

VETERANS' DISABILITY COMPENSATION:
FORGING A PATH FORWARD

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WEDNESDAY, JULY 29, 2009

United States Senate,
Committee on Veterans' Affairs,
Washington, D.C.

The Committee met, pursuant to notice, at 9:15 a.m., in Room SR-418, Russell Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

Present: Senators Akaka, Murray, Brown, Tester, Begich, Burr, and Johanns.

OPENING STATEMENT OF CHAIRMAN AKAKA

Chairman Akaka. This hearing of the Senate Committee on Veterans' Affairs will come to order. This morning we continue our work on VA's disability compensation process.

Today's hearing will focus on improvements that can be made in reviewing disability compensation claims. My goal is to ensure that claims are adjudicated accurately and in a timely fashion. Everyone involved realizes that there is no quick fix to solving all the problems with disability claims, but the Committee, teaming with the Administration and those who work with veterans, intends to do all it can to improve this situation.

To bring optimal change to a process that is

complicated and important as this, we must be deliberative, focused and open to input from all who are involved in this process. It is in that spirit that we have held previous hearings and it is the backdrop of this hearing as well.

To be fair, claims processing is a complicated matter. There have been many changes to the claims processing landscape in recent years. Many of those changes have come from policies intended to make improvements piece by piece. Unfortunately, these piece by piece reforms have failed to produce the results veterans deserve.

While many claims processing issues are internal to VA, this committee recognizes the solutions go beyond the VA. This is especially true for transitioning servicemembers who look to VA and DoD to help them receive the care and benefits they have earned.

The Disability Evaluation System Pilot Program is one example of VA and DoD working collaboratively to ease the transition of disabled servicemembers from military to civilian life. Today, I hope to hear from VA and DoD about the status of this program and their plans for its future.

I reiterate that our goal is to provide veterans with accurate and timely resolution to their cases. No idea is too bold. We must act quickly, yet responsibly, to rectify this situation. I, again, welcome everyone to today's hearings.

May I call on Senator Tester for any opening remarks?
Senator Tester. Well, thank you, Mr. Chairman. I think I am going to forego my opening remarks and will take the opening remarks up in the questions. So, thank you, Mr. Chairman.

Chairman Akaka. Thank you very much, Senator Tester. Senator Johanns, for your opening statement
Senator Johanns. Mr. Chairman, I will do likewise. That is a good idea. I will do likewise.

Chairman Akaka. Thank you very much.
I want to welcome our principal witness from VA, the Honorable Patrick Dunne. It is good to have you, the Under Secretary for Benefits. He is accompanied by Thomas J. Pamperin, Deputy Director for Policy at the Compensation and Pension Service. I also want to welcome DoD's witness, Noel Koch, Director, Office of Transition Policy Care Coordination.

I thank all of you for being here this morning. Your full testimony will, of course, appear in the record.

Admiral Dunne, will you please begin with your testimony?

STATEMENT OF THE HONORABLE PATRICK W. DUNNE, UNDER
SECRETARY, BENEFITS, DEPARTMENT OF VETERANS'
AFFAIRS, ACCOMPANIED BY THOMAS J. PAMPERIN, DEPUTY
DIRECTOR FOR POLICY, COMPENSATION AND PENSION
SERVICES, VETERANS BENEFITS ADMINISTRATION,
DEPARTMENT OF VETERANS AFFAIRS

Admiral Dunne. Good morning, Mr. Chairman, members of the Committee. Thank you for the opportunity to appear today to discuss the direction of VA's Disability Compensation Program. I fully share the concerns of this committee, veteran service organizations, and the veteran community, regarding the timeliness of disability benefits claims processing.

Our mission is to deliver to veterans first-rate care and service. Where we do not meet high standards, such as with timeliness and benefits adjudication, we will find the root causes and fix them. Our leadership team is deeply committed to changing the paradigm of today's lengthy and paper-bound disability claims processing.

The number of claims completed during this fiscal year is 10 percent greater than in the same period in 2008. We have improved average days to complete on rating claims from 178 days at the end of 2008 to 161 days at the end of June. We currently have approximately 406,000 disability claims pending, which includes all disability claims received,

whether pending only a few hours or significantly longer.

This inventory is dynamic rather than static. Completed claims are continuously removed from the inventory while new claims are added. We currently average over 80,000 new rating related claims added to the inventory each month.

Our strategic goal for completing disability claims is 125 days. We consider all disability claims pending for more than 125 days to be our claims backlog. At the end of June, 144,652 rating claims, or 35 percent of the inventory, were pending for more than 125 days.

We believe our disability claims workload is increasing largely due to our many outreach efforts. We conducted thousands of transition briefings, including pre- and post-deployment briefings for Reserve and National Guard members and briefings for military personnel stationed overseas. All separating servicemembers are encouraged to attend transition assistance program briefings. We project that we will brief over 300,000 new veterans this year. We have also hired nearly 4,200 new employees since January of 2007. In addition, to leverage the knowledge and experience of retired claims processors, we hired more than a hundred recent retirees as re-hired annuitants to assist in completing rating decisions and train and mentor our new employees.

Last September, we partnered with Booz Allen Hamilton to conduct a review of the claim development process to divide recommendations on cycle time reduction. On July 20th, we began a pilot at the Little Rock Regional Office to implement those recommendations.

Our core IT modernization strategy includes implementing a business model for claims processing that is less reliant on the acquisition and storage of paper documents. Our comprehensive plan will employ imaging and computable data as well as enhanced electronic workflow capabilities, enterprise content and correspondence management services, and integration with our modernized payment system. We are also exploring the utility of business-rules-engine software for both workflow management and improved decision-making.

We developed strategic partnerships with two recognized experts in the field of organizational transformation. First, MITRE Corporation is actively providing strategic program management support as well as support for the overall paperless initiative. Booz Allen was recently engaged to provide business transformation services as part of a pilot project for business process reengineering, organizational change management, workforce planning, and organizational learning strategies. The Providence Regional Office will serve as our business transformation lab, the

focal point for convergence of process reengineering and technology.

We continue to work collaboratively with DoD to enhance the transition of servicemembers to successful civilian lives with programs such as Benefits Delivery at Discharge and Quick Start for servicemembers separating or demobilizing from the active force, and the joint DES Pilot. We believe the revised DES Pilot is a better process for servicemembers. It has been faster and more transparent than the traditional process and has reduced appellate activity. The pilot is now the standard process at 21 military treatment facilities, accounting for almost 30 percent of all servicemembers going through the DES process.

As of July 12th, over 3,000 servicemembers enrolled in the pilot and 560 completed the process. Those servicemembers qualified for veteran benefits are informed of entitlements from both departments when they are notified of the PEB's decision.

Mr. Chairman, this concludes my testimony, and I will be happy to respond to any questions.

[The prepared statement of Admiral Dunne follows:]

Chairman Akaka. Thank you very much.

Mr. Koch, will you please proceed with your statement?

Mr. Koch. Good morning, Mr. Chairman. I submitted written testimony, and I would like to submit that for the record.

Chairman Akaka. Thank you. It will be included.

Mr. Koch. Thank you.

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STATEMENT OF NOEL KOCH, DIRECTOR, OFFICE OF
TRANSITION POLICY CARE COORDINATION, DEPARTMENT OF
DEFENSE

Mr. Koch. Mr. Chairman, distinguished members of the Committee, this is my first appearance before you in my present capacity, and I am privileged to have the opportunity to be with you this morning. And I am honored to share with you our profound responsibility for the future well-being of our wounded, ill and injured servicemembers, veterans and their families.

My position as Deputy Under Secretary for Transition Policy and Care Coordination was established in December of 2008, and I am the first person to hold this position formally. As you know, it represents not only a priority of the Secretary of Defense, but of the President and the First Lady as well, so I am mindful of the potential cost of failing in this work that has been assigned to me.

I am responsible for lines of action 1, 3 and 8, disability, evaluation and reform, case management and benefits, the latter including management and monitoring the DoD side of the Benefits Executive Council, and I co-chair that with my colleague, Admiral Dunne.

Immediately at issue before us today is the progress of the Disability Evaluation Pilot. As you know, this was a spearhead of the effort to expedite simply, smoothly and

equitably the transition of our wounded, ill and injured warriors to the next phase of their lives, from healing and rehabilitation back to active duty or to veterans status. This undertaking was prompted in the first instance by the events at Walter Reed Army Medical Center, but it had deeper antecedents and the experience of duplicative examination procedures, lost records, delayed medical care, and protracted efforts to provide to your servicemembers the attention they earned, deserved, and, in many cases, desperately needed to assist in recovering from the sacrifices they made on the battlefield.

The DES Pilot is precedent to a more extensive effort to make permeable the barriers between DoD and the Department of Veterans' Affairs through the DES evolution. I can report to you that the DES Pilot has exceeded its expectations as a learning process and as an expedient to serve those who have been engaged in it.

As of the 12th of this month, some 2,500 servicemembers were enrolled in the pilot at 21 medical treatment facilities; 466 servicemembers completed the DES Pilot, returning to duty, separating from service or retiring. The average time to completion of the DES Pilot has been 275 days, exceeding the goal set for the pilot and exceeding the legacy to DES by an estimated 46 percent.

The legacy DES, Mr. Chairman, would be one that you

would have familiarity with from your experience in the Army. It goes back to the earliest days. The Republic was refined somewhat in 1949 and has not improved since then.

These people who have gone through this were active duty personnel. Reserve and National Guard members moved through the system to the receipt of their VA benefits letter 13 percent faster than the goal set for them in the terms of reference governing the DES Pilot. Tracking of servicemembers satisfaction reflects the success indicated by these numbers. Among the practical efforts taken to assist the wounded, ill and injured has been the Recovery Coordination Program begun in November of 2008. This covers servicemembers less severely wounded but who are not likely to return to active duty in less than 180 days.

We are wrestling with a number of complex issues, ranging from the fit to the unfit equation, the compensation for family caregivers to TBI and PTSD screening. One among many of the issues we face in addressing these and other issues is the velocity with which medical science is accelerating the area of care for our wounded, ill and injured personnel.

Injuries that once would have disqualified a servicemember from returning to active duty no longer do so. So in the policy arena, we find ourselves trying to keep up with miracles. The tendency in some areas is to sit tight

and see where the miracles take us, between medical science and the incredible will of our servicemembers. Many of them want to go back to war. So this is what we are dealing with. It is very different than any conflict we have ever been in the past.

As you know, the DES Pilot is a test bed that will help us determine what future changes we can and may need to make in this endeavor through the modality of the DES evolution. The pilot program is operated within the context of existing policy and law. We may discover the need for changes in policy and may request that you consider changes in the law.

I do not want to speculate on that today. We are required to report on the DES Pilot at the end of August, and at that point, we expect to have a sense of the future of the pilot itself as well as the course of the DES evolution.

That concludes my oral statement, Mr. Chairman, and I look forward to any questions you may have.

[The prepared statement of Mr. Koch follows:]

Chairman Akaka. Admiral Dunne, a popular statistic going around is that the claims backlog is nearing 1 million. That is 1 million claims yet to be fully resolved.

Is that figure an accurate indicator of DBA's claims inventory? If it is not, where is that number coming from?

Admiral Dunne. Mr. Chairman, I would say that the calculation of that large number is based on taking a look at all the work that our regional offices are involved with. The number of 406,000 of a compensation and pension claims inventory, which I referred to earlier, is the number of active claims that we are working on for veterans who are waiting for some compensation or pension from us.

If we take a look at a larger number by adding up some of the other categories, everything from making adjustments for hospitalization of a veteran, incarceration of a veteran, doing changes of address, et cetera, we track all of those as workload elements at which they must also be accomplished, but they are not directly related to a decision on a veteran getting compensation or pension, sir.

Chairman Akaka. This question is for you, Admiral Dunne and also for Mr. Koch on Disability Evaluation System.

How are the departments working to make certain that the Disability Evaluation System Pilot Program is being implemented in the same way at participating sites?

Admiral Dunne. Sir, in order to maintain the consistency that we need and to ensure that the military treatment facilities have the capabilities that they need to serve our servicemembers, future veterans, we conducted a very extensive first evaluation of what was needed in the National Capitol Region when we started in November of '07, what capabilities we needed both on the VA side and on the DoD side.

We use that as lessons learned in order to conduct training for each of the individual military treatment facilities and VA offices who would be involved at the now 21 sites. So all of those individuals involved received training, having the benefit of what we learned at the first three sites. And we have continued to follow through on that as we expand it on to the 21, sir.

Chairman Akaka. Mr. Koch?

Mr. Koch. Yes, sir. Mr. Chairman, I do not have a great deal to add to what Admiral Dunne has said. We are constantly monitoring the progress of these efforts at all 21 sites and adding to the inventory of trained personnel to assist with the care of our servicemembers.

So to some extent, it is a constant becoming; it is a work in progress. And some of the things that we had started out to do, such as the Army with its AW2 program, it has evolved as it has gone along. And we have built on what

we have learned there with our recovery care coordinators. And, of course, on the other side with the Veterans' Affairs, there are the federal recovery coordinators that do this work as well.

But there are a range of issues that we have got to continue to attack, and we are doing that within the evaluation of the pilot as well as within the working group, which I chair as well for the DES evolution.

Chairman Akaka. Admiral and Mr. Koch, how can VA and DoD do a better job at screening servicemembers so that those who enroll will actually complete DES and make wiser use of resources?

Mr. Koch?

Mr. Koch. Yes, sir. The process begins at the intake of the wounded, ill or injured warrior, and we look at, of course, the nature of the wounds that may be considered catastrophic. These would be people that we do not expect to be able to go back to active duty, and they are going to have to change their expectations for their future. And we have to try to manage those expectations so that we do the best we possibly can for them.

There is a process set up for them to proceed through the system from the point of intake to the healing process, rehabilitation, and to reach a point at which a determination will be made on our side, on the DoD side,

whether they are fit or unfit for duty.

Now, that sounds like a very cut and dry determination. In fact, it is not because, as I said in my oral testimony, many of these people who have suffered wounds that would have been completely disabling in the past are going through some marvelous procedures of recovery. And now if they want to stay in, the chances of us being able to retain them are greater than they ever were in the past.

So through this process, which we are evolving, we think that it is going to be what it is set out to be, which is smooth, simple, equitable and optimal. And, again, we constantly monitor this to assure that we meet the standards that we have set for ourselves.

Chairman Akaka. Do you have any comment on that, Admiral?

Admiral Dunne. Yes, Mr. Chairman. On the VA side, as we perform the medical evaluations that we do working with DoD, there is close monitoring of the results of that, of course. And I believe as we look at it through the Senior Oversight Committee and look at the data, which includes taking a look at the data of servicemembers who are not eventually separated or retired, that that is good feedback information for the services to evaluate and evolve their program, as we are working on right now, sir.

Chairman Akaka. Thank you.

Senator Johanns, your questions?

Senator Johanns. Thank you, Mr. Chairman.

Admiral, I think I will start this question with you, but I would encourage the other members of the panel to jump in here.

One of the things we did when I was a mayor--and I was very active in the U.S. Conference of Mayors--is we established a best practices sort of system. We would always joke with each other that we were not looking for original ideas, we were looking for ideas that worked that we could bring back home and implement.

Does the VA in its disabilities process have anything like that? And I will tell you what I have in mind. I was looking at the statistics for the Lincoln office, and they are just simply better than the national average. Now, there might be a dozen reasons for that.

But is there anything out there where you look at what is happening across the country and say to yourself, I wonder why those 12 offices are doing so much better than the average, and actually try to take those models and implement them? Talk to me about that.

Admiral Dunne. Yes, sir. We are looking for all sorts of good ideas. And I think I will start by setting the example myself. And that is, over the past 16 months, I have visited over 30 of our regional offices, including the

Lincoln office, to be able to talk firsthand to the employees who are actually doing the work and learn directly from them what their challenges are, what issues they have that could either make them more effective or a best practice that perhaps they are using locally that we could share with the other 56 offices and implement that.

We have a program where twice a year, we get all the regional office directors together. In fact, we will be doing that at the end of August. One of the segments of that meeting is all about best practices and where, as a result of our periodic reviews and inspections, we become aware of something that one office is doing, whether that be through training or otherwise. We share that with all the directors and provide them enough information to be able to take that back and apply it at their office if they see that they could benefit from that.

That is one example, but we are continually looking to the ROs by communicating with them periodically at all levels in order to take advantage of those ideas. In addition to that, by publishing our results office by office, we allow the different offices to be aware of who is performing better and talk amongst themselves and figure out why they are better. But we do try to oversee that process and keep track of it.

Senator Johanns. Anyone else have any thoughts on

that?

Mr. Koch. Senator, you have talked about looking for good ideas. One of the first good ideas we had and implemented was building a collegial relationship between our two departments, between DoD and the Department of Veterans' Affairs. And that has been very productive, and that has been, again, something that we continue to share, our efforts, share information, and build on each other's learning process.

So as Admiral Dunne indicated, there is almost no substitute for visiting these centers. These polytrauma centers and other hospitals that we have are quite remarkable. And at each point, we learn something that we can bring back. We learn, as you might imagine, more from being in the field than we do from sitting back here in Washington. So that is a process that is ongoing and very valuable.

There is, as you suggest, it seems to me, some unevenness in various centers that we are involved in. I think you can trace this to efforts to break the mold and to do things that we have never done before. In the Great Lakes, for example, in northern Chicago, we are not satisfied with the progress that we are making there, but what we are trying to do is unique and it is extremely difficult to do.

In many cases, these problems will be found to be rooted in the effort of information sharing in the sense of information technology. Building these systems to work across disparate systems is not easy to do. And the less people seem to know about the information technology business, the more ambitious they seem to be about the terms of reference that they levy on us.

We began, for example, with creating a system for sharing medical information, which is a very good idea, but then you add to that, to the same system, personnel records and benefits records, and you have increased the problems exponentially. So that gets us in a little bit of a different area, but it is an example of some of the kinds of problems we have.

So it is a constant learning and it is a constant process of sharing what we learn. I think we are doing a pretty good job of it.

Senator Johanns. I am out of time, Mr. Chairman, but if I might offer one other suggestion. I think that best practices--because I did a lot of things, as a governor, as a mayor, that, quite honestly, somebody else had thought of. But it looked so good that we implemented it, and it really turned out well for us.

The second thing I wanted to ask, though--and I am not going to ask you to answer it here but maybe a follow-up

letter or something to the chairman with copies to us. As we have tried to improve this, I worry at times that maybe we have done things that have only made it worse. So I am going to turn the tables here.

Is there anything out there that has happened in terms of our effort to solve this problem that you would like us to revisit? And I have one thing in mind, the AMC, the Appeals Management Center. We hear from veterans that that can be a black hole, that things go there and disappear. Maybe that is an individual case, maybe it is not. But that is only an example.

I would ask you to give some thought to this idea, that maybe in our effort to improve things, we have actually created another level of bureaucracy that is making it difficult for the veteran to overcome. And I would like to hear from you on that. And do not be shy. We have broad shoulders in this business.

Thank you, Mr. Chairman.

Chairman Akaka. Thank you very much, Senator Johanns. Let me call on Senator Murray.

Senator Murray. I am happy to wait for the other members.

Chairman Akaka. Fine.

Senator Tester?

Senator Tester. That is very kind. Thank you very

much. Thank you, Mr. Chairman

Admiral Dunne, you stated that you have 406,000 pending. What is that level compared to a year ago?

Admiral Dunne. About 25, 30,000 more than a year ago, sir.

Senator Tester. Okay. And the ratings claims are 80,000 each month? What is that compared to a year ago?

Admiral Dunne. About 5,000 a month more, sir.

Senator Tester. Five thousand more?

You stated in your testimony that you have 125 days as your goal but you have got 145,000--and this may wrong because I was taking notes--145,000 claims over 125 days?

Is that correct?

Admiral Dunne. Correct. Yes, sir.

Senator Tester. Are those also fluid? You said the 406,000 were fluid.

Admiral Dunne. Oh, yes, sir.

Senator Tester. Is 145,000--

Admiral Dunne. The 145,000 is part of the 406,000, so it is a subset of it. So, I mean, we are--yes, sir. We are trying to move those through as fast as we can.

Senator Tester. All right. So is it a fair question to ask, of those 145,000, how long do they go past the 125 days? I mean, are we talking--

Admiral Dunne. As short a time--

Senator Tester. --180 days, 240?

Admiral Dunne. Well, that is an average number, sir. And what we do, based on the computer, is we take all the claims and we keep track of how many days they have been there.

Senator Tester. I guess the question is, is there a point and time on a claim, when it gets to a certain number of days, that you guys say, we fix this; we fix it now?

Admiral Dunne. Yes, sir. We have a team--

Senator Tester. And what is that day?

Admiral Dunne. --the Tiger team. And when it gets to be a year old, it goes to a Tiger team that works specifically on it to try to find what the issue is that is slowing it down.

Senator Tester. And how many of those plans get to 365 days?

Admiral Dunne. At the present time, there is on the order of 11,000, sir.

Senator Tester. Okay. The chairman asked a question about 1 million claims, and you said that is all the work that is being done, and you listed changes of address and some other things.

Do you guys track that backlog of that additional 600,000?

Admiral Dunne. We track all of them, sir. Everything that comes in that is a work item is given an end product and we track it all.

Senator Tester. All right.

So the question is, if you have a change of address and it does not happen for a while, it makes the ability to service that veteran a lot more difficult. That is just one example.

So the question is, is you have got 600,000 approximately out there that you are doing various, much more minor things on, is what I interpret that by. Do you track that--

Admiral Dunne. Yes, sir, we do.

Senator Tester. --to see what the backlog--what is the backlog on that? I mean, what is your goal on those?

Admiral Dunne. There are about 219,000 items in the inventory right now, sir, and we complete those in about--on average, in about 88 days. Some of them were able to complete the day they come in; others take longer.

Senator Tester. Okay. Sounds good. So the million figure that the chairman brought up is not accurate. Because if my figures add up, you have about 625,000 total work that you have been doing, 219 and 406.

Admiral Dunne. Sir, we also have to include appeals in there as part of the workload also, which the RO has to use

some of their personnel for.

Senator Tester. Okay. And I assume that there are timelines for the appeals process, too.

Admiral Dunne. Yes, sir. We established those

Senator Tester. Can you tell me what those are off the top of your head?

Admiral Dunne. I would have to get those for you specifically in terms of targets.

Senator Tester. That would be great.

Do you have the needed employees you have now to reduce the backlog? Because it has been growing.

Admiral Dunne. Sir, there is a difficult balance that has to be struck between simply adding more people to the process, which then creates also additional administrative responsibilities. I am not sure exactly where that perfect balance is.

Senator Tester. I guess the bottom line is this. And I appreciate the position you are in because the claim rates are going up 5,000 a month from what it was last year, and the pending claims have gone up by your answer to the question.

The question is, do you guys have a plan, does VA have a plan, to reduce that backlog?

Admiral Dunne. Absolutely.

Senator Tester. Whether it is employees or technology

or whatever, when will that plan be implemented so that we can start to see that backlog go down?

Admiral Dunne. Sir, we are working on several issues right now, both technology-wise and training of personnel, which will have effects over time. How fast, it is very difficult to say that a certain action that we take will result in X number of days or X number of claims being affected because each claim is truly unique.

Senator Tester. I understand.

Admiral Dunne. But we have a technology plan, which I am working with the chief information officer and the chief technology officer to put that in place on top of our business process, the reevaluation, which is going on now. We have the pilot going on in Little Rock, a pilot going on in Providence that are directly looking at the process that we go through, how we handle things in trying to improve that, sir.

Senator Tester. I understand. And I understand the position you are in, and I have some empathy for it. But I also say I have some empathy for the veteran out there who is in that backlog group.

My time has also run out. But I would just say we have not hit break even yet. We are still going the wrong direction. That somewhat distresses me. And I know that the pressures have been more because of Afghanistan and Iraq

and others, but the truth is we have to get to a point where we start reducing the backlog, and we are not there yet, and that is somewhat distressing.

Thank you, Mr. Chairman.

Chairman Akaka. Thank you, Senator Tester.

Let me call on our Ranking Member, Senator Burr, for any opening remarks and questions.

Senator Burr. Mr. Chairman, thank you for recognizing me.

Admiral, I apologize for my tardiness this morning. I would ask unanimous consent that my opening statement be a part of the record, and I will be happy to fall in the back of the line to ask questions after every member has completed the first round.

Chairman Akaka. Without objection, it will be added to the record.

[The prepared statement of Senator Burr follows:]

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Chairman Akaka. Senator Begich?

Senator Begich. Thank you very much, Mr. Chairman.

Thank you all for being here, and I know this is your second or so hearing regarding the DES. But if I can follow up on two questions, one by Senator Johanns and as well as Senator Tester.

First, on the best practices, you reminded me when you talked about the mayor's comments, we, on a regular basis, produced documentation, booklets and so forth. But, to be honest with you, I was not satisfied with your answer, and here is why. Because when you mentioned the best practices and you had--I am going to try to paraphrase your phrases there, your comments, and that is that you had the groups kind of talk about it.

What I learned as mayor is when there are best practices, and you have multiple agencies with different practices, and one may not acknowledge that the other one has a best practice, to let them just discuss it does not work.

How do you pull the trigger to make sure that when you see something that is successful--and I do not know enough about Nebraska's example in Lincoln, but let's assume that has best practices there. How do you say to the rest of them this is working; we are doing it this way? Because the way you made it sound, honestly, I was not satisfied with

that. Because when you leave it to the agencies that do not believe they are--or the different organizations, no one believes they have bad practices.

Admiral Dunne. Senator, I will give you an example. One of the things that I learned from traveling around to the offices is that at the present time, people that are working claims, they have to send letters to veterans. They have to print those letters out on printers. They share printers. They have to walk around the room to get it. They also have to sort through the outbox to figure out which product from the printer is theirs and which belongs to another VSR.

I directed that we start funding that so that we can get a printer on everybody's desk, and they can all print out their own correspondence and handle it themselves; save time and save confusion, and we are going to go do that. That is one example, sir.

Senator Begich. Let me ask you, also, in regards to that, I think Senator Tester asked a question of the claims. I think you said around 11,000 at some point when you get to a year.

Maybe I am wrong about this, but is the goal 125 days? Is that right?

Admiral Dunne. The strategic target is to complete all claims on an average within 125 days, sir. If we can do

them sooner than that, we will do them sooner than that.

Senator Begich. How did you select the year, which is almost three times what the target is? In other words, it seems significantly long when you think about it. If your target is 125 days but you are waiting a year for those kind of--I do not want to say--I do not know if the right phrase is complicated claims, but claims that are not resolved, it is three times what your average is before you kind of step in and say we got to deal with this.

How did you come up with three times?

Admiral Dunne. Senator I did not mean to imply that we did not take a look at a claim until it got to be over a year, but when it did--each of the regional offices has their own monitoring system. They are able to monitor, through the computer, the age of all their claims and they work them. But if they get to that point of a year, then that is when we turn them over to a Tiger team.

Admiral Dunne. You had mentioned I think it was 40--I am not sure which one mentioned this actually, but around 4,000 or so new employees that were added.

Is that net after attrition and other exits?

Admiral Dunne. A net of 4,200 new employees since January of 2007, sir.

Senator Begich. What do you need to get to the level to--I think to follow up again with Senator Tester--get

ahead of the game? How many more employees?

Admiral Dunne. Again, ahead of the game, sir, I would say at this point, having evaluated it for 16 months, we need to implement the IT portion of this because the significant savings that we need to move things around, we need a digital capability to do it. I will give you an example of a claim.

When a claim comes in and it is processed, then there is a need to go back and communicate with the veteran, and send that veteran a letter and say this is what you have claimed, this is what we need, additional evidence, et cetera, and give that veteran 30 days to respond. If the veteran sends additional information in, then that comes in to the mailroom, and someone has to take it and move that piece of paper to wherever that claim file might be. That takes time; it takes people.

If we have a digital capability, when that new piece of evidence is scanned in, it can be scanned in with the bar code and immediately go to the electronic claim file, which would then trigger a management item which would tell someone there is new evidence in this claim folder; you can act on it now.

Senator Begich. Let me ask you--and I am just about out of time here. Do you have, on both questions, then--on personnel that you believe you may or may not need, do you

have the necessary resources to hire those personnel? And the second piece is on the digital component. Do you have enough resources to implement what you want to do with regards to digital resources?

Admiral Dunne. Sir, I would say that we have the correct people. At this point, we have the correct funding. And I believe that the budget requests the additional resources that we need.

Senator Begich. Great. Then, I guess, last question.

When you set on this course, did you develop a strategic plan--I am assuming you did, but a strategic plan that lays out kind of your target dates and goals of how you will achieve where you at and how do you keep track of that? Do you have such a document that exists?

Senator Begich. Sir, I am in the process of creating such a timeline with the chief information officer and the chief technology officer.

Senator Begich. Can you share that with us when you--

Admiral Dunne. Absolutely.

Senator Begich. Great. Thank you very much.

Thank you, Mr. Chairman.

Chairman Akaka. Thank you very much, Senator Begich.

We will hear from Senator Murray, her opening statement and questions. We will be continuing with the questions.

Unfortunately, my presence is required at the markup of

another committee. In my absence, Senator Murray will be chairing through this hearing. She is, of course you know, an active member of this committee, and I know that she cares deeply about the issue that we are discussing.

So now, I would like to turn the gave over to Senator Murray.

Senator Murray [presiding]. Mr. Chairman, thank you very much. I will submit my opening statement for the record.

[The prepared statement of Senator Murray follows:]

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Senator Murray. But let me just summarize it by saying that we have provided a lot of funding and promoted specialized training and passed legislation, and I know that there is a lot of increasing complexity with veterans' filings and that we are facing an increased number of veterans. But I have to say I am still--because I talk to veterans--really worried.

I am frequently reminded that a lot of veterans see the VA as their adversary, not as an advocate: lost paperwork, misorganized files, an incentive system that many VBA employees perceive to value the quantity of claims processed more than the quality of those claims. So we still have a lot of work to do because I think the veterans often see that when they go to file a claim, the deck is stacked against them, and we have got to keep working on this.

So with that in mind, I wanted to ask some questions of you this morning, Admiral Dunne and Mr. Koch.

In GAO's September 2008 report on the VA-DoD Disability Evaluation System Pilot, GAO reported that your two agencies had not established criteria for determining whether the pilot should be deemed a success and expanded to the rest of the system.

Now, I understand that you are going to be issuing your final report to Congress in August, which is coming up very quickly, but can you tell the Committee, both of you,

whether or not you have developed strong criteria to measure the success of this pilot and determined the feasibility of expanding this?

Admiral Dunne. Senator, I think the best criteria that we have established so far is feedback from the servicemembers themselves and the veterans, which will be reflected in the report that we are providing. But we are going straight to the veterans and the family members and asking them how satisfied they are with the process, with the different stages of the process, to determine whether what we think is progress is actually seen by them as progress, and learn from that, so that we can adjust the DES Pilot as necessary.

Senator Murray. From your perspective, what is the important criteria to determine whether this is not doing well or not?

Admiral Dunne. Whether or not the servicemembers feel that they are being treated fairly, that they are getting consistent results, and that it is being done in the minimum amount of time with recognition that they need time for medical healing and to adapt to the fact that their military career has been cut short.

Senator Murray. Mr. Koch, do you have anything to add?

Mr. Koch. Yes. I would add that one of the things we discovered--first of all, as Admiral Dunne indicated, we

have extensive survey efforts to find out what the servicemembers feel about the way they are being treated. And one of the things you discover is as we progress through this, that the earliest generations of veterans and their families, in particular, talking to the wives who have to deal with injured servicemembers, that the earlier group has a higher level of dissatisfaction than more recent participants in the process.

So what it is telling us is that we are getting better at what we do, but we still have to go back and recapture those earlier people who have gone through this at a point when we were just learning how to do better what we were doing.

Senator Murray. How much money is the VA putting in and how much is DoD putting in to this pilot?

Mr. Koch. I would have to--oh, into the pilot?

Senator Murray. Into the pilot.

Admiral Dunne. Senator, I would have to get the exact figures for you, but our approach has been that we do what is necessary. And we have just--I do not mean to say we have been cavalier about the funding of it, but we have just gone off and determined what has to be done, and the Secretary has directed us to go do it.

Senator Murray. Okay. If you could get that answer back to me, I would appreciate that.

If you do decide that this pilot should be expanded, how are you going to roll it out consistently?

Admiral Dunne. Senator, the next step will be that the Senior Oversight Committee is going to meet near the end of August and will evaluate the report preliminary to providing it to Congress. Should they accept the report and be satisfied with the results or provide guidance to make some changes, those will be implemented directly with each of the military treatment facilities before implementation.

We have cued up right now a list of seven MTFs where we plan to recommend to the Senior Oversight Committee that we include them within the pilot. We have already conducted training for those organizations. If we get additional guidance from the Senior Oversight Committee, we would conduct that training with those MTFs before we went and implemented it.

Senator Murray. Okay. And you will share that information with us as you move forward on it?

Admiral Dunne. Absolutely, Senator.

Senator Murray. Okay. Let me change direction a little bit.

Earlier this month, the director of the VA's Center for Women Veterans came before this committee and testified that her office was planning on working with DoD and VA, through the White House Interagency Council on Women and Girls, to

make sure that the combat experience of female servicemembers and veterans is properly documented in their DD-214s.

This is extremely important. I am hearing from a lot of women who have been in Iraq, some in Afghanistan, who have come home and do not have the proper documentation saying that they were in combat areas. And I wondered if either of you are aware of that effort, and can you give us any progress on that so these women get their proper service credentials when they come home.

Admiral Dunne. Senator, I am aware of the fact that we are working with DoD, two parts of it, to get the DD-214 transferred to us electronically so that that also will speed up the process of us adjudicating claims; but also to make sure that DoD has all the requirements that we need from that DD-214 document so that they can be incorporated into this electronic exchange of information.

Senator Murray. Okay. And the problem begins in DoD where people do not get their--women particularly, but also some men who are in combat experience. Their records are notoriously incomplete or vague, but it particularly impacts women, where people are not so excited about writing something in their DD-214.

So, Mr. Koch, are you aware of this problem and can give us any input?

Mr. Koch. I am aware of it, Senator, and we are finding that this, again, is a learning process the sort of war that we are involved in is requiring us to think in new ways about how we handle this. I mean, it is just not cut and dried and anymore.

I do not mean to be craven about it, I am not making excuses about it. But we are trying to get our arms around are the multiple deployments, people who are trying to catch up with their records; we are trying to catch up with their records. And we do, but there are backlogs. And in some cases, we do not know that we have missed something until a servicemember calls it to our attention, and that may take some time. So it is something that the Department is concerned about and is trying to address as quickly as we can.

Senator Murray. Well, I am going to continue to push everybody on this because when somebody goes over and serves our country and then, simply because somebody does not write something on a form, comes home and is denied their care, to me is just really unjust. So this is something I care a lot about, and I will continue to push all of you on this.

Admiral Dunne, let me ask you. GAO's testimony notes that the VA is expecting an increase in claims as the result of an October 2008 regulation change that affects the VA rating for TBI, for traumatic brain injury. Given the

complexity of rating TBI claims, what is the VA doing now to prepare its staff with this expected increase in TBI claims?

Admiral Dunne. Senator, the regulation that was put in place last October was the most up to date, best information, medical evaluation, that we could obtain as a result of meeting with many experts, both on the DoD side and on the VA side.

Our anticipation is that we will get additional claims, but our claims processors, the folks who actually do the rating, received training on the new regulation and how to apply it. And we think as a result of the work that Mr. Pamperin and his folks did, that the rating schedule in that area is much more easy to understand and more able for the medical folks to provide the information that we need to put into the schedule.

Senator Murray. Okay.

Mr. Pamperin. Ma'am, in addition to that, part of that projection of increased workload is an outreach effort that we have done for the people who are already service connected for TBI, advising them of the change in the schedule and encourage them to come in if they feel that they have more than subjective symptoms. We have done extensive training on TBI. We have issued training letters on that, and I believe that we are ready.

Senator Murray. Okay. Well, this is something, too,

that this committee, as you know, has followed very closely, especially on knowing that a lot of men and women have come home and are sitting somewhere in a community with symptoms, have no idea that it was traumatic brain injury. And we have had a lot of resources put into this, so we want to make sure those folks on the ground out there are trained and adequately following these new procedures. So we will be following this closely, and I appreciate that.

Senator Burr?

Senator Burr. Thank you, Madam Chairman.

Admiral, again, welcome. Thank you, and I thank your colleagues for your service to our country's veterans. I really appreciate it.

Admiral, in the stimulus package, we provided \$150 million, and the purpose of it was to hire the individuals to create a surge in the claims process. And according to the VA's 2010 budget request, you suggested that the goal was to achieve an additional 10,000 cases from that surge effort.

How many new hires does that \$150 million provide?

Admiral Dunne. Senator, I believe that we will be able to hire over 2,000 temporary employees. At the present time, we have already hired almost 1,300 of them. So some of them have already started, and they are in the process of training so that they can take on some of the other work

that we can quickly train them up and get them started on.

Senator Burr. Do you stand by the goal of 10,000 claims being processed based upon the surge capacity?

Admiral Dunne. Senator, I would tell you that that is not based on any specific equation that I could put numbers into, et cetera. We took a look--we just had to take a look at how many people we thought we could hire. The training that we can do to get them proficient in some task--they obviously will not be able to rate claims, but they can help us move different support functions through the regional office faster. So while they will not have a direct impact on claims, we believe it will be an ancillary impact, and that is our best judgment on what we think we can make happen.

Senator Burr. I appreciate that, for the purpose of my colleagues, to understand that there is a learning curve that these people have to go through, that you cannot go out in the marketplace and hire people to walk in on day one and start making disability determinations and really cannot walk in and process claims.

I might note that this is not a cheap investment. If, in fact, we got 10,000 claims off of it, that is \$15,000 a claim. When you stop and think about it in those terms, you realize just what the size of the investment is to try to address this backlog, and to do it by increasing the number

of claims that can be processed by people.

I might say, the most refreshing thing I think I will hear today, I heard earlier, is that we need to think in new ways. And I appreciate that thought, because I think that is what some of us on the Committee have been saying for sometime. We have got to a point where we have got to think outside the box. We have got to look at doing things in ways that we have not done it before. We have got to reach out and look at technology, and pull it in and say, how can you help us do this. But we also have to look at the process that we have and ask ourselves, where can we make changes that we are comfortable with that shorten the period of time but provide the right opportunities to a veteran to make sure that their case has fully been heard.

Now, the DAV submitted a proposal to the Committee outlining the number of recommended changes to the claims process. In part, their proposal recommends eliminating certain procedural steps that they see as unnecessary.

Admiral, do you agree with the basic premise that wherever possible we should try to eliminate unnecessary procedural steps in the claims and appeals process?

Admiral Dunne. Absolutely, Senator. I am working on that right now.

Senator Burr. Then I would take for granted you are aware personally of some of the steps that probably should

be eliminated or should be considered for elimination.

Admiral Dunne. Senator, I have my own list, yes.

Senator Burr. Today's testimony from the Government Accounting Office mentions, and I quote, "Each time appellants submit new evidence, VA must review and summarize the case for the appellant again, adding to the time it takes to resolve the appeal."

As we will hear later, "the proposal from the DAV would attempt to address this issue by providing the Board of Veterans' Appeals with the authority to review the newly submitted evidence in the first instance unless the individual who files disagrees."

Is that reasonable?

Admiral Dunne. Sir, when we get into the appellate category, I have to defer to the lawyers because I might see something where I would say we could do this faster, but I would not want to deny a veteran his legal rights for consideration of certain items.

Senator Burr. But if it could uphold that legal right, then we should do everything to avoid these types of delays?

Admiral Dunne. Any delay, I am happy to get rid of sources of delays, sir. And as long as we take care of the veterans in the process and they are amenable to it, I am in favor of it.

Senator Burr. Okay.

Earlier this year at one of our hearings, I think a number of organizations testified that the VA Appeals Management Center should be dissolved. And I would like you to be very candid with us. They called it a black hole. And I realize there have been attempts to make changes within the center.

Can you update us as to those changes, the success, and at what point should we collectively look at that and either say it has now worked or we need to eliminate it and move on?

Admiral Dunne. Senator, we have made some changes. One of the changes we made is we put a new director at the AMC here in Washington. He has made progress already. I think he will continue to make progress.

One of my sources of information, of course, is talking with the veteran service organizations. And I meet with them routinely, at a minimum, once a month, to get their inputs. And I plan to continue to work with them on this and other issues where we can identify problems.

But I truly believe that consolidating this into one area is the best way to go in order to serve our veterans. I do not deny that we have had some problems, but that is part of putting the process together, and I think we will continue to improve it.

Senator Burr. So would I take away from that that we

are hopeful that a leadership change will resolve the deficiencies that are there or are there other challenges that we are faced with, local job market, et cetera, that come into play?

Admiral Dunne. Senator, I would say that this appellate process is also affected by the fact that it is paper-borne as well. And so, to the extent that we can bring IT solutions into the basic claims process, that also will help the appellate process.

One of the big points that I am always making with the folks that work on claims is we need to continue to improve our accuracy because the goal is to touch a claim once and to create a reputation with our veterans that when we take their claim, and we handle it, and we give them an answer, it is the right answer, and that there will be a reduced number of appeals as a result of that consistency and accuracy, in addition to using IT solutions, sir.

Senator Burr. Well, I thank you for that.

Last question, Admiral, and it is slightly off of today's topic, so I hope you will give me the leeway to do that.

I understand that the VA recently heard from a number of family caregivers who have concerns about VA's fiduciary program. My office has heard from some of the same caregivers that voiced some concerns to the VA. And, quite

honestly, these are wives and parents and siblings of severely injured veterans who have dedicated their lives to caring for the needs of those individuals, their injured loved ones, and they feel that the VA's fiduciary policies are demeaning and burdensome.

Do I have your assurance that you will take their concerns seriously and will ensure that the VA's fiduciary policies are not only looking out for the interest of the injured veterans but also are affording the respect, trust and dignity that we owe these family caregivers?

Admiral Dunne. Senator, I would tell you that I am sworn to do that very thing, and I intend to do that. And I can tell you specifically that Mr. Pamperin here has already reached out to several of the VSOs so that we can meet with them and understand what their concerns are with the fiduciary process.

That is always a difficult thing whenever a fiduciary has to get involved on behalf of a veteran. We want to make sure that it is done properly, and we also want to recognize that we are in a new environment and there are younger veterans, families involved, and we perhaps need to revise our rules and processes. And that is exactly what we intend to evaluate and pursue, sir.

Senator Burr. Admiral, I appreciate your candid answer and, again, thank all three of you for your service to the

veterans.

Thank you, Madam Chairman.

Senator Murray. Senator Johanns, do you have any additional questions?

Senator Johanns. No.

Senator Murray. Okay. I just have a few additional questions. Admiral Dunne, you piqued my interest.

Can you tell us what steps in the claim process are on your list for possible removal?

Admiral Dunne. I would be happy to, Senator. I will give you an example of some of the items.

One is apportionment. When we get involved with a veteran, family member, et cetera, where there is separation, and one party will apply to us for a portion of the veteran's benefits in order to be properly supported. At the present time, there is a very lengthy, detailed process, essentially in the absence of a court decision, for us to go in and play Solomon and decide what the percentage breakdown should be.

I am trying to determine the proper way to approach that so that our employees are not asked to play judge and jury but rather to have a metric that they go by, which is fair to all concerned, and that would save us a considerable amount of time.

We have seen some progress as a result of the fully

developed claim pilot, which Congress authorized us to do. In that environment, where the veteran takes advantage of that, we have been able to turn those claims around under the 90-day goal that was set in the legislation. So we intend to pursue that. We are also seeing some success as a result of the checklist, which is added to the letter, another pilot that Congress authorized us to perform, and we would like to perfect that as well.

Senator Murray. Okay. Very good. I appreciate that.

One of the things I hear from veterans all the time is that their paperwork is lost. And I understand complex systems and everything.

But, Admiral Dunne, let me start with you. What action can the VA and DoD take to make sure that somebody's ship or unit location can be readily accessed by VA employees so that they can substantiate a claim?

Admiral Dunne. Senator, I think the long-term answer is our virtual lifetime electronic record, which, as you know, the President charged both the Secretary of Defense and Secretary of VA with pursuing. We are hard at work at that. I think that is the long-term solution.

Short term, some of the things that we have accomplished, as you recall, last October, we did have a problem with shredding of documents, et cetera. I believe that the records management program that we have put into

place as a result of that is yielding benefits, and we are going to pursue that. One piece of paper lost, one piece of evidence, is too many. So we just have to continue to work at it and keep people's attention focused on the fact that that piece of paper is a veteran; it is not just a piece of paper.

Senator Murray. Thank you. I appreciate that.

Mr. Koch, what can the DoD do to keep better records so that we do not hear continuously from veterans that their paperwork has been lost, we cannot find it, VA cannot substantiate it?

Mr. Koch. Senator, I am not sure that the issue is the quality of records keeping; it is the management of those records once they are created. I, frankly, do not know what the answer to that is. I am sorry. I wish I could give you something more straightforward, but I do not. People lose records; I think particularly medical records, keeping track of medical records.

Something as simple as putting these things into a thumb drive that a servicemember could carry like an electronic dog tag might make sense. But then you would have the question of keeping these things updated, and that is always a difficult thing to do, so that every time you go to get shots, that has to be recorded. And sometimes it is just difficult to keep these things together and to keep

them up to date.

So there is a question of our responsibility to find a solution to this, and the servicemembers share a responsibility as well. And sometimes one side or the other does not do it. And those are the--of course, as we understand very well, those are the exceptions that come to the attention of all of us and that gives us so many headaches.

What is not recorded is the vast majority of records that are properly kept and are properly handled, which is not to say, as Admiral Dunne has said, one slip up is one slip up too many. But in a perfect world, we would not have those slip-ups. We are trying to create a perfect world, but I do not think in my lifetime that we are going to succeed at it.

Senator Murray. Well, we have to keep working at it for sure because this is what we hear more than, I think, anything, is somebody's complete frustration that they cannot get a piece of paper that allows them to be able to substantiate and process a claim. So the burden is on you.

Senator Burr, you had another question?

Senator Burr. Yes, ma'am, one last one.

I chucked, Mr. Koch, at the answer because I sat here thinking, you know, MasterCard and Visa can find everybody in America. And when they find them, they know exactly what

they make and they know exactly what the risk is they are taking.

I think sometimes there are real merits to us looking outside of organizations that we are in and tapping into people that, as you said earlier, think in new ways. It is not always incumbent on us to think of all those new ways, but it is incumbent on us to look out and find those entities that can help us make that transition to new ways. And I certainly encourage the VA to do that in every appropriate area.

Admiral, last year, the Congress directed the VA to submit a report regarding a study conducted by Economics Systems, Inc. on the issues of earnings, loss, quality of life payments, and transition payments. In part, the law required VA to set forth what actions VA plans to take in response to the study, a timeline for taking those actions, and any legislative changes. But I do not see any planned actions or timelines laid out in the VA's report.

Can you clarify whether VA plans to take any actions in response to that study?

Admiral Dunne. Senator, we evaluated the study. I would say that in the short, six-month period of time, Econ Systems had to do that. They did a good job of evaluation, et cetera. But what I learned from that report is there is more information that we need in order to make any decisions

or make any recommendations.

I also recognize that I believe we need an opportunity, a time period for the Congress, all our stakeholders, to read that report and evaluate what is in there because some of the recommendations in there are truly national policy recommendations which do deserve evaluation and debate. And for us to have at this point, with only the information we have, to have put forth a definitive this is what should be done, I think would not be serving our veterans properly, sir.

Senator Burr. As a follow-up, does the VA have a position right now as it relates to compensating veterans for any loss in quality of life caused by their service-connected disability or can I take the report as an indication that the VA does not support it?

Admiral Dunne. Sir, I would take it as a recognition by VA that there is more information that is needed and that there is more discussion that needs to take place with many experts before we would be prepared to say yes or no on any of those recommendations.

Senator Burr. Admiral, I will not put you on the spot today, but I would love for you to go back and converse with the Secretary because I think what we need from you is what is the next step. Rather than to have this lay dormant for some period of time, I think it is absolutely essential that

you tell us whether the next step are congressional steps, the next steps are VA steps, the next step is to stimulate the national debate.

But I think that we have had a number of commissions report, and I think many of us have expressed our strong desire that the most recent two not become part of the shelf of dust that other commission reports have found there way to. And I think that they were very specific as it related to the need to move to a system that compensated for the loss of quality of life. And I think there was a consensus within the VA then, and for the most part I think in Congress.

I just want to make sure that this is momentum to try to come to some finality in the loss, that we get to the point. If at the end of the day we determine we have a system that cannot do that, then we have to decide whether we change the system to accommodate it or, in fact, we may find that we can do this and incorporate it in the same system.

I happen to believe, as you know, that the disability system needs to be, for the lack of a better word, updated to reflect where we are and the new ways that we have got to think in the future. And I think a quality of life payment is probably very appropriate in the context of the overall change to the system.

Admiral Dunne. Yes, sir.

Senator Burr. I thank you and look forward to the comments from you or the Secretary on what the next step is.

Admiral Dunne. Understood, sir. I will get you an answer.

Senator Burr. Thank you, Admiral; Madam Chair.

Senator Murray. If there are no further questions from the senators, I want to thank this panel for your testimony and your work. And there will be additional time left open for any questions from senators. Again, thank you so much for your testimony this morning.

With that, we are going to move to our second panel. Come forward and take your seats.

I want to welcome our second panel this morning. I will introduce them as they are getting seated.

Our first witness is going to be Michael Allen. He is a professor of law at Stetson University. Next, we have Daniel Bertoni, the Director of the Disability Issues from the Government Accountability Office, GAO. Final witness is retired Air Force Lieutenant-Colonel John Wilson. He is the Associate National Legislative Director of the Disabled American Veterans.

I thank all of you for being here this morning and appreciate your appearing before this committee. Your full testimony will appear in the record. And, Professor Allen,

we are going to begin with you.

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STATEMENT OF MICHAEL P. ALLEN, PROFESSOR OF LAW,
STETSON UNIVERSITY

Mr. Allen. Thank you, Senator Murray, Ranking Member Burr and members of the Committee. Thank you for the invitation to testify here this morning. Most of the other witnesses have talked about, or will talk about, the claims processing at the administrative level. I am going to focus my remarks on the end of the process, which is the appellate review, the judicial appellate review of those determinations because, as the members of the Committee have noted at many different times in the past, what goes in at the beginning is going to make a difference at the end of the pyramid.

This coming October marks the 20th anniversary of what we now know as the United States Court of Appeals for Veterans' Claims. And until Congress enacted the Veterans' Judicial Review Act of 1988, there was effectively no judicial review of veterans' benefits determinations outside of the VA administrative process itself. And so the VJRA was itself a milestone in the commitment, the evolving commitment, to veterans in the United States, and I think it is an opportune time to look back and see what has happened in the last two decades.

I should say that the addition of independent judicial review of these veterans' benefits determinations has been

successful, and I think we can lose sight of that when we try to think about ways to improve the system.

As I explain more fully in my written testimony, it has been successful in a number of ways. One of them, it has dramatically increased the uniformity and predictability of administrative decisions. Second, it has enhanced the actual but also the perceived fairness of the process and it has improved administrative decision-making. But despite its successes, independent judicial review has caused or contributed to serious problems in the system.

First, and most importantly, as the Committee has noted now and in past hearings, are the delays that veterans face as part of the claims process. One cause of that is the dual layer of appellate review, meaning appellate review first at the Veterans Court and then a second appellate review at the United States Court of Appeals for the Federal Circuit. There is no other similar level of dual layer of appellate review as of right in the federal system.

Second, there are, and as this committee has noted in the past, large numbers of remands. Those large number of remands do not just occur from the board to the regional office within the administrative system. They occur from the Veterans Court back to the board, and this increases delay.

Third, there is an inability to adjudicate class

actions or aggregate litigation at the Veterans Court. And in lots of other contexts, class actions can have bad or good connotations, depending upon the political views. But, really, the issue here is not the traditional class action; it is the ability to handle a large number of claims that all have the same legal issue at once. Those factors have led to increased delay.

There is also tension between the Federal Circuit and the Veterans Court. There are tensions between the Veterans Court and the Secretary at times. And another problem with judicial review has been an issue that Senator Murray alluded to in her questions to the last panel, which is that the veteran can get caught in the space between the administrative process and the judicial process, because whether or not the VA process continues to be non-adversarial, people can debate that.

But that is the stated purpose of the system. There is a transition point from that system to judicial review before the federal courts where it is a traditional adversary system, and veterans face a difficult challenge moving from one to another. So there are these problems with judicial review.

So what I would urge is for Congress to consider--and I hate to use the word "commission" again, Senator Burr. But a commission or I will call it a working group perhaps, to

study the system. What changes can be made in the process from beginning to end, including judicial review now that we have 20 years under our belts.

The key to that is that there is the widest possible buy-in from affected groups: veterans, the Department and all its facets, Congress and the relevant judicial bodies. And I do not think this commission should be limited in what it can consider.

To paraphrase Ranking Member Burr at a hearing in February, "This commission should start with a blank piece of paper to design this system with no preconceived notions. It has got to keep the interest of veterans in mind, their paramount constitutional issues of due process and separation of powers, and the public's interest in the expenditure of resources.

But beyond that, the system should take the time to step back and see where we have been because, after all, only a few hundred yards from here in 1865, Abraham Lincoln gave his famous second inaugural address in which he called on the Nation to stand up for the people who stood up for the country and their dependents. And we are still doing that today. And so for me, it is a distinct honor to even be a small part of the process. Thank you.

[The prepared statement of Mr. Allen follows:]

Senator Murray. Thank you.
Mr. Bertoni?

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STATEMENT OF DANIEL BERTONI, DIRECTOR, DISABILITY
SERVICES, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. Bertoni. Senator Murray, members of the Committee, good morning. I am pleased to be here to discuss the Department of Veterans Affairs disability compensation claims process. And I just want to preface my remarks by saying some of the numbers I will reference today will be slightly different than what we have been hearing. We focused for this Committee on our ongoing work only on compensation claims. We have isolated DIC and pension out of our analyses, so the numbers will be slightly different although the trends are consistent.

Last year, VA paid over \$31 billion of disability benefits to 3 million veterans. For years, VA's claims process has been a subject of concern due to long waits for decisions and large numbers of pending claims. My statement today is based on prior and ongoing work for this committee and discusses trends and compensation claims as well as the steps the agency is taking to improve service delivery.

In summary, over the last decade, disability workloads have improved in some areas and worsened in others. Since 1999, VA has steadily increased the number of initial claims processed annually by 60 percent to 729,000, and the agency has realized substantial gains in the number of claims processed over the last three fiscal years.

Last year, compensation claims were pending an average of 123 days, down from 152 days in 1999, but still in excess of VA's goal of 116 days. And despite these gains, the inventory of claims waiting a decision has increased 65 percent to 340,000. And those pending more by six months have increased by 20 percent. More recent data shows that pending claims declined slightly between 2007 and '08. However, the average time VA took to complete a claim increased from a low of 181 days in 2004 to 196 days in 2008.

Regarding disability appeals, VA has also experienced some gains and setbacks. Since 2003, the number of appeals processed increased by 22 percent and the number of pending cases decreased from 126,000 to 95,000. Unfortunately, average processing time has trended upward from 543 days in Fiscal Year 2003 to 639 days, over 21 months, last year.

Various factors have contributed to the trends in disability workloads, including substantial increases in the number of claims received, growing claims complexity, and laws, court decisions and regulations changes, which have expanded workloads over time.

VA has taken several steps to expedite service to veterans. First, the agency has hired thousands of additional claims processing and appeals board staff and plans to use Recovery Act funds to hire 1,500 additional

support staff going forward.

This infusion of staff has helped VA process more claims, and that explains the positive trends in recent data. However, VA has cautioned that per person productivity will decrease in the short term because it takes from three to five years for staff to become fully trained and proficient. We have also noted that quickly absorbing, these staff will likely pose substantial human capital challenges going forward in regard to training and deployment.

Second, beyond increasing staff, VA has also expanded its efforts to redistribute key workloads to 15 resource centers. These centers process claims for backlogged offices, often specializing in distinct phases of the process, such as claims development or ratings. In fiscal year 2008 alone, VA redistributed over 140,000 ratings cases. And although such actions could improve processing time and consistency, VA has not yet collected key data to evaluate the effectiveness of these centers.

Third, VA has expanded efforts to assist servicemembers in filing claims prior to leaving the military when their personnel and medical records are most accessible and up to date.

In 2008, VA received 32,000 claims through this program known as Benefits Delivery at Discharge or BDD. To improve

consistency, all BDD rating activities are consolidated at two VA regional offices, and on average, processing times for these claims are shorter than for other claims. However, we have recommended that VA take additional steps to improve its measure for BDD timeliness and quality and to ensure access to members of the National Guard and Reserves who represent 1 in 4 disability applicants.

While VA has a number of other initiatives underway, I will conclude by noting that it is piloting a joint disability evaluation process with DoD to improve the transparency, timeliness and quality of disability evaluations. Key pilot features include a single physical exam and a single disability rating prepared by the VA for determining both military retirement and VA disability benefits. If the pilot is successful, the likely outcome will be worldwide implementation of this streamline system and a substantial change in the way many veterans first receive VA benefits.

We have noted, however, that broader expansion will require development of a comprehensive service delivery plan, sound performance measures, and resolution of key operational challenges, such as who will perform the single physical exam at locations where there is no VA facility nearby. Both agencies have been working to address these and other concerns.

Senator Murray, this concludes my statement. I am happy to answer any questions you may have. Thank you.
[The prepared statement of Mr. Bertoni follows:]

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Senator Murray. Thank you very much, Mr. Bertoni.
Colonel Wilson.

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STATEMENT OF JOHN L. WILSON, LT. COL, USAF (RET.),
ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED
AMERICAN VETERANS

Colonel Wilson. Madam Chair, members of the Committee, I am glad to be here today on behalf of the Disabled American Veterans.

As you know, the claims process is complex and lengthy. VA estimates that it will decide over 940,000 claims in 2009, but it may be well 1 million considering the total workload. It is also important to note that the VA has decided close to 200,000 more claims than it decided just two years ago, which is a likely indication that the VA is making good use of the additional staffing provided by Congress over that same period. What is discouraging is that the VA may actually receive just as many new claims as it decides this year, which is also close to 200,000 more just a couple of years ago.

Short of growing VA's workforce indefinitely, what solutions are available to us? The DAV believes it has a viable solution. We have presented this committee with the DAV's 21st Century Claims Process proposal, which is intended to simplify the process while preserving resources and reducing expenditures.

Our proposal begins with the initial stages of the claims process and continues through the entire appellate

process. Our recommendations are carefully aimed at making efficient a rather inefficient process without sacrificing a single earned benefit.

They include, 1) amending legislation to indicate that the VA will assist a claimant in obtaining private medical records only when such assistance is requested by the claimant on a form prescribed by the Secretary; 2) amending legislation to allow the VA on its own to waive all VCAA requirements when it determines that evidence of record is sufficient to award all benefits sought; 3) amending legislation so VA could issue appeal election letters at the same time as the initial rating decision; 4) amending legislation to decrease the period in which a VA claimant may submit a timely notice of disagreement to the VA, following the issuance of a VA rating decision from one year to six months; 5) amending legislation in a manner that would specifically incorporate an automatic waiver of regional office jurisdiction for any evidence received by the VA, to include the board, after an appeal has been certified to the board following submission of a VA Form 9 unless the appellant, or his or her representative, expressly chooses not to waive such jurisdiction.

These and other suggested changes could result in reduced pre-appellate stage processing time between 30 and 90 days, and as high as a three-year reduction for certain

post-remand appellate cases.

My written testimony contains many more details regarding these suggestions, to include how they could be incorporated into a new digital claims process as part of a new electronic record and imaging scanning center. Implementation of this legislative package will result in a dynamic responsive claims process with flexibility for future growth.

In closing, the VA will never be able to maximize its recent increases in staffing without making its processes more efficient. If such changes are made, the VA will see vast improvements in its entire claims process that are essential to achieving the broader goals of prompt and accurate decisions on claims. Likewise, only then will the VA be able to incorporate training, quality assurance, and accountability. Such programs have been demanded by the veterans community.

It has been a pleasure to appear before an honorable committee today and I look forward to your questions.

[The prepared statement of Colonel Wilson follows:]

Senator Murray. Thank you very much to all of you for your testimony.

Mr. Bertoni, let me begin with you. You testified that the VA has not collected data to evaluate the impact of using the research centers to redistribute workload. We have heard that mentioned by several of our colleagues this morning with concerns about that.

Can you tell us what measurement you would recommend the VA use to value the effectiveness of these centers?

Mr. Bertoni. Sure. I think critical to any process, any of these processes, is timeliness, accuracy and consistency. I think it behooves any manager, as opposed to going out talking to the troops, trying to discuss issues on site--that is all important and good, but I think there is no substitute to the data to help management make good data-driven decisions. So if you have a resource center and there are indications--and you do the analysis, and there are indications of problems in certain areas, you can make remedial interventions.

To date, I do not believe that is occurring. I think even very recently, I do not believe there were any quality assurance reviews being conducted. So that would be, first and foremost, very critical, what type of quality assurance reviews are being done, what is the MI 3-16:07 data showing, and what do you do with that data going forward to make the

interventions that need to be done.

Senator Murray. Okay. Thank you very much for that.

Mr. Allen, you talked about the current structure for judicial review of veterans' benefits, and it has two appellate levels, a veterans court and Federal Circuit, that you indicate increased delays and could be duplicative.

You raised the option of removing the Federal Circuit from the structure of the veterans' benefits determination process as one way of perhaps reducing some of the delays in this system. It did not sound like you were a hundred percent committed to that, but can you tell us why you sort of lean towards the Federal Circuit?

Mr. Allen. Sure, Senator. Let me start out by saying that it seemed to me that when Congress created the Veterans Court, one of the things it was trying to do was create an independent body to review these issues outside of the VA and that that body would be the expert in that area of the law. But since this was a new process, it provided for this second layer of review at the Federal Circuit.

Now, I should say that the level of review at the Federal Circuit is not plenary; it is not total. The Federal Circuit does not have jurisdiction to review any matter of fact or, quite oddly, any application of law to fact. It, in theory, should only review pure questions of law.

Now, it made perfect sense to structure the system, at least in my view, at the time like that. Today, I think that unbalanced, it is not worth having the Federal Circuit involved anymore. And I do not say that lightly because that is a major change.

What it goes to is what are the competing values that one wants because if the value that was absolutely top on the list was making sure that the maximum number of judges' eyes looked at a case, figuring that that would reduce overall inaccuracy in decision, well then, it might make sense to have this two-level court.

To use a silly analogy, if your absolute, 100 percent, number one value in a day is making sure that your pants do not fall down, wearing belt and suspenders makes perfect sense. It is not irrational because that is your value. But I think that for the Federal Circuit employment here, it is not having the maximum number of eyes look at a case because over time, having that second layer review has increased delay, and I am not sure--I am sure for myself that it has not increased the quality of veterans' law sufficiently to justify its current place in the system.

Senator Murray. Okay.

Colonel Wilson, have you given any thought to a proposal to remove the Federal Circuit from the veterans' benefits determination process and what that would mean?

Colonel Wilson. No, ma'am, I have not but will be glad to respond later.

Senator Murray. If you could respond to the Committee, I would appreciate it.

Mr. Bertoni, would you have any input on that?

Mr. Bertoni. I would say we have not looked into that or any considerations there. But I would say there be a range of stakeholders that you would have to bring in.

Senator Murray. That is why you suggested commission--

Mr. Bertoni. Yes, that is right, Senator.

Senator Murray. Senator Burr?

Senator Burr. Mr. Allen, you are right. It is a major shift, but I think we are challenged to look at it in a different context. And I was serious months ago when I suggested to the service organizations, let's start with a blank sheet of paper, and come in and tell us how you design it in the 21st century. And I think to the credit of DAV, they took on the task, and I am appreciative of that.

You are right when you mention the word "commission." What little bit of hair I had on the back of my neck did stand up. So let me ask, what additional information do you believe a commission would find that we do not have readily available to us today?

Colonel Wilson. I thought of two ways to respond to that. The first and most direct is, I do not know what

additional information the commission would have that you do not. And I do not mean to refer back to Secretary Rumsfeld, but, I mean, there are things that we know we do not know out there. But more importantly, Senator --

Senator Burr. And that was sort of the basis of why you had the creation of the VA appellate process and the federal court.

Colonel Wilson. Yes.

Senator Burr. We did not know what we were going to run into.

Colonel Wilson. Absolutely. And second, though, Senator, I think that the key--because I think this has been the key over time as various veterans' benefits have been discussed, is it reaches a tipping point when enough of the relevant constituencies come together on an idea. And I do not know whether something can truly be successful if it is, in fact, deemed to be imposed.

Senator Burr. How long do you think a commission would need to take to accomplish the work that you perceive a commission should attempt to accomplish?

Colonel Wilson. Part of it would be how broadly the commission should be structured. In my perfect world, I would say that it should actually be a commission that looks at the claims processing from cradle to grave because the situation we have now, some have described it as a spider

web. And that is not quite right, I think, because it is an older spider web, the administrative process, on which a new spider web has been grafted. And anything you do to one part is going to affect another.

I think that now that we have a system that we have seen, if it starts from the beginning and looks at the end, because things that are done at claims processing at the administrative level are going to make a difference in the judicial review arena as well and vice versa. So if the process were from beginning to end, I think this could probably be done, with commitment, in six months.

Senator Burr. You mentioned in a recent Law Review article, and I quote, "Perhaps the most significant shortcomings of the current system of veterans' benefit determinations and their judicial review is the delay that veterans face." I think many veterans would agree with that assessment that you have made.

How would you suggest we strike the right balance between speeding up the system and protecting the rights of veterans?

Colonel Wilson. That is a very tough question. I think that there are--at the hearing in February, Senator, I think, Begich mentioned that there are sort of two generic approaches one can take. What I have been talking about is the big picture, beginning to end.

But there are also targeted things that can be done in the system right now to help reduce delay. Some of them, Congress has done. Congress authorized new judgeships for the Veterans Court that are going to come into force in December of 2009, in theory, to help reduce that workload. There are things being done at the Veterans Court to increase--or to decrease delay, to increase efficiency. The provision of technology, for example, there are things being done at the system.

But I think that we have to be honest about the fact that any reduction in, say, for example, the number of remands, which on a systemic scale is bad, is going to affect, in any given case, the fact that a veteran's claim is going to stop somewhere on the road earlier than it would otherwise have done. And so, I think that we have to start with the assumption that that is the case.

I think a lot of this can be enforcing what Congress has put in the statutes to make the VA process be the benefit of the doubt going to the veteran, and I think that that is a good point.

Senator Burr. Mr. Bertoni, you are familiar with DAV's recommendations.

Am I correct?

Mr. Bertoni. We have not done much analysis. I am vaguely familiar with what they recommended, yes, in terms

of the--on the appellate--

Senator Burr. Are you aware of them enough to make a recommendation as to whether you think if we enacted them, they could save some of the delays that have been identified?

Mr. Bertoni. No, but I could talk generically about reengineering processes and why that is a good thing, and then sort of segue into that.

We always said that benefit processing organizations should be looking to reengineer their processes, look for efficiencies in streamlining their processes. To the extent that you can do that, then you take those redesigned processes and you build your automation systems around them. And you actually have gained to efficiencies: your process is better and your automated system is better.

To the extent that what they are proposing can eliminate steps and compress time frames, we would think that would be possibly a good solution. The only concern that I have in the limited knowledge I have is that if you create a system where the paperwork is pushed up the flag pole to the next level, I think for a while you can be more efficient. But if the numbers start to come in at substantially higher levels, if they do not have the resources and staff and reengineered processes up there, you might get into a situation where you have just moved the

problem to the next phase. And we have seen that in other programs like the Social Security Administration.

Senator Burr. Let me ask you, if you could--I cannot remember whether your comments have included an observation on the stimulus money that went to the VA, \$150 million for 2,200 positions--expires in 14 months--to basically process 10,000 claims. And I realize that is something that was pulled out of the sky on the run, but let me ask you. Good investment?

Mr. Bertoni. Well, I have seen the plan. The number I have seen is 150 million and 1,500 employees, in written form. And I believe it is 500 permanent and a thousand temporary. Clearly, absorbing the staff at the rate at which they have been going is going to be a challenge.

You mentioned the appeals resource centers. Anecdotally, we have heard some noise there, that absorbing staff and trying to find trained staff or get staff trained enough has caused some issues. So I think the organization since 2005 has been injecting a great number of staff in, and they have had some issues with training and deployment and getting folks up to a proficient level. And they have acknowledged it is going to lead to sort of a downturn in productivity for some time. However, it also shows that they are producing more. In the last couple of years, it looks like there is some good trending in the data.

So I think over time, if they can integrate staff into the processes in a timely manner, get them trained up, I think you should be able to see some better training in the numbers. However, it is going to really depend on how they design their service delivery plan to make sure they have people processed and technology in the right places at the right time. It is not a matter of simply putting staff where you have space. You could really run into some real inequities in terms of experience in certain areas if they do it that way.

Senator Burr. Thank you.

Thank you, Madam Chair.

Senator Murray. Thank you.

I have one additional question, and I am going to then turn it over to Senator Brown for his questions and comments and to hand him the gavel to chair the final time of this committee, so thank you for being here.

Mr. Bertoni, I just wanted to ask you, as you know the DES pilot could be implemented worldwide. You have testified that the DoD and VA have not established how they will define success for that pilot.

In your opinion, what would indicate success?

Mr. Bertoni. I agree with the indicators of customer satisfaction and timeliness. I mean, I think those are two very important things. But I do believe--and I do not think

that VA and DoD have put enough thought in terms of what is the performance bar for accuracy and consistency. How much improvement in any of these elements do you want to see that would warrant worldwide implementation?

I do not believe they are there. The last thing you want to do is have more decisions, quick decisions but bad decisions. So I do believe they need to get behind the accuracy and consistency ball and really design some criteria and targets to shoot for.

Another concern we have is they are about to issue a report in August, and they are going to be rolling out or standing up at least several sites in the latter part of this pilot, which by their own designation are high risk or high risk of failure. They are very unique characteristics. And it is unclear to us how they will be able to cut off analysis to begin drafting this report and still incorporate the data that those sites will yield to give you-all a good sense of how effective this pilot is by August.

Senator Murray. Okay. Thank you very much for that input.

Senator Brown, thank you for being here, and I turn the gavel over to you.

Senator Brown [presiding]. Thank you, Senator. I appreciate that.

Thank you for joining us. I appreciate your public

service, all of you, and your support for veterans.

I represent Ohio, and Ohio has, if not unique, some more severe problems perhaps than the rest of the country. I want to get to something specific later on that way.

But let me ask you--we all hear about this all the time. We hear about the bottleneck, we hear about the frustration that so many veterans have. Talk through with me where the real bottleneck is. Is it the initial claims process? Is it the appeals process? How do I explain to veterans better why there are 145,000 claims that are older than 125 days? Each of you, I would just like to hear your thoughts about it.

Mr. Allen, you want to start?

Mr. Allen. Sure, Senator. I think part of it depends on the individual veteran who comes up to you and where their claim is in the process. Starting at the back end, if you are a veteran who has been dissatisfied at the administrative level, and so you have appealed now to the federal court system, you are going to be shocked by the way it works there because now you have a traditional adversary system in which there is time built in for the assembly of an appellate record and the debriefing that goes into that, where that process itself is going to take 120 days if you are lucky, and then the case is right for decision. And then if you are still not happy, one part or the other, can

appeal to the Federal Circuit.

So part of this is that the downside of judicial review is increased process. If you are at the administrative level, other people are going to be able to discuss this better than I would. But certainly, the statutory provision that allows for "one appeal to the Secretary," which is essentially the board in this case, means that the board will remand matters for initial adjudication over and over and over again to the regional office to allow one appeal to the Secretary.

So, in that sense, I do agree with Mr. Wilson that it would make sense in terms of delay to allow the veteran to waive that right, essentially; to allow the veteran to affirmatively say I know I have the right to have it remanded and considered first before the RO, but I will let the board do it, because I think that that is a big part of administrative delay.

Senator Brown. Mr. Bertoni?

Mr. Bertoni. I do not think I could isolate any particular aspect of the process from front to back as a particular bottleneck. I think throughout the process, there are program design inefficiencies that have just slowed the way cases are processed through the system.

I do believe one key aspect or problem that starts very early on is the inability to develop the medical record and

difficulties establishing service connection. And I think that some of the initiatives that they are trying to do right now, in terms of benefits delivery at discharge, where 70 percent of departing servicemembers are leaving through these sites, where you could get early information on the medical history, the personnel record when it is most fresh. You can establish service connection.

So I do believe there are some things going on, especially the DES pilot, where those issues can be resolved early on. Certainly, there are program design issues throughout the system that are causing slow downs in processing, but I think that upfront development and being able to establish service connection can help throughout.

Senator Brown. So, Mr. Bertoni--before you answer Colonel Wilson. So you think that the meetings that Secretary Shinseki and Secretary Gates have had, and the information technology to help IT, that they are doing, and the fact that the VA will have access to those records much earlier in the process, really, from the day that a man or woman signs up and joins the military and that it will be more seamless and all, that should help in terms of this backlog?

Mr. Bertoni. If you could create those interfaces, the ability to quickly share in an online fashion medical information, I think that is going a long way. But be

mindful that it is not just a matter of taking a 400-page paper, manual file, and evolving it into an electronic system. I do believe you need to build into that system the ability to query, to search, be able to pull out documents that you need specifically to reach a decision.

So it is a matter of having this electronic interface, but having it to be a very user-friendly system that can help those who develop the claim, pull out the information they need.

Senator Brown. Colonel Wilson, your thoughts on my original question, about the bottleneck.

Colonel Wilson. Yes. Thank you, Senator. It is certainly a complex issue, as well intended to. One of the issues is simply that when a veteran files a claim and appeals, in the decisive--during appeal, should it wish to provide additional information, supplemental statements of the case are created in each particular time that veteran submits information for that particular appeal.

When I was in the field, I saw as many as 9, 10, 12 supplemental statements of the case being issued for a veteran on their appeal because they had not bothered to talk to their representative and say what is going on here; "they have asked me for information and I sent it forward, and I have got another delay and another delay." And I have to caution them, please do not submit any more additional

evidence. Stop, you have certainly submitted enough; it is duplicative as a matter of fact. They do not understand the process. So this is one of the complications that is raised, a very complex issue.

So if you allow the veteran to instead opt out of this current process where the regional office has a review, opt 4, which I think is already the case, the Board of Veterans Appeals to have a review, you then, therefore, also eliminate the supplemental statement of the case. By the way the VA tracks as many as only up to five SSOCs; there could be far more than that. As I indicated I have seen 9, 10 and 12 from certain veterans.

When you figure that SSOC is one hour of work for a simple case, and you have thousands of them, you have thousands and tens of thousands of man-hours that you can save as a result. It moves the appeal process further, gets the appeal decision back to the veteran sooner.

The other issue that you face is the VA working in the proper direction with its infrastructure issues and the IT arena. Moving to the electronic record as is being talked about with the DoD and VA, outstanding; absolutely the right way to go. It may likely take an additional investment of resources as was testified to before this committee before.

So those are a couple of the issues that cause the continued problems that the VA has in being responsive in a

timely manner to the veteran.

Senator Brown. Thank you.

From your comments, Colonel Wilson, about delay, and, Professor Allen, your comments about judicial review can take up to 120 days, just that alone, that process--there are some 145,000 claims, as we have discussed, over 125 days--what is the right number of those, considering? What should be our goal because of the slower judicial review process? What number should we be aiming at? What is fair to veterans?

Your thoughts on that?

Mr. Allen. Well, in terms of the judicial element, once you have sort of crossed the rubicon and decide I want independent judicial review in an adversary setting, in a court system, there is only so much that can be done to reduce "delay".

Senator Brown. So what is that number taking those out? Where should we be?

Mr. Allen. I think that realistically--this is not necessarily something that veterans want to hear, I think. But I think realistically at the appellate court level, the claims are being adjudicated at about the right speed if we want to maintain a traditional adversary system. There are things that can be done in certain cases that the court is doing, I understand, an aggressive mediation program to try

to get things resolved earlier. But in terms of the speed to decision at the appellate court level, I think that that is about right. In fact, I think the Veterans Court produces decisions, on average, faster than other federal courts of appeals, but it is still a significant chunk of time.

Senator Brown. Little consolation to someone going through the process, but I understand that.

Mr. Allen. And that fundamentally is the trade off about whether or not this type of judicial review is worth the candle. I think it is, but that is also why in my response to Ranking Burr--

Senator Brown. Can you estimate of the 145,000 how many of those are actually part of judicial review?

Mr. Allen. None. None technically, at least yet. Each year, approximately 4,500 to 5,000, depending on the year, cases are appealed from the Board of Veterans Appeals to the Veterans Court. Last year, I think it was just under 4,200 cases per year go to the Veterans Court.

Senator Brown. Any comments from Colonel Wilson or Mr. Bertoni about that?

Colonel Wilson. No, Senator. I could not offer a perspective on what the proper time frame should be for that at this particular time. I would be glad to respond in writing, however.

Senator Brown. Okay.

Mr. Bertoni. I was just going to say, in terms of the initial claims, I do not know what the number is either, but I would look at what has been accomplished. And if you look at the Benefits Delivery at Discharge program, their average is two to three months versus six to seven months for non-BDD claims. So I think any veteran receiving a claim within two to three months would probably be pretty satisfied with that.

As far as the appellate end, 639 days a year, 21 months, I can say that is probably too long. I do not know what the numbers should be.

Senator Brown. Veterans have not just frustration but the difficulty of survival for some number of veterans that are in this process, and have to wait and wait and wait, all that is pretty troubling of course.

I hear veterans often say they would like--is there a way that VA could provide some preliminary classification so that they could get some assistance as this process went forward in those cases that, perhaps, are a little more obvious or a little simpler.

Is there a way that the VA can define preliminary classification and move forward with that?

Mr. Bertoni. Preliminary classification with--are we saying a temporary disability or

Senator Brown. Yes.

Mr. Bertoni. I have heard folks make that point. The issue we have here, I think, in doing a preliminary classification, it could cause problems for both the administration and the veteran. Number one, if you do that and six months down the road you finally do complete the case, or two years down the road, and you find that the veteran is not disabled or at a much lower disability rate, that person could potentially be slapped with a fairly high overpayment.

Given the rules that VA has in terms of waiver, probably the person ultimately--after some administrative and bureaucratic gyrations, that amount would probably be waived. But now you are left with the VA or Federal Government would have to eat that payment. And that is one scenario.

Senator Brown. Is there a way of doing that in cases that you can reduce significant--and I apologize for going over here, for Senator Burr. Is there a way of doing that so that those cases that have a great deal more certainty, so that the error rate will be very, very small? It is perhaps a price that the taxpayers and the VA pay for these overpayments, if you will, but you do it and you define it in a way with much more certainty so the overpayments are rare.

Mr. Bertoni. There is. It is done in the Social Security Administration. It is called compassion and allowances. They are doing some of this in VA with some of the target subpopulations that they are looking into to sort of expedite. These are cases most likely to be approved, and they are doing that. I do not know the range of subpopulations with the numbers, but that is a model.

Senator Brown. But it is done in a relatively small number of cases now, to your knowledge.

Mr. Bertoni. I do not know the numbers, but it is not done on the macro level, no.

Senator Brown. And from your examination of this from GAO, can you tell if you could expand it to a good many more veterans without a high rate of overpayment?

Mr. Bertoni. That is part of what we are doing. This is ongoing work. So preliminarily I do not have that answer, but we are aware of several pilots that are ongoing where that is exactly the concept. These cases are good candidates for approval and they are on a fast-track basis. And whether they could find more or revise the criteria to bring more cases in, I do not know that right now, but it is something we are looking at.

Senator Brown. Okay. Thank you.

Senator Burr?

Senator Burr. Thank you, Mr. Chairman. I was going to

ask Mr. Wilson a couple of questions, but I am going to forego those and just make an observation.

As we have talked about the disability claims process, we have all sort of looked at the middle and the end and tried to point to all the things we think caused the delays. And we have extensive debates about what the appropriate amount of time is. When do you restart the clock? I think that is what Mr. Wilson talked about with the new evidence. It restarted the clock, and this brought further delays. And there was a point that it was not beneficial to veterans.

Let me just suggest that I hope all of us might back up and possibly look at the beginning of the process, when the first interaction takes place, and ask ourselves if we put as much effort towards the re-training and re-tooling of our VA personnel and charge them more with slowing down the process of moving that claim forward until they are confident that all of the pertinent information that that claimant might need in the claim is there, and they become a little more invested in each individual claimant, that I think, one, we would be able to then identify what we do not need, very easily, because there would not be this addition of new evidence. Somebody would be there helping them construct that file at the beginning.

If, in fact, the medical information was not in it, you

requested of the veteran for it to be there, and after a period of time, you move the claim into the process without it, well, you have got a VA employee that knows that at some point this is going to bog down. This is just going to stop dead, and then it is going to set off all these little triggers. And as the VA at some process, as Mr. Wilson says, goes back to the veteran and says, well, we need this, was there somebody in the theater that saw this, as you build that case, that is where the delays come from.

Now, I know I am probably suggesting something that is way too simple for us to accomplish, but I think that--I go back to the commission, and here is my frustration. I have seen us put commissions on to identify changes to big things, and sometimes we get little changes to big things but we do not get big changes.

I think we have got to think about this process, about how we can change it tomorrow for veterans. I know I am not suggesting the only place we need to look at, but I do not think that we can satisfactorily solve all of our problems without making sure at the earliest possible point we get all the information needed to make determinations. And I think when I ask how do you find the right balance between the veterans' rights and the speed of the process, it is having the most information to make an educated decision as early in the process so that you know whether the individual

is going to pursue it further, meaning to the appellate court, or, in fact, whether the veteran might look at the process up to that point and determine I have been treated fairly and now is the time for me to exit out of the system and let somebody else come in.

So just a personal observation because I have been as focused as everybody else on do we have too much in the middle and too much at the end, and how many times do we restart the clock, and whose responsibility is it to make sure that that does not happen too often. We have a habit of throwing the hot potato to somebody else.

Maybe we can all agree that we have got to do a better job up front, slowing the process down, making sure we have all the information; more importantly, making sure that the first interaction with the Veterans' Administration is with somebody whose sole objective is to get the information they know that individual is going to need throughout the process. If we fall short after that, well, we will deal with it. But I think we can do a much better job at the beginning because some of the things that we all reference to, quite frankly, are achievable at the earliest possible point in the process.

I want to thank all three of our witnesses as well as the administration for being here today. I thank the chair for his indulgence for my observations, and I look forward

to hopefully progress on this in calendar year '09. Thank you.

Senator Brown. Thank you, Senator Burr.

We have a vote call in a couple of minutes, and I just really have one question that I would like each of you to explore before we wrap up. I would particularly like to thank Admiral Dunne and Mr. Koch for staying and listening to the questions. Witnesses often do not do that, to listen to the next panel, and I thank you very much, both of you, for doing that.

I know this hearing is about claims processing, and we each have our stories about our own states. But I want to ask you briefly about a related matter. And Mr. Bertoni possibly could be the most helpful on this, but if others want to weigh in.

Ohio consistently will receive some of the lowest disability compensation in the country year after year, and nobody quite understands why. I mean, our delays--the slowness of the processing may be worse in Ohio, and that is not really clear from information we have. But we do know we have some of the lowest disability compensation in the country year after year after year.

I know it is partly demographics, but how much of this can be attributed to individual claims processing? Is there a structural issue with the Cleveland region that you can

see, Mr. Bertoni?

Mr. Bertoni. I do not know that answer. I think the one to get behind that would be VA. And I know they have started a program, I believe it is called the Interrater Comparison Program, where they are basically taking a case in a particular area and having a number of raters examine it and rate the case, and to see where there are breakdowns in terms of consistency or where there is inconsistency.

So I think that exercise is very important. To have that kind of analysis where you have three folks rate a like case with like impairments and see how far or how close they are in terms of the rating determination I think is a first step to sort of getting behind whether there is substantial variation that needs to be addressed.

Senator Brown. Anybody else want to--

Mr. Bertoni. And they have just started to do this, I believe.

Senator Brown. So a year from now, we may know the answer to this?

Mr. Bertoni. I think that is a question for VA, but I do not know how long that exercise will be going on.

Senator Brown. And VA has never done anything like that. And we have asked questions of them and tried to get answers on this, and they really do not seem to know the answer. This is the first time they have sort of approached

that model to be able to determine people.

Mr. Bertoni. I know the VA or the IG took a stab at this several years back, and I do not believe their analysis was conclusive either. But, again, I do know that the VA's fairly recent experience, they are doing this analysis and, hopefully, it will yield some information relative to why there may be inconsistencies.

Senator Brown. Colonel Wilson, I am sure you have heard from DAV members in Ohio about this. Do you have any thoughts or have you been able to give them any insight into this?

Colonel Wilson. No, sir, no specific insight on that particular location. I would offer that the various veterans service organizations have long contended that the quantity work is although an important one, to move cases quickly, that quality of work must be a part of that process as well.

We believe if you change the work credit system, I do not care where the location is of the regional office, work credit system changes to require accountability, both up and down for good work, take it away for work that is not as good, will improve the process for all, and eventually as well as in Ohio.

Senator Brown. Okay.

Mr. Allen, any insight you might have?

Mr. Allen. I do not know enough about that, Senator.
Senator Brown. Okay. Well, thank you.

Thank you all for your testimony, and thank you especially for your service to this Nation's veterans. The Veterans' Committee is adjourned. Thank you.

[Whereupon, at 11:25 a.m., the Committee was adjourned.]

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