

**NOMINATION OF JAMES P. TERRY, TO BE CHAIR-
MAN OF THE BOARD OF VETERANS APPEALS,
U.S. DEPARTMENT OF VETERANS AFFAIRS, AND
CHARLES S. CICCOLELLA, TO BE ASSISTANT
SECRETARY FOR THE VETERANS EMPLOYMENT
AND TRAINING, U.S. DEPARTMENT OF LABOR**

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JULY 14, 2005

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**NOMINATION OF JAMES P. TERRY, TO BE
CHAIRMAN OF THE BOARD OF VETERANS
APPEALS, U.S. DEPARTMENT OF VETERANS
AFFAIRS, AND CHARLES S. CICCOLELLA, TO
BE ASSISTANT SECRETARY FOR THE VET-
ERANS EMPLOYMENT AND TRAINING, U.S.
DEPARTMENT OF LABOR**

THURSDAY, JULY 14, 2005

U.S. SENATE,
COMMITTEE OF VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:43 a.m., in room SR-412, Russell Senate Office Building, Hon. Larry Craig, (Chairman of the Committee) presiding.

Present: Senators Craig, Allen, Warner, Salazar, and Thune.

**OPENING STATEMENT OF HON. LARRY E. CRAIG,
U.S. SENATOR FROM IDAHO**

Chairman CRAIG. The Senate Committee on Veterans' Affairs will be in order.

I apologize to all of you, but then I didn't set the vote schedule on the floor, and we are in a series of five votes, but I thought it important with all assembled that we move as expeditiously as possible through this hearing, this confirmation hearing, so that the these two gentlemen can begin their work on behalf of the America's veterans.

Before we proceed, I would ask both of you to rise and to extend your right hand.

[Witnesses sworn.]

Chairman CRAIG. Do you solemnly swear or affirm that the testimony you are about to give the Committee at this hearing shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. TERRY. I do.

Mr. CICCOLELLA. I do.

Chairman CRAIG. Thank you, gentlemen. Please be seated.

It is my understanding that Senator Warner and Senator Allen are en route for introductions, and we hope that holds. I am going to put my opening statement in the record and will not give a full statement for the sake of time this morning, but I would like to introduce to the Committee Mr. Jim Phillip Terry, nominated to be

Chairman of the Board of Veterans Appeals, U.S. Department of Veterans Affairs, and Charles S. Ciccolella. Close?

Mr. CICOLELLA. Yes, sir. That is correct.

Chairman CRAIG. All right. Nominated to be Assistant Secretary of Labor for Veterans Employment and Training.

[The prepared statement of Senator Craig follows:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Good morning, ladies and gentlemen. The Committee on Veterans, Affairs will now come to order.

This morning we will receive testimony from two very distinguished public servants: Mr. James P. Terry, who has been nominated by the President to serve as Chairman of the Board of Veterans' Appeals, U.S. Department of Veterans Affairs, and Mr. Charles Ciccolella, who has been nominated by the President to serve as the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor.

The Chairman of the Board of Veterans' Appeals serves as the head of the appellate body that renders final decisions within VA on appeals involving veterans' benefits. The Chairman oversees more than 50 Veterans Law Judges and almost 400 attorneys and support staff. As we discussed last month at a hearing before this Committee, it is essential that VA's claims adjudication and appeal system provides timely and accurate decisions to our Nation's veterans. The Board plays an important role in that system, rendering decisions on 30 to 40 thousand appeals each year.

It would appear to me that Mr. Terry—a former Marine officer who served in combat in Vietnam and is a Purple Heart recipient—would bring to the Board a wealth of experience and education. He has undergraduate and graduate degrees from the University of Virginia, a law degree from Mercer University, and advanced law degrees from George Washington University. After he completed his combat service in Vietnam, he had a distinguished legal career in the Marine Corps—a legal career which culminated with his service as legal counsel to the then-Chairman of the Joint Chiefs of Staff, General Colin Powell. After his retirement from the Corps with the rank of Colonel, he served in the Department of the Interior as Deputy Director of the Office of Hearings and Appeals and, later, as an Administrative Judge at the Interior Department's Board of Land Appeals. Subsequently, he was reunited with General Powell at the State Department where he served as Deputy Assistant Secretary for Legislative Affairs.

Welcome to you, Mr. Terry.

Turning now to Mr. Ciccolella—he has been nominated to serve as the head the Labor Department's Veterans' Employment and Training Service ("VETS"), an office which administers national programs to help veterans find jobs and also to protect the re-employment rights of veterans who have returned from service. Currently, 200,000 service members are leaving active duty each year and, for many, obtaining a job will be a critical step in successfully making the transition back to civilian life. Unfortunately, young veterans—many of them recently separated—experience higher unemployment rates than non-veterans. And, in total, nearly 700,000 veterans of all ages are unemployed in any particular month. Obviously, there is important work to be done to help our young veterans—and all unemployed veterans—find suitable employment.

Mr. Ciccolella is undoubtedly very familiar with the employment issues facing veterans today since he is currently the Deputy Assistant Secretary for the Veterans' Employment and Training Service. Prior to coming to "VETS", he served as a Senate staffer—first as Chief of Operations for the Senate Sergeant At Arms and, later, as the Director of Information Technology Policy for the Senate Rules Committee.

More significantly, perhaps, Mr. Ciccolella served with distinction in the U.S. Army for 28 years prior to taking on these important civilian jobs. Most notably, he served as an Infantry Officer with the 101st Airborne Division in Vietnam, and during his Vietnam service, he received, among other decorations, a Silver Star and a Bronze Star for valor. Later he served in various command and staff positions in the U.S., Germany, Panama, culminating in a posting as Senior Military Advisor to the Arms Control and Disarmament Agency. He retired as a Colonel in 1996 after 28 years of service. Mr. Ciccolella is a graduate of the National War College and has an undergraduate degree from Auburn University and a graduate degree from Central Michigan University.

Welcome to you, Mr. Ciccolella.

Chairman CRAIG. Senator Allen has just arrived. I have put my statement in the record, Senator Allen. You are here. We are pleased you are here. We will allow you the introduction you have come to make.

**STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR
FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman, and it is my pleasure, Mr. Chairman and Members of the Committee, to recommend to you Mr. James P. Terry, otherwise known as Jim Terry, to this commission, in fact, as chairmanship of the Board of Veterans Appeals. Mr. Terry has an extensive legal background, as well as service to our country in the armed services. I also would say I am introducing him on behalf of my colleague, Senator John Warner, who is also on his way here.

President Bush, Mr. Chairman, has nominated Mr. Terry for this position, and he does have outstanding qualifications. I would also note, Mr. Chairman, that you have been just a tremendous leader in trying to address the needs of veterans, and all of us salute you and your leadership and understand how many veterans are in need of services. Part of those services obviously are adjudication determinations of eligibility and claims, and there are just hundreds and hundreds of thousands of these claims, and Mr. Terry wants the same sort of treatment, fair treatment, prompt treatment of these claims and consideration for men and women who serve in our armed forces.

He is a Virginian, lives in Virginia, graduated from the University of Virginia in 1968 in geochemistry and then followed a family heritage and joined the military, as has his brothers, his parents, his father I should say, and his sister. He was in the Marines. He had a distinguished record in the Marine Corps for 27 years. He served in Vietnam as a combat infantry officer where he received many distinguished honors, including the Purple Heart and Bronze Star. He later graduated from law school at Mercer University, served in the Marine Corps also as a judge advocate until his retirement as colonel in 1995.

During his final 4 years in the Corps, Jim had the distinct honor to serve as legal counsel to the then Chairman of the Joint Chiefs of Staff, Colin Powell. He retired from the Marine Corps, but his service to our Nation did not stop. He subsequently served in the Department of Interior as Deputy Director of the Office of Hearings and Appeals and later as administrative judge at the Interior Department's Board of Land Appeals.

In 2001, Jim left the Interior Department for his current position as Deputy Assistant Secretary of State for regional, global, and functional affairs within the Bureau of Legislative Affairs.

I had the pleasure of talking with Jim before this, and what I liked was not just his record of caring about those who served in the military and his legal background, which is exceptional, it is that he said he wanted to get people moving. This Court of Appeals, so to speak, this Board of Appeals, is a major, major law firm and they have a tremendous volume of cases on their docket, and he said he wanted to get people moving and he wants to get the

veterans appeals getting proper prompt action from that Board of Appeals. That is the right attitude with the right background.

I believe some of Jim's family members are here, as well as friends from the Department of Interior. I believe his wife Michelle—is Michelle here? There you are far over there. Good to see you Michelle. His daughter, Kristen, is here and also Ambassador Niemczyk and his wife Peg are here. They don't let all the folks sit together, but at any rate, he has a lot of other friends from the Department of Interior and the Department of State who have come to support Jim.

I thank you, Mr. Chairman, for your courtesy, your leadership, and I think that you will find that Mr. Terry is an outstanding, well-qualified nominee who you will want to, as usual, have swift action on this Committee and on the floor to get him on the job on this very important chairmanship on this Board of Appeals.

I thank you again.

Chairman CRAIG. Senator, thank you very much for taking time out of your schedule to come to introduce Jim Terry.

Senator ALLEN. Thank you, Mr. Chairman.

Chairman CRAIG. Before we proceed with both of these nominees, I will turn to Mr. Ciccolella who has been nominated to serve as head of the Labor Department's Veterans Employees and Training Services, an office which administers national programs to help veterans find jobs and also to protect the re-employment rights of veterans who have returned from service. Currently, 200,000 servicemembers are leaving active duty each year, and for many, obtaining a job will be a critical step in successfully making the transition back into civilian life.

Unfortunately, young veterans, many of them recently separated, experienced higher unemployment rates than non-veterans, and in total, nearly 700,000 veterans of all ages are unemployed at any particular month. Obviously, there is important work to be done here, and I wanted the Committee to have the background of this important task.

So as I turn to both of you for your opening statements, Mr. Terry, Mr. Ciccolella, do you have—we know that Mr. Terry has family with them, but we would give you the privilege at this time to introduce your family to the Committee.

Mr. Terry.

Mr. TERRY. Thank you very much, Mr. Chairman. I am delighted to be able to introduce my wife of 35 years, the better part of me, Michelle, and my daughter Kristin, my youngest daughter who is a practicing attorney and a member of the Choate, Stuart, Hall law firm in Boston.

Chairman CRAIG. Thank you.

Mr. Ciccolella.

Mr. CICCOLELLA. Thank you, Mr. Chairman. I would like to introduce my wife, Donna, of 33 years and also my extended family at work who are seated right here with the Veterans Employment Training Service. Thank you.

Chairman CRAIG. Thank you very much.

Mr. Terry, we are going to try to get at least one statement in before the next vote and maybe both of you, and then I am going to allow the Committee to stay open for any Members who wish to

come and make comments and/or ask questions. We won't hold you terribly long, but we do want the Committee to have that opportunity. So, Mr. Terry, if you would start with your opening statement, please.

STATEMENT OF JAMES P. TERRY, NOMINATED TO BE CHAIRMAN OF THE BOARD OF VETERANS APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. TERRY. Thank you very much, Mr. Chairman, and I would like to acknowledge my appreciation for Senator Allen's very, very kind introduction.

As I mentioned, I am here today with my bride of 35 years and my daughter, but I am also blessed to have our dear friends, Ambassador Jay Niemczyk and his wife Peg, and colleagues from my service with the Defense, Interior, and State Departments as well as my present colleagues from the Department of Veterans Affairs. I have some wonderful colleagues and friends here and I would like to acknowledge their presence.

Sir, I am deeply honored to appear before you and as President Bush's nominee for the Chairman of the Board of Veterans Appeals, and I can assure you that if confirmed, I will work tirelessly to ensure that the board provides for fair and timely adjudication of appeals that our Nation's veterans and their families deserve. As a veteran of 27 years of active service myself, I consider my military experience to be the defining period of my life. It was in the military that I recognized, sir, the tremendous sacrifice made by the superb men and women who have committed themselves to the defense of this Nation.

My commitment to those who serve this country is both deep and personal. My father was a Navy pilot during World War II, and my father-in-law, likewise, served with distinction in the Navy and was in Pearl Harbor on December 7, 1941. I had three brothers and a sister who were in uniform, as I was, during the Vietnam conflict.

I have always viewed service to this Nation in whatever forum as an obligation and honor to be shared by all Americans. It is with this background that I totally commit to you that I will work tirelessly to ensure that the veterans law judges, the 56 veterans law judges, the 228 staff counsel, and the many administrative support personnel at Board of Veterans Appeals accomplish our mission to provide high quality, fair, and timely decisions in all matters before the board in as efficient and productive manner as possible.

Mr. Chairman, as a final arbiter on behalf of the Secretary of all appeals and claims of veterans' benefits, the board has a very special responsibility to guarantee that the department has provided each appellant with a full, fair, and impartial review of their case. They must ensure that all due process and full consideration of the law has been provided, including the present decisions of the Court of Appeals for Veterans Claims and other Federal Courts. If confirmed, sir, I can assure you that I will work assiduously to see that the board meets that responsibility and we achieve total transparency in the way appeals are processed within the department. I will work cooperatively with those involved in the adjudication process, that is the Veterans Benefits Administration, the Veterans

Health Administration, the Office of General Counsel, and especially the veterans service organizations, this Committee, and Members of Congress so that we can deliver the best and most timely service to America's veterans.

This is indeed a momentous responsibility, Mr. Chairman, but I can assure that you that, if confirmed, I will uphold this trust on behalf of all our men and women in uniform and on behalf of all those who have served.

Thank you, Mr. Chairman. I would be delighted to respond to any questions you might have.

[The prepared statement of Mr. Terry follows:]

PREPARED STATEMENT OF JAMES P. TERRY, NOMINATED TO BE CHAIRMAN OF THE BOARD OF VETERANS APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS

Thank you, Mr. Chairman, Senator Akaka, and Members of the Committee—and thank you Senator Allen for those kind words of introduction.

I am joined here today by my wife of more than 35 years, Michelle. She has been at my side for nearly all of my 37 years of Government service. I'm deeply grateful for her support, and she is my life. Also with us today is our youngest daughter Kristin, an attorney with Choate, Stewart, Hall in Boston. I am also honored to be joined today by our dear friends Ambassador Jay Niemczyk and his wife Peg, and colleagues from my service with the Defense, Interior and State Departments.

I am deeply honored to appear before you as President Bush's nominee for Chairman of the Board of Veterans' Appeals. I can assure you, that if confirmed, I will work tirelessly to ensure that the Board provides the fair and timely adjudication of appeals that our Nation's veterans and their families deserve.

As a veteran of 27 years of active service in the Marine Corps as an infantry officer and then as a judge advocate, my military experience represents the defining period of my life. It was while in the Marine Corps that I recognized the tremendous sacrifice made by the superb men and women who have committed themselves to the defense of this Nation.

My commitment to those who served this country is both deep and personal. My father was a Navy pilot during World War II and my father-in-law likewise served with distinction in the Navy and was at Pearl Harbor on December 7, 1941. My mother served as a designated Coast Watcher for the then-Department of War during the Second World War. During the Vietnam conflict, while I served as a Platoon Commander with the 1st Battalion, Third Marine Regiment in Vietnam, three of my brothers—Joel, Roy and Thomas—were also serving in uniform, as was my sister Jean.

I have always viewed service to this Nation, in whatever form, as an obligation and honor to be shared by all Americans. Following my retirement from the Marine Corps, I served 6 years in the Senior Executive Service with the Department of Interior, and then rejoined General Powell for 4 years at the Department of State, having served earlier as his Legal Counsel while he was Chairman of the Joint Chiefs of Staff. Each assignment was challenging and rewarding. Now I look forward to this opportunity to continue to serve my country and particularly to serve veterans—those to whom we as a Nation owe such a great debt.

It is with this background that I totally commit to you that I will work tirelessly to ensure the Veterans Law Judges, staff counsel, and administrative support personnel at the Board of Veterans' Appeals accomplish our mission to provide high quality, fair and timely decisions in all matters before the Board in as efficient and productive a manner as possible.

As the final arbiter on behalf of the Secretary of all appeals in claims for veterans' benefits, the Board has a special responsibility to guarantee that the Department has provided each appellant with full, fair and impartial review of their case. It must ensure that all due process and full consideration of the law has been provided, including the precedent decisions of the United States Court of Appeals for Veterans Claims and other Federal courts.

If confirmed, I will work assiduously to see that the Board meets that responsibility and that we achieve total transparency in the way appeals are processed within the Department. I will work cooperatively with all those involved in the adjudication process—the Veterans Benefits Administration, the Veterans Health Administration, the Office of General Counsel, the veterans service organizations, the Com-

mittee and Members of Congress—so that we deliver the best and most timely service to America’s veterans.

This is indeed a momentous responsibility. But I can assure you, Mr. Chairman, that if confirmed, I will uphold this trust on behalf of all our men and women in uniform and on behalf of all those who have served.

Thank you Mr. Chairman, Senator Akaka, and Members of the Committee. May I respond to your questions.

RESPONSES TO WRITTEN QUESTIONS FOR JAMES P. TERRY, NOMINATED TO BE CHAIRMAN OF THE BOARD OF VETERANS APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS FROM SENATOR LARRY CRAIG

Question 1. Have you had an opportunity to assess the tenure of the Honorable E. Dane Clark as Chairman of the Board? Do you see how your tenure would differ from his? Do you have a sense of what your priorities will be if you are confirmed?

Answer. I had the pleasure of knowing Dane Clark as a Marine officer and serving with him in that capacity. Our total commitment to veterans is the same. My style of management, however, is a much more hands-on approach and I will be deeply involved in the day to day operations and decisionmaking of the Board. I am blessed with a superb Vice Chairman, Mr. Ron Garvin, and we will work well together in continuing to shape a cohesive and efficient organization that, I assure you, will be both productive and effective.

I can say without qualification that what I have observed is that the Board is an organization composed of hard-working, dedicated employees who fully understand that their role is to serve America’s veterans. We have a body of excellent attorneys and judges who represent the single greatest concentration of expertise in the field of veterans law. As Chairman, I will do all in my power to ensure that we get even better.

Once confirmed, I will immediately do a bottom up review of the Board and its operations, see where improvements can be made, and work tirelessly to see that they are made.

I have observed that many improvements to the Board’s functioning have already been instituted, and these will be continued and enhanced. These include an effective in-house training program, the establishment of a permanent Director of Training position, and establishment of a highly effective Quality Review Office to constantly review the decisions of the Board.

I will also work extremely closely with the heads of the Veterans Benefits Administration, the Office of General Counsel and the Veterans Health Administration to ensure the Department’s message and service to all our veterans is cohesive and transparent. One of the ways we will do this is through our participation in TRIAD, a monthly meeting of top officials from the OGC, VBA, VHA and the Board that attempts to identify and resolve issues of mutual concern to each of our offices.

Question 2. In reaching decisions on disability claims, the Board is required to provide the benefit-of-the-doubt to the veteran and to conduct proceedings in a non-adversarial manner. If you are confirmed, do you have a sense of what measures you would take to ensure that the culture at the Board fosters those pro-veteran policies?

Answer. If confirmed, I will remain totally committed to the pro-veterans policies that I have already seen very evident on the Board. The mindset of the attorneys and Veterans Law Judges I have spoken to (and I have spoken to most) indicates to me that their greatest priority is ensuring that veterans are well served and that their cases are fairly adjudicated, with a commitment to applying the “benefit of the doubt” rule on their behalf. I have had the opportunity over the past few weeks to read hundreds of Board decisions to familiarize myself with each of the issues that can arise before the Board. In each of these decisions, I have seen an attempt to rule in favor of the veteran where that is legally possible. Our Quality Review Unit is instrumental in ensuring this emphasis is maintained and I will work tirelessly to ensure the law is being applied fairly and compassionately.

To maintain this positive mindset and prevent complacency requires constant training. An improved culture requires constant, intimate involvement by an organization’s senior leadership. I assure you that this will occur.

Question 3. In testimony recently provided by VA before this Committee, it was noted that BVA is attempting to reduce the number of “avoidable remands” by working with the Veterans Benefits Administration and the Veterans Health Administration to identify the root causes of remands and to provide appropriate training. If you are confirmed, would you take steps to ensure that there is continued and improved cooperation between BVA, VBA, and VHA? How have your experi-

ences provided you with the skills necessary to develop and sustain those types of collaborative relationships?

Answer. Improved cooperation with these organizations will be among my highest priorities. In fact, we are involved now in continued cooperation through joint training efforts and this will be expanded. We will continue to maintain contact at the highest levels to ensure the mission needs of the Board and other VA organizations are being accomplished.

With respect to remands, each time a case file must be returned by the Board to the Regional Office because it is not sufficiently complete to allow the Board to render a decision fair to the veteran, significant additional time is required both by the Board and the Regional Office. Effective training is critical here and we are participating with the VBA and the staff of the General Counsel to address key issues with Regional Office staff to ensure, to the extent possible, files are complete when they reach the Board.

But this is not a one way street. Our Board must focus more diligently on searching each file for that evidence which will allow a decision to be rendered. If a decision can be properly issued with available evidence, we must do so, and do so promptly. Each case we can properly decide rather than remand to our Regional Offices is a service to our deserving veterans.

I believe my leadership style and my experience provide the qualities needed to succeed in working with others—internally and externally. I am confident that I will have excellent and productive relations with both Admiral Cooper, the head of the VBA and Dr. Perlin, the head of the VHA, and the other senior leaders within the Department. My reputation both at DoD, Interior and at State was that of a positive leader committed to the mission with low ego needs and a lack of concern for who gets the credit. I intend to bring that successful approach to the Board of Veterans Appeals.

Question 4. Under current law, attorneys are not permitted to receive compensation for representing claimants at the initial stages of the VA claims adjudication process. Do you have a sense of whether allowing attorneys into the process earlier would have an impact—either positive or negative—on proceedings conducted before the Board?

Answer. The Board process by law is a non-adversarial one, and the task of the Board is to ensure that all evidence within the file is fully and fairly considered and reviewed, with the benefit of the doubt given to the veteran in each instance. I worry that injecting an adversarial element in the VA claims adjudication process could result in challenges to meaningful evidence and objections to certain evidence that could be vital to a fair and reasoned determination. The introduction of counsel might also result in the requirement that rules of evidence and procedure be developed that could further delay the process. This could be significant in a process (to include RO adjudications and BVA appeals) that will consider approximately 800,000 cases this year in the entire system.

Having said that, I really need some time on the job to make a meaningful assessment. I do know that the veterans service organizations (VSOs) are doing what I view as a superb job of representation for any applicant seeking assistance at this time.

Question 5. In a May 2005 report, the VA Inspector General found that the compensation paid for 100 percent PTSD ratings and for 100 percent ratings based on individual unemployability is a primary factor in State-by-State variances in average compensation payments.

It is my understanding that, in view of the IG report, VA Regional Offices across the country have been taking measures to improve consistency, especially for highly subjective ratings like those for PTSD and IU. If you are confirmed, do you envision the BVA implementing any particular measures in view of that IG report?

Answer. I agree that variances in awards in PTSD and IU cases have significantly skewed the results of average compensation payments by State, especially PTSD. The demographics of the veterans in those States have also had an effect. By that, I mean that an older population of veterans, such as in Illinois and Indiana, who had service in WW II and Korea, have been less likely to file PTSD claims (although called shell-shock during those periods). That may be due to the stigma attached to such claims at the time or to the pride of these older veterans in simply getting on with their lives when they returned.

Whatever the reason, everyone in the Department is extremely concerned that there is an apparent disparity in benefits with regard to certain States: e.g., Indiana, Illinois, Michigan and Ohio. We are increasing assets, increasing training at the ROs, and ensuring increased attention is paid to each of the ROs in these States and others like Colorado where the benefit rates are lower. One effort designed to assist in eliminating disparities is the development of specific standards for medical

examinations to ensure each PTSD patient is reviewed in the same way (Compensation and Pension Examination Project).

That is, by requiring examining physicians to review and examine patients using the same protocol, we hope to bring consistency to our rating process and eliminate disparities. As a result of the IG Report, during my stewardship we will give heightened attention to the appeals related to PTSD and IU concerns and ensure, to the greatest extent possible, we have consistent application of our regulations regarding their consideration for disability determinations. In that regard, we can best ensure consistency at BVA by training, quality assurance efforts, and consultation and cooperation with our partners in the adjudication process, VBA, OGC, VHA and the VSO's.

Question 6. Do you have any conflicts of interest which you have not fully disclosed to the Committee? Do you know of any other matter which, if known to the Committee, might affect the Committee's recommendation to the Senate with respect to your nomination?

Answer. No.

Question 7. Have you fully and accurately provided financial and other information requested by the Committee, and do you now affirm that the information provided is complete, accurate, and provided in a form designed not to evade or deceive?

Answer. Yes.

Question 8. Do you agree to supply the Committee such non-privileged information, materials, and documents as may be requested by the Committee in its oversight and legislative capacities for so long as you may serve in the position for which you now seek confirmation?

Answer. Yes.

Question 9. Do you agree to appear before the Committee at such times and concerning such matters as the Committee might request for so long as you serve in the position for which you now seek confirmation?

Answer. Yes.

RESPONSES TO WRITTEN QUESTIONS FOR JAMES P. TERRY, NOMINATED TO BE CHAIRMAN OF THE BOARD OF VETERANS APPEALS, U.S. DEPARTMENT OF VETERANS AFFAIRS FROM HON. SENATOR DANIEL AKAKA

Question 1. I am concerned that the Board of Veterans Appeals (BVA) does not have enough employees to process appeals timely and accurately. Can additional hiring be anticipated this year? Will this be reflected in the President's Budget? If not, where will the funding for these employees come from?

Answer. Although the Board does not anticipate hiring additional personnel during fiscal year 2006, the Board does have sufficient personnel to enable it to process appeals in a timely and accurate manner. Through the use of incentives and sound management, the Board has demonstrated in the past that that it can improve its performance, and the Board will continue to do so during the upcoming year.

The Administration's fiscal year 2006 budget submission does not significantly increase the Board's budget allocation, which will remain at approximately \$50 million. The personnel profile for the Board for fiscal year 2006 calls for 434 personnel. The currently authorized end-strength for fiscal year 2005 for Board personnel is 440. Despite this reduction, we believe the Board's performance, as reflected by the VACOLS (Veterans Appeals Control and Locator System) data, will continue to improve in the same way it has done over the years. For example, in Fiscal Year 1994, the Board issued about 22,000 decisions. The Board's pending caseload stood at 47,000, and the measure of timeliness then used—average response time—was 781 days. By Fiscal Year 1998, the Board's timeliness markedly improved and the pending caseload was down to less than 30,000 cases. The Board issued 38,886 decisions, and held 4,875 hearings. Appeals resolution time was 687 days.

In contrast, the Board issued 38,371 decisions in fiscal year 2004. The Board also conducted 7,259 hearings—a substantial increase from 1998. Appeals resolution time decreased to 529 days. Cycle time (the time the appeal is at the Board) was reduced to 98 days. Cases pending at the end of fiscal year 2004 stood at 21,430. And the Board did this with 43 fewer FTEs than in 1998. The fiscal year 2005 performance, when finally closed out on September 30, 2005, will be similar.

The Board made these improvements despite several significant challenges, including the impact of the Veterans Claims Assistance Act of 2000, and the initiation and termination of evidence development at the Board due to the decision of the U.S. Court of Appeals for the Federal Circuit in *Disabled American Veterans v. Principi*. There are several reasons for the significant increase in productivity over

this period of time, including changes in procedures to increase efficiency, training, incentives, and sound management. As a result of these changes, the Board's Veterans Law Judges and counsel staff were able to increase productivity over historical levels by 20 percent for staff counsel, and 25 percent for the VLJs, while at the same time not sacrificing quality. The average number of decisions per employee increased from 49.9 in fiscal year 1994 and 80.5 in fiscal year 1998, to 87.8 in fiscal year 2004. The number of hearings held also increased, with video-conference hearings nearly doubling since 1998.

Through incentives and sound management, the Board will continue to improve over past performance. It will do so by eliminating avoidable remands, strengthening infra-agency partnerships, writing shorter and more concise decisions, utilizing employee incentive mentoring and training programs, making judicious use of overtime, and by increasing the use of paralegals.

The Board believes these measures will work to reduce the backlog and shorten the time it takes for a veteran to receive a well-reasoned and final Board decision. The Board also will continue working to develop new and creative solutions to the challenges faced in order to fulfill its statutory mission to hold hearings and provide timely, high quality decisions to the Nation's veterans and their families.

Question 2. Can you explain BVA and its system for docketing cases? I understand that BVA generally decides appeals in the order in which they are received from VA regional offices (ROs). When a case is received from a regional office it is given a docket number. If that case is later appealed to the Court of Appeals for Veterans Claims and remanded back to BVA, it appears that BVA issues a new docket number. If that case is later appealed to the Court of Appeals for Veterans Claims and remanded back to the BVA, it appears that BVA issues a new docket number and that veteran goes to the back of the line at BVA rather than retaining his earlier docket number and receiving near immediate review. This can add as much as 3 to 5 years to the veteran's claim being resolved. Do you support remanded cases retaining their initial docket numbers in order to reduce lengthy waits for final decisions?

Answer. When a decision of the Board is appealed to the Court, and then remanded to the Board, on remand the case is assigned the same docket number that it had when the case was previously considered by the Board. Similarly, if the Court remands a case to the Board and if the Board then remands that case to the originating agency on a specific issue and the same issue is ultimately returned to the Board, the original docket number is retained. The same is true where the Board, on its own, remands the case on a specific issue to the originating agency.

However, by case law, where a case was originally remanded, for example, on the issue of service connection and is subsequently returned to the Board on a "downstream issue"—i.e., one that had not been considered by the Board or Court in their decision—such as the disability rating or effective date assigned following an award of service connection, a new docket number is assigned by the Regional Office. A new docket number is assigned because the appeal is being made with respect to a completely different issue than that originally filed with the Board, and is initiated by the filing of a new Notice of Disagreement (NOD). The service connection claim is closed out on the Board's computerized tracking system as a grant of benefits and the new issue or issues are then separately identified with a new docket number. The docket number is automatically assigned by the computerized tracking system in accordance with the date that a substantive appeal has been received. The tracking system is unable to distinguish between new issues and so-called "downstream issues."

VA has not been able to devise a technical tracking system to address this problem. VA also does not have the resources to manually screen all appeals to determine whether a case is being returned on a downstream issue, as we process nearly 40,000 appeals each year. However, when we are advised by the appellant or his or her representative that the returned case involves a "downstream issue," the Board takes prompt action to manually change the docket number to that of the original appeal.

Question 3. The claims process can be very lengthy and burdensome both for veterans and those processing claims. Do you have any suggestions for Congress to improve this process so the Board can adjudicate claims more efficiently and effectively?

Answer. Unfortunately, until I am confirmed and have the opportunity to more carefully study the Board's operations and address its overall current and future needs with the Department and Board leadership, as well as any current legislative limitations on the effective operation of the Board of Veterans' Appeal, it is premature for me to comment on the specific legislative requirements to make the Board more effective and responsive to the needs of our veterans. I do promise,

though, Senator Akaka, once confirmed and as soon as I have had the opportunity to carefully examine the legislative needs of the Board, I will arrange to meet with you and your staff to address those needs and provide whatever insights I have gained and any legislative suggestions I may have.

RESPONSES TO WRITTEN QUESTIONS FOR JAMES P. TERRY, NOMINATED TO BE
CHAIRMAN OF THE BOARD OF VETERANS APPEALS, U.S. DEPARTMENT OF VETERANS
AFFAIRS FROM SENATOR PATTY MURRAY

Question 1. Mr. Terry, I want to first thank you and your family for your service to this country. I am worried about our current veterans from Iraq and Afghanistan not having access to the disability compensation they deserve. What steps do you think the Department of Defense, the VA and others need to make to ensure that those veterans get the compensation they deserve? Do you have concerns that veterans are getting compensation they do not deserve and are not entitled to?

Answer. Thank you Senator Murray for your kind words. I believe that the Department of Defense and VA share a deep concern that those veterans returning from our current battlefronts, as well as all those who served our country in uniform, receive all the benefits to which they are entitled. A number of programs are in place to assist those transitioning from active service to veteran status to receive the benefits to which they are entitled. These include the Transition Assistance Program (TAP) and Disabled Transition Assistance Program (DTAP), which are administered by the Veterans Benefits Administration in conjunction with the Department of Defense.

I believe the function of the VA's adjudication system is to ensure that all appellants receive the benefits to which they are entitled. As you know, no system is perfect. Sometimes, veterans do not get the benefits to which they are entitled and, at times, a few get benefits to which they are not entitled. The appeals process exists to see that a disinterested tribunal takes another look at the case in which a benefit was denied and that any error is corrected. The issue of an erroneous grant of benefits generally is not seen during appellate review unless those benefits are severed. Hence, to directly answer your question, given the frailty of human nature, some veterans may be receiving benefits to which they are not entitled.

That said, the Department is working hard to prevent erroneous payments by identifying systemic problems and by training adjudicators to avoid repeat errors.

Question 2. Mr. Terry, 2 months ago in my office we were discussing the effects of PTSD on veterans. We were talking about the mental health disability claims being made and you said that your father went off to war and came back home to work on your farm. And then stated you went off to war and came back. And then you said that your father was fine when he came back and you were fine when you came back. Can you clarify what you meant by that comment?

Answer. I stated that it appears from the May 19, 2005 IG Report that the World War II generation of which my father was a part did not file nearly the number or percentage of PTSD claims (shell-shock at that time) as subsequent generations have, although the stress of war was equally applicable to those brave Americans. Part of the rationale for the smaller number of such claims for these older veterans may have been the stigma attached to mental afflictions at that time. Those States with a higher percentage of PTSD claimants tend to have a much higher per capita benefit payment rate than those with few PTSD claimants. This may explain why the States with the high demographics of World War II and Korean War veterans, like Illinois, Indiana, Michigan and Ohio, for example, do not have as high a benefit payment rate as some other states. If confirmed, I will ensure that the Board's Veterans' Law Judges fairly adjudicate all PTSD claims. Those veterans who have PTSD as a result of an in-service stressor are entitled to receive compensation from VA and I will strive to ensure they do.

I mentioned to you that I had been severely wounded in Vietnam but that I had received excellent care and that I was fine.

Question 3. I asked you to explain what you meant during that conversation in May and you stated that in the latest VA Inspector General's Report—the May 19, 2005 VA Inspector General's Review of State Variances in VA Disability Compensation Payments—the Inspector General's Office stated that there was a trend toward veterans with 100 percent PTSD to stop seeking VA Medical Care for their ailments once they received 100 percent disability compensation. Can you clarify for this Committee what you meant by that statement?

Answer. One of the concerns that senior leaders in the Department have for all claimants seeking medical benefits is the desire to ensure that they are successfully treated for their disabilities and that where possible, these veterans can return to

productive healthy lives. One concern noted in the May 19 IG report was the finding that a large percentage of veterans, having been determined to be 100 percent disabled as a result of PTSD, cease taking advantage of the treatment and continuing VA medical care that is available to them. This is a major concern if we are truly concerned about our continuing obligation to provide effective care to our disabled veterans.

Question 4. Mr. Terry, after our discussion, I was left with the impression that perhaps you did not consider PTSD to be as pressing a healthcare need as our veterans' physical injuries. I'd like to hear you clarify for everyone here your views on PTSD. Do you believe that veterans who suffer from PTSD deserve disability compensation equal to compensation for physical injuries?

Answer. Senator Murray, I am truly sorry if I left you with that impression as it was certainly not my intent. I believe that all disabilities incurred in or as a result of military service are of equal concern and all must be fully and appropriately compensated. I believe that PTSD is one of the most important of our health care concerns, and one only has to look at the number of claimants and the severity of their disabilities to reach this conclusion. All disabilities, whether mental or physical, are compensated based on their severity and how they affect a veteran's ability to earn a living. Generally, this is determined by comparing the manifestations of the disability with the criteria in the applicable regulations, also known as the Schedule for Rating Disabilities. Where the disabling effects of a disability or disabilities are not adequately compensated under the Schedule for Rating Disabilities, an additional or extra-schedular rating may be assigned. As I'm sure you are aware, the rating criteria provide for a maximum evaluation of 100 percent for psychiatric disorders, which is greater than the scheduler rating for many physical disorders, including, for example, disabilities such as the loss of a leg. I believe that this reflects the fact that a physical disability is often easier to overcome than a psychic trauma, which may affect every aspect of a person's life and severely limit their employability.

Question 5. Mr. Terry, what lessons do you think we can learn from our current appeals process that may help prevent our current soldiers, sailors, airman and marines from having to go through the same grueling appeals process 20, 30, or 40 years from now?

Answer. We all agree that the appeals process takes too long. We need to identify where the delays are, what is causing them and what remedial steps are needed to improve the process while still safeguarding veterans' rights. We must ensure that our adjudication personnel are thoroughly trained and have the resources to do their jobs. It is also important to have our veterans thoroughly examined at the time of discharge to assist them with their application for service connected disability benefits. I know VBA, VHA, and the Board are working on examination protocols to ensure consistency and accuracy with physical exams. I will look closely at that program to see if additional improvements can be implemented. I am similarly aware that BVA and VBA have been developing corrective training programs that are being aggressively delivered. I intend to build on that tradition. At this point, however, until I am confirmed and have the opportunity to more carefully study the entire VA adjudication process, including the Board's operations and current and future needs, it is premature for me to comment on the specific elements of these initiatives to reform the adjudication process to make it more effective and responsive to the needs of our veterans. Senator Murray, once I have been confirmed and as soon as I have had the opportunity to carefully examine the adjudication process, I will be happy to meet with you or your staff to discuss whatever insights I have gained regarding possible reforms for its improvement.

Question 6. What steps will you take to reduce the current backlog of appeals, currently at 24,846 cases, that are pending at the BVA while maintaining and or improving the quality of BVA decisions?

Answer. Although I have had only a short time to directly acquaint myself with the Board, I am very impressed with the dedication, professionalism and commitment to our Nation's veterans that typify the Board's employees. I can assure you, when confirmed, the Board will continue working to develop new and creative solutions to the challenges faced in order to fulfill its statutory mission to hold hearings and provide timely, high quality decisions to the Nation's veterans and their families.

The Board has come a long way. In Fiscal Year 1998, the Board's pending caseload stood at 30,000 cases. That year, the Board issued 38,886 decisions, and held 4,875 hearings. Appeals resolution time was 687 days. In fiscal year 2004, the Board issued 38,371 decisions, conducted 7,259 hearings—a substantial increase from 1998—and appeals resolution time decreased to 529 days. Cycle time (the time the appeal is at the Board and not being reviewed by the veteran's representative) was

reduced to 98 days. Cases pending at the end of fiscal year 2004 stood at 21,430. The Board did this with 43 fewer FTEs than in 1998. The fiscal year 2005 performance, when finally closed out on September 30, 2005, will be similar.

The Board made these improvements despite several significant challenges, including the impact of the Veterans Claims Assistance Act of 2000, and the initiation and termination of evidence development at the Board due to the decision of the U.S. Court of Appeals for the Federal Circuit in *Disabled American Veterans v. Principi*.

The Board did not do this alone, but had much help from (1) the Congress, providing unqualified support for veterans and their families, (2) veterans service organizations (VSO's), which represent about 85 percent of all appellants before the Board, (3) the VA leadership, that supports improvements in the appeals process to ensure that veterans receive timely and quality decisions, and (4) the staff at the Board, including the 56 Veterans Law Judges, 228 counsel, and 154 administrative support staff. Through their efforts, productivity increased, over historic levels, by 20 percent for staff counsel, and by 25 percent for the VLJs. The number of hearings held has also increased, with videoconference hearings nearly doubling since 1998. The average number of decisions per employee increased from 80.5 in fiscal year 1998, to 87.3 in fiscal year 2004. Decision quality at the Board has improved from an 88 percent error free rate in 1998 to a 90 percent rate in 2005, and, as noted above, the Board's cycle time is a little over 3 months.

If confirmed, I will ensure that the Board continues to improve over past performance. We will do so through the use of appropriate incentives and sound management. We will do so by eliminating avoidable remands, strengthening infra-agency partnerships, writing shorter and more concise decisions, utilizing employee incentives, mentoring and training programs, making judicious use of overtime, and by increasing the use of paralegals.

I believe that these measures will be successful in reducing the backlog and shortening the time it takes for a veteran to receive a well-reasoned and final Board decision.

Question 7. Mr. Terry, Veteran Service Organization (VSO's) represent a large number of BVA appellants. What is your experience with the VSO community and what steps will you take to foster/maintain a professional working relationship between BVA staff and the VSO representatives?

Answer. The Veterans Service Organizations (VSOs) are the voices of America's veterans. They provide free, high quality representation to about 85 percent of appellants before the Board. Although they are not lawyers, they are experts in veterans law and their success rate reflects this—in fact, it meets or exceeds that of private attorneys.

The Board enjoys an excellent working relationship with the VSOs, both in the field and with those that have appeals units that are co-located at the Board's offices in Washington. Board personnel interact with VSO representatives on a daily basis. We have quarterly meetings with the VSO representatives, as well as members of the private bar that wish to attend, to discuss issues of VSO concern, answer questions and advise them of developments in BVA procedures and policies.

I can assure you, Senator Murray, that if confirmed, I will ensure that this relationship will continue. Again, if confirmed, I will meet with the leaders of the major VSO's to discuss how we can work together to see that we will continue to work together for the benefit of the veterans we both serve.

Question 8. Mr. Terry, what steps will you take to reduce the number of BVA decisions that are remanded by the Court of Appeals for Veterans Claims (CAVC) due to BVA deficiencies?

Answer. Senator Murray, if confirmed, I will do all in power to reduce avoidable remands, both those from the Court of Appeals for Veterans Claims (CAVC) to the Board and those from the Board to the VA Regional Offices. I believe that the best approach to ensure that we get it right the first time is through training. The Board has a very robust training program in place. It involves mentoring and developing new counsel and judges, periodic training for all professional staff on new and challenging areas of veterans law, and substantive training in both veterans law and legal writing. We have cooperative training endeavors with the Office of General Counsel, the Veterans Benefits Administration, and the Veterans Health Administration to improve the competence of adjudicators throughout the VA system. As Chairman, I would continue and expand our efforts in this critical area.

One cautionary note—while some CAVC remands are the result of Board error, many are not. Frequently, court remands are based on changes in the law from that which was in effect when the BVA decision was rendered. An example is the Holliday decision, which created an avalanche of Court remands directing VA to comply with the Veterans Claims Assistance Act (VCAA), which was not in exist-

ence at the time the BVA decision was made. Others are based on a difference in judgment between the reviewing judge at the CAVC and the deciding VLJ at the Board as to the interpretation of the law, whether the reasons or bases for the Board decision were adequately explained or whether all due process was accorded. About 60 percent of remands are never seen by a CAVC judge, but represent actions by the attorneys involved in the case to dispose of the appeal. Finally, given the delays in the system, the CAVC is reviewing BVA decisions that may have been issued years ago.

The Board does track the reasons for each Court remand. While we have much to learn from remands, we need a more immediate source of feedback to improve our quality. The Board is working cooperatively with VA's Office of General Counsel, particularly Professional Staff Group VII, which represents the Secretary before the Court, Professional Staff Group II, which handles Compensation and Pension issues, and VBA to see what we can do to avoid remands whenever possible from the CAVC. This is an extension of the avoidable remand project that is ongoing with the Veterans Benefits Administration.

RESPONSES TO WRITTEN QUESTIONS FOR JAMES P. TERRY, NOMINATED TO BE
CHAIRMAN OF THE BOARD OF VETERANS APPEALS, U.S. DEPARTMENT OF VETERANS
AFFAIRS FROM SENATOR KEN SALAZAR

Question 1. Colorado Average Benefit. A recent VA Inspector General report found significant differences in compensation payments across the States. Colorado is one of those that falls below the national average. Veterans in Colorado get an average of \$4000 less than veterans in New Mexico do. Why. What steps do you propose in response to the report and specifically, what can the VA do to improve the situation in Colorado?

Answer. The compensation determinations which were the subject of the IG comparison are made at our Regional Offices (ROs) of the Veterans Benefits Administration (VBA) in each of our States and in certain of our territories (e.g., Guam and Puerto Rico), which are under the authority of the Under Secretary for Benefits. The Board of Veterans' Appeals can only influence these determinations if they are appealed to the Board and the Board overturns the RO determination and grants the benefits sought.

The statistics referred to place Colorado at 34 of 50 States for fiscal year 2004 with an average payout of just under \$8000 (\$7,944) per veteran in fiscal year 2004. The national average was \$8,378. New Mexico ranked first at \$12,004. The May 2005 IG Report found that a number of demographic and benefit rating factors help explain the variances in State average annual disability compensation payments. One of the most significant,—the age of a veteran receiving benefits—is a variable that the VA has virtually no control over. Statistics do show, however, that States with a larger percentage of older veterans who served in the Second World War and the Korean Conflict tend to receive less in benefits because they tend not to request benefits related to psychiatric trauma. For whatever reason, veterans from these conflicts tended to return to their homes and resume their lives without consideration of post-traumatic stress claims (called shell-shock during those conflicts). PTSD claims make up a significant percentage of claims from recent era veterans, to include Vietnam and the first Gulf War. In fact, data indicates that Vietnam veterans receive, on average, \$2328 more in annual compensation payments than veterans in the next highest period of service. New Mexico has 41 percent of its veterans receiving benefits from the Vietnam period, while Colorado has 32.5 percent. Moreover, New Mexico has 18.2 percent of its total compensation recipients in receipt of compensation for PTSD, while Colorado has only 6.7 percent.

Other factors identified by the IG Report included the rate at which veterans receiving disability submitted new disability claims (those States where veterans receiving benefits submitted additional claims received greater compensation), the period of service (Vietnam "VETS" tend on average to receive greater benefits because of extensive PTSD awards), whether the disability claimants had dependents (those with dependents received more), and whether the recipient had a number of service connected disabilities, vice a single claimed disability (the more disabilities, the higher the average disability payment). In each of these areas, New Mexico ranked near the top and Colorado in the middle.

The key to ensuring all Colorado citizens are treated fairly is to ensure that every RO in each State is providing the same message to every veteran and providing the same standard when assessing their claim. The VBA is constantly providing training to its ROs across the country to ensure that the same rating factors, the same

application of the factors to disabilities reviewed, and the same assessment techniques are used consistently in each RO.

The Board of Veterans Appeals is a participant with VBA in this process as we have consistently utilized attorneys and Veterans Law Judges, when they visit the various ROs to conduct Travel Board hearings, to spend a portion of their time sharing information with staff personnel at the ROs and providing any desired training that could prove helpful to their adjudication process. We are also participating with VBA and the Office of General Counsel to provide broadcast training to all the ROs. We are participating in a joint effort with VBA and the Veterans Health Administration to develop a comprehensive protocol for examinations for PTSD and other psychiatric disorders to ensure the same standards are applied in each such examination. We are committed to ensuring, to the extent possible, the claims adjudication process is totally transparent and consistent across State lines.

Question 2. Mental Health Variance. One of the key factors identified in the O.I.G. report was the fundamental subjectivity of claims decisions in certain areas, such as mental health and Post Traumatic Stress Disorder. What steps do you propose to improve training and communication across the system to reduce this variability and improve consistency?

Unlike certain physical disorders that may have clear-cut manifestations, the evaluation of psychiatric disorders often involves a significant element of judgment. While attempts have been made to add a greater degree of objectivity into the evaluation process, such as, for example, by the 1996 revisions of VA regulations for the evaluation of psychiatric disorders, a subjective element still remains.

I agree that communication and training are the best approach to ensuring consistency throughout the adjudication process. We need to focus on these issues as part of our continuing monthly "Triad" meetings with the Veterans Benefits Administration (VBA), the Office of the General Counsel (OGC), and the Veterans Health Administration (VHA). In this way, we may design appropriate vehicles for training for all those involved in the adjudication system. These efforts would continue our ongoing joint satellite broadcasts to BVA and VBA, as well as the ongoing CPEP (Compensation and Pension Examination Project), which is a joint effort to train the medical professionals involved in the compensation examination process. The Board would continue its training of VBA and VHA personnel during trips to the Regional Offices to conduct Travel Board hearings, as well as our comprehensive program of in-house training for our judges and staff counsel.

Question 3. Incentives for Performance. This Committee has heard a number of suggestions for reform of the adjudication process. One of those is setting time limits for each stage of the adjudication and appeals process. What is your reaction to that suggestion? What are other suggestions do you have for moving the administrative process forward and creating incentives for high performance?

The Board has in place a robust program for providing incentives for high performance. These include participation in a variety of VA, OPM and other training programs, financial incentives, and public recognition for a job well done. We believe that such incentives contributed to the Board's success in increasing productivity over historic levels by about 25 percent for our Veterans Law Judges and 20 percent for our staff counsel. If confirmed as Chairman, I certainly will continue and improve on this highly successful program.

Unfortunately, until I am confirmed and have the opportunity to more carefully study the entire VA adjudication process, including the Board's operations and current and future needs, it is premature for me to comment on the specific initiatives to reform the adjudication process to make it more effective and responsive to the needs of our veterans. At present, the Board's cycle time—the time it takes the Board to issue a decision from its receipt of the file (excluding the time taken for review by the appellant's representative)—is about 100 days. The setting of a time limit for this stage of the process would appear to be unnecessary. Furthermore, I am at a loss to speculate as to the remedy for a failure to meet time limits. Certainly, neither the Board nor the VBA would be permitted to grant benefits if the evidence of record does not support such action. This is an issue I must consider if confirmed. I do promise, though, Senator Salazar, once confirmed and as soon as I have had the opportunity to carefully examine the adjudication process, I will be happy to meet with you or your staff to discuss whatever insights I have gained regarding possible reforms for its improvement.

Question 4. Simplifying the Appeals Process. There have been a number of suggestions for simplifying the remanding process and streamlining the appeals process. What is your response to proposals to place Administrative Law Judges in Regional Offices to decentralize the Board's decisionmaking authority? In a perfect world, what would you recommend?

Answer. I do not see the merit in the proposal to place BVA's Veterans Law Judges in VA Regional Offices (ROs). In fact, I think it is a bad idea.

The existing appeals process, with layers of review, was established, in part, to promote claimant confidence in the decisions reached on claims by ensuring fairness and integrity. Decentralization or regionalization of the Board by placing VLJs at the ROs could affect the appearance of Board independence by creating a perception in the minds of appellants and their representatives that the Board is an extension of the RO and not a separate and independent body that exists to fairly and impartially consider their appeals.

Decentralization or regionalization would also pose substantial challenges to BVA in maintaining the efficiency of its operations. Given the rapid changes in veterans law and the complexity of the VA disability system, it is advantageous for VLJs to be able to function in a collegial environment where they have the opportunity for a quick and free exchange of ideas and information. The ability of VLJs and counsel to instantly communicate and exchange views enables the Board to quickly adapt to changes in the law. This kind of environment fosters consistency in understanding and application of the law. Regionalization of the Board will also create a host of logistical problems that do not exist in a centralized environment. Regionalization could cause a need for additional expenditures to provide necessary support services and legal research resources at multiple locations. We would also predict difficulties managing the case flow to and from VLJs and difficulties in conducting quality reviews.

It is hard to understand exactly what improvements would result from basing VLJs at Regional Offices. VBA Decision Review Officers and Rating Specialists are sufficiently qualified to determine whether necessary development has taken place or whether legal requirements have been met, and improvements in the quality of RO claims adjudication can be achieved by training and quality review. In fact, VBA and BVA have recently developed a plan to reduce avoidable remands. This plan includes training, better documentation of certain determinations in the claims folder, better attention to certification of appeals by VBA Regional Office appeals staff, and some changes in guidance.

At this point, as I noted in my response to the previous question, until I am confirmed and have the opportunity to more carefully study the entire VA adjudication process, it is premature for me to suggest specific initiatives to streamline the system. I can assure you that VA will carefully consider all available options for improvement in order to provide the best possible service to and ensure the rights of our Nation's veterans and their families. Again, Senator Salazar, once confirmed and as soon as I have had the opportunity to carefully examine the adjudication process, I will be happy to meet with you or your staff to discuss whatever insights I have gained regarding possible approaches to streamlining the appeals process.

Chairman CRAIG. Mr. Terry, thank you very much.

Now we turn to you, Mr. Ciccolella, nominated to be the Assistant Secretary of Labor for Veterans Employment and Training. Please proceed.

STATEMENT OF CHARLES S. CICCOLELLA, NOMINATED TO BE ASSISTANT SECRETARY FOR VETERANS EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Mr. CICCOCLELLA. Thank you, Senator Craig. Thank you and the Committee for considering my nomination. I want to thank all the Members of the Senate Veterans' Affairs Committee because you always have been very responsive to our budget requests and any other issues that have come up where we have needed assistance from the Congress, both on the House side and the Senate side.

As you know, sir, I am joined by my wife Donna of 33 years. I am also joined by a number of the professional staff at the Veterans Employment Training Service at the Department of Labor. These are dedicated veterans themselves. We work pretty tirelessly to make sure that veterans receive priority service in the labor exchange.

I am very honored to be nominated for this position. Like Jim, my family has a long tradition of military service. My dad was a

Major General in the Army and fought in World War II, actually captured General Von Rundstedt at the end of the war. My father-in-law and my brother-in-law both served in the Navy, my dad and my father-in-law in World War II and Korea and my brother-in-law saw action in Vietnam, as I did, and as my two brothers also did in Vietnam. We were all commissioned as infantry officers.

So the values of the military have really defined our lives, and that is why it is an honor for me to be nominated to be the Assistant Secretary for Veterans Employment and Training. If the Senate confirms my nomination, it will be my privilege to lead this organization.

I have been very fortunate to have been the Deputy Assistant Secretary of "VETS," or the Veterans Employment Training Service, for the past 4 years. In that time, I think we have made some very good progress. We still have a long way to go. In order to improve our entered employments and our retention rates, we simply must better integrate the services of the veteran employment representatives that are hired by the States within the Workforce Investment System.

The Workforce Investment System is a \$15 billion investment every year. There are 19 Federal programs involved in that and veterans receive priority of service in each of those programs, but it is a big matter of making certain that our veteran employment representatives understand that and also that those in the workforce system understand that. Secretary Chao and the President, the Veterans Employment Training Service, and all of the partners in the one-stop career centers are working very hard to make this a very integrated service.

Also, I think it is very important, and you mentioned the group of young veterans who are recently separated, particularly that age cohort of 20 to 24, we need to focus on them because they do have a higher rate of unemployment. We have looked very carefully at the reasons for that, and there are some reasons for it, but we have got to address that problem and we need to address it in the transition programs. We also need to look at a change in the way business has been done with the reserve component units, and I know you have the 116th Brigade in Idaho and other Senators have a number of units in the Guard and the Reserve in their states who have deployed to Iraq. These individuals have deployed for 6 months or a year or more, and when they come back, they are assured and the law provides for their jobs back, not only their jobs, but the jobs that they would have had but for the military service.

We have done a very good job in getting the word out about the Uniform Services Employment and Re-employment Rights Act, servicemembers' rights and the obligations of the employers, but we need to do a better job and we need to look at the requirements for the Guard and Reserve with regard to their transition, because many of them come back and they have got higher levels of skills. They have a tremendous amount of management experience. In many cases, they have great leadership skills now, and so they want to change jobs, but in a sense, they may be first-time or second-time entrants into the workforce and need a little bit of help with their networking skills and their resume writing.

So we are responding now to the State Adjutant Generals on an as-needed basis and we are working with the Defense Department to make sure that we come up with a program that addresses their needs.

Finally, Mr. Chairman, we need to focus our most intensive efforts on those who are seriously injured. We have 13,000 servicemembers from the Iraqi conflict who are injured. Eighteen hundred or more are seriously injured. We have 482 amputees. I know that the Senators and yourself have been out to Walter Reed and you have seen these young folks. They don't see themselves as being disabled. We need to make sure that there is a path and a life for them and that they have meaningful jobs and meaningful careers.

In my lifetime, I have never seen soldiers and veterans held in higher esteem. I think we have a tremendous opportunity today to ensure that the level of service that is provided to veterans with regard to employment can be raised to a much higher bar. We have the commitment of the Secretary of Labor, and the entire Labor Department. I know we also have the commitment of the Department of Veterans Affairs, the Department of Defense, and the Department of Homeland Security to make that happen.

I would just conclude by telling you, Mr. Chairman, I am very honored to have been nominated by President Bush for this position, and if confirmed by the Senate, I pledge my full cooperation with the Senate, my responsiveness to both the Senate and the House, Veterans Committee and my full dedication to this job.

[The prepared statement of Mr. Ciccolella follows:]

PREPARED STATEMENT OF CHARLES S. CICCOLELLA, NOMINATED TO BE ASSISTANT SECRETARY FOR VETERANS EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR

Good morning Chairman Craig, Ranking Member Akaka, and Members of the Committee:

Thank you for the opportunity to appear before the Committee today. I thank the Committee for considering my nomination and for the courtesies that have been extended to me.

I also thank all members of the Senate Veterans' Affairs Committee for their effective oversight of the Veterans' Employment and Training Service. This Committee and the Congress have always supported our budget requests and you have acted on important legislation that has benefited veterans and transitioning military members.

I am joined today by my wife Donna. I am very fortunate and deeply grateful for her wisdom and her support for the past 33 years of our marriage, and she is my closest adviser.

Donna and our daughter Connie always allowed and helped me pursue my passion for serving my fellow soldiers when I was in the military. Today, both Donna and Connie have their own careers in government service, but they support me in the same way in my efforts to serve our nation's veterans and transitioning service members, many of whom have not been as fortunate as I.

I'm speaking especially about those who come back from the military with serious injuries and disabilities. I'm speaking about our veterans who have barriers to employment, including those who have become homeless.

I AM HONORED TO BE NOMINATED

My family has a long a tradition of military service to our country. My father was an Infantry officer who fought in North Africa and Germany in World War II, and later rose to the rank of Major General. My father in law served in the Navy and saw action in both World War II and Korea. My brother in law served in the U.S. Navy and saw action in Vietnam. My two brothers and I each were commissioned in the Infantry through Army ROTC. Each of us is a combat veteran of Vietnam and each rose to the rank of Colonel.

The values of the military have defined our lives. We know firsthand the unwavering commitment, professionalism and honor with which American soldiers serve. We are a family with well over 100 years of military service. We understand the blessings of freedom and the sacrifices made by our men and women in uniform. We know and love our fellow soldiers and veterans. They are the best of America.

That is why it is such an honor for me to be nominated by President Bush to be Assistant Secretary of Veterans' Employment and Training, so I may continue to build on the success of this Administration in providing the highest quality of employment services to our Nation's veterans.

If the Senate confirms my nomination, it will be my privilege to lead the Veterans' Employment and Training Service. I pledge my full commitment to helping transitioning military members and veterans find better jobs and the training needed for those jobs.

That is, after all, what the Department of Labor's Veterans' Employment and Training Service ("VETS") is charged with doing—helping veterans and transitioning servicemembers with the resources and services they need to succeed in the 21st century workforce. "VETS" is a small agency, with a very big job.

GOALS FOR THE VETERANS' EMPLOYMENT AND TRAINING SERVICE

I have been fortunate to have served as the Deputy Assistant Secretary of "VETS" for the past 4 years. We have made much progress in those 4 years, but challenges remain. With the help of the "VETS" professional staff, and the collaboration of the Departments of Veterans Affairs, Defense, and Homeland Security, we will meet those challenges.

If confirmed by the Senate, I will strive to achieve three primary goals:

- To better integrate the services of the Disabled Veterans Outreach Program (DVOP) specialists and Local Veterans Employment Representatives (LVER) in the One Stop Career Centers. This will require better training for our DVOPs and LVERs and it will result in a higher quality of employment services to veterans by the entire Career One Stop System.

- To improve transition assistance services for Active Duty, Reserve and National Guard members who are moving from the military to civilian life. We also must continue to ensure all servicemembers and veterans understand their employment and reemployment rights.

- To focus our intensive employment services and personal, face to face assistance for those service members who are recently separated from the military—and for those veterans who need our help the most—those who have been seriously wounded or injured and those with significant barriers to employment, including homeless veterans.

In working to achieve each of these goals, we must focus on how better to reach employers so they are actively involved in making the veteran employment connection.

VISION FOR "VETS"

These are my goals and they are actually continuing goals for me. I understand the enormous responsibility of making sure we achieve these goals and get this right. My vision for the Veterans' Employment and Training Service is, and has been, to change the manner in which employment and training services are delivered to veterans. We want to improve upon the traditional idea of service delivery by embracing a 21st century model that is focused on equipping veterans with the resources they will actually need to be successful in their chosen career field.

This vision is widely shared in the Department of Labor. Secretary Chao and the Labor Department are working hard to advance and support the public workforce system's provision of priority of service to veterans through education, outreach and better services. We are working hard with the State Workforce Agencies to expand the number of veterans who use these services, and to ensure they have access to the full array of resources.

WE ARE MAKING PROGRESS, BUT CHALLENGES REMAIN

Four years ago, approximately 3 in 10 veterans using the workforce system were being placed into jobs. Today, nearly 6 in 10 are entering employment. We have extended the highly successful Transition Assistance Program (TAP) employment workshop to serve servicemembers separating overseas. We are also beginning to provide those services to returning guard and reserve members where and when requested.

Over the past 4 years, we have vastly improved military members' and veterans' knowledge of their employment and reemployment rights. We will soon publish, for

the first time ever, regulations implementing the Uniformed Services Employment and Reemployment Rights Act (USERRA).

While we have made significant progress, we must continue to set higher standards for performance outcomes in job placements and job retention, and we must always stress better performance and accountability on the part of those who directly serve veterans.

We have a tremendous opportunity today to move to a higher level in helping servicemembers and veterans obtain better training for better jobs. Our economy is strong, our country needs workers, veterans are outstanding employees, and there are many new career opportunities, especially in high growth, high demand industries.

In my lifetime, I have never seen soldiers and veterans held in higher esteem than they are today. They have earned that. They deserve our best efforts to help them.

We have the support, commitment and collaboration of the entire Department of Labor, as well as the Departments of Veterans Affairs, Defense and Homeland Security, to improve employment opportunities for veterans. We will continue to set the bar very high so they receive the dignity, respect and services they have earned.

Mr. Chairman, I am honored and humbled by President Bush's and Secretary Chao's confidence in me for this nomination. I look forward to this honor and to the challenge, if the Senate so entrusts me, of becoming the Assistant Secretary of Labor for Veterans' Employment and Training.

I pledge to work with this Committee and the Congress, to keep you informed, and to be responsive to your oversight responsibilities.

Thank you for allowing me to appear before this Committee today. I thank the Chairman, the Ranking Member and all Committee Members for considering my nomination.

RESPONSES TO WRITTEN QUESTIONS FOR CHARLES S. CICCOLELLA, NOMINATED TO BE ASSISTANT SECRETARY FOR VETERANS EMPLOYMENT AND TRAINING, U.S. DEPARTMENT OF LABOR FROM SENATOR LARRY CRAIG

Question 1. The GAO has stressed that, because of ongoing concerns about data reliability, it is difficult to assess how well the DVOP and LVER programs are serving our Nation's veterans. What measures would you implement to ensure that "VETS" has the data necessary to conduct a meaningful assessment of the services provided to veterans by DVOP specialists and LVERs?

The Jobs for Veterans Act (JVA) required a full review of employment reforms by GAO, which includes an assessment of the Disabled Veteran Outreach Program specialist (DVOP) and Local Veteran Employment Representative (LVER) programs. We have worked very closely with the GAO on this review. The GAO's preliminary report cited the data reliability concerns, which were initially raised by our staff here at the Veterans Employment and Training Service ("VETS").

The Department of Labor has been working to improve data reliability and reporting in State reporting systems for many years. Most recently, the Employment and Training Administration implemented significant improvements in reporting by moving to the wage record validation of entered employments. Additionally, over 40 States are using the Wage Record Information System (WRIS) which captures wage records from all participating States, allowing a State to capture entered employment data on registrations in one State obtain employment in another State. Having employers report on their new hires and on all individuals who earn wages, instead of calling employers and validating employment information, has been a major move forward and has greatly helped to ensure that most of the data we're getting is meaningful and accurate. If I am confirmed, I will work with ETA to encourage State implementation of this system as soon as possible. We can do this by providing technical assistance and training to those States that have not completed their adoption of the system.

Additionally, "VETS" requires each State to submit quarterly financial and performance reports, and each One-Stop Career Center to submit a quarterly Manger's Report. Our field staff also conducts annual assessments of the Jobs for Veterans Act (JVA) State Grants Program in the One Stop Career Centers. We do a lot of analysis and monitoring of the services provided and outcomes reported by the DVOPs and LVERs. We thoroughly review the required quarterly State financial and performance reports at the State, Regional and National levels to ensure that we are getting the most reliable JVA data. Where errors are identified, we provide technical assistance to ensure that the problem is resolved. If confirmed, I would also stress the need for State Workforce Administration officials to review how data

is collected and reported with the DVOPs and LVERs. Finally, we need to refine the “VETS” self-assessment tool that we use to ensure that all veteran employment services provided at the service delivery point are in compliance with the requirements of the JVA. I believe the actions that have been taken since the implementation of the JVA, along with the actions I plan to take if confirmed, will provide “VETS” a means of assessing the services provided by the DVOPs and LVERs.

Question 2. It is my understanding that programs such as the Transition Assistance Program (TAP) are intended to facilitate the transition of active duty troops out of service and into civilian life—and not necessarily to facilitate the movement of Reserve and Guard personnel into and out of active duty. In light of increasing movement by Reserve and Guard personnel into and out of active duty roles, do you think program changes are needed to account for the unique needs of Reserve and Guard personnel?

Answer. We must address the increasing movement by Reserve and Guard personnel into and out of active duty roles. While the Department of Labor has provided employment workshops as part of the active duty TAP, there is now an increased need to provide these workshops to the reserve components as our worldwide military commitments have necessitated a mobilization of National Guard and Reserve members that is unprecedented in modern times. The result is a need to provide these workshops to members of the Guard and Reserve, and we are working with the National Guard and Reserve on providing TAP services to these returning servicemembers in many States on an informal and as needed basis. Recently we launched Reserve Component TAP demonstration programs, in which we work with returning units and provide a flexible format that allows for a tailored transition assistance package that meets local needs. The approach in each location is unique. Once we evaluate the success of these programs and review any feedback from participants, we will work with the Department of Defense—led Demobilization Working Group (including the National Guard Bureau and Office of the Chief of Army Reserve) to create flexible models that can be adapted to fit any situation.

Question 3. “VETS” has reported that in program year 2003 it had an “entered employment” rate of 58 percent for veterans. Does “VETS” track the annual wages earned by those veterans that have entered employment? If so, what is the average wage? Does “VETS” track how long those veterans remain in their jobs? If not, should it? Are there measures you would like to see implemented to track the quality and success of employment secured by veterans?

Answer. “VETS” does not currently track the average wage earned. However, under the new common performance measures, we will have access to a new performance measure that tracks the 6-month earnings increase. We do track employment retention at the 6-month point. The wage records provide both employment and retention rates and are, I believe, very significant performance measures that allow us to better monitor the quality and success of employment by veterans.

Question 4. VA’s Vocational Rehabilitation and Employment program provides vocational rehabilitation services to disabled veterans. How does “VETS” integrate its services with those provided by VA to assist disabled veterans in obtaining employment? What additional measures should be taken to integrate the services provided by “VETS” with the services provided by VA?

Answer. “VETS” has a strong working relationship with the VA’s Vocational Rehabilitation and Employment Service (VR&E). We continue to work with VR&E staff at the national and local level to improve services to disabled veterans receiving VR&E services. We have approximately 55 veterans employment representatives outstationed at VR&E sites and 90 located at other VA facilities, including VA medical centers. We provide itinerant coverage in other locations and work through a coordinated referral system. Additionally, we will be soon implementing a new Memorandum of Understanding between “VETS” and VR&E that among other things will establish three work groups: (1) Performance Measures for Assessment of Partnership Program Results; (2) National Veterans Training Institute (NVTI) Curriculum Design; and (3) Joint Data Collection, Analysis, and Reports.

“VETS” has also initiated a study to evaluate how well the VR&E referral process is working. This study will provide a clear assessment of the employment and retention rates of disabled veterans who are referred by VR&E to the DVOP specialists and registered with the Public Labor Exchange. The study will help in determining future service delivery strategies for this targeted population.

Question 5. “VETS” stated mission “is to provide Veterans with the resources and services to succeed in the 21st century work force by maximizing their employment opportunities, protecting their employment rights and meeting labor-market demands with qualified Veterans.” How does “VETS” measure its success in accomplishing that mission?

Answer. "VETS" measures success through a series of performance measures including entered employment, entered employment after receiving staff assisted services, and employment retention, measured for all veterans and also separately for disabled veterans. We have also instituted the grant level measures I referred to in response to Question 1, which measure the performance at the DVOP/LVER level. Through these and other performance measures, we have seen improved performance outcomes in recent years. Four years ago, approximately 3 in 10 veterans using the workforce system were being placed into jobs. Today, nearly 6 in 10 are entering employment.

Question 6. Under the Jobs for Veterans Act, veterans are entitled to priority of service for all employment services funded by the Department of Labor. Would you please explain what measures the "One-Stop job centers" generally have instituted to provide priority of service to veterans? Do you believe that more needs to be done to ensure that veterans are receiving priority of service?

Answer. The cornerstone of the workforce investment system is the network of One-Stop Career Centers, including more than 3,500 centers and affiliate sites. One-Stop Career Centers provide a wide range of employment and training related services that help employers find the skilled labor they seek and help ensure that job seekers find good jobs with good pay and career pathways in high-growth industries. In Program Year 2003 alone, we connected over 1.4 million veterans (200,000 of them disabled) to the workforce investment system.

In Program Year 2003, the first year under the jobs for Veterans Act requirement for priority of service, the Department established a plan for how best to implement priority of service. On September 16, 2003, the Department's Employment and Training Administration issued a guidance letter that instructs the workforce investment system on the provisions in the jobs for Veterans Act to ensure Priority of Services for veterans and eligible military spouses. The Department also developed web resources on each specific program area for use by the One-Stops and others on how the program is impacted by the jobs for Veterans Act. This focuses on how best to implement the priority. These web sources also provide an opportunity for One-Stop staff to submit additional questions. The Department also used PY 2003 to collect data on the participation of veterans in various programs covered by priority of service. This data shows that veterans are essentially represented in proportion to their incidence of representation within the workforce for the major adult programs. In those programs where you would expect veteran participation, they are well represented on a parity basis with the overall veteran participation rate in the labor force.

States recently completed a 2-year strategic plan for their workforce investment system under the Workforce Investment Act, and States were required to report their strategies for implementation of priority of service to veterans. States are doing many things to ensure veterans are receiving priority of service. These actions include improved procedural strategies on how veterans are served, such as outreach activities, improved intake and registration, better client flow procedures and clarification of the DVOP and LVER roles. Many States also have improved integration of DVOP/LVER services by cross training their staff. Many States have been working hard to improve their informational strategies by creating veteran specific legislative, entitlement and contact information well above and beyond the information provided to other clients. Some States have implemented job matching strategies through their electronic websites.

If I am confirmed as Assistant Secretary for Veterans Employment and Training, it would be my responsibility to work closely with the Assistant Secretary for Employment and Training to ensure that all State Workforce Agencies and each One Stop Career Center understands what veterans priority of service means and to develop communication and technical assistance strategies implementation of priority of service.

"VETS" is already working on the implementation of an outreach and communication plan on services for veterans under a Memorandum of Understanding between the Department of Labor and the Department of Defense that will include new methods for promoting priority of service. In addition, we are developing new methods for linking One Stop Career Centers to the Transition Centers on the military installations. This helps veterans, especially those in the category of young and recently separated, make the connection to the One Stops to ensure that they have all the tools they need to enter the workforce.

Question 7. What performance measures do you think the Senate Veterans' Affairs Committee should use to assess the performance of "VETS", particularly with regard to its employment services? What would be your assessment of "VETS" performance under those measures?

Answer. Obviously, the best measure for assessing the performance of "VETS" is that veterans are receiving the training and employment service they need and are finding good jobs. That is the bottom line.

But I believe the Committee should assess "VETS" performance by whether we achieve our stated performance goals, especially with regard to veterans entering employment and retaining employment. And, as the new common measures are implemented this year, I think the Committee can look also at the "earnings" measure to gauge "VETS" performance. "VETS" should assess and report on those particular measures each year, and continually negotiate with each State, consistent with their specific labor market situation, to improve on the kinds of jobs veterans are getting. For example, if we capture the information on earnings, and compare that to a State's labor market conditions, we ought to be able to determine if the workforce system is truly more demand driven, if veterans are receiving training in the right skills and are moving into the high demand, high growth industries where there are good career paths.

Therefore, I think if we look at employment retention rates and they are going up, and we look at earnings, and they are going up, those things will be indicators of how "VETS" is performing and whether we are on the right track.

Question 8. It is my understanding that, under a pilot program launched in February 2005, the U.S. Office of Special Counsel (OSC) is handling certain claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA) involving Federal-sector employers, including all Federal-sector USERRA claims that also involve allegations of a prohibited personnel practice ("mixed" cases). It is also my understanding that OSC personnel have expertise in identifying mixed cases; that "VETS" personnel do not have that expertise; and that "VETS" has declined OSC's request that it be permitted to initially screen all Federal-sector USERRA claims in order to identify those claims that should be handled by OSC. It has been suggested that having "VETS" personnel, rather than OSC personnel, screen these claims is not the most efficient and appropriate method for discerning which entity will handle each claim. What is your assessment of the current practice? Can you explain why OSC's request has been denied?

Answer. The Department takes its responsibilities under the Uniformed Services Employment and Reemployment Rights Act (USERRA) very seriously. America's service men and women deserve no less than our total commitment. Under USERRA, the Secretary of Labor is charged with primary responsibility for enforcing the reemployment and other rights of service members and veterans. USERRA directs the Secretary to undertake a multitude of tasks, including providing assistance concerning statutory rights, receiving complaints, conducting investigations, resolving disputes, forwarding certain claims to other Federal agencies for enforcement, issuing regulations, submitting reports to Congress, and conducting various outreach activities.

To that end, we have worked very hard to ensure that we respond quickly to requests for assistance or complaints received from our constituent service members. The data we have compiled for fiscal year 2004 shows that 84 percent of the 1,440 USERRA cases we received that year were closed within 90 days, and 92 percent of those cases were closed within 120 days or less. We believe we have a strong record of success in resolving our USERRA cases in a fair and timely fashion.

The 3-year pilot project involving the Department of Labor and the Office of Special Counsel (OSC), established pursuant to the Veterans Benefits Improvement Act of 2004 (VBIA), Pub. L. 108-454, is currently underway. Under the terms of the 3-year demonstration project, the Department of Labor will transfer odd-numbered USERRA cases to OSC for review, investigation, and possible enforcement. Working with OSC, we have developed a procedure for referring USERRA cases that will ensure that our claimants' cases are processed as quickly and efficiently as possible. In that regard, our investigative staff has been instructed to forward any USERRA cases with any likely or potential prohibited personnel practices (PPPs) to our national office for review before forwarding to OSC. "VETS" is following the processes we have established with OSC, and to date, 48 cases have been transferred under the pilot project.

I recognize the importance of handling the claims of Federal Sector employees promptly. I do agree that OSC investigators have expertise in identifying possible prohibited personnel practices in USERRA claims. However, I also believe having OSC review in the first instance of all Federal-sector USERRA cases will result in unnecessary delay, duplication of effort, and claims bouncing back and forth between our two agencies.

I favor an approach that has been proposed by the Special Counsel himself and is under discussion between our two agencies. Under OSC's most recent proposal, DOL investigators would receive training in prohibited personnel practices, or

“PPPs,” by working along side OSC personnel for a specific period of time. Once trained, they would return to DOL where they, in turn, would train other “VETS” investigators on how better to recognize PPP issues. I think the Special Counsel’s proposal makes sense. It provides a useful framework for resolving this issue and ensuring that “mixed cases” will be handled efficiently.

If confirmed by the Senate, I intend to work cooperatively and collaboratively with the Office of Special Counsel, ESGR and the Department of Justice to resolve all other issues regarding how best to handle USERRA claims.

In addition, we have developed a number of tools, including an electronic online complaint form, the “VETS” e1010, which will allow for an even more efficient transfer of USERRA cases from “VETS” to OSC. The e1010 can be completed in a very short time, and contains features that automatically allow for the immediate transfer of appropriate odd-numbered USERRA cases to OSC while providing the claimant notice that his or her claim has been transferred. If confirmed as Assistant Secretary for Veterans’ Employment and Training, I fully intend to continue to work in cooperation with OSC under the terms set forth under the VBIA.

Question 9. Do you have any conflicts of interest which you have not fully disclosed to the Committee? Do you know of any other matter which, if known to the Committee, might affect the Committee’s recommendation to the Senate with respect to your nomination?

Answer. I have no conflicts of interest that I have not fully disclosed to the Committee, nor do I know of any other matter that, if known to the Committee, might affect the Committee’s recommendation to the Senate with respect to my nomination.

Question 10. Have you fully and accurately provided financial and other information requested by the Committee, and do you now affirm that the information provided is complete, accurate, and provided in a form not designed to evade or deceive?

Answer. I have fully and accurately provided all information requested by the Committee, and I affirm that the information provided is complete, accurate, and provided in a form not designed to evade or deceive.

Question 11. If you are confirmed, can this Committee count on you to appear personally at Committee hearings when asked? Will you ensure that this—Committee is provided with timely responses to requests for non-privileged information, materials, and documents that may be requested by the Committee in its oversight and legislative capacities? In that regard, can you tell me whether there are any outstanding requests for information, including post-hearing questions, pending before “VETS” and when this Committee should expect to receive responses to any outstanding requests?

Answer. If confirmed, I will endeavor to honor requests to appear before the Committee and provide timely responses to all requests by the Committee.

I am aware that there are still outstanding written responses to questions posed by the Committee following the oversight hearing on “VETS” held on April 19, 2005. These responses are still awaiting final clearance from the Office of Management and Budget.

Chairman CRAIG. Thank you very much. Thank both of you very much for those very valuable and well-placed statements.

Mr. Terry, the mission of the Board of Veterans Appeals is to conduct hearings and dispose of appeals in a timely manner. What do you see as the Chairman’s role with regard to that mission, and how have your professional experiences prepared you to lead the board toward accomplishing that mission?

Mr. TERRY. Thank you very much, Mr. Chairman. As you know, the statute provides that the board is under the administrative control and supervision of its chairman, and certainly as chairman, if confirmed, I will report directly to the Secretary and ensure that the board does everything it possibly can to accomplish the mission to serve our Nation’s veterans and their families. Sir, it requires leadership, the ability to work cooperatively with others, and the ability to envision and effectuate constructive change, and I assure you, sir, that this is precisely what I will do and what I will further as chairman of the board. Thank you, sir.

Chairman CRAIG. Earlier this year, Secretary Nicholson testified before this Committee that as a Presidential initiative, improving the timeliness and the accuracy of claims processing remains VA's top priority for VA's benefits programs. Do you yet have a sense of what measures you would implement at the board to help VA accomplish the goal of improving the timeliness and the accuracy?

Mr. TERRY. Thank you, Mr. Chairman. I agree, accurate and timely claims processing must be the principal focus of our board, and it will remain that, but we are just part of the equation, sir. The Veterans Benefits Administration led by Admiral Cooper has cognizance over all the 57 regional VA regional offices whose decisions may be appealed to our board, and together we are working hard to reduce the time required to process these claims, that is the claims from the date of filing of the Notice of Disagreement with the regional office's determination to the resolution of an appeal before the board.

We are likewise working to do a number of other things, sir, to increase the timeliness. We are working to increase the efficiencies through effective in-house training, use of technology where appropriate, Mr. Chairman, and improvement of our current error-free decision rate, which currently stands at 90 percent. We are also providing training to our attorneys and veterans law judges, sir, to write more concise and organized decisions that can be issued in a more timely way.

Organizationally, we are trying to conduct more of our hearings by video conference rather than by travel boards. Sir, we do more than 8,000 hearings per year. Video conferences would save on judges and counsels' time spent away from writing decisions. If confirmed, sir, I will also try to improve our internal processes, and by that I mean we need to look at our docketing system, our intake process, and certainly we need to develop meaningful goals for the productivity of our staff to measure their performance in a meaningful way, and we are working on that very hard at this time.

Now, we have also developed realistic goals for our veterans law judges and our attorneys through a fair-share system that we have developed to better manage our caseload. Senator, when a system processes approximately 40,000 cases a year, as we do, we must take advantage of each of these measures to ensure that all of our professionals are as productive as possible. I assure you that I am totally committed to these principles.

Chairman CRAIG. In Fiscal Year 2004, the U.S. Court of Appeals for Veterans Claims remanded over 1100 cases to the board. Approximately 80 percent of the cases, it decided on the merits. Do you know if the board tracks the reason for each court remand and whether they are based on error by the board, and do you believe measures can be taken to reduce the rate of court remands?

Mr. TERRY. Thank you, Senator. Sir, the board has currently established a quality review unit which reviews every remand from the court and conducts a trend analysis of all issues remanded. It is important to note that most cases appealed to the Court of Appeals for Veterans Claims involve several issues, and when the court resolves all but one of these issues, for example, and sends that issue back to the board for further adjudication, the case is

listed as a remand, not as an adjudicated case, not as a decided case.

It is also important to understand that many of the remands are based on changes in the law from that which controlled when the BVA decision was made. Others are based on an honest difference in judgment between the reviewing judge at the Court of Appeals for Veterans Claims and the deciding veterans law judge at the board. About 60 percent, sir, of these cases, of these remands, are never seen by a Court of Appeals for Veteran Claims judge, but represent actions by the court staff and attorneys who are involved in the case to dispose of the appeal.

We all have much work to do to limit the number of remands and to better serve our veterans. I assure you, Mr. Chairman, that I will work very hard to ensure that that occurs.

Chairman CRAIG. Well, Mr. Terry, thank you very much. I have other questions, and we will submit them to you in writing for the response. Because of the time constraints we are under this morning, I will not ask them here before the Committee.

Mr. Ciccolella, I am going to run to the floor and vote. That is a fast walk, and then I will be back.

Mr. CICCOLELLA. We will certainly wait for you, Senator.

Chairman CRAIG. So I trust you all will chill out for just a few moments. I am going to leave the Committee un-recessed in case other Members come prior to my returning, and I will ask the staff to allow them to ask questions of you and to preside as if the Committee were in session, as it will be, without a Chairman.

**STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR
FROM COLORADO**

Thank you very much. I will step out and get a couple of votes made, and I will be right back. Thank you and I appreciate your patience.

[Pause.]

Senator SALAZAR. Thank you. Senator Craig just met me in the hallway, and he said I could come in and take over as temporary Chair. So I know we are continuing to hold this hearing of two very important nominations and continuing to try to get through a series of votes on the floor this morning. So I just appreciate your patience as you watch us work in doing the Nation's business on the Senate floor.

Today, the nominations of both of you are an important consideration for all of us, and I am proud to say that both of you come with the kinds of qualifications and distinctive records that I expect that you will receive my support and receive the support of many Members of the U.S. Senate. Both of you have served our country honorably in Vietnam, and for your service, we very much appreciate your sacrifice for our country. You also have spent most of your lives working on behalf of the public, a noble calling, and I appreciate your willingness to continue to do that on behalf of our Nation's veterans, especially because we must make sure that we honor our Nation's commitment to the veterans of our country.

Over the last few weeks, this Committee has had some difficult times. We have tried to address the budget crisis that we find our veterans health care in today. The announcement that VHA was

short some \$1 billion for this fiscal year has caused significant concern and lots of discussion here in this Committee as well as with the Veterans Administration and with Secretary Nicholson. From my point of view, the work that we need to do in that arena is just beginning. We can fix a short-term problem for this year with a fiscal addition of money into veterans health care, but longer term, it is going to be very important for all of us to make sure that we are addressing that issue so that we don't have the same problem in the years ahead.

I am sure most Americans probably have never heard of the two positions that you have been nominated for by our President, the Board of Veterans Appeals and the Office of Veterans Employment and Training Service, but I will tell you that the veterans community and the veterans service organizations that work with veterans all the time know of the critical importance of both of your roles.

Chick, I know you came to see me in my office and we talked a lot about employment opportunities for veterans and ideas that you might have with respect to how we can provide additional employment opportunities for veterans. So my first question is going to be to you. I have spent time in my State in Colorado Springs where we have over a hundred thousand veterans that live within that community, and Fort Carson is a place where we have deployed many of our soldiers to Iraqi and Afghanistan. One of the things that we are preparing for in Fort Carson today is the expansion of our troop presence there at Fort Carson, but as part of that conversation, one of the things that I asked the business community who was present there that day was whether or not there were additional things that we could be doing in our State of Colorado as citizens to try to help the transition of our soldiers from active status over to veteran status and try to help them find employment opportunities. I would like you to comment on that, if you would.

Mr. CICCOLELLA. Thank you, Senator Salazar. You represent a great State in Colorado. We have a good State director out there, and we have a very good program for both the active duty and the Reserve component units that are mobilizing and then demobilizing. We run a lot of the transition assistance programs, as you know, from Fort Carson, and we also are working with the State Adjutant General, as you and I discussed earlier, to look at what the requirements are for the Reserve component units and Guard units as they come back, and things are changing today. Their requirements are changing. These organizations, units, have gone to their deployments, whether they are in Bosnia, Herzegovina, Iraq, Afghanistan or whether they are deployed in other areas in the War on Terror.

When they come back, they, we find frequently, are coming back to the same jobs or they may have problems with reinstatement, but in any case, they may be looking for another job, and for that reason, we believe we can be available for them and are being available to help with transition assistance when they demobilize. We run a lot of transition assistance employment workshops, or the modified version of the existing transition workshop that we provide to active duty servicemembers for these Guard and Reserve servicemembers.

Now, you mentioned the employer community. One of the things that Secretary Chao and our employment training administration, myself, and my predecessor Fred Juarbe have tried to do is to make the workforce system as much a demand-driven, business-driven system as we can. We need to get the employers and the one-stop career centers hooked up so the employers provide the job requirements, and then our veteran employment representatives can profile the requirements of the veterans and make that match, and I think that, as you mentioned, you reached out to the employer community, those 20 leading employers in Colorado. I think it will be very interesting to talk with them and to see if we can really make the connection between the employer and the veteran through that one-stop career center, because if we can do that, it is going to be a great model for the rest of the country.

Senator SALAZAR. I will ask you, Chick, to help us get that done in Colorado in a way that works for all of us.

We have been joined by Senator John Warner, who is a distinguished Chairman of Armed Services and perhaps one of the most distinguished Senators in the last 50 years here in this body. I had the honor of having a wonderful meeting with him this morning, and he personifies what it is to be a statesman in America, and he is here to speak on your behalf. So I will turn it over to Senator Warner.

**STATEMENT OF HON. JOHN WARNER, U.S. SENATOR
FROM VIRGINIA**

Senator WARNER. I thank the distinguished Chairman and Members of the Committee. I find it a privilege to come over to say a few words from the heart about Colonel Chick and his family who are with him here. I was privileged to have him work with me when I was Chairman of the Rules Committee, which was a very long time ago, together with another wonderful Army man, one of Chick's best friends, Grayson Wunderling, and in preparation for these remarks—and I will ask to put my extended statement into the record given that I must return for the vote—Grayson Wunderling filled me on some facts which I think are very pertinent. I am certain that the Members of the Committee and others are familiar with his distinguished career and, indeed, that of his wife who is likewise a public servant.

So I want to focus on that part of his career which I think enables him to identify with the veterans all across America. I, myself, am proud to have a very modest career in the military, having served in World War II, one of the five remaining Members of the Senate. Inconspicuous as it was, as a 17-year-old sailor, I didn't accomplish much before the elders concluded that war. I want to talk about one of those elders, your father, who came up through the ranks and fought all through the battles of World War II and was recognized for his courage and bravery by receiving three silver stars. Likewise, Colonel Chick followed in his father's footsteps during Vietnam. At that point in history, I was either Under Secretary or Secretary of the Navy, I guess, during the last 5 years that I served in the Pentagon, and you and your fellow compatriots, among them Grayson Wunderling and others that I have known through the years, performed brilliantly in that stressful and dif-

difficult conflict, and there you are no stranger to the battlefield, much like your distinguished father, and you too won a silver star. That will enable you to, more than I think anything else, gain the confidence and trust of the people with whom you will serve in the Department of Veterans Affairs and, most importantly, all across the land the veterans who will look to you for fairness and for leadership and for recognition that all veterans so richly deserve for their service to country.

We are in this room, Mr. Chairman, enjoying the most important and precious thing we have, freedom of speech, freedom of assembly because of the generations of men and women who have gone across this land and left our shores to protect those freedoms, and today this Nation is gripped in difficult conflict, perhaps the most challenging in the history of mankind, that is non-state sponsored conflict. We are engaged in a hearing in my Committee this morning on trying to determine what is Congress' role in establishing a clear definition of how we deal with detainees and others who we must take into our custody to gain intelligence which is vital to the men and women of the armed forces and, indeed, others here at home to protect ourselves.

I had a chance to visit with our distinguished Chairman Craig, and as long as I have been around, I didn't realize that the Department of Veterans Affairs, next to the Pentagon, has the largest number of civilian employees. So you have an awesome task, but you sure come with the credentials to do it.

So I will put this in the record, and I thank the distinguished Chair, and wish you well. As I told you throughout the time I have known you, you are on your own now. Good luck.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM VIRGINIA

Chairman Craig, Senator Akaka, and my other distinguished colleagues on the Senate's Veterans' Affairs Committee, I thank you for holding this confirmation hearing for Charles Ciccolella, or—Chick—as I have come to affectionately know him.

Today, I am proud to present Col. Chick, a fellow Virginian, to the Committee as the President's nominee to be Assistant Secretary of Labor for Veterans' Employment and Training.

Chick is supported here today by his wife Donna, a fellow civil servant with the U.S. Drug Enforcement Administration. Their daughter Connie, also a civil servant with the General Services Administration, was not able to make it today. But, you can see the dedication to civil service throughout his family, and I thank them for that.

The position of Assistant Secretary of Labor for Veterans' Employment and Training is a very important one for our veterans and transitioning servicemembers, and it is a position which Chick is familiar with as he currently serves as the Deputy Assistant Secretary of Labor for Veterans' Employment and Training.

As Assistant Secretary, he would be responsible for ensuring that the Veterans' Employment and Training Service ("VETS") provided the resources and support necessary to help veterans succeed in today's workforce.

How fortunate we are that someone as eminently qualified as Chick is willing to serve in this critical position.

Chick graduated from Auburn University and later earned a Master's Degree from Central Michigan University. Just as important as his formal education is for this position, Chick also had a distinguished 28 year career in the United States Army, serving with the 101st Airborne during Vietnam and later in several other troop command and staff positions.

After the army, he began his public service with the State Department and then with the U.S. Senate for the Rules Committee and the Senate Sergeant at Arms.

In 2001, Chick began his career with the Department of Labor, where he has served with distinction.

On a more personal note, I must point out that I have seen first-hand the dedication and care that he applies to his work. When I was a Member of the Rules and Administration Committee, Chick served admirably as the Director of Information Technology Policy for the Committee.

Mr. Chairman, I am certain that Chick will continue to be a strong asset for the Department of Labor as Assistant Secretary of Labor for Veterans' Employment and Training. For these reasons and more, I offer my highest recommendation in regard to this nominee, and urge my colleagues to support his nomination.

Mr. CICCOLELLA. Thank you, Senator Warner.

Senator SALAZAR. Thank you very much, Senator Warner.

I have about a minute and a half or 2, so I am going to have to leave as well, but let me ask a question of you, Mr. Terry, concerning the Board of Veterans Appeals, the thousands upon thousands of veterans that have to go through that appellate process. As Senators, we all represent veterans in our State, and we sometimes get concerns about the delay that they encounter in going through the Board of Veterans Appeals process. I was wondering whether you could share with the Committee your ideas on how you we might be able to improve that process and avoid the kinds of delays that we are encountering now.

Mr. TERRY. Thank you very much, Senator Salazar. We are embarking on a process that includes a number of measures that hopefully will help us both reduce the backlog of pending appeals and also speed the process of resolution of the cases before us. We are certainly looking at improved efficiencies. We are trying to work very hard on ensuring that we have a quicker intake process, that we improve our docketing system, that we write shorter, more concise decisions with the existing full-time employees we have.

We also are doing a great deal in training, sir. We are trying very hard to ensure that we are looking at all economies that are available to us in terms of the manner in which we focus on the real issues of the case and shorten decisions so that we can move more of them through the system.

Sir, we are turning out—last year, we turned out 38,000 decisions. That is with 56 judges and 228 lawyers. That means that each of our lawyers is writing a 15 to 25-page decision nearly every day, close typed. That is a lot of work. We have to find better ways to get it done. We are. We are looking at economies of scale, and we are finding ways that we can make our people more proficient. They are a wonderful group of attorneys, Senator. They truly are. They are truly professional, and they are doing yeoman work for this country, and I need you to know that, sir.

Senator SALAZAR. Thank you, Mr. Terry. There has been some suggestion that the administrative law judges be decentralized out across the country, and I am wondering what your thoughts are on that potential decentralization.

Mr. TERRY. Sir, we do not think that is a positive approach, and let me tell you why. The way we are structured within the department today, attorneys are able to maintain a consistency of decisionwriting by ensuring that the decisions are available quickly to each of the attorneys and each of the judges as they come out in the central office. We also are able to take advantage of the experience of certain judges who have tremendous expertise in each of several areas, and having them available as resources for our

other judges who may not have that expertise in that particular area is worth its weight in gold, and with the numbers, sir, of decisions that we are writing each year, it is critically important that we have both the consistency and the availability of readily available assets, the ability to have attorneys move from one case to another very quickly and assist one another, and having them in a centralized location allows us to do that.

In terms of economies of scale, sir, I believe we can be far more efficient the way we are currently structured. That doesn't mean, sir, that we are not working very, very hard with the regional offices. You need to know that our travel teams that go out to each of the regional offices to hold hearings, and of course each person who appeals a decision of the regional office staff has the right to have a hearing on appeal, our staff—

Senator SALAZAR. I appreciate that, Mr. Terry. Where I would like to go with this is there are issues out there with how we can streamline the process and how we can make it better, and I look forward to working you and I am sure Members of this Committee do as well. I have, I am told, 1 minute to get to the vote. So I see that our distinguished Chairman of this Committee has returned, and there is no question that he has the best interests of veterans in his heart and in his mind.

So I look forward to working with both of you, and congratulations on your careers.

Mr. CICCOLELLA. Thank you, Senator.

Mr. TERRY. Thank you, Senator.

Chairman CRAIG. Senator, thank you. I appreciate it.

Let me conclude our questioning with you, Mr. Ciccolella. In Fiscal Year 2006, the Veterans Employment and Training Services plans to dispense \$162 million in grants to States to fund the Disabled Veterans Outreach Program, DVOP I believe we call it, and the Local Veterans Employment Representative program, and let us see, we call that LVER.

Mr. CICCOLELLA. Yes, sir.

Chairman CRAIG. See, I am new to this. So I am really working on all these.

If you are confirmed, what measures would you take to ensure that the money is well spent, and are there measurable performance outcome standards in place for that purpose?

Mr. CICCOLELLA. Thank you, Mr. Chairman.

Mr. Chairman, what we do before we send out the money to the States is we require the State to come to us with their plan for how they intend to provide priority service to veterans in all of the 19 Department of Labor-funded job training or job placement programs. We also require them to tell us how those DVOPs and LVERs, those veteran employment representatives, are going to be integrated in the one-stop career centers. You have 24 of those LVERs and DVOPs, for example, in Idaho. It is important that they be integrated because if the DVOP and the LVER are well integrated, that means they know the other programs, and when veterans come into that one-stop, they are able to direct the veteran after making the assessment, and if they need training, great, then they can get the training. If they need placement, then they can get the placement.

We require the States to report to us on six measures. We require them to report on veterans and disabled veterans. We require them to report on how many veterans are employed, what the retention rates are after 6 months, and we require them to report on the employments after veterans have received counseling or job referral, more intensive services. Now, we also require the States to report separately on 17 performance measures, and those measures are geared to the individual veteran employment representative. What we also require is that those additional 17 measures be the basis for the position descriptions and the evaluations, the performance management plans, of those veteran employment representatives. So the DVOP or the LVER knows what the performance standards are.

We have pretty good success with that. Obviously, it varies State to State and obviously it varies one-stop center to one-stop center. Now, what we need to further improve, that is, to improve the relationships with our Federal State Directors and the State workforce agencies, and we need to provide more information and assistance to the State workforce agencies so they understand title 38, the requirements, the priority of service, because in many cases, things are not being done because people don't understand the law.

Chairman CRAIG. Thank you. In a 1999 transition commission report, it was noted that male veterans age 20 to 24 have higher unemployment rates than non-veterans of the same age. More recently, during the first quarter of 2005, one of five male veterans age 20 to 24 was unemployed. That is almost double the unemployment rate for non-veterans of the same age group. If you are confirmed, what measure will you take to address what appears to be a long-standing and troubling pattern of unemployment among those young veterans groups?

Mr. CICCOLELLA. Mr. Chairman, you are exactly right. This is a long-standing issue. It has been this way for about 25 to 30 years. When the Bureau of Labor Statistics takes this measurement through their household survey of the age group 20 to 24, those rates vary. In January, the rate was 20 percent employment; in April, at 7 percent; and May comes out to about 11 percent. We are dealing with a small cohort of people. So the statistics will vary.

Now, when you look at the age group 20 to 24, these veterans, they are recently separated. They are coming out of the service. So we know that this is a turbulent period of time for them. What I am trying to do is tell you why the issue occurs, because I think that is what you have to know. You have to try to understand the issue first. It is a turbulent period. So it is just like the 18- and 19-year-olds when they come into the workforce for the first time. Their unemployment rates are high because they are first-time entrants into the workforce.

The other thing is that servicemembers—and I was talking to Dr. Chu about this over at Defense the other day, and they, incidentally, are very aware of the issue and work with us very closely. The Defense Department funds, obviously, the unemployment insurance for veterans when they first come out of service if they are not employed. So what we find anecdotally is that some young veterans will resist taking the first job that is available and may be more selective because they have the advantage of the unemploy-

ment insurance. Now, that helps us understand what the problem is, but that doesn't help us address it.

What we need to do to address it, I believe, is to beef up our Transition Assistance Program and orient it more toward these recently separated veterans. In that regard, we are working very closely with the Defense Department because we are only getting about 60 percent of the transitioning veterans through the TAP workshop, or Transition Assistance Program employment workshop, and it would be nice to get a 100 percent of them. So the Defense Department now is working with us to try to make this Transition Assistance Program employment workshop more of a mandatory event for separating service members. I think we can knock some of these numbers down when we do that, because servicemembers who go to that transition assistance employment workshop, we get really good reviews on that, and servicemembers need that transition assistance and they need to understand about resumes and skills and their networking abilities and those sort of things. So I think we can knock it down that way.

Chairman CRAIG. You use the figure 60 percent attend these training sessions. It is voluntary at the moment?

Mr. CICCOLELLA. Well, yes. It is interesting how it works. When you separate from service, you get a pre-separation counseling sheet, and you can indicate on there if you want transition assistance services. Sometimes a servicemember, like maybe a senior servicemember, already has a job. So he or she may not opt to go through the transition assistance employment workshop. But there are other cases where, because of operational needs, a commander might not be able to release the servicemember for that, and I think the Defense Department and the Labor Department and the Department of Veterans of Affairs, because they have the disabled TAP program, we are working together to try to make and encourage more servicemembers to enroll in that workshop.

Chairman CRAIG. We will ask you to come back a year from now and report on that to see if we can't improve that a great deal. It sounds like we are missing the obvious, because apparently the track record coming out of that training session works.

Mr. CICCOLELLA. It does work.

Chairman CRAIG. Let me ask one last question, and you approached it in your opening statement, and then I will turn to my colleague, Senator Thune, before we close this hearing out.

You mentioned the 116th National Guard Brigade team that is based in Boise, but in Iraq at the moment. I had the opportunity to visit with them. I took the Secretary with me as we went there, and they are one now of thousands of Guards and Reserve units across this Nation that are in Iraq, and we are using our Guard and Reserve very, very heavily at this moment. I am committed to helping ensure that when they return, they will have a seamless transition back into civilian life, and of course that is going to be awfully important for all of them.

If you are confirmed, what measures will you take to make certain that the re-employment rights of Guard and Reserve personnel are protected, and what measures will you take to ensure that Guard and Reserve personnel will be provided with timely and

comprehensive information regarding DOL's employment and training services?

Mr. CICOLELLA. Thank you, Mr. Chairman. The 116th is a great unit, has done a great job in the OIF Iraqi Theater. They will be returning and they will be returning in, I think, the period of November through January, as I understand it. They will come through Fort Lewis when they do that. That will be their demobilization point, and that is the way it is with Guard units. They come to a major military installation and get their de-mobilization.

What we do before they leave is we make sure that either we or the Defense Department's Committee on Employer Support for the Guard and Reserve brief them on their employment and re-employment rights, among other things, before they depart, and that certainly happened with the 116th. You have got them spread out all over Idaho, but I think they did those briefings in about 25 different locations. Now, when they come back, our standard practice is that our Federal State Director gives them a 1-hour briefing on the USERRA, the Uniform Services Employment Re-employment Rights Act, so they understand their employment rights and their re-employment rights and reinstatement rights. They understand what the obligations of the employers are.

They also understand, more importantly, how to get help. In other words, if they cannot get their reinstatement, or their seniority benefits or their health benefits aren't reinstated, then they will know how to contact either us or the Department of Defense. The Guard units are very good. So they usually have a point of contact that they could talk to there, as well. So that is what we are doing in terms of their employment and re-employment rights, and if necessary, we will open up a Federal investigation, and we do those Federal investigations.

Now, on the point about servicemembers being over there for a period of a year or so and come back, some of them were unemployed before they left. Some are underemployed when they come back. They have obviously done a lot of good things when they have been in the military, especially in the combat zone. They have learned a lot of management skills, a lot of skills, period, and a lot of leadership. So we make available on an as-needed basis—and I have had every one of our State directors contact the State Adjutant General to make sure that we can provide, a modified transition assistance employment workshop, and that workshop will enable each of these servicemembers to know how to get employment assistance and what programs are available that are operated by the Department of Labor and the other Federal agencies in the one-stop career centers. In other words, they will know how to access that system, and the individuals who do that workshop facilitation are the DVOPs and the LVERs, those veteran employment representatives that you mentioned.

Not every unit takes advantage of this program. We are trying to figure out what is the best model for the program, because when the Guard units come home, you know, they are on Ft. Lewis for like about 3 days. Then they split, and the next time they get together may be 90 days. At the 60-day mark or 30-day mark, an individual might need employment assistance. So it is different for every one of the States, and if the Defense Department now, based

on the GAO's recommendation, is taking the lead, we are going to work with them to try to figure out how to break the code on what transition employment assistance is needed and really do a better job of making sure that they get that employment assistance.

Chairman CRAIG. Well, I thank you for that comment. This Committee and I have expressed very real concern to the Department of Defense and we recognize with veteran services that these men and women are coming not back to a base and to a unit that is family in itself where they obviously are employed, because they are full-time career, but they are going back into civilian life, and we know that there are going to be some difficulties with them both physically and mentally. One of the ways to ease them back in is to assure that they can get back into that job they left, if they left a job. That is going to be a tremendously valuable base to them as will be the home and the family, and we have got unprecedented numbers at hand now.

So I am pleased to see you are focused on that. We will stay with you on that to watch it because the Committee and I have expressed our concern.

Senator Thune, thank you for coming by. The balance of the time is yours.

**STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM
SOUTH DAKOTA**

Senator THUNE. Since you put it that way, thank you, Mr. Chairman, and I want to thank our nominees for your tremendous record of service to our country, both in the military and subsequent to that. I can't say enough how appreciative we are of that service.

Mr. Terry, I noted in your remarks, as well, that your father was a Navy pilot, as was mine, and also that your father-in-law was at Pearl Harbor. My Uncle Gibb was at Pearl Harbor on December 7th of 1941. So there is a lot of Navy history there, but you both have resumes that speak for themselves about your commitment and dedication to this country and to its principles and its freedom. So thank for that service, and I look forward to working with both of you in your new positions. Obviously, this is something of great importance to our Nation, making sure that we are doing right by our veterans and that the programs that are in place to assist them are administered in a way that is actually beneficial and a service to them.

I am sure these questions have already been asked, and I probably won't belabor the point, Mr. Chairman, and get on with business, but I am interested as we move forward, Mr. Terry, in taking some steps that will streamline and lessen this bureaucracy and these terrible delays that we deal with on appeals for our veterans, and I have had conversations with you. I know you are very committed to that purpose as well.

Mr.—is it Ciccolella?

Mr. CICCOLELLA. Ciccolella.

Senator THUNE. I am sorry. I wasn't here when you were introduced. So I didn't want to butcher your name.

Chairman CRAIG. You didn't do any better than I did. Now we have got it down.

Mr. CICCOLELLA. Believe me, I learned to tie my shoes first.

Senator THUNE. It is very reassuring to know that I am following the Chairman's example here.

But I also think it is important, and the Chairman mentioned that we have an extraordinarily high number of people in the Guard that have served, and as they return in these employment issues, and also, of course, people in active duty who are coming back from these different theaters, some of whom are disabled, and making sure that they have the necessary training to get back into the labor pool. That is an incredibly important priority, and I hope that you will be very focused on that.

If you feel the need to comment, feel free, but I don't have a specific question. I think those questions have probably been asked, but these are both issues and areas that are of great importance to our veterans, and we want to do justice to them. So thank you for your service and for your willingness to stay involved in public service and the good work that you are going to do on behalf of America's veterans. I would welcome, and I am sure the Chairman would as well, suggestions that you might have in terms of legislation that might help us better accomplish those objectives, knowing full well that funding is also a major issue in that process.

Thank you, Mr. Chairman.

Chairman CRAIG. Senator, thank you very much.

Let me check with staff, but I believe Senator Murray is in route. Is this correct?

Then we will keep the Committee open—I think the last vote is about to start and proceed in that manner. So we will not recess again, but stand down at least until Senator Murray arrives thank you.

[Pause.]

[Whereupon, at 11:46 a.m., the Committee adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL AKAKA, U.S. SENATOR FROM HAWAII

Thank you, Chairman Craig, for holding this hearing. Today the Committee will examine the nominations of two individuals for two very important positions.

Mr. Charles S. Ciccolella is nominated to be Assistant Secretary of Veterans' Employment and Training ("VETS") for the Department of Labor (DOL). Mr. James P. Terry is nominated to be the Chairman of the Board of Veterans' Appeals.

Mr. Ciccolella, you have a long and distinguished career serving this Nation and its veterans. During your tenure in the United States Army you earned a Silver Star, the Defense Superior Service Medal, and the Bronze Star for Valor. In your current position as Deputy Assistant Secretary for "VETS," you help veterans secure employment and protect their rights and benefits through DOL programs. In your interaction with the Committee, you have also been forthcoming about the problems facing "VETS." This cooperation between the Administration and Congress makes this Committee's job much easier.

With that said, I am concerned that "VETS" is not always available to provide Congress with the data that we require as an oversight body. And with an increasing number of servicemembers separating from military service, especially Guard and Reserves, I want to ensure that "VETS" has the ability to absorb this group as they transition from military to civilian life.

Mr. Ciccolella, this Nation is fortunate to have a person of your character in public service. I congratulate you on your appointment and look forward to working with you.

Mr. Terry, you also are a distinguished public servant. You are a decorated Vietnam veteran and a former Marine JAG officer. You were legal counsel to former Chairman of the Joint Chiefs of Staff, Colin Powell, and worked in both the Department of Interior and the State Department.

Mr. Terry, I need not impress on you the importance of the job ahead of you. As Chairman of the Board of Veterans' Appeals, you would be tasked with the responsibility for handling all claims appealed from VA regional offices. We can expect the number of VA claims to increase as returning soldiers from OEF/OIF become veterans. It is imperative that you work closely with this Committee to ensure the Board has the resources necessary to quickly adjudicate veterans claims.

Also, a recent VA inspector general's report highlighted, among other things, that certain conditions, such as Post-Traumatic Stress Disorder (PTSD), are difficult to define and be subjectively rated. I would like to work with you to make certain that PTSD and other disabilities that are difficult to define are adjudicated in a manner fair to the veteran.

Lastly, I am concerned about the high remand rate of cases at the Board. We need to work with you to fix the problems in the system that may cause lengthy delays. Mr. Terry, thank you for accepting this nomination. I look forward to working with you.

Mr. Chairman, thank you again for calling this hearing and thank you to both witnesses for joining us today.

[Letter from Richard C. Schneider in support of the nomination of Charles Ciccolella to be Assistant Secretary for the Veterans Employment and Training.]

NONCOMMISSIONED OFFICERS ASSOCIATION OF THE
UNITED STATES OF AMERICA,
Alexandria, Virginia 22313, July 12, 2005.

Hon. Larry E. Craig, *Chairman,*
Committee on Veterans' Affairs,
U.S. Senate,
SR-412, Russell Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: The NonCommissioned Officers Association is appreciative that the Committee has worked with deliberate purpose to schedule the Confirmation Hearing for Charles S. "Chick" Ciccolella to be Assistant Secretary, Veterans' Employment and Training Service at the Department of Labor.

NCOA without any equivocation fully supports the nomination of Mr. Ciccolella to this vital position that supports employment and training of those separating from active duty, Guard, or Reserve forces, veterans of military service and certain other eligible family members of these groups. Staff members of this Association, including myself, have been privileged to work with "Chick" on Appointed Advisory Committees at the Department of Labor and the Department of Veterans Affairs. He ably assisted those committees on recommendations involving veterans entering the employment market from military service, homeless veterans requiring special job preparation and training, and preparation of specially designed transition programs for incarcerated veterans upon release from confinement. He demonstrated over and over again his commitment to the Department of Labor and was instrumental in developing staff objectives and goals supporting the Assistant Secretary/"VETS" initiative to make "VETS" a 21st Century Veterans' Employment and Training Service.

Mr. Ciccolella has the personal drive and determination coupled with experience in and knowledge of the Department of Labor to be in his own right a most capable and productive Assistant Secretary for "VETS". The Association believes it would be inexcusable for the Committee on Veterans Affairs to not only recommend but to secure immediate Senate Confirmation of Mr. Ciccolella as Assistant Secretary/"VETS" before the scheduled summer recess. America needs this employment advocate appointed at the Department of Labor to support military personnel returning from the Nation's War on Terrorism and to ensure those employment policies legislated for all veterans.

Sincerely,

RICHARD C. SCHNEIDER,
Executive Director for Government Affairs.

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