Statement of
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Mr. Chairman, Ranking Member Burr, and Members of the Committee,

Thank you for your invitation to testify today regarding the performance and structure of the U.S. Court of Appeals for Veterans Claims, and as to two pending bills: S. 2090 and S. 2091. Before beginning my testimony, I would like to provide a brief overview of my organization, which is Professional Staff Group VII of the Office of the General Counsel, and is otherwise known as the Veterans Court Appellate Litigation Group.

My office represents the Secretary of Veterans Affairs in all cases coming before the Veterans Court. Whether the case is an appeal from a final decision of the Board of Veterans' Appeals, a petition for a writ of mandamus, or an application for fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, my office is responsible for handling the administrative and legal aspects warranted by the litigation.

That provides a segue to the main topic of today's hearing – the performance and structure of the Veterans Court. My office has watched the caseload steadily increase since the Veterans Court opened its doors for business in 1989. We can appreciate the daunting management challenges that flow from such a caseload. For example, my office alone filed more than 29,700 pleadings with the Veterans Court during FY07. It is impossible to predict with accuracy the number of new cases that will be brought to the Veterans Court in the coming years, but based on the increasing number of disability claims expected, we do not believe the caseload has hit a plateau.

A couple of examples of why the Court may see more cases include VA's initiative to decrease remands. This has led to an increase in the number of final decisions issued by the Board of Veterans' Appeals and, hence, an increase in the number of decisions that can be appealed to the Veterans Court. Also, there is a heightened awareness among veterans of their access to the judicial process. Veterans are now more knowledgeable about the Veterans Court and the availability of this legal remedy. Their heightened awareness, coupled with a growing and very active appellants' bar, has undoubtedly led to an increase in the number of new appeals.

Empirics, however, do not tell the entire story. From our perspective, cases tend to involve much larger records these days and issues that are more numerous and complex. Even a

case with just a few simple issues takes more time to process, when, as is increasingly common, the record on appeal may constitute thousands and thousands of pages. When there are changes in law, such as a statutory enactment like the VCAA or issuance of a new precedent by a court, there might be dozens or hundreds of cases that must be re-briefed, thereby delaying the ultimate decision in those cases. Also, if a case is scheduled for oral argument, that delays processing of others while the subject case receives priority treatment. All of these factors add to the case-management challenge.

The Veterans Court clearly is cognizant that its decisions, even in routine cases, are very important to those veterans who have been waiting for their "day in court." Moreover, precedents issued by the Veterans Court can have a profound and wide-ranging impact on the adjudication system and benefit programs administered by the Secretary. These factors call for careful deliberation and consistency, which, in turn, affect the amount of time the Veterans Court must spend on each case.

You have asked for VA's views on two bills. S. 2091, if enacted, would expand the number of active judges sitting on the Veterans Court from seven to nine. We defer to the Court on how effective this increase will be and whether this will be more effective than the current recall authority available to them. We have glimpsed the efficacy of the Court's recall authority during the last year when the Court recalled judges to temporarily boost productivity.

S. 2090, if enacted, would require the Veterans Court to adopt rules to protect the privacy and security of electronically filed documents. This proposal is an extension of the Veterans Court's existing authority and anticipates the upcoming conversion from paper filing to electronic filing. The proposal also requires the Veterans Court to adopt rules that are consistent with the other Federal courts, and to take into account the best practices in Federal and State courts to protect private information.

Current U.S. Vet. App. Rule 11(c)(2) permits the Veterans Court, on its own initiative or on motion of a party, to "take appropriate action to prevent disclosure of confidential information." Rule 48 permits the Veterans Court to seal the Record on Appeal in appropriate cases. Rule 6 currently provides: "Because the Court records are public records, parties will refrain from putting the appellant's or petitioner's VA claims file number on motions, briefs, and responses (but not the Notice of Appeal (see Rule 3(c)(1))); use of the Court's docket number is sufficient identification. In addition, parties should redact the appellant's or petitioner's VA claims file number from documents submitted to the Court in connection with motions, briefs, and responses." The idea is to prevent the public from easily accessing a veteran's Social Security number, which the Department of Veterans Affairs often uses as a claims number.

The importance of safeguarding sensitive information in a veteran's files cannot be overemphasized. Consequently, the VA supports enactment of S. 2090. The proposal is logical given the impending conversion from paper filing to electronic filing.

Mr. Chairman, that concludes my testimony. Thank you for the opportunity to present these ideas to the Committee.