

STATEMENT OF JOSEPH A. VIOLANTE NATIONAL LEGISLATIVE DIRECTOR OF THE
DISABLED AMERICAN VETERANS

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JOSEPH A. VIOLANTE NATIONAL LEGISLATIVE DIRECTOR OF THE DISABLED
AMERICAN VETERANS BEFORE THE COMMITTEE ON VETERANS' AFFAIRS UNITED
STATES SENATE JULY 13, 2006

Mr. Chairman and members of the Committee:

The Disabled American Veterans (DAV) shares your interest in ensuring veterans have effective and efficient claims and appeals processes. Since Congress enacted legislation in 1988 authorizing judicial review of decisions by the Board of Veterans' Appeals (BVA) and establishing what is now the United States Court of Appeals for Veterans Claims (the Court or CAVC) with special jurisdiction for that purpose, the complexion of the claims and appeals processes for veterans has changed dramatically. For the most part, the superimposition of judicial review on the administrative processes of the Department of Veterans Affairs (VA) has had a positive effect. With independent review from outside VA, we have seen the law carefully examined to ensure it is carried out according to congressional intent, and to ensure that correct application of the law takes priority over administrative expedience.

Expedience and efficiency are, of course, not synonymous. Neither does efficiency mean solely speed nor a constrained expenditure of resources, but rather that a thing is done as well as possible with optimum speed and with the fewest resources necessary. There must be a balance among quality, speed, and resources. Because, in the name of efficiency, political forces often unrealistically press administrative agencies to produce more with less, real efficiency suffers. When that happens with VA, as it so often does, veterans suffer the consequences of the adverse impact. Judicial review can correct the injustices that result. By design, courts operate independently of these kinds of political pressures, and are therefore theoretically better guardians of the law and justice. Autonomy brings with it a special obligation to conscientiously pursue efficiency without outside pressure, however. Increasing case loads and slower processing times in a court may simply be the product of more work without a commensurate increase in resources, or it could signal declining efficiency, or both.

The Court rightfully has a great deal of independence, but it should not operate without any oversight. As an "Article I" court, CAVC is an instrumentality of Congress, unlike Article III courts. So long as it does not affect the independence of the decision making or encroach upon the broad discretion as to internal operating procedures, the DAV believes that limited oversight is appropriate. Should Congress find an imbalance between resources and workload, it is Congress' responsibility to remedy the shortfall through additional funding or any authority necessary to use available resources in different ways. Should Congress conclude that increasing case backlogs are the product of inefficiency, it can leverage improvement through more general pressures and without direct interference in the operations or decision making processes. These principles involve no mysteries or concepts of which this Committee is unaware, but we believe they merit restating to provide an analytical foundation for consideration of the matters to be addressed.

In his March 2, 2006, written statement to the Subcommittee on Military Quality of Life and

Veterans Affairs, and Related Agencies of the House Appropriations Committee, Chief Judge William P. Greene, Jr., discussed "a dramatically escalating number of new cases." In fiscal year (FY) 2005, the Court received 3,466 new cases, compared with a yearly average of 2,400 cases for eight of the preceding ten years, an increase of 44 percent during FY 2005 and "the largest number of case filings ever." That trend had continued during the first quarter of FY 2006.

The Chief Judge pointed to an increased number of denied appeals by BV A in FY 2005. In FY 2005, BV A issued 13,033 denials, compared with 9,299 the previous year. In addition, the number of appeals to the Court as a percentage of BV A denials rose considerably over the level in FY 2000 and earlier years, from 17.3 percent in FY 2000 to 26.6 percent in FY 2005.

According to the Chief Judge's testimony, the majority of appeals to the Court involve claims for disability benefits, which is consistent with BV A data listed in the FY 2005 Report of the Chairman showing that 94.2 percent of BV A dispositions during FY 2005 involved disability compensation. VA's FY 2007 Budget Submission indicates the number of veterans filing initial disability compensation claims and claims for increased benefits has increased every year since 2000, with disability claims from returning war veterans and veterans of earlier periods increasing from 578,773 in FY 2000 to 788,298 in 2005. By our calculation, this represents an average annual increase of more than 6 percent in the five years from the end of FY 2000 to the end of FY 2005. VA projects it will receive 910,126 claims in FY 2006.

Although the number of appeals listed as denied by BV A may be the best indicator of potential workload for the Court, appeals to the Court come from the total number of cases decided on the merits, that is, not remanded. Cases listed by BV A as "allowed" may not have been decided fully favorably or favorably on all issues. Of the 31,397 total BV A decisions in FY 2003, the allowed and denied together totaled 16,874. For FY 2004, this total was 15,860. For FY 2005, it was 20,128.

The caseload volume upstream can be expected to influence the workload volume downstream, with some lag time. The input volume at the Court is an indicator of resource needs; the output volume is an indicator of efficiency.

In his written statement, Chief Judge Green acknowledged that case output has fallen off since FY 2002. He attributed the decline to several factors—a spate of remands in 2000 to 2002 for compliance with new legislation that accounted for more dispositions; a full contingent of experienced judges up to 2002, with only five judges from 2003 to the second quarter of FY 2005; and an increase in caseload between FY 2004 and FY 2005. (He did not explain how the increased caseload contributed to fewer dispositions.) In addition, he noted that nearly 60 percent of the new cases were filed by unrepresented appellants, requiring more work by the Court. Although he did not explain whether this represented an increase in pro se appellants, the Court's annual reports show that 70 percent of appellants or petitioners were unrepresented at filing in 2000 and that 58 percent were unrepresented at filing in FY 2005. At the time of closure, 29 percent were unrepresented in FY 2005. In the five years from FY 2001, an average of 57.7 percent were unrepresented at the time they initiated action with the Court, and 26 percent were unrepresented at closure.

In response to questioning from members of the Subcommittee, Chief Judge Green reported that case production began increasing in 2005 as the newer judges became fully staffed and gained experience:

I also would like to note that the number of cases decided in the first quarter of calendar year 2005 was 472. This was when our new judges were hiring staff and gradually receiving cases, and our senior judges were preparing to retire and no longer receiving new cases.

In the last three months of calendar year 2005, when the new judges were fully staffed and had more than six month's experience, the number of cases decided increased by over 100 to 579.

In the first 59 days of calendar year 2006, we have already decided 366 cases. Following that trend, we can expect to decide almost 600 by the end of the first quarter. I have every reason to anticipate that we will continue to process the cases expeditiously.

According to the Court's annual reports, the number of new cases declined from 2,442 in FY 2000 to 2,296 in 2001 and 2,150 in 2002. That number increased to 2,532 in 2003, declined to 2,234 in 2004 and rose, as noted, to 3,466 in FY 2005. The total cases decided for those years were: 2,164 in FY 2000, 3,336 in 2001, 1,451 in 2002, 2,638 in 2003, 1,780 in 2004, and 1,905 in FY 2005. Cases that went to a full decision on the merits, presumably those that most reflect the Court's production, increased from 1,619 in FY 2000 to 2,853 in FY 2001, dropped precipitously to 972 in 2002, increased to 2,152 in FY 2003, dropped substantially again to 1,337 in FY 2004, and declined even more to 1,281 in FY 2005. We note that the Court received 2,532 new cases in FY 2003 and decided a total of 2,638, of which 2,152 were merits decisions, as compared with FY 2005 when it received 3,466 and decided a total of 1,905, of which 1,281 were merits decisions. In 2005, the Court issued 56 fewer merits decisions than in FY 2004. We note that the Court counts cases remanded on joint motions by the parties as merits "decisions."

The Court issued 53 precedent decisions during FY 2005. Through May of this year, CA VC had issued 24 precedent decisions.

The Court's annual reports show the average "Time from filing to disposition" was 379 days for FY 2005. Chief Judge Green stated in his oral testimony:

I am happy to report that the average number of days from filing to decision has decreased from high of 430 days in calendar year 2005 to currently 370. Further, our statistics show that 64.7 percent of all cases decided in calendar year 2005 were decided within one year. This is an increase from 30.8 percent decided within one year in calendar year 2004.

Cases taking more than a year have decreased from 41.6 percent in calendar year 2004 to 22.4 percent in calendar year 2005.

(Emphasis added.) Apparently, the FY 2005 processing time of 379 days increased to 430 days for calendar year 2005 and had dropped back to 370 days at the time of the Chief Judge's March 2006 testimony. The cited drop in the cases taking more than a year in 2005 should be considered in light of the fact that the total cases decided in 2005 was

made up of a higher number of procedural decisions and a lower number of merits decisions than in 2004 (if the fiscal year numbers we know from the Court's annual report are consistent with the calendar year numbers stated in testimony).

According to the BV A Chairman's annual report for FY 2005, the average length of time between the initiation of an appeal with a V A field office and receipt of the case at BV A was 824

days in FY 2005. Issuance of a BVA decision took another 160 days on average. If we add another 370 days for a decision by the Court, the total time for an appeal is 1,354 days, nearly 4 years. Of course, that being the average, roughly half of all appeals can be expected to take even longer.

Disabled veterans who are often elderly and quite sick must wait for unacceptably long periods of time for resolution of their appeals, and substantial percentages prevail ultimately. No doubt, the protracted delay creates a hardship for many.

Although we can draw some inferences from the data publicly reported by the Court, much about the Court's internal operations is not transparent to the public, and more precise efficiency determinations would require data on the flow of cases, timelines, and volume of cases pending in each judge's chambers, as well as delays attributable to motions for extension of time by VA and appellants' counsel.

Indisputably, the long processing times suggest inadequate resources, the need for increased efficiency, or both. In any event, with a 44 percent increase in new cases during FY 2005, with that trend continuing into FY 2006, and with approximately 5,000 cases pending before the Court according to the Chief Judge's March 2006 testimony, we must question why the Chief Judge would request funding for only one additional employee or full time equivalent,

a 1 percent increase in staffing.

In his testimony, the Chief Judge stated: "I am confident that we will reduce [the] backlog significantly and at the same time process all cases expeditiously." With more than three-quarters of FY 2006 passed, this Committee should look to the Court's most recent data (which DA V was unable to obtain) to determine if that seemingly ambitious and optimistic prediction was warranted.

From the inception of judicial review of claims for veterans' benefits, the DA V has been a major participant in providing free representation to appellants before the Court, to complement our free representation of a large share of claimants throughout the administrative claims and appellate processes. In support of our primary mission of service to veterans, we provide all resources necessary to enable our staff of attorneys and non-attorney practitioners to effectively represent appellants before the Court. We believe disabled veterans, and their

eligible family members, should be able to obtain the benefits a grateful nation provides for them without undue burdens or cost to them.

The DA V appreciates the Committee's interest in this aspect of the backlogs and delays claimants must cope with in pursuing claims and appeals for veterans' benefits.