs."⁶ The benefit was enacted as an amendment to the Civil Service Retirement System provisions of Title 5, and codified as Section 8336(c), or "6(c) coverage," as the benefit is commonly known. The benefit was incorporated into parallel provisions of the Federal Employees Retirement System Act of 1986. Although "federal law enforcement officer" was originally defined in statute to refer to employees whose "duties include the investigation, apprehension, or detention of persons suspected or convicted of offenses against the United States . . .," Congress subsequently expanded the coverage to all employees of the Bureau of Prisons, to federal firefighters in 1972, and, last year, to nuclear materials couriers.

The enhanced retirement benefit carries a higher accrual rate for covered employees, so that employees receive a larger pension for equal years of service than employees covered under the standard retirement provisions. Both CSRS and FERS allow for optional retirement at age 55 with either 30 (CSRS) or at least 10 (FERS) years of service. A CSRS employee who retired at age 55 with 30 years service would earn a defined benefit equal to 56.25 percent of his final average salary, based on his three highest earning years ("high three"). A FERS employee retiring at age 55 with 30 years service would receive a defined benefit equivalent to 30 percent of his high three. Analyses of the total compensation package available to federal employees conducted by both the Congressional Budget Office and the General Accounting Office have indicated that federal annuities are generous employment benefits.⁷ Employees covered by the "law enforcement" retirement benefit are eligible to retire as early as age 50, with twenty years service, at which point CSRS-covered employees would have accumulated a retirement benefit equivalent to 50 percent of their high three, and FERS employees would have accumulated a defined benefit equivalent to 34 percent of their high three. Additionally, FERS beneficiaries would receive transition payments equivalent to their earned Social Security benefit until they reach 62.

The accelerated accrual rate is based on an assumption that employees need to accumulate their retirement benefit earlier because of the physically and mentally stressful aspects of the work. Thus, employees covered by this benefit face mandatory retirement ages. For firefighters, retirement is mandatory at age 55, for air traffic controllers at age 56, and for federal law enforcement personnel at age 57, or as soon after reaching that age as one completes the requisite 20 years of service. Accordingly, in order to complete the twenty years of service

⁶ This description of the retirement benefit draws heavily upon Carolyn L. Merck, "Retirement for Federal Workers in Public Safety Occupations," *Congressional Research Service Memorandum*, May 18, 1994.

⁷ See, for example, "Comparing Federal Salaries with Those in the Private Sector," Congressional Budget Office (July 1997), and *FEDERAL PENSIONS: Relationship Between Retiree Pensions and Final Salaries*, (GAO/GGD-97-156) (August, 1997).

before the mandatory retirement age, agencies employing people in covered positions do not hire into those fields after the applicant has reached 35 to 37 years of age.

Regular federal annuities are designed to provide a higher replacement rate of the employee's preretirement salary with increasing years of service. For example, after 30 years, a CSRS annuitant would get a pension equal to 56.25 percent of final average salary, where an employee who accrued 20 years of service in a covered position would have a replacement rate of only 50 percent. However, the actuarial normal cost to the government of providing that benefit for the enhanced retirement is significantly greater. Where the full normal cost of a standard CSRS benefit is 24.2 percent of payroll, OPM has informed the Subcommittee that the dynamic normal cost of the enhanced annuity is 40 percent of final average salary. With employees' contributions set at 7 percent of pay,⁸ the regular federal employee pays 28.9 percent of the costs of a CSRS annuity through payroll deductions. Employees retiring under the CSRS enhanced benefit contribute 7.5 percent of pay, but even at this higher rate their payroll deductions pay for only 18.8 percent of actuarial cost of their annuities.

Under FERS, agencies bear an even greater portion of the cost of these retirement benefits. FERS employees have only 0.8 percent of their pay withheld to pay for the defined benefit component of FERS,⁹ and agencies must pay the remaining 10.8 percent of payroll to fund the 11.5 percent full normal cost of the FERS annuity. For regular FERS annuitants, the employees' deductions pay slightly less than 10.0 percent of the normal cost of their annuities. FERS employees qualifying for the enhanced retirement option now have 1.3 percent of their earnings deducted to cover the benefit, but the full normal cost of this benefit is 24.6 percent according to OPM. Because of the full normal cost funding required under FERS, agencies would have to pay 23.05 percent of covered employees' salaries to provide the enhanced benefit. This is nearly 95 percent of the actuarial cost of the benefit.

These data indicate that, since the enactment of FERS, the enhanced retirement benefit has become economically more attractive because the replacement rates are better than the replacement rates for regular optional retirement benefit, eligibility for an annuity is earned in a shorter period than eligibility for a regular annuity, and the employee bears a smaller portion of the dynamic normal cost of the enhanced benefit. The difficulty that employees encounter when seeking to retire with the enhanced benefit under FERS is that they are not eligible to withdraw funds from their Thrift Savings Plan accounts until age 59 and 1/2, consistent with the Internal Revenue Service regulations governing tax-deferred retirement accounts. As a result, employees have claimed that they will be unable to access their full retirement benefit until more than two

⁸ For CSRS employees, the 0.5 percent increase in the retirement deduction being phased in beginning in January 1999 would affect less than five of the twenty years of service involved in earning an annuity, so it would play a minimal role in this calculation.

⁹ The 0.5 percent increase being phased into the FERS payroll deduction is currently authorized only through 2003, and is not included in the calculations in this paragraph. If included, the marginal effect of the additional payroll deductions remains less than 3 percent of the total cost of the annuity.

years after the mandatory retirement age governing the enhanced retirement benefit. Some employees have contacted the Subcommittee recommending legislation that would waive the IRS penalties that govern early withdrawals from tax-deferred retirement accounts. Other employees would prefer to continue working in their federal positions until they gain eligibility to draw from their TSP accounts. Legislative measures that would raise the mandatory retirement age under these programs to age 60 would accomplish this objective, but would affect other aspects of both human resources management in the agencies, including the recruitment programs of affected agencies. Raising the mandatory retirement age, however, would place these employees in conditions where there would be few distinctions between them and regular federal employees, who become eligible for regular retirement benefits at age 60 with 20 years service. In effect, then, the mandatory retirement age is inextricably linked to the higher accrual rate for the enhanced benefit.

Experience with the Enhanced Retirement Benefit

Does the opportunity for an enhanced annuity result in significant differences between work and retirement patterns of federal employees? According to data provided by OPM, the single largest pool of retirees (15,936 individuals) added to the CSRS retirement roster during FY-1998 were employees retiring above the age of 62 with at least five years service. These employees' mean years of service were 27.8, and their average age when they first received an annuity was 65, and their median monthly annuity was \$1514. The pool of retirees aged 55 to 59 (14,912 individuals) completed a mean 34.4 years of service (with 30 years required for this benefit) and began collecting annuities at a mean age of 56.8, and with a median value of \$2357. In comparison, the 2,449 federal employees who retired under the law enforcement or firefighter provisions of CSRS in 1998 began collecting a median annuity of \$3,874 at age 53 after a mean of 28.8 years of federal service.

The pool of annuitants who retired under FERS in 1998 is substantially smaller, so the data cannot be generalized as an accurate reflection of the long-term operation of the federal workforce. The initial impression, however, is a substantial difference between the benefits received by the retirees. The 8,276 individuals who retired eligible to collect an immediate FERS annuity had accrued a median monthly benefit of \$323, which they began collecting at a median age of 65 after completing a mean of 26.2 years of service. The 97 law enforcement officers and firefighters retiring under the FERS benefit had earned a median monthly benefit of \$4,649 after completing a mean of 29.8 years of service, and they began collecting this annuity at a median age of 52. This high median monthly benefit, even without the extra benefit of TSP withdrawals, compares very favorably with the CSRS law enforcement and firefighter cohort (\$3874 monthly payment starting at age 53, after an average of 28.8 years of service).

Employees Seeking the Enhanced Retirement Benefit

The attractiveness of the enhanced retirement benefit is reflected in the number of employee organizations seeking coverage for their members, and the range of occupational series that would gain coverage under bills introduced during this session. Employees working in several occupations have appealed to the Office of Personnel Management to rule that their work

should be classified as "law enforcement," based upon several functions that the employees perform. Some employees have argued that the physical demands made on immigration and customs inspectors at selected ports of entry, and the exposure to risky encounters with hostile people are significantly greater than some employees whose responsibilities currently are covered, for example, staff of inspectors general whose primary responsibilities center on the investigation of financial fraud and comparable white collar crimes. Although some employees in each category might perform a range of duties sufficient to justify the classification, OPM has consistently ruled that the positions are not accurately included in the current definition of characteristics required for coverage. Employees have the ability under current law to appeal retirement coverage classifications to the Merit Systems Protection Board, but the MSPB, too, has rarely granted appellants the desired retirement benefit.

As a result, the bills introduced in the current Congress reflect efforts to redefine the scope of "law enforcement retirement coverage." The bills do not include findings claiming that the occupations fit under the current statutory definition. Instead, the proposals would extend the increased benefit to several particular occupations. The assistant U.S. attorneys, for example, provided the Subcommittee with information claiming that, from the moment that a criminal suspect comes into custody, all other federal employees involved in trial, detention, transportation, sentencing, and incarceration (with the exception of the life-tenured judge) are covered by the enhanced retirement benefit. Their claim, then, is advanced on equity grounds in relation to others who have the benefit, rather than any claim of physical rigor in their own responsibilities. It should be noted, however, that the assistant U.S. attorneys advocating for the enhanced retirement benefit make no distinction between attorneys who work on civil cases and those involved exclusively — or even primarily — in criminal cases.

Arguments Affecting Proposed Extensions of the Benefit

Classification Issues

Proponents of extending this benefit to many of the categories of employees identified in H.R. 1228 have argued that many of the responsibilities performed by the employees constitute law enforcement activities, and that the work should, therefore be accorded the status of other law enforcement officers. Immigration and customs inspectors routinely search vehicles, detain suspects, are authorized to make arrests in certain cases, carry firearms at many locations, and have encountered armed criminals during some of their routine duties. These risks are substantial at some ports of entry, but detention and removal functions constitute a relatively minor portion of even these activities. In 1998, for example, the Immigration and Naturalization Service reported inspecting more than 500 million people for admission to the country, but apprehended fewer than one million persons who were ineligible for admission. Similarly, several employees classified in the "083" police officer occupational series have sought the enhanced retirement benefit because the employees are authorized to carry firearms, make arrests, issue citations, and other law enforcement work. In rejecting some of these classification appeals, OPM has monitored the work performed by such officers and demonstrated that most of the violations encountered in their official duties consist of parking violations.

Agencies employing these individuals have made little effort to distinguish geographic locations, areas of responsibilities, or other factors that might provide different classifications for employees who might be deemed more deserving of coverage. Customs inspectors, for example, have an identical classification whether working at a busy port of entry which encounters comparatively high levels of violations or solely at airports, where all passengers have passed through security checks before encountering inspectors. The work performed by employees in all of the pay classifications included in legislation introduced into the House differs significantly from the work performed by employees traditionally classified among the physically and mentally demanding occupations.

In addition to the differences in responsibilities performed by inspectors at different locations, the immigration inspector occupation was designed as an entry-level position in the INS' promotional ladder. The series has a journeyman grade that tops at GS-11. During periods of relatively light activity at ports of entry, immigration inspectors have opportunities to review petitions for immigration benefits, and this adjudications work provides an opportunity to advance within the agency. Extension of the "law enforcement retirement" coverage to immigration inspectors, then, would effectively end one career ladder opportunity for inspectors, who would not be able to carry this coverage into the adjudications workforce.

Recruitment and Retention

Proponents of the enhanced retirement benefit have claimed that the agencies have difficulty recruiting and retaining employees in some of these occupational series, asserting that they lose both immigration and customs inspectors to other occupational series, such as the 1811 investigative series, which is covered by the enhanced retirement benefit. In both agencies, of course, career ladders have been structured to make the 1811 series a more attractive career option. Investigators are expected to have previous experience in other occupations, the work is classified as more complex in responsibility than inspection, and the promotional opportunities are proportionately greater in the investigation field. Within both agencies, senior investigators constitute the primary pool of applicants for senior management (e.g., District Director) positions. Similarly, the 083 police occupational classification provides fewer career advancement opportunities than the investigator series, and one would expect personnel seeking such opportunities to pursue these promotional vacancies on a regular basis. Thus, on the basis of normal classification standards and occupational incentives, one would expect more ambitious inspectors to seek the career opportunities presented by the investigation series. In light of congressional requirements to increase the staffing of the border inspection services, factors that might promote mobility out of these services is rightfully a source of concern in balancing the factors shaping the character of these organizations.

As reflected on the following tables, supplied by the Office of Personnel Management, the available workforce data do not support the claim that the Customs Service experience substantial movement between the inspector employment classification and the investigation series. Alternatively, if the enhanced retirement benefit were a clear incentive for employees, one might expect immigration inspectors shifting into the 1896, Border Patrol, occupational series. That series, too, is covered by the enhanced retirement provision, but does not provide the

same promotional opportunities as the investigator series. As Tables 1 and 2 indicate, the Department of Justice has had a total of 39 employees during FY-1997 and FY-1998 who moved from the immigration inspector series into either the Border Patrol series or the investigations series. As Table 3 demonstrates, the Department of the Treasury has experienced greater movement from the 083 police series into the 1811 investigator series, but during the two fiscal years for which we have data, only 11 internal revenue officers and 11 customs inspectors transferred into the 1811 series.

Table One¹⁰
Internal Movement to Occupation Series 1811
within Justice Department (Excluding FBI)

FY 1997 - 1998			
Prior Occ. Series	FY 1998	FY 1997	Total
1896 - Border Patrol Agent ¹¹	50	119	169
1801 - Gen Insp, Invstgtn & Comp ¹²	32	41	73
1816 - Immigration Inspection	7	12	19
0007 - Correctional Officer ¹³	5	4	9
1802 - Compliance Insp & Support ¹⁴	5	6	11
Other Series	14	14	28
All Series	113	196	309

Note: ¹Internal Movement¹ includes promotions, changes to lower grade and reassignments where latest occupation series is 1811 and prior occupation series is not 1811

¹⁰ Unless otherwise indicated, the source of all table information in this paper is the Dynamics File of OPM's Central Personnel Data File.

¹¹ Employee was covered by special retirement for law enforcement officers.

¹² If prior subelement is INS, employee may have been covered by special retirement for law enforcement officers.

¹³ Employee was covered by special retirement for law enforcement officers.

¹⁴ If prior subelement is INS or Marshals Service, employee may have been covered by special retirement for law enforcement officers.

Table 2.
Internal Movement to Occupation Series 1896
within Justice Department (Excluding FBI)
FY 1997 - 1998

Prior Occ. Series	FY 1998	FY 1997	Total
1811 - Criminal Investigating ¹⁵	13	5	18
1816 - Immigration Inspection	11	9	20
1801 - Gen Insp, Invstgm & Comp ¹⁶	7	13	20
1802 - Compliance Insp & Support ¹⁷	2	2	4
Other Series	0	2	2
All Series	33	31	64

Note: 'Internal Movement' includes promotions, changes to lower grade and reassignments where latest occupation series is 1896 and prior occupation series is not 1896

¹⁵ Employee was covered by special retirement for law enforcement officers.

¹⁶ If prior subelement is INS, employee may have been covered by special retirement for law enforcement officers.

¹⁷ If prior subelement is INS or Marshals Service, employee may have been covered by special retirement for law enforcement officers.

Table 3.
Internal Movement to Occupation Series 1811
within Treasury Department
FY 1997 - 1998

Prior Occ. Series	FY 1998	FY 1997	Total
0083 - Police ¹⁸	39	10	49
1801 - Gen Insp, Invstgm & Comp ¹⁹	21	9	30
1802 - Compliance Insp & Support ²⁰	10	1	11
1169 - Internal Revenue Officer	9	2	11
0511 - Auditing	9	0	9
0512 - Internal Revenue Agent	8	0	8
1890 - Customs Inspection	5	6	11
1854 - ATF Inspection	2	1	3
Other Series	11	10	21
All Series	114	39	153

Note: 'Internal Movement' includes promotions, changes to lower grade and reassignments where latest occupation series is 1811 and prior occupation series is not 1811

Movement between these employment categories, of course, addresses only one dimension of the question as to whether the recruitment challenges facing the INS and the Customs Service might be attributed to the lack of enhanced retirement benefits for these occupations. To address this question, OPM provided the Subcommittee tabular data reflecting the hiring and attrition experience of these occupations during the past five fiscal years. Both the INS' and the Customs Service's inspection workforces have increased over this period, by 388 immigration inspectors and 452 customs inspectors. Each agency has hired more than 3000 new inspectors over this period in order to achieve these increases in employees. Both agencies have experienced relatively low levels of employees quitting from the positions (less than 2.7 percent quit rates in any single year). The stability in the Customs' workforce is particularly notable

¹⁸ If prior subelement is Secret Service, employee may have been covered by special retirement for law enforcement officers.

¹⁹ If prior subelement is Customs Service or BATF, employee may have been covered by special retirement for law enforcement officers.

²⁰ If prior subelement is Customs Service or Secret Service, employee may have been covered by special retirement for law enforcement officers.

since the agency has also experienced significantly higher retirement rates than the INS' inspectors. Customs, for instance, has been able to increase its inspectors while authorizing 228 voluntary early retirements. During this period, the number of customs inspectors working after age 57 dropped from 958 in FY-1994 to 729 in the current fiscal year.

These tables assist in providing additional perspective on the effects of providing the enhanced retirement benefit for these inspection workforces. In each agency, all of the covered employees who are older than 57 would face immediate mandatory retirement. Additionally, during the past three years, the INS has hired an average of 400 inspectors annually who are more than 37 years old. These employees would be unable to complete 20 years of service before reaching the mandatory retirement age, and therefore would become excluded from the agency's future recruiting pool if the benefit were extended. This exclusion from the recruitment pool would have a lesser impact on the Customs Service, which hires an average of slightly fewer than 200 inspectors older than 37 each year. However, because the current Customs workforce includes 729 inspectors who are older than 57, that agency would also face a requirement immediately to replace nearly 10 percent of its experienced workforce. In effect, providing this additional benefit to current employees would exacerbate the recruiting challenges that these agencies face in their efforts to increase their workforces in a very tight labor market.

Costs of the Enhanced Retirement Benefit

The most systematic assessment of the costs of extending this retirement benefit was performed by the Department of the Treasury's Office of Inspector General in March 1998.²¹ This report analyzed the costs attributed to converting 8,172 Customs officers to the "law enforcement" retirement status, and calculated that it would result in immediate direct costs to the agency of \$50.6 million. Of this, \$14.9 million would be increased base pay; \$216,000 would cover additional Medicare contributions from both employees and the employer's share; \$741,000 would be required for additional Social Security contributions for employees and the employer's share; \$537,000 for additional TSP contributions and agency matching funds; \$1.1 million for additional CSRS contributions; and \$33.1 million for additional FERS contributions. In addition, the federal government would have to appropriate an additional \$24.4 million annually to cover the additional normal cost of the retirement benefits of employees remaining under CSRS. The total additional cost, then, would be \$75 million merely to provide the enhanced retirement benefit for an additional 8,172 Customs Service employees. The two bills introduced would extend this coverage to almost 23,000 additional federal employees.

Beyond these annual costs, the Treasury Inspector General's analysis indicated that the enhanced retirement benefit would also increase the unfunded liability of the Civil Service Retirement and Disability Fund by \$539.1 million, if all of the 8,172 Customs inspectors were credited with retroactive coverage for their service prior to enactment of the enhanced benefit. Both H.R. 583 and H.R. 1228 would allow affected employees to elect retroactive coverage of

²¹ "Application of Model for Estimating Cost of Law Enforcement Officer Coverage," Report OIG-97-E03 (March 1998).

the enhanced retirement benefit. OPM calculated projected costs of extending the enhanced retirement benefit to many of the groups listed in these bills, and estimated that an additional \$1.499 billion unfunded liability would accumulate to the CSRDF as a result of that extension. OPM's estimate, however, did not include all of the classifications affected by this proposal, among them the assistant U.S. attorneys, whose average annual salary exceeds all other classifications included in these bills.

Agency Concerns

Although proposals for the enhanced retirement coverage have circulated for many years, none of the agencies affected by this legislation have supported the proposal. The Treasury Inspector General's report is the sole formal projection of costs to come to the Subcommittee's attention, but all affected agencies were aware of the substantial incremental costs of the benefit. These agencies also recognize that they currently employ many persons who are above the mandatory retirement age, and have understood that extension of the benefit could disrupt their procedures for recruiting, placing, training, and developing employees. The Office of Management and Budget has also traditionally resisted such extensions of coverage, focusing on the costs of extending the benefit.

Additional Oversight Concerns

Customs Service Overtime

The International Trade Subcommittee of the Committee on Ways and Means has conducted extensive oversight of the overtime pay benefits available to inspectors at the Customs Service. Customs inspectors received overtime pay under legislation adopted in 1911 until Congress revised that formula through the Customs Officer Pay Reform Act of 1993 (COPRA). At the time, the Committee was concerned that costs associated with overtime and premium pay were out of control, and the statutory revision was intended to curb growth in these payments.²² Since enactment of this revision, overtime and premium pay costs at the Customs Service have increased. Moreover, when COPRA increased the annual cap on individuals' overtime pay from \$25,000 to \$30,000, the amount of pay that is creditable toward calculating the retirement benefit increased from \$12,500 to \$15,000. Any proposal to enhance the compensation and benefits of customs inspectors would have to incorporate consideration of the International Trade Subcommittee's concerns about current pay levels.

Attorney Overtime

The Department of Justice currently faces a class action lawsuit filed in U.S. District Court on behalf of more than 12,000 attorneys who have worked in the Department since

²² William J. Krouse and Barbara L. Schwemle, "Overtime and Premium Pay for U.S. Customs Service Officers Compared With Immigration and Naturalization Service Officers," *Congressional Research Service*, June 3, 1998.

November 25, 1992. Their complaint asserts that the Department has refused to pay the attorneys for required overtime work, as mandated by the Federal Employees Pay Act of 1945. The suit seeks more than \$500 million in back pay and damages, and alleges that the Department of Justice maintains two sets of pay records for its attorney workforce. The first set of records provides for a standard 40 hour workweek, and is used to compensate the attorneys. The second set of records reflects the actual hours worked by the attorneys, and is used to support claims for litigation costs in cases where the Department has legal authority to seek reimbursement from parties in litigation. This set of books is also used to justify budget requests for additional personnel. Although contesting some details of the allegation, the Department's response to the complaint admits that the Department maintains two sets of pay records. The invitation letter to the Department of Justice asked that their witness comment on the possibility that attorneys might be seeking the enhanced retirement benefit in lieu of overtime compensation that has wrongfully been withheld.

Abuse of Classification

The Subcommittee has received reports that some agencies, notably the Nuclear Regulatory Commission, have extended the "law enforcement retirement" benefit to employees who do not qualify under current law through administrative actions, such as classification decisions. The Office of Personnel Management has responsibility to ensure that this benefit is not extended beyond current statutory provisions, and the possibility that some employees might be gaining the benefit through agency actions, where comparable employees in other agencies do not receive this benefit, could increase efforts to extend the categories of employees seeking the greater retirement benefit.

Invited Witnesses

Member Panel

The Honorable Ed Bryant
The Honorable Thomas M. Davis
The Honorable Bob Filner
The Honorable Elton Gallegly
The Honorable Patsy Mink
The Honorable James A. Traficant, Jr.

Agency Panel

Mr. William E. Flynn
Associate Director, Retirement and Insurance Services
Office of Personnel Management

Department of the Treasury

Mr. John Vail
Deputy Assistant Attorney General for Management
Department of Justice

Group Panel

Mr. Grover J. Norquist
President
Americans for Tax Reform

Mr. Gilbert G. Gallegos
National President
Fraternal Order of Police

Ms. Colleen M. Kelley
National President
National Treasury Employees Union

