GARNISHMENT OF BENEFITS PAID TO VETERANS FOR CHILD SUPPORT AND OTHER COURT-ORDERED OBLIGATIONS

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

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GARNISHMENT OF BENEFITS PAID TO VETERANS FOR CHILD SUPPORT AND OTHER COURT-ORDERED OBLIGATIONS

WEDNESDAY, AUGUST 5, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room 334, Cannon House Office Building, Hon. Bob Stump (chairman of the committee) presiding.

Present: Representatives Stump, Everett, Quinn, Cooksey, Evans, Mascara, Peterson, Rodriguez, Snyder, and Reyes.

The CHAIRMAN (presiding). The meeting will please come to order.

Both conferences are still going, but the ranking member agrees that we should probably proceed. We have a very long agenda today, so I think we'll go ahead and start taking our testimony.

We are here today to gain a better understanding of the various laws which allow veterans' benefits to be divided or garnished for child support and other court-ordered obligations. In our Federal system, States have the primary responsibility to determine spouse and child support obligations.

The failure by one or both parents to provide adequate support for their children was dealt with at length when Congress revised our nation's welfare laws 2 years ago. However, Congress has also long been concerned about protecting the payments made to disabled veterans from garnishment or other legal claims. The fundamental question before us is, under what circumstances should the Federal Government permit the garnishment of disability benefits or military retired pay in order to satisfy a veteran's family obligations?

We'll receive testimony today on the circumstances in which garnishment is allowed and whether changes to the current law would make it more equitable. In addition, we welcome witnesses from the veterans' and former military communities, who will share their views on how military retired pay and veterans' benefits are handled during a divorce.

As many of you know, I introduced H.R. 2537, The Uniformed Services Former Spouses Equity Act of 1997. This bill does not repeal a judge's authority to divide military retired pay, but attempts to provide greater equity to both parties in divorce proceedings.

We are all aware of inconsistent and apparently unfair decisions made by the States' courts systems affecting a veteran's obligation for alimony and other child support payments. But uninformed judges or mistaken decisions should not be the basis for legislation.

I appreciate the time which so many of our witnesses spent in assembling information for Congress' use as it deliberates on this important topic.

I would now yield to Mr. Evans, the ranking member, for any statement he would like to make.

[The prepared statement of Chairman Stump appears on p. 35.]

Mr. EVANS. Thank you, Mr. Chairman. I also look forward to the testimony to be presented today. I welcome the witnesses who will be testifying this morning and I appreciate the contributions each of you will make to today's hearing.

Because of the length and number of witnesses Mr. Chairman, I'll forego an opening statement.

The CHAIRMAN. Thank you, Mr. Evans. I would remind those members present and those witnesses, because of the agenda today, we will have to strictly adhere to the 5-minute rule. If you could limit your testimony to 5 minutes, your entire statement will be made part of the record.

If the first panel would come up? Mr. Kusiak, and Mr. McKinney, and Mr. Willick. Gentlemen, thank you for taking the time to be here today. We have no particular order but Mr. Kusiak, I have you listed first. So if you would care to start—let me remind those that are not familiar that a little green light will go on for your testimony. When that orange light comes on, you have about 1 minute to summarize the rest of your statement. If you would please, sir?

STATEMENTS OF PATRICK J. KUSIAK, LEGAL CONSULTANT TO THE RETIRED OFFICERS ASSOCIATION; C.A. "MACK" MCKINNEY, LEGISLATIVE COUNSEL, FLEET RESERVE ASSOCIATION, AND MARSHAL S. WILLICK, ATTORNEY, AMERICAN BAR ASSOCIATION

STATEMENT OF PATRICK J. KUSIAK

Mr. KUSIAK. Yes, sir. Thank you very much.

The CHAIRMAN. You may commence any time you see fit.

Mr. KUSIAK. Thank you, Mr. Chairman and distinguished members of this committee.

The CHAIRMAN. If you could pull the mic just a little closer, please sir?

Mr. KUSIAK. Yes, sir. Before I begin, I'd like to indicate that other associations have joined The Retired Officers Association in my testimony here today and I'd like to submit that list for the record.

The CHAIRMAN. Certainly, without objection.

(See p. 56.)

Mr. KUSIAK. I'm pleased to be here this morning to provide some observations regarding Federal laws related to garnishment of veterans' benefits for child support and court-ordered family obligations and the views of The Retired Officers Association on these matters. I'm going to try to limit my comments to 5 minutes as you

suggested, Mr. Chairman. Simply because there's a lot of issues here, I'm going to try and just sort of highlight the points of my statement which has been submitted for the record.

The CHAIRMAN. Thank you, sir.

Mr. KUSIAK. Generally, with regard to garnishment, there's no question that the Retired Officers Association and others support any efforts to strengthen and streamline procedures to collect child support. There's a legal and moral obligation for every parent to support his or her children and efforts to ensure that support is provided are—are endorsed.

We suggest, however, that in the context of spousal support—and when I say, "spousal support," I mean alimony, alimony unrelated to child support—alimony has been an opportunity or has been used by a number of State courts to indirectly do what we believe Federal law prohibits them from doing; in particular, dividing disability by providing for payment that is akin to a division of retired pay but, in fact, is characterized as alimony. Utilizing those strengthened enforcement mechanisms to collect that kind of alimony is probably not what the Congress intended. Consequently, we would suggest that current law should be modified to eliminate the mechanism of alimony as a scheme to—or mechanism to divide what cannot be divided as marital property.

There are other concerns regarding division of disability. State courts are really having a—some State courts have a difficult time grappling with the concept of disability as something different than normal retirement and, consequently, there's been a number of devices, mechanisms, or legal concepts that State courts use that, in effect, divide disability.

Disability compensation—when I say, "disability," I'm not talking about disability retired pay that is based on years of service. I'm talking about disability retired pay that is based on a percentage of disability or disability from the Veterans' Administration, clear disability compensation that, in virtually all circumstances, is never divided as a marital asset. These devices include things such as alimony, a concept known as res judicata, which essentially says, if we divide it, you didn't object before, it's too bad; it's too late to object after the fact. There are other mechanisms as well where a member is perceived to have agreed to divide disability. All these kinds of devices and techniques should be eliminated to prevent the division of disability.

There are some structural deficiencies, we think,in the Former Spouse Protection Act that I'd like to bring to your attention. One in particular is the continuation of a spouse's interest in retired pay after remarriage. Fundamentally, retired pay is really not like any other kind of property. It's not like a house. It's not like a car or a piece of land. It is a Federal entitlement that has unique aspects to it that don't exist in other context. Consequently, it really is not property, and a spouse's interest in retired pay should be no greater than the member's interest. One way to highlight that is to simply say that a continuation of a division of retired pay as marital property should end if the spouse remarries.

Another concern addresses the issue of Survivor Benefit Plan. Essentially, survivor benefit premiums are deducted from retired pay before it can be divided. This effectively makes the economic

burden of SBP paid by the owners of the retirement after it's been divided. As an example, if a member gets 75 percent of disposable retired pay and a spouse gets 25 percent, the member pays 75 percent of SBP and the spouse pays 25 percent. It's not uncommon for State courts around the country to require the former spouse to pay the full amount of SBP. Yet, when those court orders are sent to the finance centers they really can't comply because the law doesn't authorize them to do so.

Secondly, Federal law for Federal civilians permits multiple beneficiaries of SB—well, not SBP, but a survivor annuity. Under the military survivor benefits system, there's only one SBP beneficiary and you can't have multiple beneficiaries. We think that should be changed.

Fundamentally, the more structural problem is one related to how a division of retired pay as marital property must be stated. The Federal law says that disability retired—rather, retired pay that's divided as marital property must be stated as an amount certain or a percentage. That's fine if someone continues to serve throughout their entire career and gets divorced after that career has ended. But if the marriage ends during the course of a career, it becomes really problematic to decide what that percentage should be. If it's a percentage based simply on years, that percentage is not going to be accurate enough because it's going to somehow give the former spouse a benefit of subsequently accrued benefits. That should be changed. In addition, the amount of retired pay that's divided should be limited to amount that's earned during marriage.

Finally, there should be an invalidation of any court order that orders a member on active duty to make a payment that's akin to dividing retired pay.

Finally, I think, clearly, we believe the Federal law needs to be modified to effect a remedy to some of these inequities.

Thank you for the opportunity to address these questions and I'd be pleased to answer any questions.

[The prepared statement of Mr. Kusiak appears on p. 42.]

The CHAIRMAN. Thanks, sir. Since I failed to properly introduce you, Mr. Kusiak represents—he's legal counsel for the Retired Officers Association.

Next we have Mr. McKinney, who is legislative counsel for the Fleet Reserve Association in behalf of the 15 member organizations of the Military Coalition. Mr. McKinney?

STATEMENT OF C.A. "MACK" MCKINNEY

Mr. MCKINNEY. Thank you, Mr. Chairman and distinguished members of the committee. I appreciate this opportunity to discuss the Uniformed Services Former Spouses Protection Act. In doing so, it is a privilege to represent the member organizations in the Military Coalition that are listed on the opening page of my prepared statement. I might add that the Marine Corps League had joined that group. If you will so submit for the record.

To begin, allow me to assure the committee that my prepared statement is not in opposition to the garnishment of retired pay for child support. In that case, military retirement pay is not considered property to be divided at the whim of some State court.

And, for the record, I'm personally not opposed to dividing the accumulated assets of the parties in a divorce. In this respect, I would be willing to share whatever my spouse and I had in the way of property, but not my military retired pay. However, if I voluntarily provide my former spouse with payments from my military retired pay, it would be my own doing, not as a result of the Federal Government giving the State courts access to that pay simply because some States refuse to amend their own laws to effect the proper collection of court-ordered obligations.

Having said this, there's an old adage used quite often to describe the making of a law and sausage. If you like one, don't watch it being made. Never has this been more descriptive than when applied to the USFSPA. Here is a law that was molded from a mix of complicity, subterfuge, embellishment, subtleties, inequities, and half-truths. A witch's brew to be sure. And my purpose today, is to provide the committee with a history leading to the enactment of the USFSPA.

It began some years before the enactment where stories of mistreated divorcees of Federal employees and military personnel were printed in the Congressional Record and fed to local newspapers and other publications. Throughout the text, the word pension was used over and over again to describe military retired pay as well as Federal retirement benefit. By placing both under one descriptive term, pensions, it soon led uninformed persons, including members of Congress and civilian military officials to believe that military retired pay was a payment for services rendered and not what it really is, reduced pay for reduced services.

As time moved on, a group from the Texas congressional delegation of that period gave its attention to the effort by a former congresswoman, Pat Schroeder, and others to produce a law that automatically required the Federal Government to make payments to divorced spouses of Federal employees and military personnel. It would be a way to circumvent changing the Texas Constitution in order to authorize the garnishment of Federal pay for court-ordered alimony, child support, and even divisions of property.

Hearings were conducted by the House Armed Services Committee to address former Congresswoman Schroeder's proposals and related bills. Pleas were heard from both sides. The opposition, at that time, consisted of the Department of Defense and a number of major military organizations. No action was taken in the House.

Suddenly, the issue became a hot topic on the Senate side. The Supreme Court decision on the McCarty case moved the Senate Armed Services Committee to act quickly. Was it because the committee had a new chairman, a Texan? What caused the Department of Defense to change its mind? Was it the influence of a new SASC chairman? I leave the answers to you after you read my prepared statement, Mr. Chairman.

I was and I am deeply involved in this issue, from the time former Congresswoman Schroeder introduced her first proposal through the enactment of the USFSPA and, subsequently, dealing with the financial suffering of many military retirees who fell victim to the worst law ever passed by Congress adversely effecting veterans of our uniformed services. As former Congressman Richard White warned during the debate on the Schroeder amendment,

it creates more loopholes than it cures, and so it has. It deserves to be repealed, Mr. Chairman or, at least amended to make it equitable for both sides.

Thank you very much. I stand ready for any questions.

[The prepared statement of Mr. McKinney appears on p. 57.]

The CHAIRMAN. Thank you, Mr. McKinney.

Mr. Willick from the American Bar Association.

STATEMENT OF MARSHAL S. WILLICK

Mr. WILLICK. Thank you. Mr. Chairman, members of the committee, thank you for allowing me to present testimony on behalf of the American Bar Association today. My name is Marshal Willick. I'm an attorney from Las Vegas, Nevada. I chair—I co-chair the Congressional Relations Committee of the Family Law section of the ABA.

I have been working in this area for quite a bit of time. Since shortly after the USFSPA became law, I chaired the committee of experts made up of former JAG officers and civilian attorneys that did the comprehensive report to Congress in 1990. Since then, I've handled several hundreds of these cases personally, working for both sides. I have consulted on some thousands of them. I have lectured and written widely in the field and have completed a text book on this subject.

My goal, consistent with existing ABA policy, is to recommend that military retirement benefits be treated by courts in the real world of everyday litigation in the State courts in a manner consistent with the property distribution laws of those States which, of course, are designed by those State legislatures to achieve equity in property distributions in divorce cases.

There are two formal statements of policy by the ABA. One was in 1979, urging that all forms of deferred compensation be allowed to be subject to State dissolution laws, and the other one in 1982, in the wake of McCarty, and that was a formal policy, again, strongly urging specifically that military retirement be made divisible as would any other asset so that military members are treated like civilian employees of the Federal Government, employees of State governments, and private citizens all throughout the United States.

My own research in this field has made it quite clear that, especially in military cases, the military retirement benefits are, far and away, the most valuable asset of most military marriages. So that if you do not fairly divide that asset between the two parties, it is impossible to ever achieve an equitable distribution because there is no possibility of compensating the spouse for the benefits be accorded to the military member. Simply, wouldn't be possible.

I'd like to turn to the individual proposals after I make a couple of quick comments about national law. And that is a little tricky. We have 50 little kingdoms out there and they all do their own thing. So it is difficult to summarize without somebody being able to find a technicality that the could quibble with. But, generally, all 50 States have recognized today that military retirement benefits are property, properly divisible between the spouses to a marriage. All 50 States have recognized that retirement benefits, generally, are valuable property rights that should be accorded be-

tween the spouses in proportion to the extent they were earned during the marriage since both parties to the marriage contribute to the marriage, although sometimes in different ways. Sometimes one person stays home, one person goes to work, whatever. But that's the deal that the people make.

The ABA policy is that the treatment by the State courts of military retirement benefits should not be impeded by congressional preemption of State law, so that the State divorce court judges are allowed to treat military members the same way they treat all other civilians and Federal employees and State employees.

Turning to the individual proposals, termination of spousal interest upon remarriage, I'll quibble with Mr. Kusiak. Now, these assets are assets and no assets anywhere in the United States are retroactively terminated in the event of remarriage. It doesn't happen for any other asset of any kind anywhere in the United States. It would, without question, cause a great deal of dispossession of individuals and unsettle established property rights to allow for termination of retirement benefits division upon remarriage. It would also make military members be treated differently than everybody else in the United States which would provide a marvelous opportunity for creating inequity and confusion all throughout the States. State law would be impaired. It would be problematic. That proposal is directly contrary to existing ABA policy and I strongly urge that you reject.

I would note that just a few years ago in *Barker* v. *Kansas*, the U.S. Supreme Court, at the urging of the same groups that are here today telling you that military retirement benefits are not to be treated as deferred compensation, ruled that military retirement benefits are deferred compensation. And the reason the military groups wanted that ruling from the United Supreme Court a few years ago is that meant they couldn't be taxed differently that State employees. So you will find that their characterization of the benefits, and that goes for the partisans on both sides, tends to be in direct reaction to where they think their interests are at stake. The ABA, of course, doesn't have a partisan stance.

As opposed to my work in the courts, where I try to represent my client and get the best deal I can in that case, my role here today is to try to establish what the law should be. And the ABA has long stood for the position that it should be fair and equitable to allow States to do the things that they do for spouses to a marriage.

Turning to—just in summary on the first proposal and I see that I don't have much time. So I tell you what, I'm going to skip that proposal. I'm going to go straight to garnishment.

This committee ought to be aware that is a much smaller question, I think, than the committee may be aware. The number of people affected is, apparently from the research I've been able to do, about less than 100 a year. The total number of cases may be some thousands although I don't have a good count. The only time that the garnishment provisions would come into effect is in the case where a military member was ordered to pay child support, did not pay child support, a State court later entered an arrearage award, and then, usually, the custodial parent of that child tried

to garnish on that arrearage. That is the only time this would come into place.

The danger with the legislation is that it would allow retroactive recharacterization of retired pay as disability pay. Until Congress is willing to take the physical step that Congress so far has not been willing to take, to grant disability awards in addition to, rather than in replacement of, retirement benefits—I see I'm out of time, but I'd like to finish the sentence.

The CHAIRMAN. Sure, certainly.

Mr. WILLICK. Until Congress is willing to supplement the retirement benefits rather than have them be replaced, it is not going to be possible to make this nongarnishable for child support purposes without directly injuring the dependants of the retirees.

This committee should note that Congress—another branch, essentially—another committee has put through legislation within the last couple of years highly criminalizing nonpayment of child support. Even making interstate travel to avoid child support a criminal activity. The Congress has decided it is a crime. If you went ahead and passed this proposal as it was—and I'm unfamiliar with any case where they have used this strictly for alimony, I only know of a diversion, which is discretionary with the VA in the event of, usually, large amounts of child support arrearages—if you did this, you would be encouraging people to, essentially, do what it is that you have just decided is criminal. And then you would make it easier for those same people to end up getting it criminally sanctioned. And I would submit that it would be illogical to condone or encourage or contribute to a behavior that you then wish to punish. So, I would suggest not doing anything to make garnishment more difficult—already, it's very rare and very infrequent.

I have a lot of other comments as to the individual proposals. I would refer the committee to the written testimony which I have tried to buttress with appropriate authorities.

The CHAIRMAN. That will be included in the record.

Mr. WILLICK. Thank you.

[The prepared statement of Mr. Willick appears on p. 77.]

The CHAIRMAN. Thank you, Mr. Willick.

Are there questions? Mr. Evans?

Mr. EVANS. Mr. Willick, some of the testimony we have received for today's hearing in advance suggest that military retirees and veterans are treated less favorably in divorce proceedings than any other—any other retirees, such as civil service retirees. Can you describe any differences between the treatment of military-related benefits and civil benefits in divorce proceedings?

Mr. WILLICK. The most obvious one is that there's a 50 percent limitation to military retirement benefits division, whereas with almost all other forms of retirement benefits up to 100 percent can be allocated to the spouse in the discretion of the divorce court if it feels that it's most appropriate. No, I would not say that that is an appropriate summary. Military retirees are still a highly favored class. Military retirement benefits are still one of the most difficult things to divide with the most exceptions, take backs, reductions, exceptions, etcetera rather than any other form of deferred compensation.

Mr. EVANS. Thank you, Mr. Willick. Thank you, Mr. Chairman.

The CHAIRMAN. Are there other questions, gentlemen? Doctor?

Mr. SNYDER. Mr. Willick, I know we—because of the time constraints of the committee, we don't necessarily give you a lot of time. But you had a point that you had skipped over and I have a few minutes here, if you'd like to proceed with any other comments you want to make.

Mr. WILLICK. Well, I think it had to do with the other—the other individual proposals. Unfortunately, it comes down to a matter of mathematical proof and it's very convoluted and difficult to present orally. But on the limitation to length of service and rank at time of divorce, what you're doing there is what's often called, the smaller slice of the larger pie. And if you do what this proposal suggest, what you do is do a double reduction. You freeze the spousal share as to percentage in terms of total dollars and then you defer its payment over time. Since people always have a finite life time, the net effect, according to my own research, is to reduce the effective spousal share of that which was actually earned during the marriage by about 13 percent.

So the effect of the proposal would be to turn some of the spouse's property into the member's property. Congress could decide to force the States to do so, but there would be a lot of fallout from that. For example, I'll give you a few logical problems with it. If you had two spouses, one of which was married to the member for exactly the first half of the career and the second of whom was married to the member for exactly the second half of the career, those two spouses would get widely different awards under the existing proposal.

Whereas, under the law of most States today, the way it would work is they would be treated the same. They would say, get 25 percent of the net military retirement benefits received at the end of service. If this proposal went through, one of them would get a piece of a hypothetical retirement from 10 years earlier based on COLA's that accrued for a rank that nobody's had for that amount of time, even though the final rank achieved is as dependent on the first 10 years as on the last 10 years since you can't get to the end without going through the whole process.

So there are some logical problems with it although it's facially appealing. And I would just urge you to go back to the references. There have been law review articles which have gone over the math. And it just doesn't make logical sense if you take the thing apart to do that.

There would be some unintended side effects with the proposal as written. For instance, a lot of property would be taken from military members in a number of States that I don't think anybody has really paid attention to. And that's because the State courts divide property, they terminate the accrual of marital property at different times.

Currently, this proposal requires reference to the final decree of divorce. But some States, for example, California, terminate the development of community property at final separation. Now, the divorce itself in that State can take 2 years. So the effect of this proposal would be to turn 2 more years of property over to a spouse by preempting State law that otherwise would have terminated the spousal interest and give it to that spouse. Now, I'm not sure the

drafters of the proposal had that idea in mind, but that would be one of the unintended effects of the legislation as drafted. So I'm not sure it's been completely thought through because you would be handing out various inequities to various people in various States.

The restriction of retired pay to actions within 2 years of divorce is a—in my personal opinion, a spectacularly bad idea. Again, as a matter of State law preemption. And that's because I believe that—I haven't read all this written testimony yet, but I think that Congress is being largely misinformed about the scope of a nonexistent problem.

Partition actions exist in the States to remedy inequities. They aren't devices for creating inequities. The only way anybody can partition an omitted asset is by persuading a State court judge that Party A is in possession of property that has actually belonged to Party B. All 50 States have statutes of limitations. No State is allowed to go back beyond those limitation periods. And many States consider that the action itself can't be brought if you go beyond that limitation period. But again, that's a matter of State law.

Even though States that allow partitioning—and California is usually the bogey man when this is brought up in Congress—even the most famous case on subject which is *Casas* v. *Thompson*, restricted the spouse's ability to partition the omitted military retirement to prospected payments. In other words, the court said to Mr. Thompson, Mr. Thompson, you've got 100 percent of the property that was supposed to have been divided all this time between you and the wife, so from now on she gets her half. That was not an unfair result. And there's no reason for Congress to use the power of preemption to stop the States from remedying inequity when they see it because that would be effect of this proposal.

I should note that Congress weighed the policy alternatives just 6 years ago. And if you look at the House report, it made a point of saying that they were attempting to consistent with balancing the State and Federal interests that have been the hallmark of this law since its inception. And what Congress did was decide that all those spouses that didn't get a piece of the military retirement benefits before McCarty, before 1981, were out. They no longer had access to the State court to ask a judge whether they have been wrongfully dispossessed. They can't get in at all. But for all the people that were divorced since McCarty, and since USFAPA's effective date, those people can at least ask a judge whether or not they have been wrongfully dispossessed, get a State court decision, and those State courts divisions, if indeed they're made, are enforceable through the military pay centers.

Unless this panel willing to tell the Congress of 6 years ago that weighed the equities wrong and made a bad call, there isn't a reason to go back and divest a larger group of future former spouses from being able to have access to the courts. It would require a finding that Congress did it wrong the last time, and I'm not sure that's—I'm not sure that's correct.

That really was the other three topics I wanted to address. And I thank you for allowing me to make those points.

The CHAIRMAN. Mr. Kusiak, your name was mentioned once, did you have any response or anything to what Mr. Willick had to say.

Mr. KUSIAK. A couple, if I may, sir. Thank you very much for giving me the opportunity.

Mr. Willick said that military are favored retirees in the divorce case in comparison to other Federal employees. In the context of retirees in the Central Intelligence Agency and the Foreign Service, unless a court order provides otherwise, payments to a former spouse terminate upon remarriage. In addition, under the Federal civil service system, military retirees—rather civilian retirees can split up the survivor benefit among a number of different beneficiaries. In the military, you can't. Those are two examples of things that I think have been mentioned in the context in military that are not available to them that are available to some other Federal civilians.

In addition, the retroactivity discussion that Mr. Willick made is absolutely correct. In 1990, the Congress made a specific enactment to invalidate court orders that had divided retired pay improperly by retroactively reopening, through a partition action, in cases that had been long settled when this marital asset was discovered because of the enactment of McCarty in many cases or, at least, perceived to be found then even though it was ignored in the earlier divorce decree.

Courts have had difficulty, in some circumstances, in applying that limitation that Congress enacted in 1990. By suggesting that even though the divorce decree did not pertain to—or did not retain jurisdiction to divide retired pay under the laws of that State, every court has jurisdiction for dividing retired pay, in effect, invalidating the prohibition that Congress enacted in 1990.

So, I think the context within which the expressions are made would be helped by that addition. Thank you for the opportunity.

The CHAIRMAN. Are there other questions? Yes, Dr. Snyder. Any other questions?

Mr. Kusiak, let me ask you a question. Suppose Congress were to change the law so that retired pay could be divided as a marital asset but not as property? State courts would then be able to take into account such factors as the financial condition of both parties and could make a case-by-case determination on whether payment should cease upon remarriage. Since retired pay is really a function of Federal statutory entitlement and has no characteristics of property, would this be more fair than the current law?

Mr. KUSIAK. Mr. Chairman, if—having it identified as a marital asset but not property may be more a facial distinction than a legal one. I don't practice divorce law as I've said in my statement, but I think a marital asset could easily be characterized with the label property under a State law. And the problem with characterizing it as property is that because it's considered property, a number of States, because of the laws of their own jurisdiction, have difficulty ignoring their own State law. And the one that comes to mind immediately is this notion that disability is somehow an add-on to retirement as opposed to an alternative. It's because of property that they say a spouse can't be deprived of this interest.

The CHAIRMAN. Mr. Willick, you touched on this but if you'd care to add to your statement? Is that—are you satisfied?

Mr. WILLICK. Actually, Mr. Chairman, if you used the title, marital asset, you classify—an asset is property. Those words mean the

same thing to the States of the United States. I do practice divorce law and I believe that would be uniform in every State. But that's true with every defined benefit plan. You find that an increasing percentage—actually, the largest asset of most marriages is now deferred compensation of some sort, the right to receive in the future, payments usually from an employer—there's more private employers than there are government employers—and that's exactly the way it works with every defined benefit plan. You have a right to receive in the future X payments for the rest of your life which is exactly how the military system works. It is, essentially, a noncontributory defined benefit plan and not really different.

I will agree with Mr. Kusiak on one point. In 1990—and I was very sorry that no one in Congress picked up on it—the one thing that everybody that testified agreed to, the retirees groups, the spouses groups, the ABA, the Pentagon rep, the one thing that we all said we would like to see is the divisability of the survivorship benefit to mirror civil service. Because that makes sense. You'll allow survivorship benefits to be apportioned in accordance with how much was accrued during the marriage. And that testimony form all participants was apparently simply ignored. We—nothing, nothing was ever introduced, nothing was ever passed. And that's a bit of a shame because it's led to gamesmanship on both sides in State divorce courts.

The CHAIRMAN. Thank you, sir. If there's no further questions? Gentlemen, thank you very much.

And if we could call the second panel up please?

Mr. WILLICK. Thank you, Mr. Chairman.

The CHAIRMAN. All right, Mr. Ault, we'll start off with you. Frank Ault, the Executive Director of the American Retirees Association. Mr. Ault?

STATEMENT OF FRANK AULT, EXECUTIVE DIRECTOR, AMERICAN RETIREES ASSOCIATION; ACCOMPANIED BY COLLEEN M. TIMPANO, HOSPITALMAN, FIRST CLASS, U.S. NAVY (RET.); MAJ. NEITA ARMSTRONG, U.S. MARINE CORPS, AND PATRICIA BRUCE, NATIONAL DIRECTOR, WOMEN IN SEARCH OF EQUITY

STATEMENT OF FRANK AULT

Mr. AULT. Mr. Chairman, members of the committee, I am Frank Ault, a retired Navy captain and naval aviator. I have been the Executive Director of the American Retirees Association for the past 9 years. The ARA was formed in California in 1984 for the exclusive purpose of addressing the inequities in the Uniformed Services Former Spouses Protect Act which here and after, I'll call "Foospah" (FSPA) to get away from the tongue tangler. I'll summarize my written statement in 5 minutes although that is far less than what is needed to shine some light on a subject which has generated so much heat, namely military divorce.

We certainly admire and appreciate the courage and initiative of the Veterans' Affairs Committee which is exemplified by the willingness to hold these hearings. Congress has tiptoed around this subject for 15 years. And right now, it's being given even more foot dragging time by section 643 of the Defense Authorization Bill for

Fiscal Year 1998 which directs the DOD to study the subject and report not later than 30 September 1999. This means that there will be no legislative action in 1999. Since 2000 is an election year, the earliest we could expect anything from Congress under the course now set is 2001, and that's much too long. We hope that one of the outputs of these hearings will be things which will permit the DOD to expedite its report. We further hope that members of Congress will look at the urgency of the problem here and move before 2001 to do something about it.

Because it is poorly crafted, the FSPA's inequities may be attributed, in about equal measure, to what it says as well as to what it doesn't say. I could go into a recitation of its many inequities but they are cited in my written testimony. I do, however, want to discuss a consequence of the law which results in its most egregious abuse.

The root of the problems military members are having with FSPA originates with the classification of military retired pay as a "pension," which it, provably, is not. If you have any questions about that and you need corroboration, you can check with the U.S. Supreme Court, the General Accounting Office, the Department of Defense, the Internal Revenue Service, and any bankruptcy court.

When the word "pension" is mentioned, the minds of the American Bar Association and it's host of domestic relations lawyers shift, immediately, to thoughts of "equitable distribution," which is a matter to be addressed separately from any consideration of alimony or similar forms of spousal support. Note that the FSPA does not classify military retired pay either as property or a pension. It says merely that it may be treated as property in a divorce action.

If I were pensioned by Westinghouse, I wouldn't have to remain subject to involuntary recall to work at the whim of the company. I wouldn't have to continue to comply with the bylaws of Westinghouse. If I went to work with General Electric, Westinghouse wouldn't have voice in the determination of my salary. And if I committed a crime, Westinghouse probably would not terminate my pension. Contrast that with the conditions under which a military member receives retired pay and, above all, ask if the Westinghouse pension ceases to exist at my death. Mr. Willick, military "pensions" are different.

Then picture—a situation where after my pension was divided through an equitable distribution, that portion allocated to me is further tapped as a source of alimony and child support up to and, sometimes beyond, 100 percent of my share. That's what's happening to military retired pay, but not to a Westinghouse pension.

If we recognize military retired pay for what it has always been and still is, reduced pay for reduced current services and an integral part of the military compensation system, then the word "pension" has no validity and the abuses which it has engendered go away: leaving, incidentally, a still quite lucrative business, in divorce court, for ABA members.

Congress created this mess and Congress should clean it up. It can do this by restoring fairness and equity to the military divorce process while still protecting the interests of ex-spouses. Mr. Chairman, your sponsorship of H.R. 2537 was a courageous and considerate step in the right direction and we're grateful for it. We both

know, however, that H.R. 2537 will go nowhere in the 105th Congress and we also know why it won't.

While Congress has exhibited in public—I emphasize "in public"—a pervasive reluctance to reform the FSPA, there have been enacted, since 1982, 23 changes to laws affecting military divorce. All of these, except two, have been effectuated by sub rosa amendments to mainstream legislation without public hearings or debate. Eighteen of these have benefited ex-spouses, one has benefited military members, (and that merely to correct a congressional oversight where the intent expressed in the conference report wasn't codified,) and four of them were about equal. I've been told that if the FSPA is ever amended, however, there will have to be a quid pro quo, meaning something for both sides. Mr. Chairman, there's been a hell of a lot of "quid;" it's time for some "quo." Military members aren't looking for a win in divorce court, sir, we'll settle for a tie. The score is, at present, ex-spouses 18, military members, 1.

Thank you, sir.

[The prepared statement of Mr. Ault appears on p. 90.]

The CHAIRMAN. Thank you. Thank you, Mr. Ault.

Ms. Timpano.

STATEMENT OF COLLEEN M. TIMPANO

Ms. TIMPANO. Mr. Chairman——

The CHAIRMAN. Ms. Colleen Timpano, USN Retired.

Ms. TIMPANO. Mr. Chairman and members of the committee, my name is Colleen Timpano. I am a retired Hospital Corpsman First Class, USN, Navy. Thank you for the opportunity to appear here today to invite your attention to the problems of military women who get divorced.

As the number of women in uniform continues to grow, so will the problem. I will summarize my written testimony which I ask to be included in the record of these hearings.

Most of the problems to which I allude can be attributed to the Uniform Services Former Spouse Protection Act which, I believe, was poorly conceived and its sponsors, apparently, narrowly focused on civilian females married to male military members. They evidently ignored the fact that enlisted female military members would be impacted by this law also. As a result, they are like me, who have completed honorable careers in the service of their country, suffered trauma of divorce and found that they would not get all of their retired pay that they expected to receive. This is because of the law which permits a divorce court judge to require them to share it with an ex-husband who, in many cases, doesn't need it or use it to provide the icing on the wedding cake of his next marriage. Worst, that ex-husband will continue to receive payments for life regardless of his marital history or of possible criminal conduct.

My personal experience is that 5 years after enlisting into the Navy, I married a male shipmate who had two children from a previous marriage and, as it turned out, a drug abuse problem for which the Navy gave him a general discharge after 7 years of service. This made me the principal wage earner of my family. Using my Navy pay and the income of some moonlighting jobs, I also paid

the living expenses while financing my husband's college education and a few ill-fated business ventures.

In 1982, we had a daughter of our own which made us a family of five. I will spare you the account of my husband's conduct throughout except to say that it involves sporadic employment, extra-marital affairs, drug abuse, and jail.

My husband was always an unwilling participant of my career changes of duty stations. I had to balance my time between a demanding career and dysfunctional personal life of a domineering husband and a controlling partner. Any impact my husband had on my career was negative not positive.

It is fair to ask why I stuck with it. I suppose the answer is simply because of the children and because I couldn't see a reasonable way out.

Finally, in 1991, we started talking legal separation. This has ultimately resulted in a divorce finalized in December 1994. At no time during my 20 year career did the Navy tell me that there was a law called Uniformed Services Former Spouses Protection Act and explained to me how it might affect my life in my retirement. The divorce court judge knew about it, however, and awarded my husband 30 percent of my retired pay, for life. I did get one break that I will not have to start paying him until our daughter, now living with me, either finishes high school or reaches the age of 19. In the meantime, he has remarried and the payments he will eventually receive will continue for life.

Boiled down to the fundamentals, what we have here is a case where a male military member who forfeited his right to retired pay by unsatisfactory conduct, but is now collecting it anyway from a female member who did qualify.

My daughter and I are now living below the poverty level in my mother's home. I'm attending college in order to prepare myself for a future without a badly needed part of my retired pay.

Why can't this law be changed so that it is fair to both parties to a divorce. Why should someone married to a military member be treated differently in a divorce court from other American citizens. This isn't a male, female issue. This is an issue of fairness. It doesn't appear that the members of Congress who voted for this law thought about enlisted military members, and certainly not female military members. It is high time this oversight is corrected.

Thank you.

The CHAIRMAN. Thank you.

And next we have Major Armstrong of the United States Marine Corps.

STATEMENT OF NEITA ARMSTRONG

Major ARMSTRONG. Good morning. Mr. Chairman, and members of the committee, I am Major Neita Armstrong, the Korea Area specialist for 1st FSSG, Camp Pendleton, CA. Thank you for the opportunity to appear here before you today. I will summarize my written testimony and ask that it be included in the record of these hearings.

I am not here to represent the Marine Corps, but the men and women of all uniform services. My experiences span military, civilian, and life as a military spouse and mother. I represent your si-

lent constituency. Jumping the chain of command is frowned upon, and it is difficult for us to determine when it's okay to voice our opinion. Our freedom of speech is limited. We cannot campaign or make political statements in uniform. So rather than face the possibility of overstepping our bounds, we take the hand we're dealt and say nothing.

What military person when tasked with a difficult or dangerous job would say, I can't, or I won't, or complain. We're used to living with less and tolerating more. If the military had not maintained this type of discipline, neither of us would be here today. We trust you to make the right decisions; to look out for our welfare as we look out for our country's. For every letter you receive from a military member there are tens of thousands who would like to write.

The daily transition from the military mind set to the domestic is often difficult. On duty, we are great at mission focus; this can be carried to the point of excluding anything personal. We work to the point of exhaustion, sleep for a few hours and start again. Our work ethic is often perceived as abandonment by the civilian spouse, which leads to other problems and often divorce.

Some have tried to convince Congress and the American public that this is a male-female issue. It is not. There are women in the military too and our promotions are based on how well we do our jobs, not our marital status. Yet the States have been allowed to interpret the Uniformed Services Former Spouse Protection Act, so that my contributions as a military's wife are more valuable than my contributions as a Marine officer. According to the law, I am vested in 12 years worth of my husband's retired pay since he is eligible for retirement. Yet, I am vested in nothing based upon my own 17 year military career. I must serve 20 years to receive anything.

The truth is, that my responsibilities as a Marine involved greater hardship to me in service to my country, than to the inconveniences I ever experienced as a wife. I find it disheartening that Congress views my worth and right to entitlement, more highly based upon my status as a wife than as a Marine. How can an hour in the commissary be equal to an hour in combat?

I am held to a higher standard. I am sworn to protect, defend the Constitution of the United States with my life. I must maintain strict physical standards. I am subject to the uniform code of military justice. I am told what to wear; how to wear it; what I can eat; when I can drink; and I can have my liberty secured. I am told where to live; how to act; whom I can be friends with; whom I can make love to; and who I can marry. And if I violate these regulations, I can be incarcerated. These things are necessary for the good order and discipline of the military. They apply to me, not my spouse.

My best friends are military spouses. I do not want to minimize their daily challenges. Some of them are the salt of the earth. Marriage between two loving, supportive people withstand the test of time and the challenges of military life. They are not the people I'm talking about. These laws will never affect them. Yet, while there are many good and supportive spouses, there are also those who are not. The civilian spouse can do things for which I would be court martialled, and still be guaranteed payments after divorce.

The current law provides for a windfall to the former spouses. I know of a colonel married five years and divorced early in his career. After he retired, his ex-wife sued for her share of his retired pay, not at the rank he held at divorce, but laying claim to every promotion he received during the 20 years since they separated. With all we endure, with all the hardships we do to get promoted, how can you credit a former spouse for the military member's success? The Supreme Court ruled that our retired pay is a reduced pay for reduced services and couldn't be divided for good reason. Most military members, the American Bar Association, and Congress, don't understand that military retirement pay is not a pension. It is paid at the pleasure of the Government and can be terminated.

Someone asked if I am a victim myself. Absolutely. I'm a victim every time I see the anguish in a Marine's face. The emotional drain divorce takes on them and the helpless frustration with this one-sided legislation. For them divorce is never final. I challenge you to right the wrong and pass legislation that is there for both sides. Thank you.

[The prepared statement of Major Armstrong appears on p. 99.]

The CHAIRMAN. Thank you, Major.

Our last witness on this panel, Mrs. Patricia Bruce, national director, Women in Search of Equity.

STATEMENT OF PATRICIA BRUCE

Ms. BRUCE. I thank you for the opportunity to present to you our views and comments regarding various issues that affect our military members.

The lack of clarity of the Uniformed Services Former Spouses' Protection Act, causes a great deal of misinterpretation by State courts. This ill-defined law places military members and their former spouses in a situation where there is no consistency among military divorces. Issues of utmost importance are the treatment of disability pay, survivor benefit plans, remarriage, and the need for a statute of limitations.

Under Federal civilian systems, Federal retirees have access to more than one survivor benefit plan in order to provide financial security for a second spouse upon the death of a retiree. The second spouse of a military retiree is not afforded the same protections for old age security as spouses in the civilian Federal sector, even though the second spouse may have been married to the retiree longer than the first.

Civilian Federal plans are statutorily clear in providing a statute of limitations for dividing retired pay. Not so for military retirees. Because of this, State courts are currently reopening final decrees, sometimes up to 10 or 15 years after the divorce, to award a share of retired pay and property to long-divorced former spouses, to include retroactive payments.

While Congress has no control or jurisdiction over how the State courts divide retired pay, Congress does have control over the use of Federal compensation, as well as administrative mechanisms in the disbursal of Federal compensation and benefits. This fact is emphatically demonstrated throughout the enactment and application

of Federal law governing Federal retirement plans, and their former spouse protection sections.

The present treatment of military retired pay is inconsistent with treatment afforded Federal civilian retirees under central intelligence agencies and foreign service retirement laws. The law governing how military retired pay is treated in divorce is not even remotely comparable to those Federal civilian plans, and should at the very least, be consistent with foreign service and CIA, whose duty assignments have been likened by Congress to be very similar. By altering the scheme under which military retired pay is divided in divorce by bringing military retired pay in line with CIA and foreign service, the problems inherent within the broad decision-making authorities of the States would be eliminated.

While this is a very emotional and complex issue, Congress has a distinct opportunity to correct the inequities that face our military in divorce by aligning the division of military retired pay and divorce awards with that of other Federal plans. Many of the issues of concern to military members and former spouses could be resolved by this realignment. Realignment would eradicate the problem surrounding remarriage, statutory entitlement, statute of limitations, duration of marriage requirements, jurisdictional issues, and violations of the military member's protection under the Soldier and Sailors' Civil Relief Act.

The discriminatory divergence between civilian Federal and military laws as they pertain to divorce could be expunged, enabling all military members and former spouses to know that their divorces are treated in an equal manner with their civilian Federal counterparts. The discrimination rampant from one military divorce to another due to the capricious laws of the 50 States will be erased, and equal justice under the law will prevail.

There is simply no reason why we should treat men and women who serve honorably in our uniformed services, any less favorably than men and women who serve in the foreign service or CIA. On behalf of our military members, active duty, reserve, retired, and national guard, we thank you for your consideration of this much-needed oversight. Thank you.

[The prepared statement of Ms. Bruce appears on p. 107.]

The CHAIRMAN. Thank you, Mrs. Bruce.

Are there questions? Any questions?

Thank you very much for your testimony. You made it very clear that there needs to be some changes made and we may ask you to respond to some written questions if you would for the record, later on.

Mr. AULT. We'd be pleased to, Mr. Chairman.

The CHAIRMAN. Thank you sir. Thank you. If we could have panel three come up.

I will remind you that your entire statements will be included in the record. Our first witness is Joyce Raezer, senior issues specialist at the National Military Family Association. You may proceed.

STATEMENTS OF JOYCE RAEZER, SENIOR ISSUES SPECIALIST, NATIONAL MILITARY FAMILY ASSOCIATION; DORIS MOZLEY, CHAIR, COMMITTEE FOR JUSTICE AND EQUALITY FOR THE MILITARY WIFE, AND VIRGINIA KAY WARD, BOARD MEMBER, EX-PARTNERS OF SERVICEMEN/WOMEN FOR EQUALITY

STATEMENT OF JOYCE RAEZER

Ms. RAEZER. Thank you, Mr. Chairman. The National Military Family Association appreciates this opportunity to speak on the issue of garnishment of military and retired pay for family obligations.

Garnishment of active duty military pay for family obligations is most frequently done to provide child support. NMFA strongly believes that servicemembers have at a minimum, financial responsibility for their children. Each of the services have strong statements about servicemembers' responsibility to provide for their families. However, non-military parents without court orders often find it difficult to make the system work for them. Each service needs to make it clear to all military legal offices and commanding officers that they have a responsibility to assist the non-military parent in obtaining child support. Non-military parents should be strongly encouraged to obtain court ordered child support, or written agreements that will be honored by the Defense Financing and Accounting Service.

We believe that the services must take the responsibility for counseling the non-military parent on the ramifications of not having a court order for child support before a servicemember retires.

Active duty and retired pay are also garnished to provide alimony in cases of divorce. Since awarding alimony is a purview of the State courts, it seems to NMFA that the only action that could be taken by the Federal Government is to protect further the amount of active duty pay that can be garnished by such courts. Such action might affect child support and garnishment for other just debts.

In most cases of divorce that occur after a member retires, the amount of alimony awarded is based on the income of the servicemember from post retirement civilian employment. NMFA is aware of cases where alimony has been awarded on an almost permanent basis to circumvent the prohibition on dividing any part of disability pay as property. However, as alimony, it stops if and when the former spouse remarries.

NMFA is aware that some retired servicemembers and some former spouses have concerns about the equity of certain provisions of the Spouse Protection Act, or the application by State courts of some provisions. We believe that, as presently written, FSPA provides reasonable safeguards for both the servicemember and the former spouse. Because of the actions by some State courts to circumvent the intent of FSPA, we suggest in our written statement certain modifications to the law were it to be addressed by the Congress.

We are also aware that the current legislation would, if it became law, significantly change FSPA. NMFA strongly believes that military retired pay should continue to be able to be treated as property by State courts, and as such not be affected by the remar-

riage of either party. Although most military spouses are unable to vest in pension plans, some few, thanks to military spouse preference in DOD civil service jobs, have been able to accrue civil service retired pay. The proliferation of 401(k) plans has allowed some spouses to take at least their own deposits in the plans with them when they are forced to transfer employers due to a military move.

In community property States, the civil service retired pay, and the 401(k), would be divided as property. Upon remarriage of both parties, servicemembers would keep their portion of the spouse's civil service retired pay or 401(k). Under the legislation before Congress, however, former spouses would lose their portion of military retired pay. This would be neither fair nor equitable.

Military spouses give up a great deal of control over their own lives to the Federal Government when they marry servicemembers. They're told when to move, where to move, and how many of their possessions they can take with them. The current pace of deployments and the long work hours of servicemembers, even when they are home—we call this the "they only sleep here syndrome"—means that almost all the needs of the children and the home fall on the shoulders of the military spouse. They drive the carpool, handle trips to the doctor and dentist, wait for the plumber, supervise homework, often while holding down a job of their own.

The number of military spouses in the work force today mirrors that of their civilian peers, but little attempt is made to ensure a spouse's career progression when a military family is ordered to move. With a 13 percent active duty pay gap and housing allowances that are 5 to 7 percent behind actual costs due to caps, spouses don't have the luxury of delaying employment in a new location until they find a position in their chosen field. They must accept whatever employment is immediately available just to make ends meet, just to help the servicemember support the family.

Most military families enter retirement with little, if any, savings. If they own a home it's normally very highly mortgaged. The only thing of financial value most have at retirement is military retired pay. How can this not be treated as property? Thank you very much.

[The prepared statement of Ms. Raezer appears on p. 113.]

The CHAIRMAN. Thank you, Ms. Raezer.

Ms. Doris Mozley, Committee for Justice and Equality for the Military Wife.

STATEMENT OF DORIS MOZLEY

Ms. MOZLEY. Thank you, Mr. Stump. I thank the Committee on Veterans' Affairs and the Honorable Bob Stump for inviting me to speak here today before this distinguished panel.

By way of introduction, I'm Doris Mozley, a 20-year Navy wife, divorced from retired Captain Paul David Mozley, Medical Corps, U.S. Navy Retired, after a 30 year marriage. I have been actively seeking to improve the legal security for military wives since 1980, when I wrote to each member of the Supreme Court, urging it to rule in the McCarty case that military pensions be categorized as community property, and to mandate a pro rata split at divorce. I'm still waiting for a reply. I've been working since that time, now

18 years, in an effort to make it safer to serve our country as a military wife.

Our committee has had some success but more should be done by Congress to ensure that all divorcing military wives are treated fairly and similarly—it's very important—in domestic matters pertaining to military divorce, no matter what State the divorce is in. Unfortunately, this is not the case today because often what a wife receives of her earned pension share depends on her ability to raise money to hire competent legal counsel, having the will to act to protect herself—and many don't—the vagaries of State law, and all too often, biases of domestic relations judges.

A good example is that of Linda Field, story attached, a faithful wife of 24 years whose husband, according to court record, left her for another relationship. Even though court testimony proved that he went on out of town trips with his new friend whom he characterized at the trial as his business partner, and spent many nights at her house, Judge Allen Crow, domestic relations judge of Calhoun County, Alabama, ruled that such behavior on the husband's part did not rise to the level of proof of adultery. Well, it makes a big difference in Alabama.

Linda received no part of the military pension she had helped to earn. Linda now works in the Ft. McClellan Commissary stacking groceries for a little more than minimum wage, has no benefits from her job, and is facing the prospect of living on a meager social security benefit of a check after she is no longer able to work. Her former husband, by contrast, is enjoying all of their jointly earned pension as well was his new relationship. To those who say that military wives already have "enough protection," this case occurred 12 years after the passage of the Former Spouses Protection Act, and was heard by a divorce judge who publicly stated that he "did not believe in pension sharing." Also, see attached, an article from the "Equitable Distribution Journal" for a good example of a lawyer's gross incompetence from past years.

I could give the committee more examples—I know plenty of them, as I said, I've been working in this area for 18 years—but I do not believe that anyone believes in the throwaway military wife system which these two examples epitomize. The question arise as to how these two cases and other similar ones, relate to collecting alimony and child support. The answer is that divorce is much more likely to occur if a military member thinks there is a chance he can beat the system, thereby making it unnecessary to collect child support and alimony.

As the attached article shows, nearly one-fourth of all children in this country now grow up without fathers. The disintegration of the American family is a danger to the very foundations of our society and should be discouraged by every public means.

I may be overly pessimistic about the future of our country, but I wonder if the coming generations of American young men will be willing to sacrifice themselves in a war as the noble young men of past generations, when so many children today do not have fathers around to help teach them virtuous living and a duty to sacrifice for the higher ground. To use an analogy, studies have shown that one of the most important variables in the reduction of crime is the certainty of punishment, not the severity of penalties. I believe the

same is true with military pension sharing. If a military member knows for sure he will have to divide with the wife who helped him earn it, there will be a reduction in the incidence of military divorce which society so desperately needs.

In summary, I believe it is in society's interest to protect the military wife who serves, with a presumption to entitlement as the American Bar Association and the AARP recommend, thereby reducing the rate of divorce as well as the necessity for collecting alimony and child support. I also believe there will be fewer family breakups if military members know for sure that they will have to share the major asset of a long military marriage with the wives who helped them earn it, the military pension.

And as I said, I've been working in this area 18 years. I've written an awful lot of stuff. It was hard, and I've had a lot of it published in military papers because my objective was to try to influence military members as well as Congress. I understand that everybody on Capitol Hill reads these papers. I had not even read one when I was a military wife, so I started and we've had some success and I've enclosed a lot of articles from papers. Of course, I don't have the time to go in and you don't have the patience here anyway, but to show you what experts think of what is going on in our country today. The disintegration of family, the neglect of children, the abused. All this deriving from divorce. What we need to do is enact laws that will tend to diminish. It seems so simple.

[The prepared statement of Ms. Mozley, with attachments, appears on p. 120.]

The CHAIRMAN. Thank you, Mrs. Mozley.

Our next witness, Ms. Virginia Ward, board member of the Ex-Partners of Servicemen/women for Equality.

STATEMENT OF VIRGINIA WARD

Ms. WARD. Good morning, Mr. Chairman, committee members, and ladies and gentlemen. I am Kay Ward, a member of the Board of Ex-Partners of Servicemen and Women for Equality, otherwise known as EX-POSE. I am also a former military spouse of a 30 year marriage.

With regard to this hearing, it is our understanding that the concern is primarily that of garnishment of benefits paid to veterans for child support and other court ordered family obligations. We are not totally clear just what is in question here. However, what is clear to us is feedback that we get from former spouses that many aspects of military divorce are not equitable.

Judging from correspondence we have received from our members, it is our opinion that an investigation is in order concerning just exactly what is defined as a service-connected disability by the Veterans' Affairs. We have women writing to us telling us that their former husbands appear to be in very good health, they're working full-time, and yet, they are receiving large percentages of their retirement income from the VA. Our members tell us that their former spouses will threaten them by saying they will get part of their retirement as disability in order to deprive them of what they have been awarded in a court order.

Situations such as this are not only unfair to former spouses, but they make light of countless legitimate sacrifices made by so many

of our service men and women. They are an affront to the decisions made by judges at the State level.

One of the reasons service-connected disability payments are so very attractive to former service men is that they are tax-free. Another reason is that disability is deducted before it is paid to a former spouse from what the State court had concluded to be property. His disability status reduces her court-awarded property share.

Our members have also informed us that very often their share of retirement pay will be reduced because of changing disability status, and they are unable to determine why this reduction has occurred. They cannot obtain any information about this reduction because the Privacy Act prohibits DFAS from divulging the source of the reduction. Clearly, what constitutes service-connected disability needs to be further defined before any legislation can proceed. EX-POSE believes that the Department of Veterans Affairs should be fair to all persons involved in these difficult family matters. Thank you.

[The prepared statement of Ms. Ward appears on p. 131.]

The CHAIRMAN. Thank you, Mrs. Ward.

Are there questions of any members at this time? If not, we thank each one of you for taking the time to be here today and for your testimony. Thank you.

If we could now have the fourth panel to come forward please.

First witness on this panel, Mr. John Thompson, Acting General Counsel, Department of Veterans Affairs. Mr. Thompson.

STATEMENTS OF JOHN THOMPSON, ACTING GENERAL COUNSEL, DEPARTMENT OF VETERANS AFFAIRS; LT. GEN. NORMAN G. LEZY, DEPUTY ASSISTANT SECRETARY OF DEFENSE, MILITARY PERSONNEL POLICY, DEPARTMENT OF DEFENSE

STATEMENT OF JOHN THOMPSON

Mr. THOMPSON. Good morning Mr. Chairman, and members. With me this morning is Bob White, who's an Assistant Director of the Compensation Pension Service, Department of Veterans Affairs.

There have been discussions this morning of Federal statutes which generally prohibit the garnishment of VA benefits to satisfy debts owed to private individuals. The sole exception, as has been mentioned this morning, is that the VA disability compensation received in lieu of military retired pay can be garnished in order to satisfy court ordered child support or alimony obligations. In these cases, only that portion of the disability compensation representing waived retired pay is subject to garnishment.

Our payment systems don't permit us to say how many garnishments are being honored by VA at any one time. However, we conducted a survey in 1992, indicating that only 93 garnishment orders had been processed by the Department during the preceding year.

It's also been mentioned that VA benefits, including even compensation received in lieu of retired pay, are also protected from court-ordered divisions of property upon veterans' divorces. However, the United States Supreme Court has ruled that State courts

are not precluded from setting child support obligations at such levels that veterans would necessarily have to use some of their VA compensation in order to honor those obligations.

Garnishments are handled at VA regional offices across the country in a coordinated effort involving our legal counsel, our adjudication staff, and finance staffs. We are not aware of any systemic problems in the processing of those orders.

To complete the picture, the unavailability of garnishment in most cases with respect to VA benefits, is relieved somewhat by the availability of administrative apportionment. VA regulations are designed to ensure that there is an equitable division of veterans' benefits where VA beneficiaries are failing to meet their obligations to support their spouses or children. Our apportionment decisions are based on a balancing of needs of the veteran and the apportionment claimant. Income and expenses for both parties are carefully weighed and VA attempts to balance their respective needs. There are currently nearly 23,000 cases in which running awards of VA benefits of all kinds are being apportioned to spouses for children.

Mr. Chairman, that concludes VA's prepared remarks.

[The prepared statement of Mr. Thompson appears on p. 139.]

The CHAIRMAN. Thank you, Mr. Thompson.

Next, we have Lieutenant General Norm Lezy, United States Air Force—Deputy Assistant Secretary for Military Personnel Policy in the Department of Defense. General Lezy.

STATEMENT OF LT. GEN. NORMAND LEZY

General LEZY. Thank you, Mr. Chairman, and members of the committee. Thank you for the opportunity to appear before you this morning to discuss garnishment of benefits paid to veterans for child support and other court-ordered family obligations. This morning I am accompanied by Mr. Rodney Winn, who is the Assistant General Counsel, Garnishment Operations from the Defense Finance and Accounting Service.

The Department of Defense has long been an advocate of encouraging parental child support and is committed to ensuring that child support obligations are met. For more than 20 years the Department of Defense has been required to garnish the pay of retired military members to enforce child support and comply with the support of recent improvements in the laws and enforcement of parental child support.

Title 42 of the U.S. Code, Section 659 provides that the Department of Defense, upon receipt of a court order, shall garnish retired pay for alimony and child support. Similarly, Title 10 of the U.S. Code, section 1408 requires the Department to make payments from a member's disposable retired pay based on a divisional property if it is specifically provided for in a qualifying civilian court order. It is the Department's policy to fully comply with these statutory requirements. The Defense Finance Accounting Service is responsible for implementing these provisions.

The Department of Defense has begun a comprehensive review of the Uniformed Services Former Spouse's Protection Act as mandated in the National Defense Authorization Act for 1998. The Secretary of Defense is required to report to Congress on the results of this review not later than September 30, 1999. Let me just tell

you a little bit about what this review will encompass, Mr. Chairman and committee members.

The review will compare the protections and benefits and treatment afforded under Federal law to military members, former members, and former spouses, with such benefits provided to civil service employees and former employees of the Federal Government and their former spouses.

Additionally, this review will also consider the experiences of the Uniformed Services in administering the law: the adequacy and effectiveness of legal assistance provided; experiences of military members, former members, and former spouses in the application of the law by State courts, including the interpretation of State courts of applicable Federal State statutes; and all matters presented in today's hearing.

I can assure you that considerable effort will be expended to seek the views of those having interest in this issue both from inside and outside DOD, to include DOD departments, that is the services and agencies such as DFAS, the Office of Personnel Management, the State Bar Associations, those tax-exempt organizations involved in the representation of current or former military members and spouses, and also the general public.

In fact, taking a cue from Congress I note that you're heavily involved in using the Internet. Hopefully, by next month we'll have a world wide web designed to capture individual views on this key issue.

In reviewing some of the issues for this testimony, Mr. Chairman, I noted way back in 1981 when Congressman Nichols was Chairman of the Personnel Subcommittee and they were getting ready to address this issue, he described it as a very complex and very emotional issue. And after sitting here and listening to the testimony this morning and reviewing the history, it hasn't changed much. Perhaps some would say, "Well, why will the Department take so long to do this?" It's not just because our suspense date, so to speak, is September of 1999 as granted by the House National Security Committee and the Senate Armed Services Committee.

I am convinced, after spending time looking at this. I talked to people who have been living and working in this environment for a lot longer than I have, and two things I found impressive: one, everybody agrees that this needs to be done. It needs to be done earnestly and it's going to take us time to do it to do it right.

That's the commitment we'll make. We will do this right and then be in a better position by the end of this study to provide what we feel will be some meaningful recommendations on where to go on this issue.

[The prepared statement of General Lezy appears on p. 142.]

The CHAIRMAN. Thank you, General. Will some of the procedures that you're going to use, will that include public hearings and testimony from individuals or organizations?

General LEZY. At this time, sir, the plan does not call for public hearings. I think the way the game plan is laid out is we're going to request it in writing by extensive use of this Internet system, as I told you. But the door is still open if we need to do face-to-face.

The CHAIRMAN. I know there's been some criticism about the September 30, 1999 time for this to be submitted to the Congress. But, as you mentioned, I hope it's done right. Better be a little late and do it right.

General LEZY. Yes, sir.

The CHAIRMAN. It is a very complicated subject, even very controversial as I observed this morning.

Mr. Thompson, does the administration support the existing law which generally prohibits garnishment of VA benefits for child support? Does the administration support existing law?

Mr. THOMPSON. The administration has not recommended any changes in existing law. We're not advocating any changes.

The CHAIRMAN. I would take that to mean then that they would support the prohibition against the garnishment of benefits for child support.

Mr. THOMPSON. We have not advocated a change. We're satisfied with current law.

The CHAIRMAN. Thanks. Are there questions from members for any one on the panel?

Well, gentlemen, thank you very much. We appreciate you taking the time to testify today. We may submit some questions to you later on for the record. Thank you.

Our next panel, panel 5, if they would come up, please, moving right along, the last panel for the day.

Gentlemen, thank you, and your entire statements will be made a part of the record.

First to testify, Mr. Krebs, manager of legislative affairs in the Air Force Sergeants Association. Mr. Krebs.

STATEMENTS OF JOSHUA W. KREBS, CHIEF MASTER SERGEANT, USAF, RET., MANAGER, LEGISLATIVE AFFAIRS, AIR FORCE SERGEANTS ASSOCIATION; SERGEANT MAJOR MICHAEL F. OUELLETTE, DIRECTOR OF LEGISLATIVE AFFAIRS, NCOA; MARK H. OLANOFF, LEGISLATIVE DIRECTOR, THE RETIRED ENLISTED ASSOCIATION, AND RICK SURRATT, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

STATEMENT OF JOSHUA KREBS

Mr. KREBS. Mr. Chairman and members of the committee, we were pleased to receive your request to participate in these proceedings. The Air Force Sergeants Association which represents the enlisted, active and retired, men and women of all components of the United States Air Force and their family members.

This hearing provides a rare, courageous opportunity to fairly examine a situation that's been cloaked in emotion, built upon a clear misrepresentation of the military lifestyle, and generally avoided by Congress for over 15 years, all at the expense of military retirees. Indeed, rather than fairness or justice for all parties involved, the Uniformed Services Former Spouses Protection Act focuses only on promoting the enrichment of former military spouses because of the automatic, without risk or need nature and lifetime duration of the award. We would hope that as a result of this hearing, the

process to address significant inequities targeted uniquely against military veterans may begin.

The previous panel members have covered the inequities of the current law and to save time, we'll not recover that ground. The Air Force Sergeants Association supports the reforms to the Uniformed Services Former Spouse Protection Act proposed in House Resolution 2537, and believes that these changes are long overdue. The financial situation caused by the FSPA is unfair and particularly onerous for retired non-commissioned military members. Usually, former spouses obtain financial security by virtue of their own income, the income of their new partners, or a combination of two incomes.

By contrast, many military members who's retired pay has been divided must support second families. Keep in mind that the military veteran, if retired, is generally reentering the job market in middle age, many with untransferable skills.

Mr. Chairman, we ask you use your considerable influence to change the law to one of fairness to all parties concerned. Thank you for your time.

[The prepared statement of Mr. Krebs appears on p. 148.]

The CHAIRMAN. Thank you, Mr. Krebs.

Our next witness is Mr. Ouellette, director of legislative affairs, the Non-Commissioned Officers Association. Welcome.

STATEMENT OF MICHAEL OUELLETTE

Mr. OUELLETTE. Good morning, Mr. Chairman. On behalf of the 160,000 members of the Non-Commissioned Officers Association of the United States of America, I would like to thank you for the opportunity to present testimony before your committee.

NCOA president and CEO, Roger W. Putnam, asked me to extend his appreciation to you for bringing this issue of the FSPA to the table for open discussion.

Mr. Chairman, instead of reading, for a while here let me talk to you just briefly. Mr. Krebs hit it right on, that we are very concerned about FSPA from the enlisted side of the house. They're the ones on the low end of the pay scale. You know, if you're splitting $3,000 a month in retirement pay, that's a whole lot different than when you split $1,000 in retirement pay as opposed to an officer retiree's pay. You then must understand that people serving today are working under entirely different retirement systems that were in effect at the time FSPA was passed. Consequently, they're serving for a reduced benefit that if the Former Protection Act provisions are applied, are going to further reduce what the individual has in life.

And we're extremely concerned about that and then at the same time you're seeing the changes in the benefits structure where military retirees are being asked to pay for more of their benefits in terms of health care, in terms of dental care, in terms of all the other items. So, an enlisted retiree caught up in the FSPA or in a divorce, many times is just left destitute and even if they are able to continue with their life, they find themselves even unable to protect their family.

Mr. Chairman, as a military retiree, I am personally offended that the FSPA even exists simply because of its implications. It im-

plies that all military retirees are so irresponsible, untrustworthy, and even deadbeat, that a law had to be passed to instruct State courts to treat them differently in divorce actions in order to ensure they meet their responsibilities and resulting settlements.

Mr. Chairman, nothing could be further from the truth since the very foundation of military service centers around the requirement to meet both professional and personal responsibility. Failure to do so in both cases results in termination of service.

Based on the wide range of discussion delivered this morning, it does not appear that FSPA can be tweaked in order to meet expectations on both sides of the issue, and not violate the basic provisions of the law.

Although NCOA has indicated support for total repeal of the Act, perhaps the best course of action this committee could endorse would be to amend the Act, specifying that income levels of VA disability and military retirement pay would be used to determine alimony and child support towards, on the part of the military retirees—awards on the part of the military retiree. Such action would appear to level the playing field for all future military retirees and provide an opportunity for current retirees involved in FSPA settlements, to return to court if they so desire, to revalidate the alimony requirements of their divorce decrees. NCOA believes such action to be a fair solution to the property issue of FSPA.

In closing, Mr. Chairman, if something is not done to correct the inequity of FSPA in its current form, military retirees can be insured of only one thing: that the future spouse or spouses of ex-military spouses will forever and ever speak very highly of them. Thank you.

[The prepared statement of Mr. Ouellette appears on p. 157.]

The CHAIRMAN. Thank you.

Mark Olanoff, Legislative Director for the Retired Enlisted Association.

STATEMENT OF MARK OLANOFF

Mr. OLANOFF. Good morning, Mr. Chairman and members of the committee. Thank you very much for allowing the Retired Enlisted Association to speak.

Mr. Chairman, I'm not going to read my statement—obviously you have it. But I am going to give you a couple of observations based on what I've heard already today.

I'm not a lawyer but I think I understand the concept of Federalism, and based on what I've heard from all the testimony in here this morning, I don't think it could be more clear that the message that you should get from this hearing is we cannot have 50 ways of doing this. And that's why it is a Federal question, and I commend you for your leadership for introducing H.R. 2537.

I have received many phone calls and also many e-mails from our members and other military retirees, that talks about what their specific problem is. The gist of most of the correspondence and phone calls that I've received is although the—we do not come here to say that people who owe child support should not pay the money. Obviously, we agree with that. However, it appears based on the way States courts are interpreting some of these statutes, that VA disability is being used to pay some of these awards.

And I think one of the problems as you are aware of, because you have advocated this change, Mr. Chairman, is the issue of concurrent receipt of retired pay and VA disability which is now prohibited. So the military retiree has to make a choice when they receive this disability, that they have to give up a portion of their retired pay. So it really isn't a great advantageous income benefit when they have to make that choice. And I would just kind of say that we hope that in the future Congress that we can have some reform on concurrent receipt legislation.

But I do want to give you one example that I received from one of our members, was the fact that—and as I said, I'm not a lawyer and I'm not here to say what's right and what's wrong. I'm just here to report what I've been told and what I see.

One of our individual members, besides the division of property, the former spouse was awarded the house and the VA was responsible for the mortgage of that house. And the individual reports to me that after seven months of him not living there, this former spouse stopped paying on his VA mortgage. So of course, he didn't know this until the VA went after him. So now not only is he paying for whatever the court has added, now he has to apply for bankruptcy because he doesn't have the money to pay for the mortgage payments.

So that's one of the examples that I have to tell you, Mr. Chairman. Again, I'd like to thank you for introducing H.R. 2537. I'd also to like thank Representatives Stearns, Peterson, and Doyle of this committee who have also co-sponsored that legislation. And I would also urge other members of this committee to look at this legislation and support the Chairman. This is a bipartisan bill. This is not a political bill at all.

The other thing that I'd like to bring to your attention, Mr. Chairman and the committee, is that this is also an equity issue. We've heard some discussions before of VA disability versus retirement—and I'm sure my next witness here who is from the DAV will probably have something to say about this—but if this issue was just clearly a non-retired veteran who was drawing a disability, this question would not even be discussed because it's not property.

So there are some inequities and as I stated earlier, from the witnesses that we've heard about whether you're in civil service or whether you're military or within certain segments of civil service, the law is not really being applied the same. And as I stated, that's why I think there needs to be a Federal answer to this question so every State does this the same way to be fair.

The last thing I have to say to you, Mr. Chairman and the Committee is—there was a mention of the Internet site, and I attach this with my statement and I think this really makes a mockery of this entire problem. But someone has actually built an Internet site which I've attached, that has the motto, "Ladies aim high." And basically what this is, Mr. Chairman, and members of the committee, this is a step-by-step description of how you get married and figure out the ways to divorce a military member and make money. And I think this is really terrible. This is really a mockery of what this is all about. It's already in my statement.

Thank you very much, Mr. Chairman, for allowing me and the Retired Enlisted Association to present our views.

[The prepared statement of Mr. Olanoff, with attachment, appears on p. 166.]

The CHAIRMAN. Thank you, Mr. Olanoff.

Our next witness and final witness for the day, Mr. Rick Surratt, the assistant national legislative director for the Disabled Veterans' Association.

STATEMENT OF RICK SURRATT

Mr. SURRATT. Mr. Chairman, and members of the committee, good morning. I am Rick Surratt with the Disabled American Veterans.

One question we are addressing in this hearing is whether there is a problem relating to the way courts are treating veterans' benefits when they make awards for spousal or child support. In the DAV's view, the answer to that question is yes, there is a problem.

First, let me say that where disability compensation is received in lieu of military retired pay, the laws are complex. Without going into the details, in the final analysis the veteran has no protection against a court ordering that he or she make support payments from the compensation he or she receives by virtue of a waiver of military retired pay. Under some circumstances the courts can enforce these support awards by garnishment.

Aside from that tangle of laws, no veteran who receives disability compensation or other veterans' benefits is protected from unwarranted court awards of his or her benefits to third parties. Through an administrative process, VA is authorized to apportion a veteran's benefits to a separated spouse and dependent children not in the veterans custody when warranted. And we have no complaint with that.

Congress also enacted provisions which we believe exempts veterans benefits from awards of spousal or child support by the courts. That provision is found in Section 5301 of Title 38 United States code. In broad and all encompassing language, it exempts veterans' benefits from attachment, levy, or seizure, by or under any legal or equitable process whatever, either before or after receipt by the veteran. Some State courts have held that this language means what it says: observing that its intent was to prevent the diversion of veterans' benefits to persons other than veterans.

Other State courts conveniently created an exception to the exemption for awards of spousal and child support. They have twisted the clear language of this law in all manner of ways to avoid the exemption it provides veterans. And unfortunately, the Supreme Court of the United States, has now completely changed its earlier interpretation of the law to go along with what the States are doing.

Some of these courts have even required veterans to pay part of their disability compensation to divorced spouses in the form of alimony, although divorced spouses are entitled to no veterans' benefits under veterans' laws. That is particularly egregious and violates the clear intent of Congress.

We don't suggest that disabled veterans should be able to avoid their responsibility to support their dependent children. Neither do

we believe the Federal Government should let the State courts take veterans' benefits without some constraints. The Federal Government should exercise some control over the taking of veterans' benefits to ensure that any awards to third parties are warranted and proper, to guarantee that veterans' disability compensation payments will not be diverted to others for whom they were never intended, or who need them less than the disabled veteran.

For example, we don't believe a disabled veteran should be required to pay part of his or her disability compensation to an able-bodied ex-spouse as alimony. We don't believe a spouse should be able to abandon a veteran because service-connected disability renders that unfortunate veteran mentally ill, and then have the court award a large portion of the disability compensation to that spouse upon divorce.

The Federal Government should also exercise control over the taking of veterans' benefits to ensure uniformity among the States. With the States now interpreting the law to suit their own notions of what should be, there is no uniformity. There are Federal safeguards to protect veterans and their benefits from predatory practices in dealings with third parties such as educational institutions, and lending institutions in home sales. Congress should do the same for divorce actions.

Veterans are no less vulnerable to unjust loss of their benefits in divorce actions than in the purchase of a home, for example. The States have shown little desire to protect veterans, and clearly demonstrated that they have little appreciation for the primary purpose of veterans' benefits.

I've covered that in the DAV's recommendation for changing the law in my written statement so I won't go into any more detail here. We urge the committee to consider our suggestion and we appreciate your interest in this issue.

That concludes my statement, Mr. Chairman and I'll be happy to answer any questions.

[The prepared statement of Mr. Surratt appears on p. 178.]

The CHAIRMAN. Thank you, Mr. Surratt.

The gentleman from Louisiana, Dr. Cooksey.

Mr. COOKSEY. Question, thank you Mr. Chairman. Incidentally, I would point out that you have a very brave Chairman, as is obvious by the absence of a lot of my colleagues. I think they would rather face the Vietcong or Saddam Hussein than the two groups that are on opposing sides of this issue today. So—I'm ex-Air Force, he's ex-Navy. They deserve some credit.

I question, if this is a Federal law, would these issues be heard before adjudicated and a Federal court?

Mr. SURRATT. Not usually. I'm not a lawyer but unless it's a Federal question between——

Mr. COOKSEY. Where will it be sir? I'm asking. I don't know the answer.

The CHAIRMAN. I beg your pardon?

Mr. COOKSEY. What is the answer to that?

Mr. SURRATT. There's the diversity of citizenship, it would be in some cases but generally it's the State court that hears domestic relations matter.

Mr. COOKSEY. That's correct. Well, my concern about national legislation I was talking to a Federal judge recently and he was criticizing those of us in my party for passing too much legislation that requires Federal judges to get involved in issues that they think are not germane to their—looking at you know, other issues.

I think this is a very important issue. I know when I was in the Air Force and I was a newlywed at the time—and I'm still married to the same person for 31 years, and I did get married while I was on active duty. So Air Force weddings maybe last longer, I don't know. But anyway, I was surprised that a guy that I knew that was also in flying status, that came in, he came into Texas, in Austin from Arizona. He told me, he said he was transferred there because he said that Texas was a man's State and it was better for a man to get divorced in Texas than Arizona. I am from Louisiana and we really have good laws for women. So it varies from State-to-State and I'm sure it all changes.

I think that the message though that you would get from the members of this committee—and in deference to them, we all had some other meetings that I was at and some of them are at now probably—is that we want to do what is fair to both parties. I'm particularly sensitive to veterans that have disabilities and problems there.

And on the other hand, as a father of three daughters all of whom are in their 20's, one of whom is getting married, I'm also very sensitive to the women's side of the issue. I really think it's contingent upon the parties involved to work out something that will be fair, and civil, and equitable, and consider it to the spouse that on their wedding day you thought was the most wonderful person in the world. And your children which I hope you still think are the most wonderful people in the world.

The CHAIRMAN. Thank you, Doctor.

Mr. SURRATT. Congressman, I'd like to comment on one thing you said about the Federal judge. I think the message that everyone is getting here is that if the legislation or the law were more clear we might actually cut down on some litigation. This must be a lawyer's dream, I mean when you look at the laws and how they interrelate. So perhaps that wouldn't be going against his caveat if Congress were to simplify these laws and make them more equitable.

Mr. COOKSEY. He was not discussing this issue in particular. The day I saw him he was having to write an opinion on an inmate who was suing the judicial system and the prison system because he did not get false teeth and he felt like he had been discriminated against, and another one that did not get into a school situation. So those were the issues he was talking about. But Federal judges like to think that they look at big issues. To me this is a big issue but it still needs to be worked out in an equitable manner.

Mr. OLANOFF. Dr. Cooksey, if I could just make a quick response. I agree with Rick about the Federal question, that it belongs at the State courts. But one of the examples I have with me today is an individual who was reassigned to Hawaii and eight days after he moved into base housing his family left and went back to Illinois. And then he detailed all of his specific problems of the State laws of Illinois and what he couldn't do and what he wasn't allowed to

do. And that's the reason why this is a Federal question and the issue needs to be one solution.

You know, we're not—I don't think any of us are here to advocate that it needs to be the military retirees' favor. Both sides need to have proper protection. But I think based on what I've heard today and what I hear from my membership, is that we have 50 states and everything is not done the same way and certain people are protected and others are not.

Mr. COOKSEY. I see some ladies in the back nodding their head in agreement. Is there then agreement from people from both sides of this issue that we do need one set of rules, one law?

Mr. OLANOFF. And enforced the same way.

Mr. COOKSEY. Right. Okay. That answers my question. I'll send a message to my friend, this Federal judge to——

The CHAIRMAN. Earlier today, one of the witnesses stated there would not be an action on this bill today and he is absolutely correct, because of the pending DOD study, the lack of any action on the part of the Senate. And certainly we have less than 20 days, legislative days left in this session.

But let me assure you, if I am fortunate enough to return to the 106th Congress and to serve in this position, we will address this problem at our earliest possible time. Mr. Ouellette.

Mr. OUELLETTE. Mr. Stump, I want to thank you very much for the courage to bring this thing up. We, probably all of us collectively, knew that there was not probably going to be any action taken this year. The strong point is, I think from NCOA and many other groups, and I think some of the other witnesses said it, nobody told us.

People are serving today, and if anything what this hearing is going to do, with the resulting and the education portion of this, is probably being able to expand for the members that FSPA does exist and what are the implications, how does it work, what is the impact on their lives? They need to know that.

There are many, many of my members out there that are serving on active duty that are happily married that could care less about the Former Spouse Protection Act. In fact, they probably think it's a good idea until they get caught up in a divorce action and then the ball really starts rolling and they really get upset about it when they find out the full details.

But I know NCOA compliments you for taking a strong stand and at least being able to rise to the occasion and try to do something about the situation that is just absolutely devastating to enlisted. Thank you.

The CHAIRMAN. Thank you, sir. If there are no further questions. Let me thank all the witnesses that appeared today. We thank you for taking the time to be with us, and for your statements.

If there are no other questions, the meeting stands adjourned.

[Whereupon, at 11:57 a.m., the subcommittee adjourned subject to the call of the Chair.]

APPENDIX

CHAIRMAN BOB STUMP
STATEMENT
COMMITTEE ON VETERANS' AFFAIRS HEARING
GARNISHMENT OF VETERANS' BENEFITS
AUGUST 5, 1998

THE COMMITTEE WILL BE IN ORDER.

WE ARE HERE TODAY TO GAIN A BETTER UNDERSTANDING OF THE VARIOUS LAWS WHICH ALLOW VETERANS' BENEFITS TO BE DIVIDED OR GARNISHED FOR CHILD SUPPORT AND OTHER COURT-ORDERED OBLIGATIONS.

IN OUR FEDERAL SYSTEM, STATES HAVE THE PRIMARY RESPONSIBILITY TO DETERMINE SPOUSE AND CHILD SUPPORT OBLIGATIONS.

THE FAILURE BY ONE OR BOTH PARENTS TO PROVIDE ADEQUATE SUPPORT FOR THEIR CHILDREN WAS DEALT WITH AT LENGTH WHEN CONGRESS REVISED OUR NATION'S WELFARE LAWS TWO YEARS AGO.

HOWEVER, CONGRESS HAS ALSO LONG BEEN CONCERNED ABOUT PROTECTING PAYMENTS MADE TO DISABLED VETERANS FROM GARNISHMENT OR OTHER LEGAL CLAIMS.

THE FUNDAMENTAL QUESTION BEFORE US IS: "UNDER WHAT CIRCUMSTANCES SHOULD THE FEDERAL GOVERNMENT PERMIT THE GARNISHMENT OF DISABILITY BENEFITS OR MILITARY RETIRED PAY IN ORDER TO SATISFY A VETERAN'S FAMILY OBLIGATIONS?"

WE WILL RECEIVE TESTIMONY TODAY ON THE CIRCUMSTANCES IN WHICH GARNISHMENT IS ALLOWED AND WHETHER CHANGES TO THE CURRENT LAW WOULD MAKE IT MORE EQUITABLE.

IN ADDITION, WE WELCOME WITNESSES FROM THE VETERANS' AND FORMER MILITARY COMMUNITIES, WHO WILL SHARE THEIR VIEWS ON HOW MILITARY RETIRED PAY AND VETERAN'S BENEFITS ARE HANDLED DURING A DIVORCE.

AS MANY OF YOU KNOW, I HAVE INTRODUCED H.R. 2537, THE UNIFORMED SERVICES FORMER SPOUSES EQUITY ACT OF 1997.

THIS BILL DOES NOT REPEAL A JUDGE'S AUTHORITY TO DIVIDE MILITARY RETIRED PAY, BUT ATTEMPTS TO PROVIDE GREATER EQUITY FOR BOTH PARTIES IN DIVORCE PROCEEDINGS.

WE ARE ALL AWARE OF INCONSISTENT AND APPARENTLY UNFAIR DECISIONS MADE BY THE STATE COURTS SYSTEM AFFECTING A VETERANS' OBLIGATION FOR ALIMONY AND CHILD SUPPORT PAYMENTS.

BUT UNINFORMED JUDGES OR MISTAKEN DECISIONS SHOULD NOT BE THE BASIS FOR LEGISLATION.

WE NEED TO DEVELOP A CONSENSUS THAT THE LAW IS NOT FAIRLY SERVING AMERICA'S INTERESTS.

I APPRECIATE THE TIME WHICH SO MANY OF OUR WITNESSES HAVE SPENT IN ASSEMBLING INFORMATION FOR CONGRESS' USE AS IT DELIBERATES ON THIS IMPORTANT TOPIC.

Statement by Rep. Luis V. Gutierrez
Committee on Veterans' Affairs
August 5, 1998

Thank you Mr. Chairman.

As human beings, we wear many hats and take on many roles throughout our lives.

At once we are individuals and members of communities.

And we are defined differently in each of our relations with a variety of people and institutions.

The Internal Revenue Service (IRS) sees us as taxpayers, businesses see us as consumers, doctors see patients and pro atheletes see fans.

In our communities, we are neighbors, residents, homeowners or renters and citizens all at the same time.

Today, we are dealing with an issue in which two of the definitions that people hold for others sometimes are questioned as to which is more important under the law.

I am sure that all of us would qualify the brave men and women who served and defended our national interests in wars this century as veterans and heros.

This they most certainly are.

But again this is not all they are. Like all of us, veterans wear other hats and bear other titles.

Veterans are fathers or mothers to their children, husbands and wives to each other and friends and companions to many of us here today.

This morning, we are confronted with the issue of how to treat the benefits that veterans receive while considering their obligations to their families.

As veterans, these individuals have earned and deserve the full benefits accrued them through their military service.

As parents and spouses, they hold obligations that all who enter into these sacred relationships must honor.

Legally, in cases of child support and divorce, we are faced with the complications of remembering our nation's commitments to our veterans, while also ensuring that we do not forget a parents' responsibility to their children.

Sifting through the complexities of Federal and State laws governing familial relations in cases relating to veterans is no easy task.

Conflicting interpretations of current law and poor oversight by Congress are partially to blame for these difficulties.

However, I am pleased that we are holding this hearing so that we may learn more about this important issue.

I look forward to start the learning process now.

Thank you Mr. Chairman.

STATEMENT OF THE HONORABLE MIKE DOYLE (PA-18)

Committee on Veterans' Affairs

Hearing on the Garnishment of Veterans' Benefits

August 5, 1998

I want to thank Chairman Stump for providing this opportunity to discuss the garnishment of veterans' benefits for court-ordered family obligations in relation to the Uniform Services Former Spouses Protection Act (USFSPA). I also want to welcome the distinguished group of panelists who have been assembled to discuss this important matter.

Without question, living up to one's responsibilities, whether they be the payment of alimony or child support, should be encouraged. The determination of the scope of these responsibilities should be arrived at through a fair and equitable process. While the intent of enacting the Uniform Services Spouses Protection Act was to ensure fairness in regard to child support and spousal support, the implementation of this Act has caused a measure of inequality for a number of male *and* female retired veterans.

I have personally heard from many of my constituents regarding the adverse effect the Uniform Services Former Spouses Protection Act has had on their lives. Their concerns center around the treatment of military retirement pay as property during divorce proceedings. By extension, they do not view the right of an ex-spouse to continue to receive a share of their retired pay after their former spouse has remarried, or the fact that there is no limitation on when a former spouse can seek a division of retirement pay, as being either fair or equitable.

It is my hope that the insight brought forth today, in conjunction with the report that is scheduled to be completed by the Department of Defense, will contribute to the formulation of viable adjustments that could be made to the Uniform Services Former Spouses Protection Act that would address the concerns of veterans without creating disadvantages for their former spouses.

Opening Remarks for Rep. Mascara at Veterans Committee hearing on August 5, 1998

Thank you Mr. Chairman for calling this hearing. I would also like to thank the panelists for testifying at this hearing today.

The issue that will be discussed today is a very complex one with no easy solutions. What is a fair and equitable way to divide the proceeds of a veteran's retirement and/or disability payments?

I think everyone understands that relationships change over a period of time. Divorces are on the increase in the United States and especially in the military. Here the demands of military service often lead to the breakup of many marriages.

The reason we are here today is not to make any sudden discoveries, judgements or to punish anyone for the choices they make. Hopefully this hearing will shed some light on how the Congress can help solve some of the problems associated with the division of property in a divorce action.

The lives of veterans, their spouses and their children are affected daily. We must deal with these issues as soon as possible and assure equity to all those who are involved.

I look forward to hearing from the panels and the distinguished guests here today.

STATEMENT OF PATRICK J. KUSIAK, LEGAL CONSULTANT TO THE RETIRED OFFICERS ASSOCIATION BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS REGARDING GARNISHMENT OF VETERANS' BENEFITS FOR CHILD SUPPORT AND OTHER COURT-ORDERED FAMILY OBLIGATIONS

Chairman Stump and distinguished members of the committee, I am pleased to be here this morning to provide some observations regarding federal laws related to the garnishment of veterans benefits for child support and other court-ordered family obligations and the views of The Retired Officers Association on these matters. As explained more fully in my *curriculum vitae*, my knowledge regarding federal laws concerning garnishment comes from my experience while assigned to the Office of the Secretary of Defense related to hearings on and amendments to the Uniformed Services Former Spouses' Protection Act (USFSPA) in 1990. Following my retirement in 1993, at the request of The Retired Officers Association, I've conducted extensive research into the USFSPA.

GARNISHMENT OF VETERANS' BENEFITS FOR CHILD SUPPORT AND OTHER FAMILY OBLIGATIONS

FEDERAL LAWS

There are two federal laws that address the garnishment of federal payments to enforce court-ordered child support and spousal support. The Uniformed Services former spouses' Protection Act (USFSPA) and the Child Support Enforcement Act (CSEA).

Uniformed Services Former Spouses' Protection Act

Provisions of the Uniformed Services Former Spouses' Protection Act (USFSPA), (codified, in part, at 10 U.S. C. section 1408) direct service Secretaries to make payments of child support and spousal support in compliance with court orders from "disposable retired pay". Disposable retired pay excludes amounts of retired pay waived in order to receive veteran's disability compensation. Consequently, USFSPA provides no authority to satisfy child support/spousal support obligations from disability retired pay (based on percentage of disability) or from disability compensation from the Department of Veterans Affairs.

38 USC 5301

In general, section 5301 of title 38, United States Code, provides that benefits under any law administered by DVA are exempt from the claims of creditors. The Child Support Enforcement Act (CSEA) (42 U.S.C. secs. 651 – 669b) waives this exemption for purposes of garnishment orders for enforcement of court-ordered child support and alimony.

Child Support Enforcement Act

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) consolidated and streamlined the legal authorities to collect support from federal employees including members of the uniformed services and veterans. It also broadened the definition of income subject to garnishment to include, among other things, retirement and pension pay including disability pay if the veteran has waived a portion of retirement to receive disability pay, and veteran's benefits.[1]

Conflict?

It has been suggested that the 1996 amendment to the federal garnishment rules conflicts with prohibitions contained in the USFSPA. We don't agree. While the USFSPA may very well operate to prohibit a division of military retired pay waived to receive disability compensation from DVA (and consequently, disability compensation), the absence of authority for the Service Secretaries to make payments of amounts waived to receive compensation from DVA does not conflict with provisions of law that specifically authorize DVA to make payments of disability compensation (including disability compensation received in lieu of military retired pay) in compliance with court-ordered child support or alimony.

CHILD SUPPORT

Parents have a legal and moral obligation to support their children. The Retired Officers Association strongly endorses efforts to facilitate the collection of child support from federal payments paid to retired members of the uniformed services as well as members on active duty. All forms of compensation for military service including disability retired pay and disability compensation from the Department of Veterans Affairs should be subject to garnishment for child support.

SPOUSAL SUPPORT/ALIMONY

The Retired Officers Association feels that legislation authorizing garnishment of disability compensation for court-ordered spousal support or alimony may not have been subjected to significant scrutiny and evaluation. As explained more fully below, some state courts have used alimony to circumvent prohibitions regarding the division

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[1] As amended, 42 USC sec. 659 specifically includes as moneys subject to garnishment, "periodic payment or other payments . . . by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed forces who is in receipt of retired pay or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation." [Emphasis added.] The term "former member" appears to be an unintended limitation. "Former member" refers to an individual who is not currently a member of the armed forces in any capacity. All retired members of the regular components of the Armed Forces remain members of the Armed Forces after retirement from active duty, albeit in a retired capacity. A former member is a term that referred to members of the Reserve components of the Armed Forces, who, after completing sufficient years of creditable service (normally 20 years), including service as a member of the Reserves and reaching age 60, became entitled to retired pay without regard to status as a member of the Armed Forces.

of disability compensation as a marital asset. Consequently, strengthened and streamlined federal authority regarding the enforcement of child support obligations should not have been extended to the enforcement of spousal support obligations without careful study and, we feel, meaningful modifications.

Using Spousal Support/Alimony to Divide Disability

Since the enactment of the USFSPA, state courts have interpreted and applied the USFSPA in countless numbers of cases. In many cases, state courts have applied the limitations of the federal law evenhandedly, consistent with the letter and intent of the law. However, there have been a substantial number of cases where state courts have been unwilling or unable to apply the limitations and protections of the USFSPA in a manner consistent with letter and or intent of the law.

No federal law, including the USFSPA, provides any authority to treat any amount of disability retired pay based on some measure of disability and disability compensation from the Department of Veterans' Affairs as a martial asset. Divorce courts of several states have had great difficulty reconciling this limitation of federal law regarding entitlements to disability retired pay and disability compensation and their state laws regarding the division of deferred compensation as marital property.

PROBLEM: Initially, state courts read the USFSPA limitations regarding disposable retired pay as limitations on the amounts payable by Service Secretaries but not as a limitation on what could be divided. After *Mansell*, where the U.S. Supreme Court held that disposable retired pay was a limitation on what could be divided, state courts have used alimony/spousal support awards to circumvent this limitation.

Traditionally, alimony, also known as separate maintenance or spousal support, is a payment of support from one spouse to a former spouse for a temporary period. The purpose of alimony was to provide support. It was based on need and the financial circumstances of the parties. In virtually all circumstances, alimony ended if the receiving spouse remarried or no longer needed support. In addition, alimony could be the subject of garnishment and other procedures compelling payment whereas payments regarding marital property were not collectible through garnishment and other compulsory processes. To overcome obstacles regarding the division of disability compensation, some state courts issue orders requiring payments of permanent alimony in an amount equal to the amount of retired pay that would be payable if the retiree had not received disability compensation. Payments are required even if the recipient former spouse remarries. Because the payments are identified as alimony, they are not considered to violate federal law.

SOLUTION: Alimony has been used to circumvent (by "supportifying") an otherwise invalid division of disability compensation. To prohibit such actions, the USFSPA and the CSEA should be amended to invalidate any obligation to make any court-ordered payment of alimony that is considered "a payment in lieu of a payment of retired pay as marital property". The definition of such invalidated payments would look to the

amount, timing, and termination of such payments. For example, any payment paid for the life of the retiree or the former spouse, which ever occurs first, without regard to economic need or the remarriage of the former spouse would be presumed to be a payment in lieu of retired pay as marital property and prohibited.

Other Ways to Divide Disability Retired Pay and Disability Compensation

PROBLEM: Initially, state courts read the USFSPA limitations regarding disposable retired pay as limitations on the amounts payable by Service Secretaries but not as a limitation on what could be divided. After *Mansell*, where the U.S. Supreme Court held that disposable retired pay was a limitation on what could be divided, state courts have used alimony and the following additional means to circumvent this limitation:

1. *Res judicata.* This concept prohibits reopening final judgments. If a member failed to object to a division of nondivisible disability compensation at the time of the initial judgment, an objection to court orders directing payments after the original adjudication are dismissed because the issue regarding the division of disability compensation is considered *res judicata.*

2. Agreement. If a member has agreed to provide a certain percentage of disposable retired pay to a former spouse, any reduction in the amount of disposable retired pay available for division is deemed to be a violation of an agreement between the retiree and the former spouse to provide a particular sum to a former spouse.

3. Offsetting award. Some states require an equitable rather than an equal division of marital property. In such states, nothing prohibits a court from considering disability compensation payable only to a disabled retiree in determining a proper allocation of marital assets among the parties.

4. Court Orders. Some state courts have issued orders directing disabled retirees to not waive an increased amount of retired pay to receive an increased amount of disability compensation, to preserve a former spouse's interest in disposable retired pay.

SOLUTIONS: Given the many differing abuses by state courts, any comprehensive response requires a multifaceted approach to address each abuse. Consequently, the solutions to the problem of dividing disability compensation should include the following:

1. Affirmatively Prohibit Any Division of Disability Compensation. A number of state courts have relied on the absence in federal law of an affirmative prohibition regarding the division of disability compensation to validate state court orders dividing such disability compensation. The USFSPA should be amended to affirmatively prohibit any division of disability compensation.

2. *Res judicata.* Any court order enforcing an invalid division of military retired pay should be unenforceable, without regard to whether or not there was an objection to

the invalid division. On the other hand, a proper division of disposable retired pay should be enforceable without further litigation. The USFSPA should be amended to establish certain categories of clearly invalid divisions of disposable retired pay that are void *ab initio* and unenforceable by any subsequent court order, notwithstanding *res judicata*. Among the categories of invalid divisions of retired pay is any division of disability compensation.

3. Agreement. The USFSPA should be amended to provide that an agreement of a member to divide disability compensation is void *ab initio* and cannot provide the basis to order any member to make payments of disability compensation as marital property.

4. Offsetting award. The USFSPA should be amended to specifically prohibit a state court from considering disability compensation when determining the equitable division of marital assets. Disability compensation should not be considered an asset of the disabled member. It may, however, be considered in determining the respective income of each of the marital partners.

5. Court orders. No court order should be able to prohibit a disabled retiree from applying for or from waiving retired pay in order to receive disability compensation. The USFSPA should be amended to prohibit and make unenforceable any court order prohibiting a disabled retiree from taking any action authorized by federal law related to disability compensation.

OTHER INEQUITIES

PAYMENTS AFTER REMARRIAGE

PROBLEM: One of the most troubling aspects of the USFSPA is that remarriage of a former spouse has no effect on the right of a former spouse to receive disposable retired pay as a result of a court order that divided disposable retired pay as marital property. One rationale for permitting retired pay to be treated as marital property was to provide a mechanism to provide for the support of a former spouse of a retired member of the uniformed services in those few states that did not authorize alimony.

Remarriage extinguishes the obligation for a person to support a former spouse. Remarriage prior to a certain age also extinguishes entitlement to many federal benefits, including Social Security widow's benefit, Survivor Benefit Plan (SBP) payments, and survivor benefits from the Department of Veterans Affairs. Remarriage also extinguishes entitlement to payments of pension benefits for former spouses for certain federal employees.

SOLUTION: Amend the USFSPA to terminate the interest of a former spouse in disposable retired pay as martial property if a former spouse remarries. This would provide remarried former spouses of retired members of the uniformed services with

treatment comparable to the treatment of remarried former spouses of Foreign Service and Central Intelligence Agency retirees.

SURVIVOR BENEFIT PLAN INEQUITIES

Retired members of the armed forces entitled to retired pay are eligible to participate in the Survivor Benefit Plan (SBP). Surviving spouses under age 62 receive 55 percent of gross retired pay (or some lesser selected amount) and survivors 62 or older receive a survivor annuity equal to 35 percent of gross retired pay (or some lesser selected amount). The retired pay of participants in the SBP is reduced by 6.5 percent of gross retired pay (or some lesser selected amount). The election to participate in SBP is made at the time of retirement. A former spouse is eligible to receive benefits under the SBP. There are several inequities and inappropriate limitations regarding SBP for former spouses.

Payment of SBP Premium

The USFSPA defines disposable retired pay as gross retired pay less amounts deducted because of an election to provide an annuity to a spouse or former spouse to whom a payment of disposable retired pay is being made.[2] The effect of this definition is that the economic burden of SBP premiums is on the recipients of disposable retired pay in the same proportion as these recipients receive disposable retired pay as marital property. If a former spouse receives 25 percent of disposable retired pay as the former spouse's share of disposable retired pay as marital property and a retired member receives 75 percent of disposable retired pay as the retiree's share of disposable retired pay as marital property, the retiree is paying 75 percent of the economic burden of SBP and the former spouse is paying 25 percent of the burden. Yet the former spouse receives all of the benefit of SBP participation.

In recognition of these economics many state courts direct a former spouse to pay the entire cost for providing a SBP benefit to the former spouse. In fact, the Defense Finance and Accounting Service has reported that nearly fifty percent of all divorce decrees require the former spouse to pay for the costs of an SBP annuity for the former spouse.

PROBLEM: The USFSPA does not permit compliance with court orders directing a reduction in amounts paid to a former spouse to pay for SBP. This is because the only amount of retired pay that may be divided as marital property --- disposable retired pay --- already reflects reductions in retired pay for participation in SBP. Since disposable retired pay already reflects reductions for SBP before any division of retired pay as marital property, the economic burden of SBP is paid by the retiree and the former spouse in the same proportions as their respective shares of retired pay as marital property.

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[2] 10 U.S.C. §1408(a)(3)(D).

The only way under current law to have a former spouse pay for the cost of SBP is to revise the amount of disposable retired pay payable to the former spouse as marital property (expressed as an amount certain or as a percentage of disposable retired pay) to reflect a reduction. One way to shift the economic burden of SBP to a former spouse would be reduce the amount of disposable retired pay payable to the former spouse as marital property. In the example above, this would require reducing the former spouse's share of disposable retired pay from 25 percent to 19.78 percent (19.78% of disposable retired pay is equal to 25% of gross retired pay reduced by SBP costs --- an amount equal to 6.5% of gross retired pay). This approach complicates the calculation of spousal interests in retired pay and confuses participants.

SOLUTION: A simpler approach would be to amend the USFSPA to permit the Secretaries of the military departments to comply with court orders directing a former spouse to pay the cost of participation in the SBP.

Multiple SBP Benefit

PROBLEM: Current federal law permits a former spouse who receives as little as 10 percent of disposable retired pay as martial property to receive 100 percent of the SBP benefit. In addition, current law does not permit a retired member who has been divorced and remarried to provide any SBP benefit to the retiree's current spouse if SBP is in effect for the retiree's former spouse. Under the federal laws that provide survivor benefits for other federal employees, a retiree may provide multiple survivor annuities.

SOLUTION: Amend federal law related to SBP to permit multiple survivor annuities.

USFSPA FORCES INEQUITABLE DIVISIONS OF RETIRED PAY

The USFSPA requires court orders that divide retired pay as property to "specifically [provide] for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member."[3] This requirement encourages courts to issue court orders that are inequitable.

Regular increases in military retired pay to reflect increases in the cost of living are common knowledge. Therefore, any award of retired pay as marital property that provides for the payment of a specific dollar amount invites regular revisions to accommodate increases in retired pay based on inflation. To avoid this, courts issue orders that express a division of retired pay as marital property as a percentage of disposable retired pay.

PROBLEM: In circumstances where a member was married at the time of retirement, the percentage approach is not obviously inequitable. If, however, a member is divorced while on active duty and retires several years and promotions later, a division

[3] 10 U.S.C. §1408(a)(2)(C).

of retired pay expressed as a percentage of disposable retired pay when the percentage is only based on years of marriage while on active duty is clearly inequitable. It is also incompatible with notions of community property whereby the community's interest in marital property ends when the community ends. Increases in retired pay as a result of service or promotions after divorce are generally considered the separate property of the member.

The USFSPA provides no mechanism to assist courts in establishing an administrable formula to determine each party's interest in disposable retired pay if a member is divorced while on active duty. Instead, the law requires payments that are easily administered by the military departments. Members, former spouses, and courts are not provided any information or assistance in calculating an equitable division of retired pay. It's not surprising that courts, relying on little more than some sense of justice, issue orders dividing retired pay on the basis of years of marriage during which the member performed service creditable for purposes of entitlement to retired pay.

SOLUTION: Amend the USFSPA to establish a procedure and, if appropriate, a formula to permit a state court to equitably divide retired pay on the basis of rank and years of service at the time of divorce rather than rank and years of service at the time of retirement.

CIRCUMVENTING FEDERAL INVALIDATION OF
CERTAIN RETROACTIVE DIVISIONS OF RETIRED PAY

When legislation that would become the USFSPA was under consideration by the Congress, one of the principal concerns was retroactive application of the decision of the U.S. Supreme Court in *McCarty v. McCarty*. In general, decisions of courts are based on current law. Not surprisingly, the decision of the U.S. Supreme Court in *McCarty* invalidating a division of military retired pay by a state divorce court raised serious questions regarding the validity of existing decrees that had divided military retired pay. Retroactive application of *McCarty* to invalidate existing divisions of retired pay could disrupt everyone's expectations. To prevent retroactive application of *McCarty* to invalidate existing decrees, the USFSPA used an effective date of the day before the date of the decision of the U.S. Supreme Court. However, the congress intended no retroactive application of the USFSPA to divide retired pay in cases that had not taken action to divide retired pay.

Unfortunately, the language of the original enactment did not prevent state courts from reopening long settled divorce decrees to divide previously undivided military retired pay and that is precisely what many former spouses began to do. In many jurisdictions, courts that granted a divorce decree retain jurisdiction to render decisions in connection with the divorce. Although such jurisdiction is normally to ensure continuing supervision of matters related to child and spousal support, divisions of marital assets may sometimes be considered. In other states, an unadjudicated matter related to the ownership of property by two or more parties can be the subject of litigation

characterized as an action to partition property. Former spouses used both techniques to divide retired pay retroactively.

Congress never intended for the enactment of the USFSPA to provide an opportunity to reopen long settled divorce decrees and divide military retired pay if the original divorce decree did not treat (or retain jurisdiction to treat) military retired pay as martial property. To make federal limitations unambiguous, in 1990 the USFSPA was amended to deprive any court of jurisdiction to treat disposable retired pay as martial property if the final divorce decree was issued before June 25, 1981, and did not treat (or reserve jurisdiction to treat) disposable retired pay as marital property.[4] The amendment was explicitly made effective with respect to judgments issued before, on or after the date of enactment of the amendment (November 5, 1990). In the case of judgments issued before November 5, 1990, the amendment would not relieve any obligation to make a payment that is required to be made before the end of a two-year period following November 5, 1990.[5]

PROBLEM: State courts have avoided this prohibition by holding that all courts of the state are deemed to reserve jurisdiction to treat disposable retired pay as marital property or by holding that the legal concept of *res judicata* prevented the reopening and invalidation of final decree that retroactively dividing military retired pay, notwithstanding federal law invalidating such retroactive divisions.

SOLUTION: Any court order enforcing an invalid retroactive division of military retired pay should be unenforceable. The USFSPA should be amended to declare invalid retroactive divisions of disposable retired pay as void and unenforceable by any subsequent court order, *res judicata* notwithstanding. Invalid retroactive divisions of retired pay could also be included in the categories of invalid division of retired pay, discussed under *Res judicata,* related to the division of disability compensation, *supra.*

UNEQUAL DIVISION --- FORMER SPOUSE'S SHARE GREATER THAN HALF OF MARITAL SHARE OF DISPOSABLE RETIRED PAY

In 1990 the USFSPA was amended to limit the amount of disposable retired pay divisible as marital property to 50 percent of disposable retired pay. In particular, the USFSPA currently provides that "the total amount of disposable retired pay . . . payable under all court orders [treating retired pay as marital property] may not exceed 50 percent of disposable retired pay." An equal division of marital property should be expected to provide an equal amount of the marital share of disposable retired pay to both spouses.

PROBLEM: State courts routinely award more than fifty percent of the marital share of disposable retired pay to a former spouse to offset the effect of other limitations or reductions in disposable retired pay. For example:

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[4] 10 U.S.C. §1408(c)(1), as amended by P.L. 101-510, §555(a), 104 Stat. 1569 (1990).
[5] Section 555(c), P.L. 101-510, 104 Stat.1569, 1570 (1990).

An increase in the amount of disposable retired pay payable under a divorce decree from 18 percent to 40 percent to offset a reduction in disposable retired pay resulting from an increase in disability compensation was not considered to be improper because the increased amount did not exceed the 50 percent limit under the USFSPA.

SOLUTION: The USFSPA should be amended to limit the amount of retired pay that may be treated as marital property to 50 percent of the amount of retired pay considered earned during a marriage and to prohibit payments that are considered payments in lieu of disposable retired pay.

WINDFALL --- DIVISION OF MILITARY RETIRED PAY BASED ON RANK AND YEARS OF SERVICE AT RETIREMENT RATHER THAN RANK AND YEARS OF SERVICE AT DIVORCE

Although principles of community property and equitable property terminate a marital interest in property at the time the marriage is terminated, the application of this principle to a division of military retired pay as marital property is far from certain. An equal division of disposable retired pay (unreduced as a result of disability or other circumstances) should only occur in circumstances where the marriage has continued for the entire period of service on active duty creditable for retired pay purposes.

PROBLEM: The problem arises whenever the period of service is greater than the length of the marriage. Assuming the rank at divorce is also the rank at retirement, a division of retired pay on the basis of years of marriage while performing service creditable for retired pay purposes should produce a division of retired pay where the member receives a percentage of retired pay greater than 50 percent and the former spouse receives a percentage of retired pay less than 50 percent --- an unequal division --- yet many courts award a 50-50 split in these circumstances.

Divorce while on active duty may occur at a rank other than the rank at which the member ultimately retires. In many cases, courts provide a formula approach that merely looks to years of marriage while performing creditable service, without consideration of the disparity in rank or pay grade between the time of divorce and retirement. This is particularly inappropriate in cases where continuing military service was a factor leading to the divorce. Unfortunately a number of state courts have concluded that federal law does not preclude a division of disposable retired pay that could result in the division of post-divorce increases in retired pay, even though such increases in retired pay would be considered separate property in most circumstances.

In addition, as explained above under "Deficiencies in the Uniformed Services Former Spouses' Protection Act," *supra*, the USFSPA requires court orders dividing disposable retired pay as marital property to be expressed as specific dollar amounts or as a percentage of disposable retired pay. These requirements make it extremely difficult

for court in these cases to issue an order providing for an equitable division of retired pay.

SOLUTION: The USFSPA should be amended to limit the amount of retired pay that may be treated as marital property to the disposable retired pay considered earned during marriage. The amount should be based on the rank or pay grade and years of service at the time of divorce.

PAYMENTS OF RETIRED PAY FROM MEMBERS ON ACTIVE DUTY

PROBLEM: The USFSPA expressly does not authorize any court to order a member of the uniformed services to apply for retirement or to retire at a particular time in order to effectuate any payment under section 1408 of title 10, United States Code.[6] However, state courts have not felt constrained to require a member who continues on active duty to make payments to a former spouse in an amount equal to what the former spouse would have received if the member had retired when first eligible to do so. Courts have rejected member arguments that such orders are indirect orders to retire in violation of the USFSPA.

SOLUTION: The USFSPA should be amended to prohibit court orders requiring a member to make payments to a former spouse that are payments in lieu of retired pay as marital property of a member on active duty, without regard to the eligibility of the member to retire.

LIMITATIONS ON PAYMENTS OF RETIRED PAY

When the USFSPA was enacted, there was substantial concern that federal limitations on payments of retired pay should not be construed to limit a member's obligation to comply with court orders directing payments of alimony or child support. Consequently provisions were included to prevent members from avoiding obligations to pay alimony or child support.[7]

PROBLEM: Although the USFSPA contains provisions that make it clear the USFSPA does not permit a member to avoid obligations to make payments of alimony or child support, state courts have used these provisions to interpret the USFSPA to permit payments of retired pay as marital property that are prohibited.

SOLUTION: The USFSPA should be amended to clarify that although a member's obligation to make payments of alimony or child support are unaffected by the USFSPA, payments of retired pay as marital property (or payments in lieu of such payments) are subject to the limitations of the USFSPA.

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[6] 10 U.S.C. §1408(c)(3).
[7] 10 U.S.C. §1408(e)(6).

CONCLUSION/SUMMARY

Federal law (USFSPA and CSEA) should be amended to restore a balanced even-handed approach in divorces involving members of the armed forces and veterans and to correct serious inequities and other difficulties. Remedies recommended include:

1. Amend CSEA to prevent the use of alimony as a means to divide disability compensation by prohibiting "payments in lieu of retired pay as marital property."
2. Amend USFSPA to affirmatively prohibit the division of disability compensation.
3. Amend USFSPA to diminish the use of other means used by state courts to divide disability compensation.
4. Amend federal law to invalidate and make unenforceable any state court order that prohibits a veteran from waiving retired pay to receive disability compensation.
5. Amend USFSPA to extinguish the interest of a former spouse in disposable retired pay upon remarriage.
6. Amend USFSPA to permit a former spouse to pay SBP premiums.
7. Amend SBP to authorize multiple SBP beneficiaries.
8. Amend USFSPA to prevent windfall benefit by providing a basis for a division of retired pay based on rank and service at the time of divorce rather than rank and service at the time of retirement.
9. Amend USFSPA to invalidate any court order that improperly divided retired pay retroactively and make it unenforceable.
10. Amend USFSPA to limit the amount of disposable retired pay that may be treated as marital property to 50 percent of the amount of retired pay attributable to military service while married.
11. Amend USFSPA to prohibit any court order requiring a member on active duty to make payments to a former spouse that are payments in lieu of payments of retired pay as marital property.

Thank you for this opportunity to present these observations and the views of The Retired Officers Association on this important matter.

Curriculum Vitae

Patrick John Kusiak, Esq.

Patrick J. Kusiak, an attorney admitted to the bar of California, the District of Columbia, and the United States Supreme Court. From 1968 until January 1993, he served on active duty in the U.S. Navy, retiring at the rank of Commander, Judge Advocate General's Corp. His principal area of legal specialization is state and local taxation.

Although Pat Kusiak has never practiced in divorce or family law, he has significant experience concerning the Uniformed Services Former Spouses' Protection Act (USFSPA). From 1986 until his retirement from active duty in 1993, he was assigned to the Office of the Secretary of Defense. During this period, he was involved in the testimony of the Deputy Assistant Secretary of Defense (Military Manpower and Personnel Policy) regarding the USFSPA in a hearing before the Military Personnel Subcommittee of the House Committee on Armed Services in 1990. He also was involved in the development of remedial legislative measures to amend the USFSPA that were enacted in 1990 as part of Public Law 101-510. During this period he also made several presentations to professional associations regarding the USFSPA and was member of a study group by the Virginia State bar Association into federal laws regarding the division of military retired pay and survivor benefits for former spouses.

After his retirement from active duty in 1993, at the request of The Retired Officers Association, Mr. Kusiak conducted substantial research into how state courts have applied the Uniformed Services Former Spouses' Protection Act since its enactment in 1981.

Kusiak received a juris doctorate from the School of Law of the University of San Diego, San Diego, California, and a masters of law (taxation) from the Graduate School of Law, University of San Diego, San Diego, California. He is also a graduate of the Advanced Course, The Judge Advocate's School, U.S. Army, University of Virginia, Charlottesville, Virginia.

He is employed as tax counsel, Franchise Tax Board, Sacramento, California, and as intermittent/part-time consultant to the Office of the Secretary of Defense on military tax matters. The views expressed in this statement are made in his individual capacity as a consultant to The Retired Officers Association and should not be considered the views of the Franchise Tax Board or the Office of the Secretary of Defense.

Patrick Kusiak resides in Placerville, California.

FUNDING STATEMENT

The Retired Officers Association (TROA) is a non-profit veterans membership organization, as described in section 501(c)(19) of the Internal Revenue Code of 1986. TROA is registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

The Retired Officers Association or Patrick J. Kusiak has not received any Federal grant or contract relative to the subject matter of this testimony during the current or two previous fiscal years.

TROA's Testimony is supported by the following organizations:

Air Force Association

Army Aviation Association of America

Association of Military Surgeons of the United States

Commissioned Officers Association of the US Public Health Service, Inc.

CWO & WO Association US Coast Guard

Enlisted Association of the National Guard of the US

Fleet Reserve Association

Jewish War Veterans of the USA

Marine Corps Reserve Officers Association

National Guard Association of the US

National Order of Battlefield Commissions

Naval Enlisted Reserve Association

Navy League of the US

Reserve Officers Association

The Military Chaplains Association of the USA

The Retired Enlisted Association

The Retired Officers Association

United Armed Forces Association

USCG Chief Petty Officers Association

US Army Warrant Officers Association

Veterans of Foreign Wars

THE MILITARY COALITION

STATEMENT OF
C. A. (MACK) MCKINNEY

Retired Sergeant Major of Marines
Legislative Counsel

FLEET RESERVE ASSOCIATION (FRA)

in behalf of
15 Member Organizations of

THE MILITARY COALITION

before the

COMMITTEE ON VETERANS' AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

Second Session, 105th Congress

on the

UNIFORMED SERVICES
FORMER SPOUSES PROTECTION ACT
(USFSPA)

August 5, 1998

Biography of
C. A. (MACK) MCKINNEY

C. A. (Mack) McKinney is the Legislative Counsel for the Fleet Reserve Association (FRA) and the voluntary Administrator for The Military Coalition.

McKinney, who served in WWII, Korea and Vietnam, retired from the United States Marine Corps in 1971 as a Sergeant Major of Marines. Two days after his retirement he arrived on Capitol Hill representing the Marine Corps League (1971-80) and the Non Commissioned Officers Association (1971-1992). He was instrumental in urging Congress to enact or amend a number of laws beneficial to the well being of military personnel and veterans.

In his nearly 27 years working with Congress, the White House and the appropriate Federal agencies on behalf of enlisted service members and veterans, he assisted in the founding of the Exchange Club of Capitol Hill, serving as its president in 1990-91, and the Capital Hill Marines, as its senior vice commandant. In 1988 he was elected president of the Texas Breakfast Club and is a member of the Texas State Society. He also served as a Marine Corps League Detachment Commandant (Alamo Detachment, San Antonio, TX), Department Commandant, State of Texas, and National Adjutant-Paymaster and National Legislative Officer for that organization's national headquarters.

McKinney, in addition to the above, is a lifetime member of the Veterans of Foreign Wars, the Disabled American Veterans, First and Third Marine Divisions Associations, Marine Corps Aviation Association, Marine Corps Law Enforcement Foundation, Marine Corps Historical Foundation, Marine Corps Association, and a member of The American Legion. He was a charter member of and the second president elected to head the Combined National Veterans Association.

McKinney, for a number of years, was a member of the Veterans Administration Committee on Cemeteries and Memorials. He also is the cofounder of The Military Coalition in 1985 and has served as its co-chairman, coordinator and administrator. He has been married to the former Rosemarie Swinford of Lansing, MI, for 45 years (as of August 8, 1998), has three children, six grandchildren and one great grandson.

CERTIFICATION OF NON-RECEIPT OF FEDERAL FUNDS

Pursuant to the requirements of House Rule XI, The Military Coalition, Inc. and the Fleet Reserve Association have not received any federal grant or contract during the current fiscal year or either of the two previous fiscal years.

A STATEMENT OF "CORPORATE HISTORY" LEADING TO THE ENACTMENT OF THE UNIFORMED SERVICES FORMER SPOUSES PROTECTION ACT (USFSPA)

Mr. Chairman. I am C. A.(Mack) McKinney, Legislative Counsel, Fleet Reserve Association (FRA). I appreciate the opportunity to address the subject of a court ordered family obligation, the Uniformed Services Former Spouses Protection Act (USFSPA), Public Law 97-252, 10 USC 1408. Supporting this statement are the below listed military and veterans' organizations numbering more than 3 million members. They are:

Air Force Association
Assn. of Military Surgeons of the United States
Enlisted Assn. Of the National Guard of the U.S.
Fleet Reserve Association
Jewish War Veterans of the U. S.
Marine Corps Reserve Officers Assn.
National Order of Battlefield Commissions
Naval Reserve Association
Navy League of the U.S.
The Retired Enlisted Association
The Retired Officers Association
United Armed Forces Association
U.S.Coast Guard Chief Petty Officers Association
U.S. Army Warrant Officers Assn.
Veterans of Foreign Wars of the U.S.

To understand the mechanics that moved Congress to enact the USFSPA, one must be knowledgeable of the events leading to its finale. The following statement was prepared by this witness who played a major role in trying to delay the momentum driving the force toward the enactment of what the military and veterans' groups believed to be a one-sided proposal. Much of this statement is supported by documents retained on file by this witness.

MILITARY RETIRED PAY

For almost a century, prior to the enactment of USFSPA, U. S. Courts agreed that military retired pay is neither an annuity, a pension, nor a payment for *fully* retiring from the Armed Forces of the United States. As far back as 1881, the U.S. Supreme Court held in U.S. v. Tyler (105 U.S. 244) that officers retired from active service were still "*in the military service of the government.*" The Court took note that those on the retired list "*were in all respects still performing 'service'.*"

> "It is impossible to hold that men who are by statute declared to be a part of the army, who may wear its uniform, whose names shall be borne upon its register, who may be assigned by their superior officers to specified duties by

> detail as other officers are, who are subject to the rules and articles of war, and may be tried, not by a jury, as other citizens are, but by a military court-martial, for any breach of those rules, and who may finally be dismissed on such trial from the service in disgrace, are still *not* in military service."

Other Courts upheld the earlier decision. In Lemly v. United States (109 Ct.Cl. 760,763 (1948)) the Court stated: "*Retirement pay ... is a continuation of active duty.*" Nearly 20 years later on March 16, 1976, the U.S. District Court, Northern District of California, supported the judgment that military retired pay is "*reduced pay for reduced but continuing service.*" In October 1978 the U.S. Court of Appeals for the Ninth Circuit arrived at the same result as in the Lemly case: "*Retirement pay ... is a continuation of active duty.*"

Additionally, the Internal Revenue Service (IRS), through the Federal Government's issue of *W-2P Forms*, identified military retired pay as separate from 'pensions and annuities.' And the Subchapter on Forfeiture of Annuities and Retired Pay, USC 5, 8311, defined military retired pay separately from federal employees' annuities. Even the Encyclopaedia Britannica of the time noted that military retired pay was different from 'public employee pensions,' "... *they (military retired pay measures) continued a certain portion of pay.*"

THE BEGINNING

For some years prior to 1977, a few States, then numbering no more than 8, had developed community property laws. Some treated military retired pay as divisable upon granting divorces involving military personnel. In 1977, two noncommunity property States, Michigan and New Jersey, adopted the concept. Colorado, however, had ruled in 1975 that military retired pay was not subject to a division because it was not the result of a 'contributory plan.'

The Montana Supreme Court also took the position that military retired pay, like a private pension, could be considered vested property and was divisible under State law. Oregon's Court of Appeals ruled that the retired pay of a Foreign Service Officer could be assigned to his former spouse while he was still employed. Payments would begin after retirement.

California went further. In Luciana v. Luciana its Court of Appeals decided that the former spouse did not have to wait until the service member retired to begin receipt of the latter's military retired pay. However, the court noted that if she began payments at that time it would *"constitute an irrevocable election to give up possibly higher future payments that might accrue because of longevity increases, more years of service and military pay raises."* (Randall Shoemaker, The Retired Scene, Navy Times, Oct. 20, 1980.)

In another California case, Tom Philpott, reporting for the Navy Times, March 16, 1981, discovered that a state court had awarded a former spouse damages because her former military spouse refused to retire so she could get a portion of his retired pay.

In an article by Bruce Covill, Army, Navy, Air Force Times, April 14, 1977, he noted that one of the community property states, Texas, had recorded a state court judge's ruling in 1960 that military retired pay constituted property and could be divided between husband and wife in a divorce action.

Texas, in the minds of its congressional delegation had one insurmountable problem, it wasn't able to enforce payment due to a quirk in its constitutional law. The State had no alimony or garnishment statute. Although Texas may have wished for the Federal government to collect and pay its court orders involving the division of military retired pay as community property, the Comptroller General of the United States, in decision B-190985, gave service secretaries legal basis for refusing to follow Texas community property attachments to military retired pay.

Texas' predicament led former U. S. Representative Kent Hance (TX) to introduce H.R. 3677 in early 1980 authorizing the Service Secretaries to pay 'another person' part of a service member's retired pay as a result of a court decree, etc., or 'any court-approved property settlement.' Hance reintroduced his proposal in 1981 as H.R. 1711. Eleven (11) of his cosposors were Texans. (More on the Texas situation, pp 10-11.)

ESTABLISHING A PRECEDENT

Despite protests to the contrary, the civilian community, including Members of Congress, referred to military retired pay (also 'retainer pay' payable to Navy and Marine Corps personnel

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with more than 20 years of active service but less than 30) as a 'pension.' The late U.S. Representative Les Aspin used the term 'pension' during his attacks on the military retirement system. Even such military-oriented publications as the Army, Air Force and Navy Times used the word. It wasn't too long before some uninformed service members began to refer to their military retired pay as a pension.

It is of little wonder that the media adopted the misnomer and used it in such articles to describe military retired pay. Newspapers had a field day with former U. S. Representative Patricia Schroeder's quotes on the plights of ex-spouses not in receipt of any part of their ex-husbands' retired civil service or military 'pensions.'. William Raspberry of The Washington Post was one of the first to pick up the Schroeder banner after she introduced legislation in early 1977 to authorize splitting retired 'pensions' between federal employees and their former spouses.

THE PROPOSALS

In introducing her first bill, seeking the division of civil service retirees' annuities, Schroeder hailed the fact that at least former spouses of military personnel would be eligible to receive social security benefits from their military sponsors' contributions to that program. However, this did nothing later to dissuade her from going after the retired pay of military members. She provided 'heart-rending' stories for publication in the Congressional Record of former spouses left without financial or other support.

Schroeder's initial proposal to divide military retired pay specified that:

a. Marriage must last for 10 years while the military member is serving the 20 years to be entitled to retired pay.

b. Division to be prorated on years of service not to exceed 50 percent of the retired pay. For example, being married for 20 years while the member was 'earning' the entitlement gave the former spouse a 50 percent share.

c. Member must provide survivor benefits for ex-spouse unless the latter declines.

d. Payment to ex-spouse terminates upon remarriage prior to age 60. (Applicable also in her Federal retirees proposals.)

e. Applies to military personnel retiring after enactment.

f. If divorce occurs while member is on active duty, the ex-spouse could later claim a portion of retired pay for time married.

Schroeder went on to introduce successive proposals in the 96th and 97th Congresses. All were similar in content and all terminated payments to ex-spouses on remarriage before age 60. In all three bills she used the term 'pension' in describing military retired pay. Two (2) examples are quoted below.

> "This bill recognizes that both spouses contribute to the service member's ability to earn a wage and receive a pension."

> "The major policy question before us is whether pension plans should continue to emphasize benefits for retired workers solely?"

Schroeder's quest to have Congress amend Federal statutes so that military retired pay would no longer belong exclusively to the service member set off a number of related proposals.

In addition to the Hance bill, H.R. 3677, former Senators DeConcini and McGovern and U.S. Representative Joseph Fisher (VA) sponsored legislation that would provide either financial or administrative support to ex-spouses of service members. Fisher's bill required the Department of Defense (DoD) to notify the military retiree that his or her retired pay would be divided by a court order, etc., but the retiree would have no recourse to halt the payments. On the other hand, civil service personnel were granted an additional 30 days to initiate legal action to challenge the validity of the order.

Meanwhile, earlier actions by the Executive Branch, the Civil Service Commission and the General Accounting Office (GAO), opposed the Schroeder legislative proposals awaiting consideration by Congress.

THE 1980-81 HEARINGS

On May 28, 1980, the late U. S. Representative Bill Nichols, Chairman, House Armed Services Committee's Subcommittee on Military Compensation, conducted a hearing to consider Schroeder's bill, H.R. 2817, and the Hance and Fisher proposals.

In his introductory remarks, the chairman stated:

> "The (military retirement) benefit system is designed to attract and retain the quantity and quality of military personnel needed. To this end, it must provide equitable compensation in conjunction with a benefit package that provided the incentive to choose the military as a career. Providing benefits to dependents can be justified, in part, on the basis of comparability with the private sector. However, extending certain benefits to former spouses neither directly enhances career attractiveness nor addresses a problem with regard to comparability. ... Whether the Federal government provides assistance to former spouses of military personnel through a military benefit program or whether that assistance is provided through standard social programs, that assistance is a payment from the public at large to a specific group. It is not for services rendered or an entitlement earned; it is a transfer payment."

Among the witnesses at the May 28, 1980 hearing was the Deputy Assistant Secretary of Defense for Military Personnel Policy. He advised the subcommittee that DoD was opposed to the Schroeder bill, H.R. 2817. His opposition was supported by four major military organizations. Of the two (2) women's panels, Ex-Partners of Servicemen for Equality (EXPOSE) and Action for Former Military Wives, only EXPOSE (with all of its 300 members nationwide) chose to endorse the Schroeder bill.

The following major points helped to convince the subcommittee to take no further action on H.R. 2817. Although cited to oppose a future Senate bill (see below), they apparently were ignored by that body's oversight panel.

+ Military retirees are subject to the applicable provisions of the Uniform Code of Military Justice (UCMJ). (Spouses are not.)

+ Military retirees may be recalled to active duty. (Spouses cannot.)

+ Military retirees do not have 'property rights' to their retired pay. It is earned on a day-by-day availability to serve if recalled. The day the retiree dies is the day his or her retired pay terminates. Additionally, military retirees are subject to a variety of rules and regulations that can reduce military retired pay. (Spouses are not.)

+ Enlisted service members, including combat veterans, can be honorably but involuntarily discharged and commissioned officers may resign with as many as 19 years, 11 months, and 29 days without any compensation or benefits forthcoming. They have served longer than 10 years (as in the former spouses' proposals)

yet are entitled to nothing from the Armed Forces for their sacrifices and hardships endured while serving their Nation. (Why, then, should spouses with less than 20 years be considered above the service rendered by these men and women, many of them combat veterans?)

+ Public Law 95-617 (1975) authorized garnishment of active and retired military pay to satisfy state-court ordered alimony and child support payments. (Later amended so that alimony would not include transfer of property as a result of divisions of property between spouses or former spouses.) (It is worthy to note that the major military organizations, numbering more than 600,000 members, did not object to the granishment of military retired pay for court-ordered alimony or child support payments.)

Chairman Nichols conducted a second hearing in November 1981 to hear from Reps. Schroeder (H.R. 3039), Whitehurst, Vic Fazio and Hance. Supporting them were three (3) women's groups with two (2) military associations providing the opposition. Nichols noted that the issue is 'complex and emotional'... thought must be given to the role to be played by the Federal versus the state government in divorce cases and *"the rights and well-being of the military member as well as the former spouse."*

MCCARTY v. MCCARTY

In the Fall of 1980 the Supreme Court agreed to hear the appeal of a retired military officer who had been ordered by a California Court to split nearly half of his retired pay with a former spouse. He argued, among other points, that he was not subject to the jurisdiction of the California Court and was exempt from that State's community property law. Further, he claimed that the State was violating the Federal supremacy clause by interfering with Congress' authority to provide a retirement system for the Armed Forces.

McCarty also mentioned the split between the States on treatment of military retired pay in divorce cases. (See pp 2 and 3 above.) And the fact that it encouraged forum shopping for a divorce by military spouses.

Meanwhile, the passage of the Foreign Service Act of 1980 brought a feeling of anxiety to the military community, in particular the major military organizations representing more

than a million service members; officers and enlisted, active duty, reserve and guard, and retired. Seven (7) of the organizations joined in an amicus curiae brief on behalf of the appellant McCarty. The Fleet Reserve Association (FRA), The Retired Officers Association (TROA), Reserve Officers Association (ROA), Marine Corps League (MCL), Non Commissioned Officers Association (NCOA), Air Force Sergeants Association (AFSA) and National Association for Uniformed Services (NAUS) requested that the U. S. Supreme Court rule in favor of protecting military retired pay from State community property laws.

Filing a brief in support of Mrs. McCarty were; Action for Former Military Wives, Ex-Partners of Servicemen for Equality, National Military Wives Association, Association of American Foreign Service Women, National Organization for Women Legal Defense and Education Fund, some California women's groups (estimated to be less than 10,000 members), and eight (8) members of Congress. The eight were: U. S. Representatives Pat Schroeder, John Burton, Millicent Fenwick, Margaret Heckler, Barbara Mikulski, John Seiberling, Olympia Snowe, and Howard Wolpe.

In spite of the anxiety, the military organizations believed that the Supreme Court and Congress would prevail in favor of military retirees for the following reasons:

+ Foreign Service and Civil Service retirement systems, unlike that of the military, were contributory. Each had a vested program, the military did not.

+ Neither of the two Federal systems had mandatory recall-to-active employment as did the military retiree.

+ Neither of the two Federal systems had a program of contributing to social security and, therefore, had no former spouses' benefit to offer. The military, however, did have such a program.

+ Neither of the two Federal systems required their retired members to suffer a loss of retired pay, as is the case for military retirees, for violating one of their regulations without judicial process, or for being employed by a person furnishing naval supplies or war materials to the United States, or engaging in selling, contracting or negotiating to sell certain supplies to Federal entities listed in 37 USC, 801.

+ Neither of the two Federal systems required their retired members to follow a lifetime of regulations as is the case of military retirees.

Some of the above reasons were reiterated in the amici curiae filed in the McCarty case by the seven (7) military organizations noted above.

> "The fundamental purpose of retired pay of military personnel is to provide for the national defense. It is this fundamental purpose which requires the finding that there is a federal interest to protect in the case before the Court, that the federal interests dictates a finding that retired pay is not a vested property right. The findings by scattered state courts that retired pay is a vested property right, based upon certain characteristics of the payment, pose significant threats to the special nature of this 'entitlement' and its function in national defense."

Once again, in the amici curiae, the associations voiced their support for court ordered alimony and child support payments. *"They are in agreement that the power of a state to require support from any of its citizens is a parochial matter subject only to the due process test of a rational basis for any law."*

THE DECISION

In its opinion the Supreme Court on June 26, 1981 held that *"Federal law precludes a state court from dividing military retired pay pursuant to state community property laws."*

> "(a) There is a conflict between the terms of the federal military retirement statutes and the community property right asserted by appellee. The military retirement system confers no entitlement to retired pay upon the retired member's spouse, and does not embody even a limited 'community property concept.' Rather, the language, structure, and history of the statutes make it clear that retired pay continues to be the personal entitlement of the retiree."

Further, the Court explained that *"the application of community property principles to military retired pay threatens grave harm to 'clear and substantial' federal interests."* Moreover, *"... such a division (of military retired pay) has the potential to interfere with the congressional goals of having the military retirement system serve as an inducement for enlistment and re-enlistment and as an encouragement to orderly promotion and a youthful military."*

The Court did recognize the plight of ex-spouses. It stated that an ex-spouse's situation may be mitigated by the right to claim social security benefits and garnishee military retired pay for support, but that Congress may wish for a need to provide more protection. Congress now had carte blanche to change the system.

SENATE ACTION

While the Supreme Court was weighing the McCarty case, the Senate Armed Services Committee's Manpower and Personnel Subcommittee was working on the introduction and consideration of a proposal to divide military members' retired pay with their former spouses. In early 1981 the panel, chaired by former Iowa Senator Roger Jepsen, offered a proposal for review, later introduced as S.1814.

Meanwhile, others, including Representatives Schroeder and Hance, sponsored their own bills dealing with the ex-spouse issue. Schroeder's bill, H.R. 3039; Hance's H.R. 1711; former Senator Hatfield's S. 888; and former Senator DeConcini's S. 1453, became subjects of a September 22, 1981 hearing before the Jepsen panel.

At the hearing the list of witnesses was restricted to one (1) military organization opposed to the bills while two (2) small women's organizations representing affirmative action were allowed to provide testimony. From that date forward, until the proposal was adopted by the Senate Armed Services Committee, none of the hearings scheduled by the Jepsen panel included as a witness a representative of an opposing military organization. Only witnesses favoring the ex-spouses' proposals were invited to testify.

Accordingly, things would not go well for the military organizations desiring to maintain military retired pay as an exclusive right of the service member. Comments by the chairman and ranking member were weighted heavily in favor of changing the retirement system so that former spouses would be able to obtain a percentage of the military member's retired pay. DoD's statement had changed from a negative position on the Schroeder's proposal to a neutral one awaiting instructions from the President's office. Responding to a Jepsen question, the DoD spokesman said that "*most of us*" (in DoD) agree to splitting the

(retiree's) check. From this hearing until the enactment of the USFSPA DoD's position remained ambiguous.

Representative Schroeder also appeared before the Jepsen panel. She endorsed Hance's H.R. 1711 or DeConcini's S. 1453 "*if the Subcommittee finds that stronger language is necessary to override the Supreme Court's McCarty decision.*" She then spoke of her proposal, once again voicing support for terminating retired pay division if the former spouse remarried before age 60.

The military organizations continued to seek support for their position. They hoped for a chance to present their case before the Subcommittee; however, that hope faded as stronger support materialized favoring the Jepsen proposal. Even the military hierarchy appeared to be abandoning its opposition to the former spouses proposal. In one example, the four uniformed manpower chiefs failed to give a clear indicator as to their Service's position.

The organizations then visited a number of offices of House and Senate members of the Texas delegation urging Texas to change its laws to permit garnishment for alimony and child support payments in lieu of using Federal statutes to provide compensation to former spouses. The attempt was futile. Except for a small minority, the delegation proved to be four square in favor of changing Federal law to circumvent their state's failure to provide protective measures for former spouses.

The Texas interest in the Hance-Schroeder-Jepsen initiative became more apparent following the Supreme Court decision of June 26, 1981. In a July 13, 1981 Air Force Times edition, Tom Philpott reported that a source told him that "... *most of the hue and cry (over Mccarty) is coming from Texas, where there is no alimony and a wife who doesn't receive a property distribution doesn't receive anything.*"

As a result, the Texas congressional delegation was playing a major role in having changes made to the military retirement system (see page 3). Conversations with Rep. Hance verified the delegation's commitment to revising Federal law 'because it is easier than trying to amend the Texas constitution.'

MARK UP AND INTRODUCTION OF AMENDMENTS

The Jepsen panel approved its version of the former spouses protection act, S. 1814, and quickly scheduled it for a mark up by the full SASC. The opposing military associations reacted by contacting Senator John Warner seeking his intervention. At the mark up he moved to have the proposal recommitted to the Jepsen panel for further consideration. He reasoned that since only one military organization had the opportunity to voice its objections, it was only fair to allow the others to have the same opportunity as did the many groups favoring the bill.

Jepsen and Exon objected and Tower sided with them. However, before announcing his decision to rule against the Warner motion, Tower went so far as to state that he was a member of one of the opposing enlisted military organizations and had heard their testimony. This came as a surprise to that organization's representative who was present for the mark up. He (as well as the other military organization representatives present) was astounded when Jepsen boasted that the Subcommittee had four hearings and they (the military organizations) had a chance to testify. Exon, the Subcommittee's ranking minority, echoed Jepsen. He, too, claimed that everyone had a chance to be heard.

On July 14, 1982, the Senate Armed Services Committee referred the bill, S. 1814, to the full Senate for consideration. The very next day, Thursday, July 15, 1982, Rep. Schroeder, without comment, and among other amendments, introduced the Senate version as an amendment to the FY 1983 Defense Authorization Bill. Twelve (12) days later, July 27, 1982, just prior to adjourning for the day, and without a hearing on the new proposal, the amendment came to the House floor for consideration. However, debate was suspended until the following morning.

After Schroeder introduced her amendment on July 15, concerned military organization representatives met the following week with Rep. Nichols, then chairing the HASC subcommittee having oversight on the issue. The purpose was to determine a method to sidetrack the proposal. However, Nichols advised the group it is an election year and momentum was such that there is no chance to slow it down. Instead, he placed an offer on the table to consider amendments to the Schroeder proposal. A number of suggestions were made, but only a few were accepted. Without the organizations' knowledge he incorporated these into an

umbrella amendment to the Schroeder amendment. Nichols introduced his amendment on July 27, 1982.

THE FLOOR DEBATE

The debate on the now Schroeder-Hance-Whitehurst amendment began the following day, July 28, 1982. The three, all attorneys-at-law, had a supporting cast of some nine (9) member attorneys to speak in favor of the amendment. It was not surprising then to learn that the only supporting document introduced during the debate by Schroeder, et al, was a letter from the American Bar Association (ABA).

The number of attorneys was so overwhelming that Rep. Nichols, leading one of the two opposing sides, admitted that he was "*in a rather uncomfortable situation ... beset on both sides from people who are learned in the law.*" And the learned appeared to take full advantage of the task at hand. They embellished many of their remarks in swaying the jury of peers to vote for the cause. For example:

"*(The McCarty decision) has materially and adversely affected the practice of family law.'*
"*State courts are holding up action on divorce cases until Congress resolves the conflict.*"

Further embellishment came through the use of the word 'pension.' Referenced any number of times to describe or allude to military retired pay, it left those who were not knowledgable a vision of a payment for past services rather than what it really is, reduced pay for reduced services.

The Texas delegation, as anticipated, continued its role in the proceedings. In addition to Rep. Hance, Texas Congressmen Sam Hall, Jr., Martin Frost, Abraham Kazen and Jake Pickle offered their suppotive views on the Schroeder-Hance-Whitehurst amendment. Ignoring the Federal law authorizing garnishment of military pay and retired pay, Frost and Kazen pled their case. Frost: "*The amendment is definitely needed for the courts in the State of Texas. ... The State courts in Texas already consider such pay in divorce settlements; however, there is no garnishment or enforcement provision to insure the due award to a former spouse on the basis of a qualified court order.*" Kazen: "... *the great State of Texas does not have a garnishment law. We*

cannot go after anybody's salary or anybody's pension or anything else."

Early in the debate, Schroeder advised her audience that the amendment *"simply returns to the State courts the authority to treat military retired pay as it does other public and private pensions."* The opposition should have caught this and countered with, 'the States never had the authority to divide military retired pay from the beginning.' (See pp 8-9)

Subtleties also were employed by the Schroeder-Hance-Whitehurst team and its supporters. Some are quoted below (Underlines supplied):

+ *"I am very saddened that we cannot — give military spouses at <u>least equal rights</u> with Foreign Service and the CIA- but to not do anything would be a tragedy and really put (military spouses) in the worst of all possible positions."*

+ *"I think we should give military wives <u>at least equal rights</u> with Foreign Service spouses and CIA spouses."*

+ *"I am very saddened that we cannot give military spouses at <u>least equal rights</u> with the Foreign Service and the CIA."*

The key words in each of the above statements were, 'at *least equal rights with Foreign Service and CIA spouses,'* but apparently equity never played a part in the Schroeder-Hance-Whitehurst amendment. Despite assurance that her amendment was, *"absolutely (the) bare minimum,"* was not *"breaking new ground,"* nor does it *"put former military spouses in a more advantaged position ...,"* the statements made throughout the debate by Schroeder and company veiled the real intent of the amendment to authorize enhanced benefits for military spouses. At least Rep. William Ford was honest enough to acknowledge this when he boasted, *"I think (the Schroeder amendment) is far superior, for example, to what we ended up doing with the Foreign Service officers."*

Nichols warned the assembly that there were *"uncertainties, ambiguities and potential problems"* in the Schroeder amendment and that he had *"some very significant reservations"* concerning its implications. Rep. Don Mitchell cautioned: *"Equity, I feel, is the theme ... not just equity for divorced spouses. Even*

though the scales have been balanced unfairly ... I do not feel we should unbalance them on the other side in an attempt to remedy the situation. ... (W)e must also provide equity for the members of the service."

During the proceedings, the following major problems or advantages emerged:

* The military spouse will have the opportunity to forum shop. Toward the beginning of the debate, Rep. Hance remarked that in order for former spouses to get any type of the retired military pay- *"they have to go to court and go from jurisdiction to jurisdiction."* Later, during floor speeches by Reps. Nichols and Duncan Hunter, both called this fact to the attention of the assembly. Nichols: *"The gentlewoman's amendment would subject a military member to the jurisdiction of a court soley because the member was residing in the State as a result of military orders."* Duncan: *"I think we do have a problem with forum shopping under the proposal by the gentlewoman from Colorado."*

* No remarriage provision. Schroeder reneged on her previous position of denying payments to former spouses who remarried before age 60. Previously she had introduced four (4) bills in successive Congresses that included the denial. Her latest, H.R. 3039, was introduced in the very same Congress now hosting the debate. Referring to the Nichols' amendment, Schroeder expressed fault with its remarriage provision. *"This really concerns me because the fact that (the military spouse) remarries or not should not have anything to do with the rights that she had vested in her time that she was working and living with her husband who was in the military."* Nichols reminded Schroeder of her earlier statements pleading for equal rights, that the Foreign Service and CIA both had remarriage terminal provisions and, *"A similar restriction is only fair for the military member as well, who, to a large extent, is similarly situated."*

* Courts can order payments to former spouses with less than 10 years of marriage to the service member. Both Schroeder and Hance argued to retain this provision. Schroeder suggested that although she, as a general rule, believed pensions should not be divided after short marriages, there were always *"exceptional cases."* She reported further that the Foreign Service Act specified that nothing therein prevented State courts from

dividing pensions in cases where the former spouse was married less than 10 years. Hance, using a different tactic, pleaded that the rights under a pension bill or retirement bill "*should vest from the first day.*" Schroeder was reminded by Nichols that recent changes in the Foreign Service system and those proposed for the CIA "*restricted payments of portions of retired pay to situations in which the marriage lasted 10 years.*" Former Rep. Don Mitchell also reminded the assembly that both Schreoder and Whitehurst had the 10 year restriction in their original bills. Mitchell, who at the time was the ranking minority member on the House Armed Services compensation subcommittee, apprised his colleagues that the service member had no vesting rights. "*We should take into account,* he said, "*that there is no vesting in the military ... If you are there 20 years, you get it. If you are there 19 years, you do not.*"

* Has no history of hearings in the House. Schroeder and other team members alluded to the fact that her amendment had been considered in the House. "(T)here were lots of hearings on this in the House," she claimed. Later, she again implied that the House "has had lots of hearings on this, on the CIA, on Foreign Service, on civil service." In truth, there were a number of hearings to consider the CIA, Foreign Service and civil service proposals, but none- absolutely none in the House on her proposal now on the House floor. Nichols, whose panel had this authority, alluded to Schroeder's statements as erroneous. He said he would rather have been able to consider this "*rather complex and far-reaching issue within the committee to insure that the full impact of these changes could be evaluated in detail.*" He rightfully charged that Schroeder's amendment "*was an attempt to circumvent the system.*" The House Armed Services ranking member, former Rep. William Dickinson, said the House should go about it in the more normal way. "*This really should be the subject of extensive hearings so that all parties interested can have their day in court ... to develop the problems that will arise from this ... and we know what we are doing.*" Nichols and Dickinson were joined by Mitchell who noted there wasn't sufficient testimony received. "*I would hate to pass a bill ... because we acted prematurely this year.*" Former Rep. Richard White, one time chairman of the House Armed Services personnel subcommittee, went even further in his observation. He said he could not be silent "*when the House might produce what I regard as defective legislation. ... Both (Schroeder's and Nichols' amendments) create more loopholes than they seek to cure.*" White also reminded his colleagues that there was no

mark up on the amendments and no opportunity for the House to pass a separate type of program.

* Provides minimum protection for service members. Rep. Whitehurst assured members of the House that, *"The service member is protected by several clauses in this legislation."* He noted that one limited the amount of the award of retired pay to 50 percent of disposable retired or retainer pay, failing to add that the amount could go as high as 65 percent. Another would forbid the courts from ordering a service member to retire in order to effectuate payments from the member's retired pay, yet he made no mention that the amendment did not forbid the courts from ordering the service member to begin payments out of his or her active duty pay. (See p. 2). A third clause stipulated that the former spouse could not transfer, dispose of by will or inheritance, or sell her portion of retired pay, although it is doubtful that this clause was a protective measure for service members. At other times during the debate other clauses were briefly addressed. One deterred the courts from ordering service members to enroll in a survivor benefit plan for their former spouses; however, they could voluntarily do so if they chose. Another came to light when Rep. Sam Hall, Jr., a Texan, inquired if there was a provision in the Schroeder amendment allowing the courts to reopen previously concluded final judgments? Schroeder replied in the negative but she did not inform Hall that there was no provision in the proposal to stop the courts from doing just that if so inclined.

OTHER PROBLEM AREAS

A number of questionable clauses in the Schroeder amendment, also incorporated in the Nichols' proposal, spelled trouble for service members. An attempt by military organizations to have the House and Senate conferees rescind, amend or correct a number of these was not successful. Most important, perhaps, was the lack of enforcement in protecting the service members' rights once the court order is received by the members' Service Secretary. Upon receipt, if the order appears "valid on its face," neither the Secretary nor any other Federal agency is required to validate jurisdiction.

The most depressing news came in response to a query to the Solicitor General of the United States. He said that the only enforcement of any violation of the USFSPA by a State court would

have to be by an appeal to a higher court. The onus would be on the military retiree to pursue litigation.

THE END: YET ANOTHER BEGINNING

In spite of the warnings by Nichols and others opposed to the Schroeder amendment, the election year momentum made it impossible to have it recommitted to the Committee for further consideration. Nichols, who had no choice but to introduce an amendment to Schroeder's, argued that his was the better choice of the two. However, as Rep. White advised his colleagues, both Schroeder's and Nichols' amendments *"created more loopholes than they seek to cure."* Consequently, the Nichols' proposal prevailed by voice vote, but the remarriage provision and a few others fell by the wayside when House and Senate conferees met to sculpt the final language of the FY 1983 National Defense Authorization Bill.

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AMERICAN BAR ASSOCIATION

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STATEMENT OF

MARSHAL S. WILLICK

ON BEHALF OF

THE AMERICAN BAR ASSOCIATION

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

THE UNIFORMED SERVICES FORMER SPOUSES PROTECTION ACT

AUGUST 5, 1998

Mr. Chairman and Members of the Committee:

Thank you for allowing me to present this testimony on behalf of the American Bar Association ("ABA"). I am Marshal S. Willick, an attorney from Nevada; I co-chair the Congressional Relations Committee of the Family Law Section of the ABA, and serve on our Legislative Task Force. I appear today as the designee of Jerome J. Shestack, President of the ABA.

As set out in the background section immediately following, this area has been of interest to the ABA for some years. Two formal resolutions were adopted by the ABA House of Delegates, the policy setting body of the Association, in 1979 and 1982.

I have personally worked in the area of military retirement benefits in divorce since shortly after the USFSPA was enacted, and chaired the committee of experts assigned by the ABA to report to the House Subcommittee on Military Personnel and Compensation in April, 1990.[1] Since then, I have handled hundreds of military divorce cases (working for both members and spouses), have written and lectured widely in this field, and recently completed a textbook on the subject.[2]

My goal here, consistent with existing ABA resolutions, is to recommend that military retirement benefits be treated by courts in everyday litigation in a manner that is consistent with the property distribution laws of the states, which are designed to achieve equity in marital dissolutions.

In 1979, the American Bar Association adopted a policy resolution recommending the enactment of federal legislation requiring the Secretaries of the Armed Forces to recognize state court decrees of divorce dividing retired or retainer pay. The 1982 resolution, in the wake of *McCarty*,[3] urged Congress to enact legislation making **all** deferred compensation derived from federal employment subject to state property and divorce laws, except where specifically exempted by explicit federal legislation.[4]

Since then, the ABA has consistently supported the position of allowing state divorce law to apply to military members and their spouses, as it does to everyone else, with the goal of avoiding any

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[1] *Proposed Amendments to the Uniformed Services Former Spouses Protection Act, 1990: Hearings on H.R. 3776, H.R. 2277, H.R. 2300, and H.R. 572 Before the Subcomm. on Military Personnel and Compensation of the House Comm. on Armed Services*, 101st Cong., 2nd Sess. (1990) (Statement of Marshal S. Willick, Chairman of Subcommittee on Federal and Military Pension Legislation, Committee on Federal Legislation and Procedures, Section of Family Law, on Behalf of the American Bar Association, April 4, 1990).

[2] *See* A LAWYER'S GUIDE TO MILITARY RETIREMENT AND BENEFITS IN DIVORCE (ABA 1998).

[3] *McCarty v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728 (1981).

[4] *See* 1993-1994 ABA Policy and Procedures Handbook at 202 (ABA 1993), noting 1979 and 1982 resolutions approved by the House of Delegates of the ABA.

"special classes" of persons who would be wrongly deprived of, or unjustly enriched with, the fruits of a marriage.

All of the states have taken the view that marriage is, among other things, an economic partnership in which both parties contribute toward the common good, although sometimes in different ways. The states recognize that partnership by considering both parties to a marriage to be owners of that property which is acquired during the marriage, including pension and retirement benefits.

Today, all 50 states have recognized military retirement benefits as property, belonging to both parties to the extent earned during the marriage. This is in keeping with the treatment by the states of all other federal, state, and private retirement and pension plans. My own research has shown that in ***most*** military marriages, the military retirement benefits are more valuable than all the other property accumulated during the marriage. In other words, if this one asset is inequitably divided, it is usually impossible to make a military divorce fair to both parties.

Such a division of property should be distinguished clearly from any kind of alimony award. Different state courts have described the distinction (between property division and alimony) in different ways, but typically they consider the division of property acquired during the marriage as a ***permanent division*** of assets created by efforts during marriage, while alimony is discretionary, is dependent upon the needs and abilities of the parties, and is subject to review upon changed circumstances after divorce.[5]

In 1990, the ABA noted that it

> recognizes the power of Congress to pre-empt state law in this field, but has uniformly held the position that no pre-emption of state law should be *implied* by the courts, and that Congress should be circumspect in determining that state law should be pre-empted at all. Where federal pre-emption is determined to be necessary, the scope of that pre-emption should be carefully defined so as to avoid wrecking havoc upon the balance of interests involved in state court divisions of marital property.[6]

ABA policy has not changed on this topic since that time, and it is in light of ABA policy that the specific proposals in H.R. 2537 are considered in this testimony.

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[5] *See, e.g.*, *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).

[6] 1990 Statement, *supra* fn.1, at 5.

I. TERMINATION OF SPOUSAL INTERESTS UPON REMARRIAGE

Section 2 of the bill is substantively identical to H.R. 572, which was considered and rejected by Congress in 1990. The proposal would undo awards of military retirement benefits as property to spouses who have remarried or who remarry in the future. For a number of legal, public policy, and constitutional reasons, this proposal should be rejected.

The proposal would essentially eliminate the status of military retirement benefits as property, which would pre-empt the law of every state in the Union. At present, in all states, property divided in a divorce decree remains in the possession of the person to whom it is awarded, irrespective of that person's future behavior or status. I am aware of no state that permits a "penalty" of removing property from one party and giving it to the other in the event of remarriage, by common law or statutory law.

Essentially, this proposal would convert all awards of military retirement benefits as property into alimony awards, by subjecting them to the same termination events. This is not a good idea, because the basis of allocating property rights upon divorce is ***different*** from the analysis of whether, how much, and for how long alimony should be awarded from one spouse to another.

State law concerning property distributions would be greatly impaired if the essential nature of such a valuable federal benefit was recharacterized as proposed. It would make the treatment of military retired pay -- and military personnel -- very different under state law from the treatment of all other persons, including other federal employees. The primary effect of this proposal would be to increase the number of former military spouses who received no share of the most valuable property right created during their marriages. This would wreck havoc upon the balancing of interests involved in state court divisions of marital property throughout the country, and would increase the difficulty and uncertainty of litigation everywhere.

The 1979 and 1982 resolutions of the American Bar Association clearly stand for the proposition that ***all*** deferred compensation derived from federal employment should be subject to state property and divorce law. This proposal would create a result directly contrary to that ABA policy.

The question, looked at another way, is whether there is anything so critical and unique about military retirement benefits that would justify over-ruling the property distribution schemes of all fifty states. In considering that question, it is worth noting that the United States Supreme Court -- with the approval and urging of the various organizations of military members and retirees -- has concluded that military retired pay is deferred compensation, so that it cannot be taxed by the states any differently than other federal or state retirement benefits.[7] The Court found that there were no

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[7] *See Barker v. Kansas*, 503 U.S. 594, 112 S. Ct. 1619 (1992). Previously, the Court had ruled that a state could not tax federal Civil Service retirees if it did not also tax recipients of state retirement benefits. *See Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 109 S. Ct. 1500 (1989).

"significant differences between the two classes" of retirement benefits and beneficiaries.[8] Discussing the relevant factors, the Court concluded: "For purposes of 4 U.S.C. § 111, military retirement benefits are to be considered deferred pay for past services."

It is worth remembering here that the military retirement compensation package is widely used by recruiters as an incentive to enlist, much the way any company's retirement system and other "perks" are used in recruitment of desired personnel. The retirement benefits should be considered to be what they are touted as upon enlistment -- an additional payment for active duty service, over and above the regular pay received, to be made after retirement, as incentive for ***both*** parties to a military marriage to endure the rigors of the military lifestyle, with its frequent change-of-station moves, necessary limitations on development of a career for the spouse, and other drawbacks.

In other words, as to the property rights and legitimate expectations of the parties, there is no reason not to treat military retirement benefits like all other retirement and pension rights accrued during marriage. And because there is usually so little other property acquired in a military marriage, the quality of life that each party can reasonably expect to have after divorce is directly dependent upon the certainty of receipt of his or her share of that asset.

From a constitutional perspective, there is some doubt whether it would be permissible to retroactively recharacterize property awards as a species of alimony, on due process and impairment of contracts grounds. The proposal would be less constitutionally objectionable if it was restricted to future remarriages, but the fundamental fairness question would remain. Additionally, passage of this proposal would have a chilling effect upon remarriage by former spouses, and thus would interfere with the public policy of many states, which encourage marriage.

In summary, this proposal would directly contravene established ABA policy. It would pre-empt state law on a very large scale, and would treat military members and their spouses differently than all other persons in similar positions. It would unsettle well-established property rights for a large number of people, and lead to substantial litigation, without any corresponding improvement in achieving equitable distribution of property. No apparent federal policy would be served by such a pre-emption of state law. The proposal should be rejected.

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[8] *Davis v. Michigan Dept. of Treasury, supra*, 489 U.S. at 816, as quoted in *Barker v. Kansas, supra*, 503 U.S. at 598. The Court observed that military retirement benefits are treated as deferred compensation for purposes of determining deductibility of individual retirement account (IRA) contributions. *Id.* at 604.

II. RESTRICTION OF SPOUSAL SHARE TO A HYPOTHETICAL SHARE OF LENGTH OF SERVICE AND RANK AT TIME OF DIVORCE

Section 3 of the bill is similar to H.R. 2300, which was considered and rejected by Congress in 1990. The proposal would pre-empt the law of the substantial majority of states which use the "time rule" to determine the spousal shares of retirement benefits, and would effectively unjustly enrich military members at the expense of their spouses, as well as create artificial distinctions between successive spouses. Apparently accidentally, it would pre-empt the law of many states as to the time during which marital property accrues, unfairly penalizing military members in those states. I believe that the language proposed would also have some unintended consequences as to how state courts would be most likely to react. For several legal and public policy reasons, this proposal should be rejected.

The near-universal consensus of the state courts is to establish the spousal share of pension assets under the "time rule," through which each spouse receives half of the percentage created by taking the number of months of marriage during service as a numerator, and the total number of months served as a denominator.

Under this formula, if the member delayed the spouse's receipt of military retired pay by choosing to remain in service, then the spouse obtains some compensation for that delay, in the form of a few more dollars per month, even though the former spouse's share is an ever-smaller percentage of the benefit. This is sometimes called the "smaller slice of the larger pie."

The clear majority of states have adopted the "building block" approach, which is discussed below. At least one state, however, has embraced the analysis that would be mandated on the states under this proposal. It can be labeled the "rank at divorce" approach, and is exemplified by the decision of the Supreme Court of Texas in *Grier v. Grier*.[9]

The husband was a Major when the Griers divorced, but he had already been placed on a promotion list for Lieutenant Colonel (which rank he pinned on eight months after the divorce). The trial court used the time rule to find a spousal percentage of the gross retirement benefits based on the husband's rank at retirement (Lieutenant Colonel). The court of appeals reversed, and awarded the same percentage, but applied that percentage against the disposable retired pay that would have been paid to a Major.

The Texas Supreme Court, starting from the precept that the benefits to be apportioned were "based on the value of the community's interest at the time of divorce," held that the valuation of military retirement benefits is to be done according to the rank "actually held by the service spouse on the date of the divorce," since granting the former spouse a percentage of the retired pay based on the rank ultimately attained by the member would "impermissibly invade" the member's separate

[9] 731 S.W.2d 931 (Tex. 1987). The case was actually a declaratory judgment action brought by the husband in Texas eight years after the parties divorced.

property. The court found, however, that the sum against which the spousal percentage was to be applied was gross retired pay, rather than disposable pay.[10] One justice, concurring and dissenting, would have held the applicable rank to be that of Lieutenant Colonel, noting the husband's placement on the promotion list occurred during the marriage, and reasoning that valuation as of the date of divorce should include rank for which qualification was met but not yet formalized, and that the majority opinion exalted form over substance.

The decisions of several states seem to simply presume that the rank at retirement is the appropriate measure, and contain little analysis of why this is so.[11] Other courts have attempted to be more analytical, focusing first on the nature of the asset being divided, and then on how to accomplish an equitable division of that asset. The decisions of these courts can be labeled the "building block" cases.

One example is *Fondi v. Fondi*,[12] in which the Nevada Supreme Court found that a "wait and see" approach is mandated in pension cases, through which the community has an interest in the pension ***ultimately received***, not just the pension as it exists on the date of divorce. That court has since emphasized that the "wait and see" approach is defined as ensuring that the spousal share of the pension is based on value of the pension ultimately received by the worker, ***rather than*** a portion of the pension that would have been received if the worker retired on the date of divorce.[13]

Some courts have explained what they are doing as adhering to the "qualitative" view of spousal contributions to retirement accrual.[14] In other words, while a pension may be based on the "highest salary earned," and the highest earning years are usually the last years of employment, ***all*** of the years of work leading up to retirement are considered equally necessary to attain that status. Two consecutive spouses, during the first and last halves of a twenty-year military career, would be treated equally under the qualitative approach, but very differently under the proposal in section three of the bill.

Perhaps the clearest expositions of the reasoning behind the two approaches are found in those cases in which a reviewing court splits as to which interpretation is most correct. The Iowa Supreme Court

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[10] This case was pre-*Mansell*, and this conclusion was based on Texas law.

[11] *See, e.g., Casas v. Thompson*, 720 P.2d 921 (Cal. 1986), *cert. denied*, 479 U.S. 1012 (1987).

[12] 106 Nev. 856, 802 P.2d 1264 (1990) (retirement under state public employees retirement system).

[13] *Sertic v. Sertic*, 111 Nev. 1192, 901 P.2d 148 (1995) (CSRS retirement).

[14] *Stouffer v. Stouffer*, 10 Haw. App. 267, 867 P.2d 226 (1994).

faced such a conflict in the case of *In re Benson*.[15] The trial court had used a time-rule approach, with the wife's percentage to be applied to the sum the husband actually received, whenever he actually retired.

The reviewing court restated the question as being the time of valuation, with the choices being the sum the husband *would have* been able to receive if he had retired at divorce, or the sum payable at retirement. The court acknowledged that the longer the husband worked after divorce, the smaller the wife's portion became. The court accepted the wife's position that to "lock in" the value of the wife's interest to the value at divorce, while delaying payment to actual retirement, prevented the wife from "earning a reasonable return on her interest."

Quoting at length from a law review article analyzing the mathematics of the situation, the court found that acceptance of the husband's argument would have allowed him to collect the entirety of the accumulating "earnings" on the marital property accumulated by both parties. Three judges dissented.[16]

I have independently verified the mathematical effects of the various approaches taken by the state courts. Unless Congress is willing to also mandate that the states adopt rules requiring payments to spouses at each members' first eligibility for retirement, regardless of the date of actual retirement, I estimate that the proposal would result in a reduction in the value of the spousal share by at least 13%. A second spouse married to a member for the last couple years of service could actually receive more money after divorce than a first wife who assisted the member for more than half of the military career.

The proposal is silent on the question of whether distribution of the spousal share should be mandated at the time of the member's first eligibility for retirement.[17] Unfortunately, it is not

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[15] 545 N.W.2d 252 (Iowa 1996).

[16] The Iowa court apparently did not even consider the possibility of having the wife's interest begin being paid at first eligibility for employment, "freezing" it at that point and letting the husband enjoy all accumulations after that time. Presumably, this is because that possibility was not litigated at the trial level.

[17] Several state courts have held that the interest of a former spouse in military retired pay is realized at *vesting* (i.e., after 20 years of creditable service), theoretically entitling the spouse to collect a portion of what the member *could* get at that time irrespective of whether the member actually retires. *See In re Marriage of Luciano*, 164 Cal. Rptr. 93 (Ct. App. 1980); *In re Marriage of Gillmore*, 629 P.2d 1 (Cal. 1981); *In re Marriage of Scott*, 202 Cal. Rptr. 716 (Ct. App. 1984); *Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989); *Koelsch v. Koelsch*, 713 P.2d 1234 (Ariz. 1986); *Ruggles v. Ruggles*, 860 P.2d 182 (N.M. 1993); *Balderson v. Balderson*, 896 P.2d 956 (Idaho 1994); *Blake v. Blake*, 807 P.2d 1211 (Colo. Ct. App. 1990).

possible to fully and fairly evaluate the impact of the proposal that has been made without examining that question as well. At this time, then, it is probably best to just say that the proposal as written would probably have the unintended consequence of causing a number of states to reach the conclusion that division of retirement benefits at first eligibility was required, rather than elective, as a matter of equity.

Finally, the structure of the proposal as written would have the probably unintended effect of transferring some additional property to spouses at the expense of members, in some states. In Nevada, community property accrues through the date of final decree, as is set out in the proposal. In California, however, community property stops accruing as of the date of final separation, and in Arizona, property stops accruing as of the filing of a divorce complaint. The proposal as worded would force those states to accrue the military retirement benefits as property through the final decree, even if state law would have otherwise stopped that accrual months or years earlier.

Again, treating this one asset differently, as a matter of federal pre-emption, may distort the ability of state divorce courts to achieve equity between spouses. This proposal does not appear to implicate any federal interest that would warrant interference with the domestic relations laws of the states.

III. RESTRICTION OF RETIRED PAY DIVISION TO ACTIONS WITHIN TWO YEARS OF DIVORCE

Section 4 would pre-empt the law of the substantial number of states (all community property states and an unknown number of equitable division states) which allow either party to a divorce to return to court after divorce, upon discovery that substantial marital property was not adjudicated in the divorce and remains in the hands of the other party. It could also completely pre-empt the procedural law of states, such as Louisiana, that issue the divorce decree prior to the property division.[18] In any event, the proposal does not appear to be necessary, given existing state law. For several legal and public policy reasons, this proposal should be rejected.

Many states have provided the remedy of partition of omitted assets since long before the military retirement benefits issues arose, and merely treat those assets like any other.[19] Presently, every state has a statute of limitations. Generally, when applied to pension cases, the statute begins to run ***from each payment***. Thus, even if 20 years goes by, the maximum exposure of a retiree in an action for

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[18] Some states enter the "final divorce decree" prior to the property division. As written, the proposal could prevent those states from ***ever*** dividing military retirement benefits, if either side could simply stall the division for two years.

[19] *See, e.g., Bank v. Wolff*, 66 Nev. 51, 202 P.2d 878 (1949); *Henn v. Henn*, 605 P.2d 10 (Cal. 1980).

recovery of the spousal share that has been incorrectly paid to the retiree is the period of limitation, usually six years or less. Some states have gone further, holding that spousal delay beyond the period allowed by state law bars the action entirely.[20]

It should be noted, of course, that partition is only granted ***if*** the state court makes a finding that one party is wrongfully keeping money that rightly belonged to the other. So the question is whether Congress should use the power of federal pre-emption to ensure that one of two parties to a divorce is permitted to keep property that rightfully belongs to the other.

My review of newsletters from various interest groups indicates that Congress may be substantially misinformed about the scope of the perceived "problem." Even in those states in which partition is allowed, the party against whom an action is brought has the ability to defend based on any equitable ground that should prevent recovery, such as waiver, estoppel, and laches.[21] Anecdotal accounts indicate that "prospective-only" partition is common, if not the norm in these cases. Even when ***retroactive*** partition is not appropriate, it is difficult to conceive of any set of facts that would make it equitable for one spouse to ***continue*** receiving the other spouse's rightful share of the property in the future, but that is exactly what the current proposal would allow.

In other words, regardless of "horror stories," partition of omitted assets is a mechanism for ***remedying*** inequity, not a cause of inequity, and it would be inappropriate for Congress, in the absence of any legitimate federal policy, to cause inequitable property divisions across the country based on an inaccurate perception of what is really going on in the state courts.

It is worth remembering that Congress weighed the various policy alternatives in this area just a few years ago, and came to the conclusion that the states should be allowed to use their own laws as to all divorces issued after *McCarty*, while the courts were closed to spouses left with no share of the retirement benefits prior to *McCarty*.[22] The House Committee Report stated that the amendments were an attempt to make a public policy judgment "consistent with the balancing of state and federal interests that has been the hallmark of this law since its inception."

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[20] *See Grieshaber v. Grieshaber*, 793 S.W.2d 161 (Mo. Ct. App. 1990) (where wife failed to file petition to divide pension for 14 years, despite knowing of its existence, and husband died in the interim, laches barred the spousal claim to partition the omitted military retirement benefits).

[21] *See, e.g., Casas v. Thompson*, 720 P.2d 921 (Cal. 1986), *cert. denied*, 479 U.S. 1012 (1987). Under California law, the court reasoned that equitable considerations included "general considerations" as well as specific equitable defenses, in "tailoring" the amount and form of an award of pre-petition arrearages. The court found Max's sole support of the children over the years a sufficient consideration, and denied to Virginia any pre-petition arrearages. 720 P.2d at 934-35.

[22] *See* 10 U.S.C. § 1408(c)(1).

The 1990 amendments to the USFSPA were largely concerned with partition cases, and codified the practice of honoring partition judgments relating to divorces after the USFSPA effective date (June 25, 1981), but not partition judgments relating to divorces prior to that date.

The question actually presented by the current proposal is whether Congress' balancing of interests in 1990 was fundamentally flawed. Only if that is true would it now be appropriate to use federal pre-emption to deny an even larger class of people, mainly women, access to state laws for doing equity. In this regard, ABA policy is that Congress should not disrupt the balance of state law except where absolutely required. It is worth recalling the words of the United States Supreme Court in *McCarty* itself, that the federal government should defer to "the laws of the States and not to the laws of the United States" in domestic relations matters, unless absolutely required to safeguard a critical federal interest.[23]

No such federal interest is apparent in this subject area. Rather, the current proposal is a pretty clear effort by a group of "haves," most of whom obtained their spouse's share of valuable property by silent omission from decrees of divorce, to make sure that their former spouses can never even ask a judge to determine whether they have been unfairly dispossessed. It is submitted that since there is no legitimate federal interest in allowing one group of former spouses to purloin the property of the other group, Congress should not interfere any further in the equitable mechanisms set out in state divorce laws.

IV. EXEMPTING DISABILITY PAY FROM CHILD SUPPORT OR ALIMONY GARNISHMENT

Section 5 changes subjects entirely. It would alter the Social Security act to prevent the federal pay centers from honoring child support or alimony garnishments, when the member has recharacterized retirement benefits as disability pay. It should be rejected on public policy grounds.
The proposal now before the Committee will apparently only have an effect when there is a final, unappealed judgment awarding child support or alimony, and the member does not comply with it, creating arrearages, when that same member voluntarily converts a portion of garnishable military retired pay into disability pay, and when the child or spouse owed the money tries to garnish to satisfy the arrearages.

Present law allows such disability pay to be reached, to the same extent that the military retired pay which was waived was reached, to satisfy that child support or alimony award.

The United States Supreme Court has made it clear that state courts can use contempt sanctions and a member can be imprisoned for failing to pay child support, despite his claim that payments could only be made from his Veteran's Administration disability award, which was exempt from

[23] 453 U.S. at 220, 101 S.Ct. at 2735.

execution.[24] In several contexts, it is now established that the federal courts will not intervene to prevent the states from using their contempt powers to fine or imprison members who refuse to comply with state court judgments for payments of retired pay, even where there is no federal mechanism by which the spouse can *directly* obtain payment of those funds.[25]

Thus, the policy choice suggested in the current proposal is that Congress might wish to make it ***more*** difficult for a child not receiving child support to garnish arrearages. There are many circumstances in which the federal law as it now exists can lead to a party having a right but lacking a remedy.[26] The question is whether Congress should create another such situation in those cases in which a member converts military retired pay into a disability award.

Experienced domestic practitioners are well aware of the limitations of civil contempt as a remedy in interstate cases. The expense and difficulty of domesticating a state court judgment in whatever jurisdiction a member can be found is often very substantial, and the people called upon to do so are usually the poorest and least able to afford private counsel, thus increasing the number of Title IV-D applications made through district attorney offices throughout the country.

During the past five years or so, Congress has taken many steps to make it ***easier*** to collect child support -- requiring the states to create job registries, making federal employees subject to wage assignments, and even criminalizing interstate travel intended to frustrate the collection of child support. In this context, it is difficult to see the policy objective to be served by making valid and enforceable child support orders harder to actually collect from members claiming disability pay. Certainly, it cannot be the intention of Congress to delay support payments to children, force poor people to consume scarce public resources to hunt down those members, and then have those members jailed until they "voluntarily" pay the sums owed. Yet that is exactly the effect this proposal would have.

Essentially, the problem addressed in the current proposal is an artifact of congressional unwillingness to change the laws requiring waiver of military retired pay in order for a member to receive disability pay. Press accounts have indicated that this unwillingness may be fiscally, not

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[24] *Rose v. Rose*, 481 U.S. 619, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987).

[25] The federal courts have been consistently resistant to becoming involved in divorce matters under the guise of peril to some federally-protected interest. *See, e.g., Silva v. Silva*, 680 F. Supp. 1479 (D. Colo. 1988) (upholding dismissal of action by member seeking to strike down unappealed state court division of disability retired pay); *Fern v. United States*, 15 Cl. Ct. 580 (1988), *aff'd*, 908 F.2d 955 (Fed. Cir. 1990).

[26] The most obvious example is the "ten year" cases, where the marriage and service have overlapped by a bit less than ten years, and the state court awards the spouse a percentage of the retired pay as property.

policy, based. Obviously, if Congress granted disability payments in ***addition to*** retired pay, those benefits should be exempt from execution for most claims.

Until and unless Congress is willing to allow members to receive disability pay in addition to their regular, longevity retired pay, however, there will be a tension between the rights of the members and their dependents. This is because the retirement benefits, or any benefits that the member obtains in lieu of them, will be the sole source of recognizing the contributions of both parties, and of satisfying the public policy of assisting the retiree ***and his dependents***, that the legislative history has made so clear is a purpose of the retired pay.[27]

In the meantime, the proposal would do much more harm than good -- to members' children and spouses, and ultimately to those members who are jailed for behavior that Congress has agreed is criminal. It makes no policy sense to contribute to the problems that other federal initiatives and programs are attempting to solve, and this proposal should thus be rejected.

CONCLUSION

None of the proposals contained in H.R. 2537 would serve any cognizable, legitimate federal interest. At best, the proposals would hurt as many people as they helped, and some of the proposals would hurt far more people than conceivably could be helped. Virtually every aspect of the proposals would pre-empt the marriage and divorce laws of the states, without any evidence of a necessity of doing so in order to serve a federal interest.

In the meantime, at least one congressionally-mandated study of the effect of the USFSPA is now underway, the results of which are to be reported to Congress in the near future. Several of the policy choices addressed by H.R. 2537 will be the subject of that report.

On behalf of the the American Bar Association, I urge the Committee to take no action at this time on the proposed legislation.

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[27] *See, e.g.*, *Fern v. United States*, 15 Cl. Ct. 580 (1988), *aff'd*, 908 F.2d 955 (Fed. Cir. 1990).

TESTIMONY OF FRANK W. AULT
Captain, U.S. Navy (RET.)

EXECUTIVE DIRECTOR
AMERICAN RETIREES ASSOCIATION

before the

HOUSE VETERANS' AFFAIRS COMMITTEE

5 AUGUST, 1998

Mr. Chairman and members of the Committee, I am Frank W. Ault, a retired Navy Captain and Naval Aviator. For the past nine years I have been the Executive Director of the American Retirees Association (ARA), formed in California in 1984 for the exclusive purpose of addressing the inequities in the Uniformed Services Former Spouses Protection Act (USFSPA); Public Law 97-252; 10 USC 1408. The membership of the ARA includes members of all the uniformed services: regular reserve and retired, male and female. The ARA was originally named ' USA', for "United Slaves of America", meaning that military members were being indentured to their former spouses for life. They still are, but the organization subsequently adopted a less extremist sounding name and is now a member, in good standing, in the National Military/Veterans Alliance. The ARA is recognized , throughout the national community of veterans organizations, as the national leader of the effort to reform the USFSPA.

We admire and appreciate the initiative and courage of the Veterans' Affairs Committee: demonstrated by its willingness to shine some light on the problems of military veterans who are divorced. Congress has tip-toed around this subject for over fifteen years and, right now, is buying even more time through Section 643 of the FY 1998 Defense Authorization Bill which directs the DoD to review the subject and report to Congress not later than September, 1999. Since that will be too late for legislative action in 1999--and since 2000 is an election year--the stage is set to avoid action until 2001, at the earliest. We hope that one of the products of these hearings will be information which will permit the DoD to expedite its report. We hope, also, that members of Congress will read the report of these hearings and recognize the need to level the playing field in an area where there are already tens of thousands of military members whose lives in retirement have been seriously degraded--and their numbers are growing at the rate of about 600 per month.

We are grateful for the opportunity to discuss with you the history of a well-intentioned law gone astray and what we recommend be done to provide, to military members, the equal justice under law guaranteed them by the Constitution. That right is indisputable. However, the treatment of military members in divorce court, as mandated by the USFSPA, differs significantly from that accorded, by law, to other federal employees and the civilian population at large.

In 1982 Congress , by enacting the USFSPA, overrode the 1981 McCarty decision of the U.S. Supreme Court which found that "...the military retirement system confers no entitlement to retired pay upon the retired member's spouse and does not involve

even a limited community property concept.....moreover, the application of community property principles to military retired pay threatens grave harm to clear and substantial federal interests." Notwithstanding this warning, Congress not only inserted the federal government into a process (viz. divorce) historically reserved for the states, but flagrantly subverted the court's decision by backdating the legislation to one day before McCarty. Some constitutional lawyers might call this "ex post facto law" which is prohibited.

Because it is poorly crafted, the USFSPA's inequities may be attributed--in about equal measure--to what it says as well as to what it doesn't say. This results in the following inequities:

* The USFSPA is a 'permissive' law in that it states that " a court MAY treat disposable retired pay either as property solely of the member or of the member and his spouse.." However, an overwhelming majority of courts has treated 'may' as 'shall'. The USFSPA limits the amount of retired pay which can be awarded as property to 50 percent, but it does not preclude the contemporaneous award of alimony and child support. Consequently, a service retiree may lose all of his or her retired pay in a divorce action. The USFSPA provides that up to 65 percent of retired pay may be garnished by the government. Payment , out-of-pocket, of the remaining 35 percent is legally enforceable.

* Since the USFSPA was imposed without warning and was not grandfathered, the lifestyles and plans of most already-divorced military members were totally derailed. In cases where divorce was being considered, the USFSPA provided an incentive to terminate the marriage.

* Although the conference report on the USFSPA stated that Congress did not want the law to be applied retroactively, this was not specified in the legislative action. Consequently, thousands of pre-1982 divorces were reopened and awards of retired pay, including arrearages, were made. The result was bankruptcy for many retired military members. This was not fixed until the law was amended in 1990. Even then, however, payments to ex-spouses involved had to be continued for two more years: until November, 1992. No restitution was made and even those who had been forced into bankruptcy did not receive so much as an apology. Let me add that this is the ONLY change to the law made since 1982 which has benefited military retirees---and that to resolve a problem which shouldn't have occurred in the first place.

* The USFSPA does not specify that the dollar amount of an award is to be based on the rank/rate or pay grade of the military member at the time of divorce. As a result, many ex-spouses have received a "windfall benefit" in the form of a USFSPA award based on promotions of the military member after divorce. The ex-spouse community's contention that later promotions are built on early effort of both husband and wife is pure nonsense. Many spouses have little or nothing to do with their military mate's career. Even in cases where they do, it is foolish to argue that a first spouse, divorced when the military member was (for instance) a Major, gave him/her such a head start that the momentum carried all the way to the rank of Major General. There is ample evidence that, quite the contrary, the stigma of divorce and the acrimony of the proceedings frequently clutter the path to future promotions. It is ridiculous to extol the virtues of career support: provided off-site, in absentia.

*A military member must serve a minimum of 20 years before being eligible to receive retired pay. Eligibility of the member's spouse is attained instantaneously upon marriage. There is no prohibition against multiple marriages and multiple USFSPA awards. The current (known) 'champion' USFSPA exploiter is on her fourth marriage to a military member and is receiving USFSPA payments from the first three.

* The military retiree must remain in compliance with the Uniform Code of Military Justice, may have restrictions on civil service employment and foreign travel, and may be subject to involuntary recall to active duty. The ex-spouse, who draws from the same retired pay envelope, is not subject to any of these constraints.

*Since military retired pay is reclassified as "property" for a USFSPA award, payments continue for life, even if the benefiting ex-spouse remarries.This is the single greatest inequity of the law. The retired pay laws applicable to divorces in the Foreign Service and CIA provide for the termination of spousal payments upon remarriage after a certain age. So do the survivor benefits programs of the Department of Defense and Social Security Administration. Since USFSPA awards are made without regard to fault, merit, need or respective financial circumstances, this hardly qualifies as equal justice under law.

*Divorced military veterans are the only U.S. citizens who have their retired pay classified in accordance with the federal government's intentions for it: "property" if for a marital award and "Income if for taxation by the IRS. How can it be both?

*The USFSPA award process is 'no fault' and rewards even miscreant spouses. The military member can be divested of retired pay by court martial or other legal action. On the other hand, USFSPA payments to an ex-spouse continue for life, even if he or she is convicted of some felony. There is at least one known case of an imprisoned ex-spouse whose USFSPA payments are being retained by a prison warden, pending her ultimate release.

*Payments of retired pay may be made to the abused ex-spouse of a military member who has been denied retired pay. But unlike the lifetime entitlement of other ex-spouses, the USFSPA mandates that payments to an abused ex-spouse terminate if he/she remarries. Is this equal justice under law?

*The USFSPA does not include a statute of limitations on the amount of time allowed an ex-spouse to petition for USFSPA payments. Consequently, many retired military members have had to wait ,indefinitely, for the "USFSPA shoe to drop'.

* Although the USFSPA is considered to apply to both male and female military members, the only pronoun appearing in the law is "his" which appears at least five times. This might constitute a legal loophole for female military members. More significant, however, is what is connoted about the intent of the legislation. It appears that the USFSPA's sponsors were focused on bringing male military members to heel. Moreover, it is apparent that little consideration was given to the demographic differences between the officer and enlisted communities of the uniformed services as they relate to the USFSPA. Officers are more likely to have the financial resiliency needed to survive the loss of a portion of their retired pay.

*The USFSPA purports to protect military disability pay, whether DoD or VA, by specifically excluding it from the definition of disposable retired pay that can be shared with an ex-spouse. This protection was reinforced by the U.S. Supreme Court decision in Mansel v Mansel in May, 1989. However, state courts are circumventing it in three ways:

1) By ignoring federal law.

2) By avoiding the award of retired/disability pay as "property' and awarding it as alimony without regard for source, even if the member is 100 percent disabled .

3) By garnishing it under the Social Security Act, Title 42, which is in conflict with Title 10 on this issue.

One of the ex-spouse objectives is the elimination of the protection of disability pay. This means that even if long-awaited legislation were enacted, providing for the concurrent receipt of retired and disability pay, disabled military retirees would find themselves in protracted court battles for an ex-spouse share of both.

*Most military members impacted by the USFSPA have been 'blind-sided' because the uniformed services have assiduously avoided briefing their personnel on the law. Nor is information on the USFSPA being disseminated during retirees seminars being conducted by the military services.

A compendium of "horror stories' could be presented, exemplifying the numerous inequities cited above, but most of them are apparent--even without documentary proof that they exist. Divorcing military couples have available to them, in state courts, all the remedies available to any other U.S. citizens. What is different , however, is the USFSPA's treatment of spousal support which is a distinct departure from customary notions of spousal support in domestic relations law. An obligation to provide 'alimony' usually terminates at the end of some 'rehabilitation' period , or upon the remarriage of the recipient. This has been standard legal doctrine since the founding of the country, based on the rationale that, in a marriage, there is a transfer of spousal support responsibility to the new spouse. The continuation of payments beyond remarriage of former spouses overrides any aspect of financial need.

Usually,spouses attain financial security by virtue of the income of their new partner, or a combination of two incomes. By contrast, many military members whose retired pay has been divided support second families. This means that the military member is severely handicapped in his/her efforts to get on with the rest of their lives by payments to an ex-spouse who no longer needs them.

The military member is further hamstrung by the requirement to give his/her ex-spouse first call on the DoD's Survivor Benefit Plan (SBP) which provides an annuity to the ex-spouse in the event of the death of the member. This seriously restricts the amount of insurance coverage he/she can provide for a second family. Commercial insurance coverage, reasonably priced at the commencement of a military career, is unacceptably expensive at retirement ages. From the viewpoint of the military member, the concurrent loss of SBP may be every bit as egregious as the "payments for life" provisions of the USFSPA.

It is very unlikely that very many members of Congress who voted for the USFSPA understood the full implications of reclassifying retired pay as 'property'...particularly 'property' which cannot be sold, bartered, traded, transferred or passed to heirs. Congress did, however, open the floodgates to describing military retired pay as a "pension"which it is not. If it were, indeed, a pension,the military member could retire with no further obligations to the nation and live 'happily ever after". However, because retired pay is an important component of the military compensation system, the retiree receives what is more appropriately described as "reduced pay for reduced future services' and remains part of the manpower resources available for recall in the event of a national need.

A frequently mentioned circumstance , during the 1982 debate on the USFSPA, was the "plight of the military spouse" who was described as a 'stay-at-home, tend-to-the-kids' female who kept the family together while the 'devil-may-care-playboy' father roamed the world sans family responsibilities. Today over 60 percent of the marital mates of military members are employed outside the home. Moreover as the number of female military members continues to grow, it is often the male member of the marriage who 'keeps the homefires burning'. Clearly, Congress never envisaged this change in circumstances when enacting the USFSPA in 1982 because it is obvious that the protection provided was, primarily, for the protection of a civilian female married to a male military member. This appreciation of the situation has persisted, as evidenced by the history of legislation affecting divorce in the military subsequent to October, 1982. While Congress has exhibited , in public, a pervasive reluctance to reform the USFSPA, there have been enacted 23 changes to laws affecting military divorce. 18 of these have benefited ex-spouses, I (the cure of the retroactivity oversight) has benefited military members and 4 have impacted both sides about equally. All but two of these changes have been effectuated by sub rosa amendments to mainstream legislation, without public hearings, discussion or debate. A 24th amendment is included in the FY 1999 Defense Authorization Bill which will change the scoreboard to read: Ex-spouses 19; Military members 1.

Never, during the over 15 years of its existence, has any amendment to the USFSPA been proposed which would deprive the ex-spouse of a military member of retired pay in the event of divorce. What has been proposed is legislation which would level the playing field so that BOTH members of any military marriage which ends in divorce will be treated fairly and equitably. This is becoming increasingly

important as the numbers of women in uniform continues to grow. Those whose objective is to protect women must , increasingly, look into the ranks for them.

Recruitment and retention are emerging as major problems for the military services. One of the influential factors is the perception of military members that they cannot count on Congress to honor commitments which they perceive as having been made. While not the most important of these, the impact of the USFSPA on the military retirement system is one of them. It IS possible to restore fairness and equity to the military divorce process without unduly disenfranchising EITHER side.

Information developed during these hearings should be used to expedite the review of the USFSPA mandated by Section 643 of the FY 1998 Defense Authorization Bill. At the same time,Congress should look at H.R. 2537, introduced in the 105th Congress by Chairman Stump, and resurrect it--or an expanded version thereof--in the 106th Congress. Then those committees in Congress concerned with the welfare of military personnel should get down to the serious business of restoring fairness and equity of the military divorce process. There is no logical reason for delaying this to 2001 or beyond. The terms of reference extant at the time of the enactment of the USFSPA are no longer valid. Moreover, the list of those impacted by the USFSPA now includes a growing roster of military women. If the USFSPA is to be fair, then it must be fair to both sexes: military and civilian.

For their part, military members aren't looking for a win in divorce court---just a tie.

Curriculum Vitae
Frank W. Ault
Executive Director
American Retirees Association

Frank W. Ault is a retired Navy Captain and Naval Aviator. He is a veteran of World War II, Korea and Vietnam. He commanded the attack aircraft carrier CORAL SEA during the hostilities in Vietnam and was the Chief of Staff to the Flag Officer commanding a Carrier Battle Group in the flagship ENTERPRISE, a nuclear aircraft carrier, during the Vietnam conflict and during the capture of the PUEBLO by North Korea in 1968. His analysis of the Navy's air combat experience in Vietnam in 1968 resulted in the "Ault Report" which is credited for major improvements in the Navy's air combat kill ratio in that war. One of the products of the Ault Report was the Navy Fighter Weapons School, featured in the popular movie, "Top Gun".

Since 1989, Captain Ault has been the Executive Director of the American Retirees Association (ARA) , a non-profit organization, founded in California in 1984, for the exclusive purpose of addressing the inequities of the Uniformed Services Former Spouses Protection Act. Captain Ault is the co-author of the book, "Divorce and the Military", written for the purpose of providing information on the military divorce process to both partners of any military marriage ending in divorce. "Divorce and the Military" is widely recognized and accepted as an authoritative reference for divorcing military couples and their legal counsel. A sequel, "Divorce and the Military II', will be available about 1 September, 1998.

The ARA is recognized, within the national community of veterans organizations, as the leader of their coordinated effort to reform the Uniformed Service Former Spouses Protection Act.

The operations and administration of the ARA are funded exclusively by the dues and contributions of its members and by sales of its book.

Testimony of Major Neita Armstrong, USMC
Before the
House of Representatives
Committee on Veterans' Affairs
5 August 1998

Mr. Chairman and members of the committee, I am Major Neita Armstrong, United States Marine Corps. I am assigned as the Korea Area Plans Officer for the 1st Force Service Support Group, Camp Pendleton, CA. Thank you for the opportunity to appear before you today. I am what the military calls a "mustang" - a commissioned officer that began military life as a private. My career has been divided between active duty and reserve status. I spent 6 years as a Reservist during which I had a civilian career and became a wife and mother before being recalled to active duty during Desert Thunder/Desert Storm. As a result, my experience spans both military and civilian as well as life as a military spouse.

I represent your silent constituency. By our very nature we do what we're told, don't question authority and certainly don't write Congress on any issue. We have to be that way. What military person when tasked with a difficult or dangerous job would respond with "I can't" or "I won't " or complain to their seniors? We're used to living with less and tolerating more. If the military had not maintained this type of discipline throughout this country's history neither of us would be here today. We trust YOU, our elected representatives, to make the Right decisions - to look out for OUR welfare as we look out for our country's freedom. Jumping the chain of command is frowned upon in the military and it is difficult for us who wear the uniform to determine when it is OK to voice an opinion. Our freedom of speech is limited. We cannot campaign or make political statements in uniform and we cannot make disparaging comments about our President. So rather than face the possibility of overstepping our bounds, or to be singled out as a rabble rouser, we just take the hand we're dealt and say nothing. This perception is not applicable in my case since - my seniors are very supportive of my being here;

however you would be surprised at how many individual service members raise the issue of reprisal when they learned that I was coming here today to exercise my right as a citizen. For every letter you receive from a military member - there are tens of thousands who would like to write.

The daily transition from the military mindset to the domestic is often difficult for us. On duty, we are great at mission focus; this can be carried to the point of excluding anything personal, for months. I often laugh when someone asks if my husband is a Marine.... Who else would put up with a woman Marine? We can understand the mindset. Civilians, for the most part, do not. We work to the point of exhaustion - sleep for a few hours and start again. Civilian employers love to hire us after we get out of the military... the Fortune Five-Hundred prefers us. But our work ethic is often perceived as abandonment by the civilian spouse, which leads to other problems and often divorce.

Often you hear: "BUT - the military member is off having fun while the spouse stays home with the kids!" I've seen both sides and I can tell you this is not true. Deployments are nothing more than long periods of sacrifice and hardship. We would much rather be at home with our families. A couple of months ago there were five of us arguing over who would have to make an unexpected trip. Somehow I doubt that the LOSER'S wife and family really believed him when he came home and announced that he had to go to Hawaii for four days! But it is true - none of us wanted to go. When you have a loving family, a home and good friends - it hurts to be gone.

An extremely vocal group of former wives has tried to convince Congress and the American public that this is a male/female issue. It is not. I am here to remind you that there are women in the armed forces too. The military has made great strides in recent years in the areas of equal rights and opportunities for women; and in many areas the military has been in the forefront. Our promotions are based on how well we do our jobs and lead our people, not on our marital status. Yet this law says my contributions as a military wife are more valuable than my contributions as a military officer. According to the states interpretation of the Uniformed Services Former Spouse's Protection Act, I am vested in 12 years worth of my husband's retired pay since he is retirement eligible - yet I am vested in nothing based on my own 17 year military career. I must serve 20 years to

receive anything and have MY contributions as a Marine recognized. The truth is that my responsibilities as a Marine far outweigh and involve greater hardship to me in service to my country than do the inconveniences I ever experienced as a wife. I find it disheartening that Congress views my current worth and right to entitlements more highly based on status as a wife than as a Marine. I am not vested in a retirement program - if I resign tomorrow I will receive NOTHING for my years of service.

How can an hour in the commissary be of equal or greater value than an hour in combat, or training for combat "I" am held to a higher standard? "I" am SWORN to support, protect and defend the Constitution of the United States - WITH MY LIFE "I" must maintain my weight and body fat within strict standards and pass a rigorous physical fitness test twice a year. I am poked, prodded and told that if I don't get certain shots I will face disciplinary action. In the past year I personally have taken 5 random screening tests for drugs. I am subject to the Uniform Code of Military Justice which includes UNIQUE regulations for the military under which I could be confined, given only bread and water for three days and discharged under other than honorable conditions. Nine of the violations are punishable by death of which there are no comparable civilian laws. I am told what to wear, how to wear it, what "I" can eat, when "I" can drink, when I can smoke and I can have my liberty secured. I am told where to live, when to turn the lights out at night and what time to get up in the morning. I'm told how to act, who I can be friends with, who I can make love to and who I can marry - and if I violate these regulations I can be incarcerated. If "I" am passed over for promotion twice - I'm "separated." These things are necessary for good order and discipline in the military. They apply to "ME" - not my spouse.

My best friends are military spouses. Many of them have given up military careers themselves to stay at home and raise their children. I do not want to give you the false impression that I do not appreciate their daily challenges - some of them are the "salt of the earth." Marriages between TWO loving supportive people withstand the test of time and the challenges of being married to a military person. They are not the people I'm talking about - these laws will never affect them. Yet while there are many good and supportive spouses - there are also those who commit adultery, succumb to drug abuse

and alcoholism and batter their children AND the military member. Many are destructive not only to the family but to the military member's career also. The civilian spouse can do things for which we would be court-martialed and still be guaranteed payments after divorce. Support ends the day of the divorce, and often long before that. Support is what GOOD marriages are about.

The current laws provide a "windfall" to the former spouses by increasing their benefits when the military member is promoted after the divorce. With all we endure - with all the hard work WE do to get promoted, how can you credit the former spouse for the military member's success? I know of a colonel, married for 5 years and divorced early in his career. 20 years later the former spouse came back to claim her share of his retirement pay - not at the rank he held at divorce - but laying claim to every promotion he received during the next 20 years. Was this first wife responsible for these promotions? Its free money – she won the lottery because she married and divorced successful man. Yet, if spouses are to receive credit for promotions - what about his current wife - doesn't she get any credit?

I know of another former Marine whose ex-wife is receiving 24% of his retired pay - as a major - even though he divorced 14 years ago as a lieutenant. He served two years of his 25 years career in Viet Nam. He quit his good paying civilian job in 1974 and reentered the Marine Corps in an attempt to save his marriage - find a different environment - after he caught her in bed with a co-worker. Later she divorced him anyway, because she was tired of moving around with the military. She has been re-married now 10 years. Last year she sued him for a portion of his retired pay but waited nearly two years beyond his discharge date to do so. Last month she sued for the arrearage in payments she deliberately overlooked before. The wound of his divorce has been opened again and again.

And what about the military member who is injured in the line of duty? In combat? Should the former spouse benefit from the disability? The former spouses think so. Will the former spouse suffer because of the injury? If so, should they receive the same windfall they do with promotions? It doesn't matter when it happens in the military career, before or after the divorce, the ex-spouse wants the benefit! I don't understand the

former spouse's rationale. I received an e-mail a couple weeks ago from a Marine whose former spouse wanted him to sign a stipulation that said he would never seek the disability pay he's entitled to - because it would reduce her benefit! This is the impact of the current laws - the enabling of civilians to deny the military member entitlements even beyond the divorce.

Right now Chapter 61 Disability Pay is protected only to the level the disability exists at the time of retirement. Why shouldn't the military member be protected if the condition deteriorates instead of maintaining the level of payment to an ex-spouse who has probably remarried? There are many other laws on the books regarding child support. If Disability Pay is the last/only resource that can be garnished for child support the courts should seriously look at the veterans overall financial status - the child support payments are probably higher than service member can afford - and not live on the streets.

The original legislation introduced by its sponsors required ten years of marriage before the former spouse would be entitled to a portion of the retirement pay and would terminate upon remarriage; however that version of the bill was not the one adopted. Instead, an alternate version was passed that could allow former spouses to receive benefits AFTER ONLY ONE DAY of marriage as if the military member were vested in a pension plan. Similar laws that apply to the CIA and Foreign Service terminate payments upon remarriage of the former spouse and do not allow for the promotion windfall. The unique laws that apply to the military allow for the promotion windfall and encourage multiple marriages.

Many of us feel the Uniformed Services Former Spouse's Protection Act is a violation of our Constitutional right to equal protection and due process along with being an unjust taking. The Supreme Court ruled that our retired pay is reduced pay for reduced services and couldn't be divided for good reason, but Congress overturned that decision during an election year for unknown reasons. Most military persons, lawyers and members of Congress don't understand that military retirement pay is NOT A PENSION. It is paid at the pleasure of the Government. In order to retain entitlement to the retired pay they must adhere to the following:

- Subject to recall in the event of a major conflict. If they do not report - their retirement pay can be terminated.
- Subject to the UCMJ.
  - If convicted of a felony they lose their retired pay.
  - If convicted of spousal abuse they lose their retired pay. However, the abused former spouse retains entitlement to their portion until remarriage. Note that the civilian spouse can be convicted of spousal abuse and STILL be entitle to a division of the military members retirement pay
- Must maintain a residence (address) in the United States
- Must maintain U.S. citizenship
- Officers loose a portion of their retired pay if they seek a job with the federal government - not so for the former spouse
- Many states require the payments to the former spouse at 20 years even though military member has not yet retired
- If the former spouse elects to take the Survivor Benefit Plan (SBP) - extend payments beyond the death of the military spouse - the premiums are paid off the top out of the veterans retired pay. The veteran is denied SBP for his/her second family.

Former spouses do not have to adhere to any of these regulations to retain their entitlement. Former spouses can be convicted of a felony, be serving a prison sentence and still be entitled to receive a portion of the military member's retirement pay.

All of this makes many of us, it makes us wonder about the selection of our careers. Are we fools for staying in the military, knowing we have a 50% chance of divorce? Of course no reasonable person would marry if they truly believed they would be in the half whose marriages will fail. We Americans are the most optimistic people on earth and we enter every venture with thoughts of success - but sadly sometimes we fail. Yet with such a high probably of divorce, why should the military member who has actively served his or her country be singled out for special laws if a marriage fails?

Perhaps it is time that those of us with marketable skills to think about protecting our futures. Why should we have to worry about being left at the poverty level by our ex-spouses when we are elderly? Why do we have to pay to support THEIR new spouses too? What about OUR current spouses? Good marriages last through the hard times but rocky marriages, under the current law, are encouraged to dissolve with a permanent economic advantage given to our spouses. Ladies and gentlemen, for those in the military who have been left by their spouses for others the Uniform Services Former Spouse Protection Act does not allow the wound to heal. It is a painful monthly reminder of how they have been betrayed. There is no such thing as a FINAL divorce in the military.

Someone asked if I was a victim myself. Absolutely - I'm a victim every time I see the anguish in a Marine's face. The emotional drain divorce takes on them and the helpless frustration with this one-sided legislation. As a Marine I am constantly reminded the sacrifices made at Inchon, the Chosun Reservoir and other battles throughout the Corps' history. Traditions and regulations made in the 18th century are still viable today. Please don't let the Uniformed Services Former Spouse's Protection act, as written today, be the legacy of our generation for hundreds of years to come. I challenge you to right this wrong and pass legislation that is fair for both sides

Thank you.

Curriculum Vitae

Major Neita A. Armstrong enlisted in the Marine Corps Reserve in 1977. While a Reservists, she held many varied civilian positions including work at the National Endowment for the Arts and at Information Spectrum Inc. as a Senior Logistician - working on the Royal Saudi Naval Forces Marine Force foreign military sale case. Her B.S. degree is in Management Logistics and she has earned the title of Certified Professional Logistician (C.P.L.). She is currently the Korea Area Plans Officer for the 1st Force Service Support Group, Camp Pendleton CA. She is a wife and mother.

Major Armstrong is appearing before the Committee today as a private citizen.

TESTIMONY OF PATRICIA BRUCE

NATIONAL DIRECTOR
WISE
Women in Search of Equity for Military in Divorce

Presented before the
HOUSE VETERANS' AFFAIRS COMMITTEE
5 AUGUST 1998

Mr. Chairman, and members of the Committee, I am Patricia Bruce, National Director of WISE, a nonprofit all volunteer association advocating equity for military members in divorce.

On behalf of myself, Board of Directors and members of WISE, we thank you for the opportunity to present to you our views and comments regarding various issues that affect the members of the Uniformed Services.

The lack of clarity of the Uniformed Services Former Spouses' Protection Act (USFSPA) causes a great deal of misinterpretation by the state courts. This ill-defined law places military members and their former spouses in a situation where there is no consistency among military divorces. There is no consistency from a state-by-state/court-to-court standpoint, or from divorce to divorce. The divorces of fifty military members, with the exact same marital conditions, but whom are each stationed in a different state, will culminate in fifty different divorce scenarios. This treatment of military members, by reason of their transient employment, is discrimination.

There are several areas of concern with regard to the Uniformed Services Former Spouses' Protection Act, one of which is the manner in which states are dividing military disability in divorces.

We are reliably informed that the Department of Veteran's Affairs does not take lightly the determination of disability for any member of the Armed Forces. Application for disability is scrutinized very carefully and the military veteran or retiree must undergo strict physical examinations to determine their eligibility.

If awarded disability benefits, a retiree is not permitted to receive concurrent payment of both regular retired pay and disability retired pay. The retiree must waive regular retired pay in order to receive tax-exempt disability pay. Waiver of regular retired pay should never be construed as an effort to circumvent an award made by a divorce court or settlement agreement, and we take great exception to such charges. Congress has stood by the bedrock fundamentals of VA disability retired pay, and at such time as the VA deems a retiree disabled to any degree, this alternate source of funding should become the sole property of the military member.

Various levels of sacrifice can be made in placing one's life in harms way for the protection of our individual freedoms...and to disrespect the value assigned to sacrifice at any level less than death is unconscionable.

Under the USFSPA, attachment of VA disability retired pay is statutorily disallowed as a means for fulfilling obligations of property awards in a divorce. Under Federal law, these funds are authorized for a military retiree who was injured or suffers illness as a result of their active service. Under Title 42 however, VA disability can be garnished by a court order to pay alimony or child support. All of the compensation can be garnished by court order up to the point where VA compensation equals a veteran's military retired pay entitlement.

It is interesting to note that veterans who are not receiving military retired pay, may not have any of their disability compensation garnished. In summary, military retirees may have some or all of the VA disability compensation garnished to enforce alimony or child support or child obligations, but veterans who are not military retirees may not. (5-23a Garnishment of VA Disability Compensation).

When military retirees waive regular military retired pay, the amounts of retired pay are decreased and accordingly, the percentage share of a marital property award is also decreased.

To circumvent this, we find that the courts are reopening final decrees of divorce in which a settlement agreement has been negotiated and subsequently the courts are awarding lifetime alimony.

Additionally, the courts are waiving the traditional "remarriage" clause inserted into alimony agreements, so that these property payments, now called alimony, do not stop in the event the recipient spouse should marry. The state courts consider settlement agreements to be contractual trusts, entered into voluntarily by both parties, and thus contract laws govern alteration of these trusts. What is not realized is that divorcing parties are strongly "encouraged" to sign an agreement rather than litigate under the advise of legal counsel that it is "the law."

While Congress intended that disability retired pay was income belonging solely to the retiree, and has NEVER been thought of as deferred income, Federal Statutes allow disability retired pay to be garnished for both child support and alimony, granting the states the ability to creatively manipulate both federal and state laws. By renaming the property division "alimony" the courts sidestep the intent of the Supreme Court in Mansell v. Mansell (490 US 581) and are modifying the bonds of the settlement agreement, creating a new form of federal entitlement through case law.

We feel it is imperative that full examination is given to all aspects surrounding this issue.

Often, disability retired pay is the sole source of income for a disabled retiree, and as it stands now, it may be divided with a former spouse to pay alimony, child support, and arrears or all three. While federal law mandates that only up to 65% of the retired pay may be garnished, the USFSPA grants any means under law to the States for fulfilling these obligations. Under contract law, the courts can obtain what cannot be garnished through a monetary judgment or real property. This could essentially cause a disabled military retiree to lose up to 100% of what is intended to be old age security.

Other issues of utmost importance are those of Survivor Benefit Plans (SBP) and the need for a statute of limitations governing the reopening of final decrees of divorce. Under federal civilian retirement plans, a provision is included allowing federal civilians access to more than one Survivor Benefit Plan. The state courts recognize SBP as a future stream of income protecting the divorced spouse in the event of the death of the retiree. Under the federal civilian system federal retirees have access to more than one SBP, for the purpose of protecting a subsequent spouse. The military retirement systems gives no such protections to the military member and spouse and subsequent spouse.

Many first marriages of military members end in divorce well before 20 years. Should the military member remarry, this "second" marriage could, and often does, survive much longer than the first marriage, but the subsequent spouse is not afforded the same protective mechanisms for old age security as spouses in the civilian federal sector. Consideration by Congress to alleviate this problem is of utmost importance.

With regard to statute of limitations... a time period by which final decrees of divorce may be reopened to divide retired pay as property... the civilian federal plans, again, are statutorily clear... the Uniformed Services Former Spouses' Protection Act does not grant such protections. The courts are currently reopening final decrees, sometimes up to 10 or 15 years after the divorce, and awarding a share of retired pay as property, to include retroactive payments, to long divorced former spouses. This leads to post divorce litigation and legal expenses as well as virtually ensuring financial ruin for the retiree who has not planned on such an event.

While Congress has no control or jurisdiction over HOW the State Courts divide military retired pay, Congress DOES have control over the use of Federal compensation and benefits as well as administrative mechanisms in the disbursal of Federal compensations and benefits related to such law.

This fact is emphatically demonstrated throughout the enactment and application of federal law governing civilian federal retirement plans and their former spouse protections sections.

The present treatment of military retired pay is inconsistent with treatment afforded federal civilian retirees under Central Intelligence Agency (CIA) and Foreign Service laws. The laws governing how military retired pay is treated in divorce are not even remotely comparable to those federal civilian plans, and should, at the very least, be consistent with Foreign Service and the Central Intelligence Agency, whose duty assignments have been likened by Congress to be very similar. By altering the scheme under which military retired pay is divided in divorce, bringing military retired pay in line with CIA and Foreign Service, the problems inherent within the broad decision making abilities of the states will be eliminated.

There is simply no reason why we should treat men and women who serve honorably in our Uniformed Services any less favorably than men and women who serve in the Foreign Service or CIA.

During the floor debate of the USFSPA in 1982, congressman Bill Nichols stated:

"The recent change in the Foreign Service Personnel System and the changes proposed in the CIA personnel system currently in conference, have been used to argue the need for change in the military (system).

Both of these systems restrict payments of portions of retired pay to situations in which the marriage lasted 10 years, during which time the member was an employee of the system.

In addition, payments of retired pay to former spouses terminate upon remarriage of a former spouse...

A similar restriction is only fair for the military member as well, who, to a large extent is similarly situated".

This statement was true then and it is true now!

While this is a very emotional and complex issue, Congress has a distinct opportunity to correct the inequities that face our military in divorce by aligning the division of military retired pay in divorce with those of other federal plans. Many of the issues of concern to military members and former spouses could be resolved with this realignment.

Realignment would eradicate the problems surrounding remarriage, statutory entitlement, statute of limitations, duration of marriage requirements, jurisdictional issues, and violation of the military member's protections under the Soldier and Sailor's Civil Relief Act. The discriminatory divergence between civilian federal and military laws as they pertain to divorce could be expunged, enabling all military members and former spouses to know that their divorces will be treated in an equal manner with their civilian federal counterparts. The discrimination rampant from one military divorce to another, due to the capricious laws of the fifty states will be erased. And equal justice under the law will prevail.

On behalf of our military members, active duty, reserve, retired and National Guard, we thank you for your consideration of this much-needed oversight.

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Statement of

JOYCE WESSEL RAEZER
Senior Issues Specialist

The National Military Family Association

Before the

COMMITTEE ON VETERANS' AFFAIRS
of the
UNITED STATES HOUSE OF REPRESENTATIVES

10:00 a.m.

August 5, 1998

Not for Publication
Until Released by
the Committee

The National Military Family Association (NMFA) is the only national organization whose sole focus is the military family and whose goal is to influence the development and implementation of policies which will improve the lives of those family members. Our mission is to serve the families of the Seven Uniformed Services through education, information and advocacy.

Founded in 1969 as the Military Wives Association, NMFA is a non-profit 501 (c)(3) primarily volunteer organization. NMFA today represents the interests of family members and the active duty, reserve components and retired personnel of the seven uniformed services: Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service and the National Oceanic and Atmospheric Administration.

NMFA Representatives in military communities worldwide provide a direct link between military families and NMFA staff in the nation's capital. Representatives are the "eyes and ears" of NMFA, bringing shared local concerns to national attention.

NMFA receives no federal grants and has no federal contracts.

NMFA has been the recipient of the following of the following awards:
Defense Commissary Agency Award for Outstanding Support as Customer Advocates (1993)
Department of the Army Commander Award for Public Service (1988)
Association of the United States Army Citation for Exceptional Service in Support of National Defense (1988)

Various members of NMFA's staff have also received personal awards for their support of military families.

NMFA's web site is located at: http://www.nmfa.org

JOYCE WESSEL RAEZER
Senior Issues Specialist

Joyce started her volunteer work at the National Military Family Association, working with the Government Relations Department, in September 1995 and became Education Specialist in 1996. In February 1998, Joyce was competitively selected for the paid position of Senior Issues Specialist for the Association. As Senior Issues Specialist, Joyce monitors issues relevant to the quality of life of the families of the Uniformed Services and represents the Association at briefings and meetings of other organizations, Members of Congress and their staffs, and members of the Executive branch. She continues to serve as stakeholder representative to the Department of Defense Education Activity (DoDEA) Cabinet. She has represented families on the DoDEA Staffing Task Force, the ACDE study group and the DoDDS 50th Anniversary Planning Committee. In June 1997, she represented NMFA at the First Annual Supporting the Military Child Conference at Ft. Hood, TX. She is a member of the planning committee for a national conference on Serving the Military Child to be held October, 1998 in Arlington, VA. Joyce was the 1997 recipient of NMFA's Margaret Vinson Halgren Award for her advocacy on behalf of military families and the Association.

A Maryland native, Joyce earned a B.A. in History from Gettysburg College, Gettysburg, Pennsylvania and a MA in History from the University of Virginia. An Army spouse of 15 years and mother of two children, she has lived in Washington, D.C. (3 tours), Virginia, Kentucky, and California. She is a former teacher and has been an active volunteer school parent for eight years. She was elected to the Fort Knox (KY) Community Schools Board of Education in 1993 and served until August 1995. She currently serves as PTA President for her son's school in Fairfax County, Virginia.

GARNISHMENT OF MILITARY PAY/RETIRED PAY FOR FAMILY OBLIGATIONS

ACTIVE DUTY PAY

Child Support

Garnishment of active duty military pay for family obligations is most frequently done to provide child support for the servicemember's child (children). Current reciprocity among states and the different service regulations regarding child support, normally ensure that court orders of child support are honored no matter where the servicemember is stationed.

Each of the services have strong statements regarding servicemembers' responsibility to provide financially for their families. However, non military parents without court orders often find making the system work for them exceedingly difficult. When non military parents do not live near a military installation, and do not know the servicemember's military location, they may find it almost impossible to obtain child support. When the servicemember is stationed overseas, the non military parent, without a court order, is left to depend on the good offices of the services and Commanding Officers.

Generally, if no court order or written agreement exists, the services require servicemembers to provide the difference between their Basic Allowance for Housing (BAH) at the with dependents rate and BAH without dependents rate for child support. However, if servicemembers remarry, their entitlement to the BAH at the with dependents rate is no longer dependent on providing child support to the children of a previous marriage, but on their new family. In this case, obtaining child support can be even more difficult. Children who have previously been acknowledged by servicemembers as their financial responsibility may be put at risk.

NMFA strongly believes that servicemembers have, at a minimum, financial responsibility for their children. Each service should make it perfectly clear to all military legal offices and Commanding Officers, that they have a responsibility to assist the non military parent in obtaining child support. Non military parents should be strongly encouraged to obtain court ordered child support or written agreements that will be honored by Defense Finance and Accounting Service (DFAS).

Alimony

Active duty pay is also garnished to provide alimony in the case of divorce. NMFA is aware of some cases where an amount equal to the per cent of retired pay that can eventually be awarded as part of a property settlement, is granted as alimony. NMFA is unaware of any cases where that sum has actually been treated as property, since in actual fact it comes from current pay or wages.

Since awarding alimony is a purview of state courts, it seems to NMFA that the only action that could be taken by the Federal Government is to further protect the amount of pay that can be garnished by such courts. Such action would affect child support and garnishments for other just debts.

RETIRED PAY

Child Support

Once a servicemember retires, it is almost imperative that a court order (or a written agreement acceptable to DFAS) exists for the provision of child support. When such an order exists and is filed with DFAS the payment of child support usually proceeds in an orderly fashion. If a court order has not been obtained before the servicemember retires, and the servicemember chooses to reside outside of the United States, obtaining a court order that is recognized by DFAS is next to impossible. In addition, the total amount of retired pay subject to garnishment is 65% of that pay. If prior orders exist for award of property, child support, alimony, etc., the sum of which totals 65% of retired pay, a subsequent court order can not be honored.

NMFA strongly believes that the services have a responsibility to counsel the non military parent on the ramifications of not having a court order for child support before a servicemember retires .

Alimony

Alimony can be and is awarded in cases of divorce that occur after a member has retired. In most cases the amount of the award is based on the income of the servicemember from post retirement civilian employment. NMFA is aware of cases when alimony has been awarded on an almost permanent basis to circumvent the prohibition on dividing any part of disability pay as property. However, as alimony it stops if and when the former spouse remarries.

NMFA is aware that cases can be cited where the permanent award of alimony in lieu of awarding disability pay as property appears to be unfair to the servicemember. On the other hand, we certainly can cite cases where a servicemember is apparently healthy enough to service a full career on active duty, and yet upon retirement receives a significant disability award. Some of these servicemembers go on to lucrative civilian careers. In these cases, awarding of permanent alimony in lieu of providing a property settlement seems only fair. NMFA believes the best way to settle this problem is to provide concurrent receipt of both longevity retired pay and disability pay.

Retired Pay Awarded in Property Settlements

In 1981 Congress passed the Former Spouse Protection Act (FSPA)which allowed state courts to treat disposable military retired pay as property of the member or property of the member and spouse for the purpose of property settlements when a final decree of divorce, dissolution, annulment or legal separation is issued by the court. FSPA also precluded an award of more than 50% of retired pay, and limited payments from DFAS directly to the spouse to those who had been married to the servicemember for at least 10 years during the member's active service. In addition, all protections of the Soldiers and Sailors Civil Relief Act apply to court actions regarding servicemembers.

In 1986 courts were given the option of mandating coverage under the Survivor Benefit Plan for former spouses.

In 1991 Congress redefined disposable pay, and no longer allowed taxes to be subtracted when reaching the total amount of disposal retired pay. The same law also precluded courts from reopening divorce decrees prior to June 26, 1981. The law further made the latter action retroactive and all payments to former spouses based on such cases ceased as of November of 1993. It is noteworthy that the change in definition of disposal retired pay WAS NOT MADE RETROACTIVE. Hence, former spouses whose divorce was effective before February 4, 1991, still are subject to receiving a reduced amount based on the prior definition of disposable retired pay.

NMFA believes that as presently written the Former Spouse Protection Act provides reasonable safeguards for both the servicemember and the former spouse. We are aware of actions by state courts that circumvent the intent of FSPA and we also would suggest certain modifications to the law, were it to be addressed by the Congress. We also are aware of current legislation which, if it became law, would significantly change FSPA. We address these areas below.

Disability Pay: FSPA specifically precludes amounts received as disability pay from being considered when defining disposable retired pay. Some state courts have circumvented the law's intent by awarding a larger percent of the disposable retired pay. However, that higher amount may not be paid by DFAS, but must be collected by the former spouse using other means. NMFA is aware of cases, referred to above, where servicemembers are deemed physically fit for duty until the day of retirement and subsequently are awarded high disability awards.

NMFA again restates our opinion that providing concurrent receipt of both longevity retired pay and disability pay is the only correct solution to the problem.

20-20-15 Marriages: The majority of marriages that have lasted for 20 or more years, but with only 15 of those years concurrent with military service, are the marriage of enlisted members. Since the disposable retired pay of these members is usually much less than that of officers, the income for the former spouse is also extremely low.

NMFA has long believed that allowing these former spouses Commissary and Exchange privileges would allow them to stretch their small income for necessities.

Definition of Disposable Retired Pay: The change to FSPA regarding the definition of disposable retired pay made in 1991 by P.L. 101-510 was not made retroactive, yet the provision regarding division of property for pre-1981 divorces was made retroactive.

NMFA believes it only fair to make the new definition of disposable retired pay retroactive with the new level of payments to former spouses made prospective.

Survivor Benefit Plan: Last year's Defense Authorization Act allowed members who have Survivor Benefit Plan (SBP) coverage for a former spouse to transfer that coverage to a current spouse if/when the former spouse dies. However, the member is precluded from transferring SBP coverage to a former spouse if the current spouse dies.

NMFA believes, that at the member's request, SBP coverage should be able to be transferred to a former spouse if/when the member's current spouse dies, and if the former spouse was at one time the SBP beneficiary.

Promotions Earned After Retirement: When a servicemember continues to serve on active duty several years after a divorce and earns promotions, many consider it unfair for the final property settlement at retirement to reflect the increased amount related to the promotions.

NMFA believes a valid argument can be made that sacrifices made by the spouse in the early years of a marriage helped ensure the servicemember's continued success after the divorce. However, we do not oppose a change in the law which would create a property settlement based on the member's rank at the time of divorce, as long as appropriate longevity raises and cost of living adjustments are included at the time of property division.

We do not support however, making such a change to present awards. Such a change should only be effective prospectively.

Affects of Remarriage: Since FSPA allows state courts to award part of disposable retired pay as property, neither the remarriage of the former spouse or the servicemember affect the award. Some argue that it would be fairer to treat military divorces in the same manner as Foreign Service Spouses who do lose their award if they remarry. However, these former spouses have an ENTITLEMENT to a portion of their spouse's retired pay. They may also go to court and receive up to 100% of their spouse's retired pay. Such a change in law, if applied to those already divorced would certainly benefit the servicemember. However, those currently serving (or in retirement and still married) might not look to favorably on a change that would create an automatic entitlement rather than at least having a chance to state their case in court. The automatic entitlement is the same formula that is most often used by state courts to divide disposable military retired pay:

$$\frac{\text{Years of marriage}}{\text{Years of service}} \times 50\%$$

Current legislation before Congress would simply stop the payment of retired pay to the former spouse if she/he remarries.

Military spouses give up a great deal of the control of their own lives to the Federal Government when they marry servicemembers. They are told when to move, where to move, how many household goods they can take with them, and little attempt is made to ensure their own career progression with each move. The number of military spouses in the work force today mirrors that of their civilian peers. Approximately two-thirds of military spouses are in the work force. However, their unemployment rate is over twice that of their civilian peers, climbing to double that amount if they are married to members in pay grades E-1 through E-4. DoD studies also show that spouses are chronically underemployed. They are forced to accept positions that are not reflective of their education or skill level. Because of their forced mobility, military spouses have few opportunities to advance in their chosen profession. At a 1995 Department of Defense conference on spousal employment one spouse spoke of her "career development" through her husband's 25 years of military service. In those years she had been: a kindergarten teacher, a HeadStart teacher, a substitute teacher, an optician, a senior citizen social program developer, a geriatric counselor and a financial counselor. Many professional military spouses face an array of varying state laws and requirements for licensure that may take from 6 months to two years at a new duty station. Most are never vested in a pension plan, since Federal law requires five years of employment before mandating vesting.

The Federal Government actually has made the situation worse for many of these spouses. The need to find immediate employment after transferring to a new duty station is made more critical by the 13% active duty pay gap, housing allowances that are 5 -7% behind due to caps, and the new military retirement plan that cuts the current benefit by over 25%. Spouses cannot delay employment to find a position in their chosen field. They must accept whatever employment is immediately available just to make ends meet. DoD statistics show that spouses of enlisted members bring in 30% of the family income, although their average earnings is only $6,300 per year. Spouses of officers contribute 22% of the family's income and average $8,408 per year.

The current pace of deployments and the long work hours of the servicemembers even when they are home, means almost all of the needs of the children and the home fall on the shoulders of the military spouse. The children's medical and dental appointments; transporting for after school activities; parent teacher conferences; and oversight and assistance with homework all must be done by the military spouse. Arranging to meet the plumber, the electrician, the deliveryman, again are left to the military spouse. Yet, the majority of the time they are also bringing in a pay check.

The military family pays at least one dollar out of every three spent for each military move out of their own pockets. Depressed pay raises, out of pocket costs for housing, a tax code that forces them to sell their home each time they move, even if the real estate market is depressed, and the accumulated costs of each military move, mean most military families enter retirement with little if any savings. If they own a home it is normally very highly mortgaged. The only thing of financial value most have at retirement is military retired pay.

HOW CAN THIS NOT BE TREATED AS PROPERTY.

Who's Pension Belongs to Whom?

Despite the fact that most military spouses are unable to vest in pension plans, some few, thanks to military spouse preference in DoD civil service jobs, have been able to accrue civil service retired pay. The advent and swift proliferation of 401K plans have allowed some spouses to take at least their own deposits in the plans with them when they are forced to transfer employers due to military moves. In community property states, the civil service retired pay and the 401K would be divided as property. Upon remarriage of both parties, servicemembers would keep their portion of the civil service retired pay or the 401K, while under legislation before Congress, the military spouses would lose their portion of military retired pay.

THIS WOULD BE NEITHER FAIR NOR EQUITABLE.

NMFA strongly believes that military retired pay should continue to be able to treated as property by state courts and as such, is not affected by the remarriage of either party.

Committee for Justice and Equality for the Military Wife
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Statement

Before the Committee on
Veterans' Affairs

Committee on Armed Services
United States
House of Representatives

I thank the Committee on Veterans' Affairs and The Honorable Bob Stump for inviting me to speak today before this distinguished panel. By way of introduction, I am Doris Mozley, a twenty- year Navy wife, divorced from retired Captain Paul David Mozley, MC, USN Retired, after a 30 year marriage. I have been actively seeking to improve the legal security for military wives since 1980 when I wrote to each member of the Supreme Court urging it to rule in the McCarty case that military pensions be categorized as community property and to mandate a pro-rata split at divorce . (I am still waiting for a reply). I have been working since that time, now 18 years, in an effort to make it safer to serve our country as a military wife. Our Committee has had some success, but more should be done by Congress to insure that all divorcing military wives be treated fairly and similarly in domestic matters pertaining to military divorce, no matter what state the divorce is in. Unfortunately, this is not the case today because often, what a wife receives of her earned pension- share depends on her ability to raise money to hire competent legal counsel, having the will to act to protect herself , the vagaries of state law, and, all too often, biases of domestic relations judges. A good example is the case of Linda Feild, (story attached) a faithful wife of 24 years whose husband, according to court record, left her for another relationship. Even though court testimony proved that he went on out-of-town trips with his new friend, whom he characterized at the trial as his "business partner," and spent many nights at her house, Judge Allen Crow, domestic relations judge of Calhoun County Alabama, ruled that such behavior on the husband's part, did not "rise to the level of proof of adultery." Linda received no part of the military pension she had helped to earn. Linda now works in the Ft. McClellan Commissary stacking groceries for little more than minimun wage, has no benefits from her job , and is facing the prospect of living on a meager SS check after she is no longer able to work. Her former husband, by contrast, is enjoying all of their jointly earned pension as well as his new relationship. To those who say that military wives already have "enough" protection, this case occured 12 years after the passage of The Former Spouses Protection Act, and was heard by a divorced judge who had publicly stated that he "didn't believe in pension sharing." (Also see attached article from the June issue of *Equitable Distribution Journal*, for a good example of a lawyer's gross incompetence vis-a-vis military divorce) . I could give the Committee many more examples from past years but I do not believe that anyone believes in the "Throw-Away-Military Wife" system which the above two examples epitomize.

The question arises as to how these two cases, and other similar ones, relate to collecting alimony and child support. The answer is that divorce is much more likely to occur if a military member thinks there is a chance he can "beat the system," thereby making it unnecessary to collect child support and alimony. As the attached article shows, nearly one-fourth of all children in this country now grow up without fathers. This disintegration of the American family is a danger to the very foundations of our society and should be discouraged by every public means.

I may be overly pessimistic about our future as a country, but I wonder if the coming generations of American young men will be willing to sacrifice themselves in a war as the noble young men of past generations when so many children today do not have fathers around to help teach them virtuous living and a duty to sacrifice for a higher good. To use an analogy, studies have shown that one of the most important variables in the reduction of crime is the certainty of punishment, not the severity of penalties. I believe the same is true with militry pension sharing--if a military member knows for sure he will have to divide with the wife who helped him earn it, there will be a reduction in the incidence of military divorce which society so desperately needs.

In summary, I believe it is in society's interest to protect the military wife who serves with a presumption to entitlement as the American Bar Association and the AARP recommend thereby reducing the rate of divorce as well as the necessity of collecting alimony and child support. I also believe there will be fewer family breakups if military members know for sure that they will have to share the major asset of a long military marriage with the wives who helped them earn it, the military pension.

I would be pleased to answer your questions.

Doris Mozley

Doris N. Mozley, Ex-military spouse

Ca. 1984

PERSONAL:	Doris Neill Mozley 2912 Duke of York Drive Chesapeake, Virginia 23321 (804) 484-5653
JOB OBJECTIVE:	To work as a financial adviser and planner, including research and sales, in a stock brokerage firm.
EXPERIENCE:	Six month training program in a stock brokerage firm. Fourteen years of study and successful management of personal investment program. Three years as a full time lobbyist on the national level. Former Secretary to the Dean of Engineering, University of Alabama, as a college student. Former stewardess with Pan American World Airlines. Former elementary education teacher. Docent, Chrysler Museum. Political campaigning with emphasis on publicity and media coverage.
EDUCATION:	AB Degree in Political Science, University of Alabama. Master of Arts Degree in European History, Old Dominion University. Ph.D. course requirements completed in Constitutional Development, The College of William and Mary.
PRIMARY ASSETS:	Energy, drive, organizational skills, enthusiasm and creativity. Ability to persuade in both spoken and written form. Poise and persuasion in public forums including radio and television. Ability to learn quickly and take directions. I am inner-directed, highly motivated, and need little supervision.

WORK EXPERIENCE POST 1984	STOCKBROKER-FINANCIAL PLANNER DEAN WITTER REYNOLDS, ANDERSON AND STRUDWICK, AND AT PRESENT AS AN INDEPENDENT CONTRACTOR WITH INVESTORS SECURITY COMPANY

Committee for Justice and Equality for the Military Wife

Doris Mozley
Chair

812 Botetourt Gardens
Norfolk, VA 23507
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February 9, 1986

Mr. Charles R. Kubic
Domestic Policy
The White House
Washington, DC 20500

Dear Mr. Kubic:

Thank you for speaking with Mrs. Doris Benit about the high rate of military divorce which now approaches 80%. Mrs. Benit asked me to respond.

Americans have been subject to much media bombardment in the last few years that goes against traditional ethical, religious, and family values. Remember the "Me Generation," "Looking Out for Number One," and "Getting Yours While You Can." This narcissistic, selfish propaganda has undercut religious values that stress family, the worth of the individual, duty, self-sacrifice, loyalty, faithfulness, chastity, and putting others before oneself. These bedrock values still exist, of course, but they, along with family values, have been undercut.

While it is true that the peripatetic lifestyle and frequent separations are hard on military families, these obtained when the divorce rate was very low. So, moving and separations are in and of themselves not the critical variables.

I believe the paramount reason for the astronomical rise in military divorce, other than the recent emphasis in our society on instant, narcissistic self-gratification, is that with the rise in military benefits and perquisites, military members became more susceptible than in the past to the wiles of campfollowers and gold-diggers because Congress unintentionally passed laws that reward military members for divorcing. It is just that simple. To explain: A military member can divorce his long-term military spouse and take everything they earned together, walk away, and give her part in the partnership to someone else. The enclosed Betty Myers' story epitomizes what we call "The Throwaway Military Wife" system that I believe has wrecked havoc on the military family. I believe this unjust system is responsible for that portion of the military divorce rate that is higher than the national average.

If you remember that the only psychological principle that all theories of behavior adhere to is that which says that a person does what is pleasurable (Freud's Pleasure Principle) and avoids that which is punishing, then you can see why we say that a military member is rewarded for divorcing, while his long-serving pouse, thereby disenfranchised, is severely punished.

You asked Mrs. Benit for a solution: I believe if Congress passes laws that predicate public benefits only on public service, the divorce rate will go way down.

Respectfully,

Doris Mozley

Doris Mozley, Chair

By Doris Mozley

Give ex-spouses their fair share

I agree that military retirement is generally split unfairly with a military spouse at the time of divorce, but not the way Patrick Thornton explains it in the May 19 commentary, "Why retirement pay is split unfairly."

It is the military member who usually gets more than his share because he is in the legal catbird seat, thanks to discriminatory congressional laws that hamper a state domestic-relations court in its efforts to give equal justice to both the military member and the ex-spouse.

In fact, as the American Association of Retired Persons found in its 1993 study of six retirement systems — the CIA, Foreign Service, civil service, railroad, private and military — the military retirement system is the most inequitable for divorced women.

And because a military wife does not have a presumption to entitlement as do Foreign Service and CIA spouses, it is very easy for a member to end run the Uniformed Services Former Spouses Protection Act — which gives state courts the legal authority to divide military retirement pay in a divorce —and totally deny a former spouse her fair share.

Your Feb. 10 article, "Former Spouses Protection Act 'didn't protect me'" about Linda Feild — who divorced her husband, retired Lt. Col. Frank Feild, in Alabama, showed what a biased judge can do to a faithful wife of 24 years if he doesn't believe in pension sharing.

Linda Feild walked away with nothing of the pension, and even Survivors Benefits Plan insurance was denied her by the judge, R. Allen Crow.

Crow did award her $500 per month in alimony and $407 per month in child support, which ended in February when their youngest child turned 19.

She also received half of their other assets, including $5,500 from her checking and savings accounts; about $9,000 in individual-retirement accounts; life-insurance policies totaling about $31,000; and two acres in Florida.

"Thus I became a thrown-away military wife just as if the Former Spouses Protection Act had never been passed," the article quoted Feild as saying. "The Former Spouses Protection Act certainly didn't protect me."

Times photo by Trent Penney

After 24 years of marriage, Linda Feild was denied any part of her ex-husband's retirement pay and survivor's benefits.

Denied a fair share

Thousands of women were denied a fair share before 1990, when military wives were saddled with helping to pay their former husbands' income taxes.

They are still paying.

Despite recommendations by experts such as the American Bar Association, disability is still off the table at divorce time.

Every dollar denied a wife because something is labeled "disability" means a regressive tax of 50 cents placed on the back of an ex-spouse. Never mind that most disabilities are not combat- or even service-connected, but simply resulting from ordinary diseases, aging and ravages of time.

Thornton opines that a wife should not get her true pro-rata share at the end of the marriage. If she gets a true share based on later promotions, he calls that a "windfall."

Let's examine that novel idea.

Suppose that a staff sergeant is married to two women for exactly 10 years each and retires at 20 years. Both women spent 10 years as military wives.

Why should Wife No. One get less of a share than Wife No. Two? They both served the same number of years.

Wife No. One served during the very lean years, helping to build the foundation for later promotions.

As the American Bar Association testified in 1990, no matter what retirement pay is called, it is still something earned during the marriage and belongs to both husband and wife.

A case could even be made for rewarding Wife No. One more than Wife No. Two because No. One shared tougher years.

But, of course, pension pay for a military wife has to be based on time served, just as it is for a military husband.

To say the least not all military members are exceptional; if they put their time in, they are rewarded.

The same is only fair for a military wife who also serves.

A career is one ball of wax. Who did what when could not be teased out even by King Solomon.

For example, what about a promotion that came one day after the divorce? Did not Wife No. One contribute to that?

Where has Thornton been since April 1992, when the U.S. Supreme Court overturned a Kansas law that taxed retirement pay as if it were indeed current income?

Justice Byron White, writing for a unanimous court, ruled that retirement pay is based on years of service plus rank obtained.

That makes it by definition a pension.

But, just as the American Bar Association testified before Congress in 1990, no matter what retirement pay is called, it is still something earned during the marriage and belongs to both husband and wife.

It should be noted that when it is more advantageous for tax purposes to call retirement pay a pension, military retirees have no embarrassment whatsoever in switching nomenclatures, as shown in the Kansas case.

As a matter of fact, Col. Christopher Giaimo, in a letter dated Dec. 9, 1991, to Capt. Frank Ault, the head of the American Retirees Association, said:

"What retired pay actually is or is not, we [members of The Retired Officers Association] have decided to support Kansas retirees in their quest to have retired pay denominated as deferred compensation.

"In our opinion, to continue to follow a course whereby we call retired pay 'reduced pay for reduced services' is folly."

Amen, Colonel Giaimo.

Thornton's claim that the wife of the retired master chief — who was an E-6 with more than 10 years of service when his marriage ended — was awarded more than 90 percent of his retirement pay is dishonest.

Doesn't Thornton know that an award of more than 50 percent is, by congressional statute, illegal?

Also, Thornton's claim to have proprietary knowledge of how to avoid such a split is false.

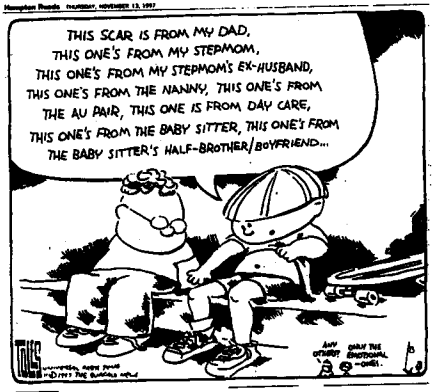
I find Thornton's arithmetic a little confusing. The master chief's former wife is due one half of 40 percent of the jointly earned pension — or 20 percent based on her 10 years of service.

Thornton claims, however, that her share should be only 10 percent, and he is willing to divulge his secrets as to how to arrive at this figure using his math for only $11.20 — the price of his book.

This proprietary knowledge will allow a divorcing military member to explain to a judge why a wife's award should be cut in half.

Such an assertion belies credulity.

Doris Mozley is the president of the Committee for Equality and Justice for the Military Wife. She plans to lobby for legislation that would give ex-military spouses presumption to entitlement to part of their former spouses' pension.



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ANOTHER VIEW

Divorced military spouses are still left out in the cold

By Doris Mozley

Military members who object to dividing retired/retainer pay with their long-term wives at divorce time base their case principally on their claim that retired pay is not a pension but current pay for reduced services.

Opponents to sharing retirement pay with long-term wives who helped them earn it reason as follows:

1. Military retirees are subject to recall to active duty in the event of a national emergency. Therefore, military retired/retainer pay is current income for performing duty as "retainers."

2. Retired/retainer pay is not based on a contributory system since military members make no direct contribution from their monthly pay toward the cost of their retirement.

3. A series of court decisions have declared that military retirement pay is not a "pension" but reduced compensation for reduced current services. . . ."

In answer to proposition No. 1 (that military retirees are paid for continuing duty as "retainers"): No one can seriously believe that the U.S. government pays out $1,757,312,000 each month to thousands of men physically unfit to serve again because of age and often disability "to stand by just in case." They would be tremendously overpaid for that. If national defense really depended on the return of these older, past-their-prime, retired men, our country would be in great jeopardy.

Up to the time of the Persian Gulf conflict, no military member had been called out of retirement to active duty for almost half a century. If the U.S. Congress really and truly paid almost $24 billion a year to retired members for nothing more than "retainer" duty, that would be the ultimate in fiscal profligacy even by congressional standards. Yet these military members, most notably the American Retirees Association, testify with a straight face that they are being paid for nothing more than current "retainer" duty.

In addition, no member is subject to recall after age 60. Therefore, after that age they are no longer performing current ("retainer") service. Is the ARA willing to give up generous "retainer" pay when retirees reach age 60 since they no longer perform duty as "retainers"?

In answer to proposition No. 2 (that military retired pay is "non-contributory"): That statement is totally false. While the exact amount "contributed" by the military member cannot be computed precisely, even by actuaries, it cannot accurately be stated that the pension has not been contributed to on a regular basis by the military member. It is deferred pay for past service. An example will explain it best. In 1962 my former husband, an obstetrician-gynecologist, made about $14,000 a year. We lived in a converted barracks on base in Millington, Tenn. A civilian friend, about the same age and with the same credentials as my former husband, made about $100,000 in private practice. My husband was contributing to his retirement by working at about one-seventh of what he could have made as a civilian. He contributed handsomely to his retirement, and I tolerated a lower standard of living than I would have had I not been willing to serve as a military wife.

In answer to proposition No. 3 (that courts have ruled that pay for retired military personnel is not a pension): A series of court cases, beginning in 1881, found that a member remains a part of the military even in retirement. In the 19th century the average life expectancy of an American was about 45. So, perhaps, it might be fair to say that a military member remained seriously subject to return to duty and that he really did perform service as a "retainer" up to the time of his death, statistically at an early age. However, with the rise in U.S. life expectancy, to say that most military members can perform service as warriors after they have been retired for some years is incredible. The continuing reiteration of retired military members with their long life expectancies that they are "retainers" belies common sense, even though the 1981 Supreme Court *McCarty* decision found it to be a fact.

Two recent court cases, one in Kansas and the other in Colorado, have come down on opposite sides of the current pay-vs-pension debate. It is noteworthy that in both cases military members sued to have their retired pay categorized as "pensions" since that designation would be more advantageous to them taxwise. Apparently, if it is to the members' advantage to have their retired pay declared "current pay for reduced service," that is what they holler. If they want a tax break, suddenly that very same income turns into a "pension."

The Colorado Supreme Court's finding, in contrast to the claims of the ARA that retired pay has no characteristics of a pension, found that retired/retainer pay has all the characteristics.

Ms. Mozley, a stockbroker in Norfolk, is a longtime advocate for the rights of divorced military spouses.

Army Times

July 2, 1990/Army Times 25

Opinion

Commentary

Bills would discriminate against spouses

Military wives divorce under the least desirable laws of any group of government wives. Three bills introduced by Rep. Robert Dornan, R-Calif., would whittle down the protection even more.

Doris Mozley

Dornan explains that his bills offering "protection" for the military member are long overdue to put military members on a par with other government employees. However, the military member, vis-a-vis divorce, already occupies a more privileged position than other government employees.

Congress has set up two systems, active and passive, for government wives who are divorcing. Both have advantages and disadvantages. But the most discriminatory and unfair laws on the book apply to military wives who are divorcing.

For CIA and Foreign Service spouses, Congress has enacted "active" laws to protect them with a presumption to entitlement to a pro-rata share of the commonly earned pension after a certain number of years of marriage.

For civil service and military spouses, Congress has enacted "passive" laws. Spouses must prove in a state domestic-relations court that they deserve a share of the pension, and what they receive depends on the vagaries of differing state laws, the expertise of their lawyers and often, having money to pay legal fees.

For example, in at least one state, Mississippi, the military [illegible] is considered separate property and cannot be divided at divorce time. The result of this passive system on two different military wives, both married for 25 year, is for one to get nothing in Mississippi, but the other to be awarded 50 percent of the gross pension in California.

Not so for Foreign Service and CIA wives. They would be awarded their pro-rata share as property anywhere in the United States due to a congressional mandate. Both Foreign Service and CIA wives would begin to receive their share of the pension at age 50 and keep it for life if they did not remarry before ages 55 and 60, respectively.

To address Dornan's bills specifically:

HR 572 would terminate court-ordered retirement payments awarded as property to ex-military spouses upon remarriage. What could be more unfair, dishonest and discriminatory than a law that would deny a divorced wife her part of the pension if she remarries with the expectation that she could continue to receive her cou[illegible] ordered pension? HR 572 would mandate that a federal law override state domestic-relations laws in order to discriminate against only one class of divorcing wives in that state — military wives. All other wives in states such as California with true community property laws would be allowed to remarry and keep what they had earned and been awarded.

HR 2277 again would discriminate against military wives by treating them differently from any other class of wife in a state domestic-relations court. This law would forbid a state domestic-relations judge from ordering as alimony or support a sum equal to an amount a divorced wife would be entitled to if the member were retired. The effect would leave long-term military spouses without any type of support or income for years.

The practice of many domestic-relations judges is to award as alimony a certain sum until the member retires and begins receiving a pension. Nothing could be fairer. Has Dornan considered what a wife of 19 years, for example, would live on if the divorce took place at year 19 and the member opted (in order to avoid alimony) to stay in the military until he was forced out after another 11 years?

Dornan should have explained to his peers in his "Dear Colleague" letter of June 7, 1989, why it is inequitable and unjust for a state domestic-relations court to order alimony for a wife until her husband retires and she receives her share of their jointly earned pension.

Dornan might reply that a judge could still make an alimony award; it just could not be the exact amount the spouse would be due from the pension as if her ex-husband were retired. Many judges would see this bill as a message not to award alimony at all, or certainly in a lesser amount.

Long-term wives who have been receiving court-ordered alimony in a sum equal to their pro-rata share of the pension would have to give it up. How many of these retroactively cheated women would end up on the welfare rolls?

HR 2300, according to Dornan, "will not only correct an inequity, but will provide incentive for service members to stay in." This bill provides that for the purpose of dividing the pension with the long-term spouse, the spouse's share would be computed as if the member had retired at the time of the divorce. Pay increases for promotions and longevity from the date of retirement would substantially increase a service member's retired pay. If subsequent raises are included, they would constitute "windfall benefits for the former spouse to which she has made no contribution."

Aside from being able to argue that promotions (if there are any) were built on the foundation that the long-term wife helped lay, what about adjustments for inflation? Is Dornan not willing to have the wife's pay adjusted for inflation as is true with her husband's?

Remember that with only a 6 percent inflation rate, the purchasing power of a dollar is halved in 12 years. Raises granted by the government to make up for being robbed by inflation are hardly "windfalls."

All Dornan's proposals single out military wives for discriminatory treatment. Of all government wives, they would be the only ones who would be denied their pension if they had been awarded it as property if they remarried; they would be the only ones with their share "frozen" as if their former husbands had retired at the time of divorce; they would be the only wives denied fair alimony support until their husbands decided or were forced to retire.

Doris Mozley, a former Navy spouse, is chairwoman of the Committee for Justice and Equality for the Military Wife, based in Virginia Beach, Va.

EDITORIAL PAGE

Army Times
The Independent Weekly
50th Year, No. 16 April 1, 1990 A Gannett Newspaper $2.25

BACK TALK

By Doris Mozley

Military ex-wives getting raw deal

"...if Congress wants to reward a man for any type of 'disability,' that disability should not be paid for solely by the ex-military wife, but by all taxpayers."

Two amendments were recently introduced to the Former Spouses Protection Act. They are the same tender, warmed-over proposals designed to hurt military wives that Robert Dornan offered for years when he was in Congress. They are:

If That a military wife have her pension share, even if awarded as property, revoked upon remarriage;

If That a wife's pension share should be computed as of the day the divorce becomes final;

If That all disability, no matter its origin, should continue to be off limits to her division;

If That a military wife continue to be left swinging in the wind in divorce court with no presumption that she is entitled to a part of the pension she helped to earn.

To analyze these plans in light of the "throw-away" wives, certain disabled military members, led by the American Retirees Association, have been yelling for years that laws relating to military divorce are "unfair." They have kept this condition bubbling while their colleagues in the Foreign Service and the CIA accepted fairer laws on pension-sharing years ago.

Apparently, military members believe they should be the only category of men in this country who should be free from fair division of marital property at divorce, and, of course, the military pension is the only property that most military couples have to divide.

The American Bar Association recommends against revoking an ex-wife's pension share upon her remarriage. They say laws such as [illegible] would deny from two-half of two-thirds to less than 20 percent, even though she served with him for two-thirds of his military career.

The ABA pointed out that a career is one ball of wax, that lower promotions are built on early effort of both husband and wife, and that it is impossible to figure out who was responsible for what and when. Under this unjust proposal, the wife could work years for her share of the pension with no increase for delayed payment or use of money over time.

Under the third proposal, that all disability be off-limits at divorce time, studies have shown that most disability payments are for illnesses which come over time with aging. However, if Congress wants to reward a man for any type of "disability," that disability should not be paid for solely by the ex-military wife, but by all taxpayers. Congress could go a long way toward simplifying divorce and at the same time promoting justice if it would enact a presumption to entitlement that other government wives already enjoy. Such a provision would obviate the need for a two-year statute of limitations for an ex-wife to claim her pension share, and it would close a loophole military members use to wiggle out of sharing at all.

What could be fairer? The American Association of Retired Persons was certainly right when it noted that of all divorce systems in the United States, the laws and rules affecting military spouses are the most unfair. I urge Congress to listen to the ABA and the AARP.

Doris Mozley chairs the Committee for Justice and Fairness for the Military Wife, Norfolk, Va.

rights and responsibilities other divorce to military couples than to others in similar positions. The ABA noted that summarily revoking pension shares of long-term military wives simply for entering into another honorable marital relationship would "unsettle well-established property rights and lead to a large amount of litigation without any corresponding improvement in achieving equitable distribution of property." He opposed federal policy would be served by such a presumption of state law.

This proposal should not be approved.

The ABA also said that enacting a law to force a former military wife to give up her share of the pension upon remarriage would "only increase the number of military spouses who would not be able to share in the benefits that their many years of work helped to produce."

Regarding the first proposal, that an ex-wife should be forced to choose between honorable marriage and her earned pension share, the enlisted experts of the bar association have testified on three occasions that that would be wrong. Regarding cutting off the ex-wife's pro rata share of the pension as of the day of divorce, again the ABA advised against this. They said that if the divorce occurred at 20 years and the member served to 30 years, the wife waits 10 years to begin drawing her share of the pension. Also, if she died before her former husband retired, she would have received nothing of the pension she had worked for. At year 30, when her ex-husband retired, he [illegible]

Let's enact laws that discourage divorce and the "Throw-away Military Wife" system by making military members at least as responsible as other men in our society to their former wives at divorce time. It would cut down on the military divorce rate now much higher than the civilian rate.

THE VIRGINIAN-PILOT AND THE LEDGER-STAR MONDAY, APRIL 24, 1995 A4

Nearly a quarter of kids grow up without fathers

A childhood without a father raises many risks for millions.

THE WASHINGTON POST

WASHINGTON – The proportion of American children growing up in homes without a father has quadrupled since 1950, leaving millions of children in neighborhoods where most families are headed by women, the Annie E. Casey Foundation reported today.

The foundation reported that in 1994, 19 million, or 24 percent, of children were living in families without fathers present. In 1950, 6 percent of children were living in mother-only households.

"This is a dramatic demographic trend that has significant impact on the lives of these children," said Douglas Nelson, executive director of the foundation. Not only are children in families without fathers present much more likely to be poor, he said, but "the time, the emotional support provided by a second parent seems to also contribute to self-esteem, security and aspiration in children."

The report said children who grow up without fathers are five times more likely to be poor, twice as likely to drop out of high school and much more likely to end up in foster care or juvenile justice facilities. Girls who are raised in single-parent families are three times more likely to become unwed teen mothers, and boys without fathers at home are much more likely to become incarcerated, unemployed and uninvolved with their own children when they become fathers.

The current debate in Congress about revamping the nation's welfare system has focused too much on creating incentives and sanctions for poor mothers and too little on the role of fathers, Nelson said. He called for social workers and agencies, as well as policy makers, to include fathers in their efforts to improve the lives of children.

The report also urges improved educational opportunities, citing the deterioration in economic circumstances of young men as an important cause of fatherless families.

Real wages for young men have fallen rapidly, especially for those who have not attended college, making it more difficult for many men to support a family. Since 1972, the report said, median income of men 25 to 34 has fallen 26 percent after adjustment for inflation. For black men who did not finish high school, earnings fell by 50 percent between 1973 and 1989.

"Almost no one volunteers for roles and duties they cannot fulfill," the report said. "And the simple truth is that disadvantaged young men who do not have the examples, education or opportunity to succeed in today's economy are not prepared to contribute as providers, protectors and mentors to their children."

Economic conditions as a cause of fatherless families have been downplayed by many conservatives, who argue instead that the problem stems largely from cultural decline and disintegrating moral values.

The Casey Foundation report does not dismiss the role of changing culture, but it emphasizes the link between the inability of many young men to earn a living wage and their absence from the family.

The Virginian-Pilot

Editorials

Tuesday, October 15, 1985

First, pare the freeloaders

By PAUL G. SAWYER

As a retired military officer who served my country 30 years on active duty, I am disturbed by the Department of Defense's proposed plan to segregate people like me from active-duty military members in dispensing medical care by sending retirees to civilian facilities run for profit on a contractual basis while leaving active-duty personnel with full traditional military medical care.

Despite the contention of Dr. William E. Mayer, assistant secretary of defense for health affairs, that retired military members would have care equal to that given those on active duty, I remain unconvinced. Generally groups are segregated (as, for example, blacks in the old South) in order that they can be treated differently, usually in an inferior manner. Do not misunderstand. I am not opposed to sacrificing for the good of my country; and, if necessary, I will do it again willingly. But, before people like me are shunted from mainstream military medical care, the Department of Defense should search for viable alternatives to removing long-serving military members and their long-serving spouses from the regular military health-care rolls.

To use an analogy, let's pretend that military medicine is a lifeboat. The boat is sinking because it is overloaded with more than 8 million retirees and "dependents." Some in the lifeboat will have to be thrown overboard or the boat will sink and all will be lost. Therefore, a decision must be made. Who will go first? Do some categories of people on board the boat have a weak or no fair claim at all to being there? Can we fairly, justly and equitably lighten the load? I believe a close examination of the whole entitlement system will prove beyond a doubt that we can.

Surely, not all retirees and dependents should be lumped in one category in the old segregationist spirit of "they all look alike to me." I can assure the reader that we are not all alike in our moral and ethical claims to being on board the lifeboat (that is, having access to regular military medicine). As proof, let's look at the seven categories that make up the 8 million retirees and "dependents" who are overloading the boat, all of whom Dr. Mayer would send en masse to civilian contractors:

1. Retired military members who served at least 20 years.

2. Military wives who served at least 15 years out of a 20-year marriage.

3. Minor, dependent children of retired military personnel.

4. Wives whom military members were married to for fewer than 10 years of active-duty service before retirement, and who had fewer than 10 years of service as military wives at the time their husbands retired. (Wives must be required to serve a minimum number of years just as military members do.)

5. Women whom military members married after they retired from service who never served a day as military wives.

6. Children of wives married after retirement who are receiving court-ordered child support from their natural fathers, whose legal dependents they are, but who have been allowed on the military health-care rolls if they live with the retired military member and his post-retirement wife.

7. Parents of military members' post-retirement wives (if the member declares them "dependents"). Unbelievably, thousands in this category are receiving free military medicine at public expense.

Fair is fair. I believe that anyone examining the above would be forced to conclude that some categories have stronger ethical and moral rights to military medicine than others. In fact, I submit that the farther down the list of categories you go, the weaker the claim to be entitled to free military medicine becomes. I believe that categories 4 through 7 should be eliminated immediately from having access to free military medical privileges. What justification can Congress possibly give a U.S. taxpayer for making him pick up the tab for, say, an in-law of a retired military member or the dependent child of someone else?

When you have eliminated all the freeloading categories (i.e., 4 through 7) we could lighten the military health-care rolls by about 20 percent. Perhaps that would cure what ails military medicine. In any case, only after the rolls have been pruned of all freeloaders will I be willing to sacrifice the military medical care I earned serving my country for 30 years.

Mr. Sawyer lives in Chesapeake.

Another view

The Virginian-Pilot

Established 1865

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CARL W. MANOUIAN ..... President
SANDRA M. SOWE ..... Executive Editor
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The Virginian-Pilot

Editorials

Saturday, December 7, 1985

Medical care, yes, for wives who serve

By ALICE BEARDS

Regarding W. E. Myers' letter (Nov. 29) charging that wives "serve" the military, isn't Captain Myers aware that Congress, with passage of the first enrollment act of 1821, legislated that wives do serve? In addition, beginning in 1955, the Department of Defense set aside an annual day to honor military wives — not for their contribution as wives and mothers, but for "their direct [italics mine] contribution to the military mission of the United States." That should settle the matter for all but the most dishonest math theorists.

I do indeed agree with Captain Myers that taxpayers do not desire, intend or approve of giving to anyone lifelong free medical or other benefits based solely on a marriage ceremony. But that is exactly what the present system still does. The best example of this is the military medical-care system. It has been almost ruined by the 2 million to 4 million freeloaders who have been given "lifetime" (or at least as long as the military marriage lasts) military medical care. Military medicine now is at the point where previously secret reports state that we could not respond to the needs of the military with adequate medical care should there be a war. In other words, the United States could actually lose a war because of this "give-away-on-the-basis-of-a-marriage-certificate" system.

To remind the public, these freeloaders were listed quite accurately in Paul Sawyer's recent letter as:

1. Women to whom military members had been married for fewer than 10 years of active-duty service before retirement.

2. Women married after retirement who never served a day as military wives.

3. Children of these post-retirement wives by previous marriages who are usually receiving court-ordered support from their natural fathers.

4. Parents of these post-retirement wives if the service member declares them "dependents."

Recently, President Reagan proposed to send Medicare recipients to private insurers at a cost to the government (taxpayer) of $500 per month in order to save the dollars. If it costs $500 per month for Medicare recipients, the cost for military medicine can't be far behind. Let's be conservative and assume only 2 million "dependents" in the freeloader category. If we multiply that number times $2,400 per year, that means the public is budgeted to pay the divorce bill for military members to the tune of $7.2 billion annually. Remember what Senator Dirksen said: "Ten years ago a billion here and you spend a billion there, and pretty soon you're talking about real money."

Congress is now debating whether or not to pass Star Wars research since the projected cost in 1990 will be $5 billion. Those who oppose it say we just can't afford the tax dollars.

If the public didn't have to subsidize divorces for retired military members (Senate to congressional largesse), it could finance Star Wars research for about 18 months with the money saved per year. If you asked any taxpayer, including Captain Myers, whether he would rather spend his dollars for a system of defense that might keep him as well as the rest of us from getting blown up in a nuclear war, as opposed to paying for military medicine for freeloaders, I believe even he would opt for research that might make him safer or at more secure.

The present system of conserving long-serving military wives from the military health-care rolls in order to make room for their successors (after a period of years when the divorce rate was very low and few people noticed the small number of long-serving military wives who were apparently thought faithful). Divorced military wives never went and without political clout as the military members, who liked the "throw-away-military-wife" system, were strong and powerful. But with the whopping rise in military divorces military wives have raised their voices in opposition to such a callous system. We are slowly making the public aware of what the and result is of giving away tax money on the basis of a marriage ceremony as opposed to service to the country.

Mrs. Beards, who lives in Chesapeake, was married for 22 years to an Army officer.

Another view

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A10 THE VIRGINIAN-PILOT AND THE LEDGER-STAR TUESDAY, MAY 21, 1996

U.N. says no country treats its women as well as its men

The United States ranks 9th worldwide out of 173 countries.

Dallas Morning News

WASHINGTON — Women are the largest "excluded group" in the world, lagging behind men in earning power, political influence, literacy and recognition as contributors to the global economy, the United Nations said Monday.

"No country treats its women as well as it treats its men," the organization said in the fourth-annual Human Development Report, issued by the U.N. Development Program, "a disappointing result after so many years of debate on gender equality, so many struggles by women and so many changes in national laws."

The report called women "the non-participating majority." They make up more than half the world's population and work longer hours than men, but hold just over 10 percent of parliamentary positions and fewer than 4 percent of cabinet-level government posts.

Women's rights groups welcomed the report, made public three weeks before the U.N. World Conference on Human Rights convenes in Vienna, Austria. Among the more controversial items on the conference agenda is one proposing that a special investigator be appointed to examine and expose violence against women around the world.

In industrial countries, according to the report, gender discrimination is evident primarily in employment and wages, with women concentrated in lower-status jobs and earning half as much as men. In the developing world, there are also gender disparities in nutrition, education and health care.

"One of the greatest health risks for women in poor countries is childbirth. Maternal mortality rates in the developing world are more than 15 times higher than in the industrial countries," the report said.

But most forms of sex discrimination exist in all countries, rich and poor, the report said. And in most countries, it said, discrimination extends into the realm of data collection — only 33 of the 173 countries in the report kept sufficient gender-based statistics for comparisons to be made in the human development index.

"Women are often invisible in statistics," the report said. "If women's unpaid housework were counted as productive output in national income accounts, global output would increase by 20 to 30 percent."

A human development index system ranking 173 nations was devised in 1990 by Mahbub ul Haq, a former Pakistani finance minister and a special adviser to the U.N. Development Program.

The 1995 index ranked countries in terms of their indicators, from "low," with Guinea on the bottom, to "high," with Japan on top.

But when the index was adjusted for gender bias, Japan fell to No. 17. The United States slipped from sixth place to ninth place.

On the overall index, the United States ranked behind Sweden, Switzerland, Norway and Canada.

Haq said the Human Development Report for 1996 would focus mainly on women. By then, he said, researchers hope to have gender-specific data from as many as 150 countries.

Failure to Close the Gender Gap Continues to Puzzle Republicans

By GERALD F. SEIB
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — At the beginning of the election campaign, Republicans were talking about the gender gap and how they would close it.

At the end of the election campaign, Republicans were talking about the gender gap and how they had failed to close it.

That, in a nutshell, is the story of the 1996 presidential campaign. Robert Dole and Bill Clinton had fought to a virtual draw among America's men; the margin of President Clinton's 49%-41% national victory came from women.

Among female voters, Mr. Clinton captured 54% of the vote compared with 37% for Mr. Dole, according to exit polls. That meant the problem that has bedeviled Republicans in presidential elections since 1980 worsened significantly from four years ago. Indeed, Mr. Clinton not only did well among working women, who voted in his favor by a 57%-30% margin, but also *did* relatively well among homemakers, who have been more conservative and Republican-friendly in their voting patterns. Among women at home under age 65, Mr. Clinton won 49% to 43%.

The numbers show that Republicans' problem with women in presidential voting cut across class lines, and wasn't limited strictly to the fabled upscale, suburban "soccer moms."

GOP leaders were left scratching their heads as to how to solve the problem. "I always thought if we had any chance, it was with the waitress moms and the homemakers," said Tony Fabrizio, the Dole campaign's pollster.

"This year, the gender gap seems to have been greatly exacerbated at the presidential level," said Republican National Chairman Haley Barbour. "It's something that should concern Republicans, and we have to work through why."

Both Mr. Barbour and Mr. Fabrizio placed much of the blame on the Democratic Party's relentless charges that Republicans wanted to cut Medicare benefits to balance the budget and finance tax cuts. "Medicare became the symbol," said Mr. Fabrizio. Mr. Clinton, he said, used the

'I always thought if we had any chance, it was with the waitress moms and the homemakers.'

—Tony Fabrizio
Dole campaign's pollster

Medicare debate to portray himself as a candidate of "compassion" and "concern," characteristics that rank higher in importance among women voters. "One of the attributes on which Clinton scored off the charts was on caring about people, caring about average people," he said. "What he did was he made [women voters] comfortable with him, and that put them just out of our reach."

Mr. Barbour charged that "the big behavioral campaign surrounded us with a lot of senior citizens. Most senior citizens are women."

The solution, Mr. Barbour argued yesterday, is for Republicans both to better explaining their economic and social policies in ways that will appeal to women's concerns about family life and social programs. "We tend to talk about balanced budgets and lower taxes like accountants," he said. "Bill Clinton was very effective in the campaign talking about a balanced budget in terms that a family could see were important to them.

How Did Everyone Vote?

Nationwide, 49% of voters chose to give Bill Clinton another four-year lease in the White House, while 41% wanted to turn the keys over to Robert Dole and 8%, picked Ross Perot. But group by group, various blocs of Americans had somewhat different views

GENDER	CLINTON	DOLE	PEROT
Men	44%	44%	10%
Women	54	37	7
AGE			
18-29	53	34	10
30-44	49	41	9
45-60	49	41	9
60 and over	49	43	7
INCOME			
Less than $15,000	60	31	9
$15,000 to $30,000	49	40	10
$30,000 to $75,000	47	44	7
$75,000 to $100,000	44	49	6
Over $100,000	40	54	5
[illegible]			
Household member belongs to union	60	29	9
[illegible]			
Those who own gun	49	41	9
PARTY AFFILIATION			
Democrat	84	10	5
Republican	13	81	5
Independent/Other	43	37	16

	CLINTON	DOLE	PEROT
[illegible]	48%	47%	5%
[illegible]	37	52	9
[illegible]	79	16	3
[illegible]			
[illegible]	44	47	8
[illegible]	57	31	9
[illegible]			
[illegible]	53	38	9
[illegible]	49	43	7
[illegible]	46	46	7
[illegible]			
[illegible]			
[illegible]	51	39	8
[illegible]			
[illegible]	44	46	8
[illegible]	84	12	4
[illegible]	70	23	6
[illegible]			8

Source: Voter Time Series exit poll conducted by Associated Press and Politics Now

August 14, 1989/NAVY TIMES

Opinion

Commentary

Army Times

Doris N. Mozley

Women should be equal partners in marriage assets

During President Reagan's tenure, the White House committee studying the American family asked me to comment on why the military divorce rate (now approaching 65 percent) was so high, what could be done to lower it to at least equal to the civilian average (one out of two), and to confine my remarks to one page. I believe everything I wrote in my Feb. 8, 1988, letter to the president's committee still is valid. I stated:

Americans have been subject to much media bombardment in the last few years that goes against traditional ethical, religious and family values. Remember the "me generation," "looking out for number one" and "getting your's while you can before they get you?" This type of narcissistic, selfish propaganda has undercut religious and moral values that stress the worth of the individual, duty, self-sacrifice, loyalty, faithfulness, chastity and putting others before oneself. These bedrock values still exist, of course, but I think they, along with family values, have been undercut.

While it is true that the peripatetic lifestyle and frequent separations are hard on military families, these existed when the divorce rate was very low. So, moving and separations are in and of themselves not the critical variables.

I believe the paramount reason for the astronomical rise in military divorce, other than the recent emphasis in our society on instant, narcissistic self-gratification, is that with the rise in military benefits and perquisites, military members became more susceptible to the wiles of camp followers and gold diggers because Congress unintentionally passed laws that reward military members for divorcing. It is just that simple.

To explain: A military member can divorce his long-term military spouse and take everything they earned together, walk away and give the spouse's part of the partnership to someone else.

If you remember that the only psychological principle all theories of behavior adhere to is doing what is pleasurable and avoiding punishment, then you can see why we say that a military member is rewarded for divorcing, while his long-serving spouse, thereby disenfranchised, is punished severely.

I told the White House committee that if Congress passes laws that predicate public benefits only on public service, the military divorce rate will go way down.

We military wives hold the following givens:

- Public benefits must be earned by public service.
- Benefits earned by serving the country, either as a military member or a military wife, are not lost by either partner due to a failed marriage.
- To strip a wife of military benefits she has earned at divorce time (in order to give them to her replacement) and to take some of the benefits from a husband, is discriminatory and unfair to the military wife.

We military wives respectfully request Congress to protect us with:

- A presumption to entitlement to our prorated share of the commonly earned pension after 10 years of service.
- Mandatory assignment of the survivor's annuity to the women who earned this valuable protection by serving our country as a military wife. This was Congress' original intention.
- Restoration of all past benefits lost by former military wives under the old "throwaway-military-wife system."

In sum, we wish to see women treated as equal partners in the military marriage. This means that a woman (wife) is a person in her own right, earns benefits to which she is entitled regardless of her marital situation, provided, of course, that she has earned them by serving. We want repealed all discriminatory laws that punish women but not men at divorce time. That is equality.

So far, I have spoken mostly of fairness, equality, justice and morality — idealistic notions that we Americans like to pay a lot of lip service to. However, there is another facet to the whole question of military entitlements: If the military continues to insist that military wives are chattel of their military husbands and leaves any rewards for serving as military wives up to the vagaries of state domestic relations courts, I am afraid that we are destined to have less able men not only in command positions, but in professional support groups such as the Medical Corps.

It seems simple enough. Smart men usually marry smart women. I do not believe that many "smart" women are going to continue to be content to serve as military wives unless Congress protects them with legislation recognizing them as equal partners in the military marriage.

Allow me to personalize about the Medical Corps, since I served as a Navy medical wife for more than 30 years.

I have a daughter who is married to a young, outstanding physician who served three years in the Public Health Service. He might have continued in regular military service if his wife had encouraged him to do so. My daughter refused to be a military wife since she is all too aware, thanks to my experience, of how unprotected she would be in that role.

Another case: My son, a young physician who is finishing a four-year residency at a highly select institution, probably would have gone into the military for his training as his father had, but he was too disgusted with all the horror stories that he has heard thanks to my work with ex-military spouses.

Another case: A young physician in my neighborhood left the military from Portsmouth Naval Hospital, Va., because his wife became aware of how unappreciated her role was.

None of the above young physicians wrote the military about their refusal to serve. They quietly faded from military service based on Congress' failure to protect military wives. If I know three young, outstanding physicians who refused when they might have been expected to serve, well, think how many more there must be out there.

I believe it is the height of folly for Congress to continue to listen to military members who are selfish, narcissistic and do not wish to share the assets of a lifetime of marriage with the ex-wives who helped earn them. This obviously is a powerful group, but for too long Congress has listened to a siren song from them that may lead to the destruction of our country.

Doris Mozley is chairwoman of the Committee for Equality and Justice for the Military Wife. She lives in Norfolk, Va.

OUR CREED

Investor's Business Daily

A6

Monday, July 20, 1998

PERSPECTIVE

Is Divorce A Bad Deal?

During the early '70s, about half the states in the U.S. switched to nc fault divorce. Under no-fault, either spouse can demand a divorc whether the other spouse wants one or not. This is often portrayed as victory for women. But it's not so simple.

On the plus side, no-fault does give a woman a (y of escaping a bad marriage, one where a husband might be hostile or abusive. There's no need to prove legal "fault." A woman can obtain a divorce regardless of whether a judge — often male — agrees that the husband acted wrongly.

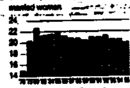
When such things happen, no-fault is a good thing for women. But there are other times when the benefits, especially economic ones, are less clear.

One of those times is when it isn't the woman who wants to leave, but the man.

Imagine, for example, a couple who've been together 25 years and have had three children. The woman has stayed home to raise the kids, leaving the breadwinning to her husband. This works fine until, one day, the man decides to leave his wife for a younger woman.

Bad For Women?

Divorces per 1,000 population for married women



Source: U.S. National Center for Health Statistics

For the abandoned wife, it's a tough spot.

Even if she gets a fair-sized settlement from her husband, she still has lots of years to live and little in the way of marketable skills.

She has, in essence, sacrificed her career for the benefit of her husband and kids. When her husband leaves, her lack of skills — in an economy that puts a premium on them — can be financially devastating.

Of course, this is something that has happened to thousands of women. But it isn't just these women who've been hurt by no-fault divorce. The damage is broader. No-fault divorce hurts even families that don't end up breaking apart.

This may seem surprising.

But pretend, for a moment, you're a young woman who's recently married. You must decide whether to devote most of your time to a high-powered, high-paying career or spend a lot of time raising your kids instead.

It's a monumental decision. With no-fault divorce, your husband could decide to leave you 20 years from now, when you've already had kids.

But you will have spent 20 years out of t workplace. Your education, particularly it's specialized, may be obsolete. If yo husband wants to leave, you can't do much stop him.

If, on the other hand, a divorce require judge to make a finding of fault, you're ir much stronger position if your husba decides to leave. To do so, he's either got wage a long court battle or get you to agree

And to do that, h likely have to offer you lot of money — perh: enough to give you fin security even though haven't developed a care

Under a system of fa tics, it's far less likely y husband will leave you the lurch. That makes safer decision for you invest time in your kids your family, instead your career. So you're more likely to do that.

Having women free to do that is, argual in everyone's economic interest.

But to make doing so attractive requ setting up a new system — one in wi people who get married give up some freec to change their minds down the line.

That's something many people won't to hear, especially men.

But getting rid of the risk that a spouse walk away — or at least, making the decis to walk away a tough one — increases incentive for both husband and wife to m the marriage they have work.

While that doesn't guarantee a marr will be a success, it does increase the odds.

With single-parent families linked to ev thing from lower educational attainmen higher rates of drug use among children. long-term economic benefits may be g indeed.

Army Times
An Independent Newspaper Serving Army People

September 3, 1990/Army Times

States treat pay as property

In response to Lt. Col. (Ret.) John B. Beach's July 23 letter ["Pay's no pension"], in which he attempts to "prove" that military retired/retainer pay is no pension, I wish to inform all who adhere to his specious reasoning that in the Former Spouses Protection Act, Congress authorizes states to treat retired/retainer pay as "property" in accordance with each state's property laws. Obviously, therefore, Congress thinks that "retired-/retainer" pay is a pension.

Also, during the April 4 hearing before Rep. Beverly Byron's military personnel and compensation subcommittee, a representative of the Family Law Section of the American Bar Association stated that:

- The ABA takes the position that states should be able to apply their own law determining that portion of retirement benefits that are divisible;
- All deferred compensation derived from federal employment, such as pensions, retired pay and other income of that nature, be subject to state property law;
- The words "disposable retired or retainer pay" are words of art and recommended their elimination from the act.
- Ultimately, spouses fare less well in divisions of military retirement benefits than they would if private or other government pensions of an equal amount were being divided.

There were three groups of witnesses at the April 4 hearing: former spouses, military members and the American Bar Association committee (half of whom were either active-duty or retired military members). It can fairly be said that only one witness was truly impartial, the American Bar Association.

I believe justice and equity would be well served if Congress follows this expert, impartial witness' recommendation.

Doris Medley
Chairwoman
Committee for Justice and Equality
for the Military Wife
Norfolk, Va.

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EX-PARTNERS OF SERVICEMEN/WOMEN FOR EQUALITY
AUGUST 5, 1998

Good morning, ladies and gentlemen. Permit me to introduce myself. I am Kay Ward, a Board member of EX-Partners Of Servicemen/women for Equality (EX-POSE). On behalf of myself and the rest of our organization, let me say that we very pleased to have this opportunity to address the House Veterans Affairs Committee.

With regard to this hearing, it is our understanding the concern is primarily that of "garnishment of benefits paid to veterans for child support and other court-ordered family obligations." We are puzzled by just what is in question here. Particularly in light of the Supreme Court's ruling in the Rose Case that child support may be deducted from "service-connected disability" payments. Further, on August 29, 1991, The Office of the General Counsel ruled - under 42 U.S.C. 662(i)(2) - ruled that both child support and alimony may be garnished from VA benefits.

Is the intent to discontinue child support for the children of veterans? Surely you cannot deny moneys ordered to support children! Disability does not preclude parental obligation. What would such a move do to the parent-child relationship? Remember, children in these instances have already suffered the trauma of their parents' divorce.

Is it then to discontinue court-approved payment of alimony to a veteran's former spouse? Alimony is awarded, "....to provide one spouse with sufficient income to obtain the necessities of life." Sometimes this award is made in a "rehabilitative" manner, that is payment is to be made until such time as one spouse is capable of securing her/his own income. On other occasions, particularly in the case of long-term marriages, alimony is ordered indefinitely. Such decisions are made on a case-by-case basis; they are made by judges at the state level; and are made at the conclusion of long and often arduous hearings. Judges certainly are aware of the fact they are requesting moneys to be deducted from disability payments - the point being that having a disability does not release the ex-serviceperson from his/her marital obligations. Remember also that all alimony ceases upon remarriage.

At this time, we would like to submit that - judging from correspondence we have received from our members - it is our opinion an investigation is in order concerning just exactly what is defined as a "service-connected disability" by the Veterans Affairs. We have women writing to us that their former husbands appear to be in very good health, are working full time, and are receiving large percentages of their retirement income from the VA. We have women write to us that their former spouses, in an effort not to relinquish control over them, will "threaten" them by saying they will get part of their retirement as "disability" to deprive them of what they have been awarded in a court order. Situations such as this are not only unfair to former spouses, they make light of countless legitimate sacrifices made by so many of our servicemen and women. Additionally, they are an affront to the decisions made by judges at the state level.

One of the reasons "service-connected disability" payments are so very attractive to former servicemen is, of course, they are "tax free." Another reason is that they are deducted from what the state courts have concluded to be "Property" - i.e., retirement pay - before it is paid to a former spouse. For example:

> Let us assume retirement pay to be $2,400 per month; of this amount, a former spouse is awarded 1/3, or $800. Let us further assume that the serviceman is granted a "service-connected disability" of, perhaps, 40% - this amounts to $399. The ex-serviceperson's disability payment is paid by the VA in the amount of $399 and DFAS reduces his payment by that amount. So, instead of receiving the $1,600 from DFAS (or 2/3 of $2,400) he now receives $399 (tax free) from the VA and $1,201 from DFAS. His spouse, however, now receives her property share as 1/3 of $2,001 (which is $2,400 less $399), or $634 - not the aforementioned $800. In other words, HIS disability reduces HER court-awarded property share.

Further, our members write us that they have their share of retirement pay reduced and are unable to determine "why" the reduction. The Privacy Act prohibits DFAS from divulging the source of the reduction.

Clearly, what constitutes "service-connected disability" needs to be further defined before any legislation can proceed. We must display a measure of fairness to all parties concerned in this regard.

EX-POSE

(Ex-Partners Of Military Servicemen(women) for Equality)

We wish to express our opposition to the proposed legislation introduced by Rep. Bob Stump(R-AZ) relative to reform of the Uniform Services Former Spouses Protection Act. The key provisions of the proposed legislation - H.R. #2537 - are as follows:

1. **Retiree payments to a former spouse would cease upon the remarriage of the former spouse - regardless of age. After a period of 180 days, this provision would be retroactively enforced even to those former spouses now receiving retired pay.**

   Such a provision would strike at the very spirit of the Former Spouse Protection Act. Retiree payments were awarded by **state** courts as **property**. The rationale used was that the retiree payments were jointly earned during the period of the marriage. Other properties jointly earned during a marriage, i.e., real estate, stock investments, etc., are **never** forfeited upon remarriage.

   Insofar as the retroactive aspect of this proposal, this would deprive many military spouses of moneys which they and their current spouses are depending upon; moneys which were presented as life-long awards.

   Further, the role of the military spouse is trivialized by this proposal. The requirements imposed by the military upon spouses (frequent moves, long periods of separation, etc.) are such that spouses are usually unable to establish careers and thus ensure self-support in the event their marriages fail.

2. **Divisible retired pay would be calculated differently. It would be based upon the pay grade and length of service at the time of divorce, as opposed to the current method of calculation which is based upon pay grade and length of service at date of retirement. Adjustments would be made for COLA.**

   Again, after 180 days, this proposal is to be retroactive.

   This proposed change has the potential for gravely impacting the financial security of former spouses. It is patently unjust to award a particular amount of money and to decide at a later date that the money would be allocated differently.

   Additionally, the method of calculation would be a very important part of anyproposed legislation. House Bill #2537 is unclear on how the calculation is to be made.

   In order to make this proposal retroactive, the Defense Finance Center would have to recompute all amounts being paid. Such a move could

entail returning to state courts for clarification, since it would be extremely difficult, if not impossible,for recipients to verify that the new amounts being paid them are indeed correct.

3. **Court jurisdiction would be limited to those areas where the member has a residence, is legally domiciled or where the member has consented to the court's jurisdiction. All former spouses must request division of retired pay within two years of the final divorce decree.**

Insofar as we are concerned, the only real change here is in the second portion of this proposal. There are many, many spouses who have poorly written property settlement agreements. These persons were oftentimes unaware at the time of their divorces that they had a "presumption" to a portion of their ex-spouses' retired pay; in the trauma of divorce proceedings they have signed away this presumption which could make the difference between a respectable life style and poverty. This proposed legislation would forever deny them the justice to address these inequities. Moreover, in the case of some divorces - "bifurcated" is the term used - the divorce decree is often final years before the property settlement agreement.

4. **Disability compensation would be more explicitly restricted insofar as the former spouse may in no way share in the member's service-connected disability payments.**

It is our position this is an oversimplification of a very complex issue. What we are requesting is honoring property settlements which have been freely entered into.

A bit of background information is necessary here. When retired pay is granted by the state court it is granted on "disposable income." That is to say that "VA Service-Connected Disability Payments" are deducted from the retired pay PRIOR to the division of such retired pay between the former spouse and the member. Therefore, let us suppose that the amount of the retired pay is $2,000 and the former spouse is awarded 50% of that retired pay; let us further suppose that **after the divorce decree is finalized and he has retired** the service member contacts the VA and is awarded 30% VA Disability (which is, of course, tax free). The calculation is now as follows:

$2,000 - (30% VA Disability, or $279**) x 50% = $861

Therefore, instead of the original amount awarded ($1,000), the former spouse now receives $861.00 and the member now receives only $721 of his former retirement pay from Defense Finance Center PLUS $279 (**tax free**) from the VA.

EX-POSE

(Ex-Partners Of Military Servicemen(women) for Equality)

More and more state courts are reviewing these cases and are concluding this is a method of not living up to a prior obligation and are insisting the member pay the difference to a former spouse. We feel this proposal in House Bill #2537 is an attempt to prohibit such state court decisions.

** The percentage of VA Disability is established with no regard to the amount of a member's retired pay. It reflects the percentage of disability, as opposed to a percentage of retirement, i.e., the VA Disability for a sergeant is the same VA Disability for a general. As you can imagine, given the above indicated circumstances, the impact upon the former spouse of an NCO is far greater than that of the spouse of a career officer.

PRESS ENTER FOR PREVIOUS RATES

* DISABILITY COMPENSATION 02/24/98

RATES EFFECTIVE 12/97

		PLUS 1	EA ADD	SCHOOL
	WITH SPOUSE	CHILD	CHILD	CHILD
		UNDER 18	UNDER 18	AGE 18-23
10% ...$ 95				
20% ...$ 182				
30% ...$ 279	$ 313	$ 337	$ 18	$ 54
40% ...$ 399	$ 444	$ 477	$ 24	$ 72
50% ...$ 569	$ 626	$ 666	$ 30	$ 90
60% ...$ 717	$ 785	$ 834	$ 36	$ 108
70% ...$ 905	$ 984	$ 1041	$ 42	$ 126
80% ...$ 1049	$ 1140	$ 1205	$ 48	$ 144
90% ...$ 1181	$ 1283	$ 1356	$ 54	$ 162
100%...$ 1964	$ 2078	$ 2159	$ 60	$ 180

Statement of John Thompson

Acting General Counsel

Department of Veterans Affairs

Before the House Committee on Veterans' Affairs

August 5, 1998

Mr. Chairman, and Members of the Committee, I am pleased to be here this morning to discuss the issue of garnishment of VA benefits for child support and other court-ordered family obligations.

Federal statutes generally prohibit the garnishment of VA benefits to satisfy debts owed to private individuals. The sole exception is that VA disability compensation received in lieu of waived military retired pay can be garnished in order to satisfy court-ordered child support and alimony obligations. In such cases, only a portion of a VA compensation award representing the amount of retired pay which has been waived can be garnished. Although I cannot tell you today in how many cases we are implementing a garnishment order, a VA survey in 1992 indicated only 93 garnishment orders were received during the preceding year.

VA benefits, including even disability compensation received in lieu of retired pay, are also protected by Federal law from court-ordered divisions of property upon veterans' divorces. However, the U.S. Supreme Court ruled in *Rose v. Rose*, 481 U.S. 619 (1987), that state courts are not precluded from setting child support obligations at such levels that veterans would necessarily have to use some of their disability compensation to meet them.

Garnishment cases are handled by VA regional offices as a coordinated effort involving the Office of Regional Counsel, the Adjudication Division and the Finance Division in accordance with the following procedures:

(1) Any court garnishment order received at a VA regional office involving a veteran who receives VA compensation in lieu of military retired pay must be promptly delivered to the Finance Officer who is responsible for establishing the initial withholding of benefits for a potential garnishment.

(2) The Regional Counsel then prepares a brief memorandum to the Adjudication Officer explaining the legal basis for any further action to be taken and, if the garnishment is to be effected, specifying the dollar amount to be paid.

(3) The Adjudication Officer notifies the Finance Officer that the veteran is receiving disability compensation as a result of waiving military retirement pay, the amount of such payments and whether the veteran is receiving additional benefits based on the dependency of the person to whom the garnishment is to be paid.

(4) Once the Regional Counsel approves the garnishment, the Adjudication Officer makes any adjustment that may be required to the withholding from the veteran's award initially established by the Finance Officer.

The Finance Officer is responsible for paying and notifying the veteran if the garnishment orders a specific amount to be paid (delinquent payments) with no recurring payments. However, if the garnishment orders a specific amount to cover delinquent payments in addition to recurring payments and if the veteran is receiving additional benefits on the basis of dependency of the person to whom the garnishment is to be paid, the Finance Officer is responsible for payment of the delinquent amount and the Adjudication Officer takes action to award recurring payments. If the recurring payments are to be made to someone who is not a dependent (for example, an ex-spouse), then the Finance Officer is responsible for issuing payments.

In the event of any change in the amount of compensation or military retired pay, the Adjudication Officer is responsible for reviewing the claims folder to determine if action may be necessary to adjust the garnishment. In that event, the case is handled in the same way as for an original garnishment.

Although garnishment of VA benefits is largely precluded, the need for it in order to force veterans to meet their support obligations is greatly reduced by the availability of "apportionment." Under authority of 38 U.S.C. §5307, the Secretary has promulgated rules for apportioning awards to the beneficiaries'

estranged spouses and/or children not in their custody, upon application, where necessary to provide for their support. VA regulations, at 38 C.F.R. §§ 3.450 - 3.461, essentially are designed to ensure an equitable division of benefits where a VA beneficiary is failing to meet his or her support obligations.

Apportionment decisions are based on a balancing of needs between the veteran and the apportionment claimant. Income and expenses for both parties are carefully evaluated, and VA attempts to balance their respective needs. There are currently 22,808 cases in which an award of a veteran or surviving spouse is being apportioned by VA.

Mr. Chairman, that concludes my testimony.

Statement by Lieutenant General Normand G. Lezy
Deputy Assistant Secretary of Defense
(Military Personnel Policy)

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you to discuss garnishment of benefits paid to veterans for child support and other court-ordered family obligations. I am accompanied by Mr. Rodney Winn, Assistant General Counsel, Garnishment Operations, of the Defense Finance and Accounting Service.

The Department of Defense has long been an advocate of encouraging parental child support and is committed to ensuring that child support obligations are met. For more than twenty years the Department of Defense has been required to garnish the pay of retired military members to enforce child support. President Clinton's Executive Order 12953 of February 27, 1995, called on all Federal agencies to become "model employers" in the area of child support enforcement. This was reinforced with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Department of Defense supports and complies with the recent improvements in the law on enforcement of parental child support.

Title 42 of the United States Code, Section 659 provides that the Department of Defense upon receipt of a court order shall garnish retired pay for alimony and child support. Similarly, title 10 of the United States Code, Section 1408 requires the Department of Defense to make payments from a member's disposable retired pay based on a division of property if it is specifically provided for in a qualifying civilian court order. It is the Department's policy to fully comply with these statutory requirements. The Defense Finance Accounting Service is responsible for implementing these provisions. The Defense Finance Accounting Service has consolidated its operations and reengineered its processes with new technology. As a result they are able to process cases more accurately and expeditiously without backlog and delay. The Defense Finance Accounting Service witness will be addressing these matters.

The Department of Defense considers any legislation that would revise the rules relating to court-ordered apportionment of the retired pay of members of the Armed Forces to former spouses to be inappropriate at this time. Congress has mandated, in section 643 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, November 18, 1997, that

the Secretary of Defense carry out a comprehensive review of the Uniformed Services Former Spouses' Protection Act and report to Congress by September 30, 1999.

The review will compare the protections, benefits and treatment afforded under Federal law to military members, former members, former spouses, with such benefits provided to civil service employees and former employees of the Federal government and their former spouses. The review will also consider the experiences of the Uniformed Services in administering the law, and the adequacy and effectiveness of legal assistance. In addition, the review will look at the experience of military members, former members and former spouses in the application of the law by State courts, including the interpretation by State courts of applicable Federal and State statutes. Pending the completion of the review, it would be inappropriate to comment on the substance of H.R. 2537.

Thank you very much for the opportunity to appear before you to discuss this important matter. The following information details the garnishment actions as implemented within the Department of Defense by our responsible agency, the Defense Finance and Accounting Service (DFAS). DFAS was established in January 1991 as the DoD executive agency for finance and accounting requirements, systems, and functions. DFAS consolidated and capitalized finance and accounting services which were previously performed by each of the military departments and defense agencies. DFAS now operates five major finance and accounting centers at Cleveland, Ohio; Columbus, Ohio; Denver, Colorado; Indianapolis, Indiana; and Kansas City, Missouri.

Among the functions previously performed by the military departments and defense agencies and transferred to DFAS in January 1991 was the processing of garnishment orders for child support and alimony and divisions of military retired pay. The Office of General Counsel, DFAS, is responsible for this function.

Garnishments for child support and alimony are processed in accordance with section 659 of title 42 of the United States Code. This statute waives sovereign immunity to subject Federal civilian employees and military members, including retired members, to garnishment of their pay in accordance with state law to enforce the legal obligation of the employee or military member to provide child support or alimony. Pursuant to section 659, if an agency of the Federal Government receives a valid court order, notice to withhold or other process to enforce support

obligations against an individual, the agency is required to establish deductions from the individual's pay, not to exceed the statutory limit, in satisfaction of that obligation. The maximum amount that may be deducted is governed by section 1673(b)(2)(A) and (B) of title 15 of the United States Code, and ranges between 50 and 65 percent depending on whether there are arrearages or other support obligations. Deductions are to commence within 30 days of the agency's receipt of the notice or legal process. The agency is not required, however, to vary its normal pay schedule to respond to the notice or legal process.

Divisions of retired pay as property are processed in accordance with section 1408 of title 10 of the United States Code, the Uniformed Services Former Spouses' Protection Act (USFSPA). The USFSPA authorizes state courts to treat military retired pay as property solely of a military member or as property of the military member and the military member's spouse in accordance with the law of the jurisdiction of the court. This authority applies only to decrees of divorce, dissolution, legal separations or annulments issued on or after June 25, 1981, unless a court, prior to that date, reserved jurisdiction to treat the retired pay as property of the member and the member's spouse or former spouse. Payments to the spouse or former spouse are initiated based on an application and copy of the applicable court order submitted by the spouse or former spouse and are made from the "disposable retired pay" of the member. Disposable retired pay is the total monthly retired pay to which a member is entitled, minus certain authorized deductions, which differ depending on whether the decree of divorce, dissolution, annulment, or legal separation was issued before or after February 3, 1991. Not more than 50 percent of the member's disposable pay may be payable to spouses or former spouses under the USFSPA. If the member has already retired, payments to the spouse or former spouse are to commence within 90 days after the date of effective service of the application. If the member has not retired, payments are to begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay. Again, the agency is not required to vary normal pay and disbursement cycles for retired or retainer pay to comply with a court order.

For divorces, dissolutions, annulments or legal separations effective on or before November 14, 1986, a spouse or former spouse was not entitled to have his or her award enforced under the USFSPA if that member retired for disability under chapter 61 of title 10 of the United States Code. For divorces, dissolutions, annulments and legal separations issued after

November 16, 1986, that portion of the member's retired pay computed using the percentage of the member's disability on the date when the member was retired is treated as a deduction to arrive at the amount of disposable retired pay subject to division.

A spouse or former spouse may also submit an application under the USFSPA for court-ordered child support or alimony. This seldom used authority provides an alternative to a garnishment order or wage withholding order issued by the court or state child support enforcement agency. Currently, however, approximately 80 percent of our wage withholding orders are submitted by state child support enforcement agencies.

When DFAS was established, garnishment orders continued to be processed at each of the five DFAS centers and at military installations world-wide. Divisions of retired pay were processed at four of the five centers. In 1993, DFAS consolidated the garnishment and USFSPA function into a single location, the DFAS-Cleveland Center. DFAS believed that consolidation would produce a number of significant benefits: it would concentrate subject matter expertise into a single location, centralize responsibilities for the development and implementation of consistent policies and legal interpretations, and reduce costs. Consolidation, which included the transfer of all active files, began in January 1994 and ended in October 1995. Meanwhile, in April 1995, the Office of General Counsel, DFAS, began a business process reengineering (BPR) study of its Garnishment Operations Directorate. In November 1995, the Director, DFAS, approved the recommendations that resulted from the (BPR) study. Those recommendations included technological improvements, such as a Payroll Locator File System (PLFS), an Integrated Garnishment System (IGS), and an Imaging system.

The PLFS provides quick and easy access to information as to whether an individual for whom we have received a garnishment order or USFSPA application is currently paid by the Department of Defense. It also provides the location of the correct payroll office. It is designed to interface with the IGS. The IGS is an integrated system, which automates the processing of garnishment orders and applications under the USFSPA. It incorporates a form of artificial intelligence which assists the attorney and paralegal in properly and consistently conducting the legal review of the orders and applications. The IGS is designed to interface with the payroll systems such that when review of the case is completed and the case is accepted, information concerning the amount of the deduction is automatically sent to the payroll system. Currently

IGS interfaces only with the Defense Civilian Payroll System and the Non Appropriated Payroll System. It will soon interface with the Active Duty and Retired pay systems.

Use of optical imaging has just commenced. The imaging system was installed in June 1998. It, too, is designed to facilitate processing of cases by eliminating the need to maintain and access the estimated 285,000 paper files currently maintained by the Garnishment Operations Directorate. Instead, the paralegal, attorney or customer service representative can pull all the necessary information up on a screen on demand.

These technological improvements, plus the use of multi-disciplined teams and increased performance standards, have had a dramatic effect on the amount of time it takes to process court orders, while at the same time reducing the number of personnel required to do so. The Garnishment Operations Directorate currently receives approximately 11,000 court orders per month, approximately 60 percent of which are child support and alimony cases. This translates into approximately 133,235 payments per month for a total of $51,000,794 broken out as follows:

GARNISHMENTS

Monthly Statistics

	Number of Payments*	Dollars Issued*
Military Retirees - Former Spouse* - Alimony - Child Support	 45,669 3,621 1,859	 $26,866,431 1,780,626 566,539
-Active Duty Army (Alimony & Child Support)	16,347	$ 5,115,906
-Active Duty Navy (Alimony & Child Support)	14,165	$ 5,141,235
-Active Duty Air Force (Alimony & Child Support)	9,086	$ 3,062,912
-Active Duty Marine Corps (Alimony & Child Support)	4,330	$ 1,478,566
- Civilian Child Support Alimony	 34,197 3,961	 $ 6,738,509 $ 250,070
TOTALS	133,235	$51,000,794

*Number of payments does not correspond to the number of members and employees with child support, alimony, and former spouse obligations. In some cases, an employee or member may have more than one obligation, and in the case of civilian employees, the payments and dollar amounts above represent a monthly number, whereas the payments are actually made on a bi-weekly basis.

Most significant is the fact that DFAS is able to process and handle a caseload of this magnitude with virtually no backlog and at a reduced cost. Currently, 99.9% of our cases are processed within the statutory timeframes discussed above and at less cost to the taxpayer than prior to consolidation and the BPR implementation.

We believe it is important to constantly strive to improve our ways of doing things. In that vein, we are currently working with the Baltimore social services (child support) agency through their agent, Lockheed Martin, to develop the capability for the electronic transmission of the wage withholding orders for child support and alimony. We expect to begin receiving our first electronic orders in October of this year. We then plan to expand the number of jurisdictions from which we will receive electronic transmission of orders to include other states and localities for which Lockheed Martin serves as the child support collection or payment agency and other states and localities that have their own capability to transmit documents electronically. We also intend to test and implement electronic transmission of payments for child support and alimony through electronic funds transfer. We believe electronic transmission of garnishment orders and payments will greatly enhance our ability to process child support and alimony payments in the most efficient manner possible.

August 5, 1998

Statement By

Joshua W. Krebs
Chief Master Sergeant, USAF (Ret.)
Manager, Legislative Affairs

to the
House Committee on Veterans' Affairs

on

Veterans' Benefits Garnishment

Air Force Sergeants Association

INTERNATIONAL HEADQUARTERS, POST OFFICE BOX 50, TEMPLE HILLS, MD 20757-0050

A participating organization in
the National Military and Veterans Alliance

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Air Force Sergeants Association (AFSA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

51-567 - 98 - 6

CMSgt (Ret.) Joshua W. Krebs

CMSgt (Ret.) Joshua W. Krebs is the Air Force Sergeants Association Manager for Legislative Affairs. In this capacity, he reports to the Director of Military and Government Relations and serves as one of AFSA's representatives on legislative matters to the White House, Congress, the Department of Defense, the Air Force, other government agencies, and other associations. One of AFSA's registered lobbyists, he represents the interests of active and retired enlisted members of all components of the Air Force on Capitol Hill.

During his 25-year Air Force career, Chief Krebs' assignments included tours at Fallon Air Force Station, Nevada; Rhein Main Air Base, Germany; Fort Belvoir, Virginia; the Forestall Building, Washington, D.C.; Randolph Air Force Base, Texas; Bolling Air Force Base, Washington, D.C. and the Pentagon. His duties covered a wide range of positions within the Personnel career field. His final Air Force assignment was as Chief of the Enlisted Skills Management Section within the Directorate of Personnel on the Air Staff where he was responsible for enlisted retraining policy, enlistment bonus policy, reenlistment bonus policy, special duty assignment pay policy and was a key player in formulating the force drawdown policies of the early and mid 1990s.

Chief Krebs is a graduate of the MAC NCO Leadership School at Bolling AFB, D.C.; the ATC NCO Academy at Lackland AFB, TX, and the USAF Senior NCO Academy at Maxwell AFB, Gunter Annex, AL. He is also a graduate of the basic Personnel Course at Keesler AFB, MS. His civilian education includes an associates degree in Human Resource Management from the Community College of the Air Force.

His decorations include the Meritorious Service Medal with four oak leaf clusters, the Air Force Commendation Medal and the National Defense Service Medal with one oak leaf cluster.

* * * AFSA * * *

STATEMENT

Mr. Chairman and members of this committee, we were pleased to receive your request to participate in these proceedings to take a close look at "the garnishment of benefits paid to veterans for child support and other court-ordered family obligations." In particular, today I want to highlight a law that is decidedly detrimental to military veterans, the Uniformed Services Former Spouse Protection Act (USFSPA), Public Law 97-252, 10 USC 1408. The Air Force Sergeants Association represents the *enlisted* (active and retired) men and women of all components of the United States Air Force and their family members and is a participant in the National Military and Veterans Alliance. We ask that this hearing focus on honesty and fairness for those veterans who put their lives on the line for this nation and their families.

This hearing provides a rare, courageous opportunity to fairly examine *a situation that has been cloaked in emotion, built upon a clear misrepresentation of the military lifestyle, and generally avoided by Congress for over 15 years -- all at the expense of military veterans.* Indeed, rather than fairness or justice for all parties involved, the USFSPA focuses only on promoting the enrichment of former military spouses and their lawyers because of the automatic "without risk or need" nature and lifetime duration of the award. We would hope that as a result of this hearing the process to redress significant inequities targeted uniquely against military veterans may begin.

Each case of family dissolution, whether military or civilian, should be handled in the courts on a case-by-case basis, and fairness should be the goal, unfettered by federal law dictating interfering encumbrances. The retired pay or veterans disability compensation -- both earned at personal mortal risk -- should not be part of a formula of automatic asset division. Although VA and DoD disability compensation are "technically" off limits, settlements are often crafted in the guise of alimony so as to negate the disability "income." Alimony and child support should be based on the need for those forms of monetary assistance with termination of the same in accordance *with the same rules imposed on all other U.S. citizens.*

The USFSPA needs to be reformed. Indeed, this association *asks that this committee resolve to support ensuring the same statutes and "equal protections under the law" that are applied to all other federal employees are also afforded to military members.* Morality would dictate such resolve. At a minimum, (1) any provision of a veteran's military retired pay to a former spouse should be terminated when the former spouse (he or she) remarries. Also, (2) any separated monies should be based on the military member's rank at the time of the termination of the marriage -- not years later when the military member retires

During this statement, I ask that you keep in mind that when we refer to either the military

member or the former spouse, the gender reference could be, in each case, male or female.

Do family members play an important part in the success of a military member? Absolutely! Is this familial contribution unique to military members? Absolutely not! The military family's lifestyle, as in all federal *and civilian* occupations, results from its combined efforts, sacrifices, experiences, separations and travel opportunities. As in the case of numerous other occupations, including that of the members of this very committee, there are unique stresses and adjustments required by all family members. Military men and women serve proudly around the world, often at great personal hardship, sacrifice, and mortal danger. Their spouses, whether male or female, *while facing none of the mortal risk*, generally accompany the military member when assigned to locations peaceful enough to accommodate family members.

Regrettably, as in all segments of our society, there are times that these military marriages fail. *Whether the failure in the military marriage results from a "Dear John or Joan letter," or any number of other causes, it is illogical and unethical to assume that the breakup and the penalty should be assumed to be solely the fault of either party.*

To be sure, these are usually bitter situations with the desire for retribution and to harm the other party. However, the only objections that we have heard from those opposed to any *pro-military* USFSPA reform have been, and continue to be, centered only on the desire of the former spouse to continue to receive, often beyond need or merit, a mandated source of income that Congress incorrectly opened in 1982 and has not closed since then.

Proponents of the current USFSPA would have you believe that all military members should be cloaked under the USFSPA because military spouses are uniquely mistreated. *They would also have you believe that the demographics of the fifties (with the financially "helpless," non-working spouse waiting at home patiently for the male military member to return from work) still apply. This is unmitigated nonsense.* Honesty would attest that most (enlisted, in particular) military spouses (male and female) now also work, many current and future military retirees are women, and the fault of a marital breakup is just as often infidelity (on either spouse's part), financial difficulties, and other factors – very few actually related to military duty.

For every anecdote of a military spouse being the "loser" or victim in a failed military marriage, we can provide examples of a spouse leaving a military member for another mate, sometimes leaving the kids behind, sometimes at great financial improvement. We state this only to emphasize that crafting, applying, and perpetuating a law based on specious claims (i.e., the USFSPA) does not serve fairness or justice.

This association receives many phone calls from *still-active* military members whose former spouse and new mate prosper, yet anxiously await the retirement of the military member *to begin collecting part of the hard-earned military member's retired pay for the rest of the natural life of the military retiree.*

The USFSPA is unnecessary, uncalled for, and unfair. It uniquely targets the military. In effect, it imposes "punishment" on the military married member simply because she or he served in the military profession. There can be no other reason since this act is not imposed on any other segment of our society. For example, *whereas the retired pay laws applicable to divorces in the Foreign Service or the Central Intelligence Agency provide for the termination of spousal payments upon remarriage after a certain age, the same does not apply to military divorces: the dollars keep on flowing.*

Section 643 of the FY 1998 Defense Authorization Bill reflected Congress' growing awareness that there is a problem here when it directed a Department of Defense study of the ramifications of the USFSPA and the inequities it thrusts on military members that are not experienced by others. However, it gave DoD until September 1999 to report back. Phone calls to DoD to apply the already voluminous data and to expedite its report indicate that DoD plans to use at least the full time period to begin and complete its report.

USFSPA "Highlights" Unfair to Military Veterans

1. The USFSPA purports to protect disability pay, whether DoD or VA, by specifically excluding it from the definition of disposable retired pay that can be shared with an ex-spouse. This protection was reenforced by the U.S. Supreme Court in Mansel v. Mansel in May 1989. However, state courts are circumventing this in three ways: (1) by ignoring federal law, (2) by avoiding the award of retired/disability pay as "property" and awarding it as alimony without regard to the source, even if the member is 100 percent disabled, and (3) by garnishing it under the Social Security Act, Title 42, which is in conflict with Title 10 on this issue.

Note: There are some USFSPA proponents whose objective is the elimination of the protection of disability pay. This means that even if long-awaited legislation were enacted providing for the concurrent receipt of retired and disability pay, disabled military retirees would find themselves in protracted court battles for an ex-spouse's share of both.

2. While, the USFSPA states that "a court MAY treat disposable retired pay either as property solely of the member or of the member and his spouse," an overwhelming majority of courts have treated "may" as "shall." The USFSPA limits the amount of retired pay which can be awarded as property to 50 percent, but it does not preclude the additive award of

alimony and child support. Consequently, a service retiree may lose all of her retired pay in a divorce action – regardless of fault. The USFSPA provides that up to 65 percent of retired pay may be garnished by the government. Payment, out-of-pocket, of the remaining 35 percent is legally enforceable.

3. The USFSPA does not specify that the dollar amount of an award is to be based on the rank or pay grade of the military member at the time of divorce. As a result, many ex-spouses have received a "windfall benefit" in the form of a USFSPA award based on promotion of the military member after divorce. The contention that later promotions are built on early effort of both husband and wife is pure nonsense. Why should consideration be given to later military promotions when no regard is given to changes in the former spouse's financial or employment situation? It is illogical to argue that a first spouse, divorced when the military member was (for instance) an E-5 (Staff Sergeant), significantly impacted the military member's later ability to reach higher grades.

4. Besides being the only party of the married couple assuming mortal risk (unlimited liability), a military member must serve a minimum of 20 years before being eligible to receive retired pay. In contrast, eligibility of the member's spouse is attained instantaneously upon marriage. There is no prohibition against multiple marriages and multiple USFSPA awards -- documented cases exist. A former spouse may be collecting the retirement from one or more military members while engaging in still another potentially lucrative military marriage.

5. The USFSPA is based on the premise that the former spouse is "dumped" by the military member. Fault is not a factor. The former spouse's (his or her) remarriage and/or economic situation is not a factor. *Indeed, the former spouse's own collection of his/her own retirement pay is not even a factor.* For example, a retired military member may have to give a significant portion of her retired pay, for the rest of her natural life, to the former spouse. But that former spouse may draw his own retirement pay, from a civilian or federal occupation, keeping *all* of his retired pay without providing a cent to the military member. This is simply unfair to the military member.

6. The military retiree must remain in compliance with the Uniform Code of Military Justice, may have restrictions on civil service employment and foreign travel and may be subject involuntary recall to active duty. The ex-spouse, who draws from the same retired pay envelope, is not subject to any of these constraints.

7. Since military retired pay is unfairly reclassified as "property" for a USFSPA award, payment continues for life, even if the benefitting ex-spouse remarries. So do the Survivor Benefits Program of the DoD and SSA. Since USFSPA awards are made without regard to

fault, merit, need or respective financial circumstance, this hardly qualified as equal justice under the law.

8. Divorced military veterans are the only U.S. citizens who have their retired pay classified in accordance with the federal government's intentions for it: "property" if for a marital award, and "income" if for taxation by the IRS. How can this Congress allow this situation to exist, uniquely focused against those who serve?

9. The USFSPA award process is "no fault" and rewards only the non-military spouse. While the military member can be made to forfeit retired pay by court martial or other legal action, the USFSPA payment to an ex-spouse continues for life, even if he or she is convicted of some felony.

10. Many of our members are emphatic in stating their beliefs that the USFSPA is quite obviously targeted against *male* military members. Ironically, with the changed demographics of our military forces since this law began, many female military members are now beginning to suffer under the yoke of the USFSPA.

11. Most military members impacted by the USFSPA have been "blind sided" because the uniformed services have assiduously avoided briefing their personnel on the law. Nor is information on the USFSPA being disseminated during retirees' seminars conducted by the military services. The services obviously want to keep this quiet because of its potential impact (now being increasingly seen) toward dissuading a military member from pursuing a military career with no fair, protected retirement in sight.

Other Ramifications of the USFSPA

Mr. Chairman, divorcing military couples *do* have available to them, in state courts, all the remedies available to any other US citizens. What is different, however, is the USFSPA's concept of "lifetime-of-the-military-retiree" spousal support. An obligation to provide "alimony" usually terminates at the end of some "rehabilitation" period, or upon the remarriage of the recipient. The continuation of payments beyond remarriage of former spouses overrides any aspect of fairness or financial need.

The financial situation caused by the USFSPA is unfair and particularly onerous for retired noncommissioned military members. Usually, former spouses attain financial security by virtue of their own income, the income of their new partner, or a combination of two incomes. By contrast, many military members whose retired pay has been divided must support second families. Keep in mind that the military veteran, if retired, is generally reentering the job market in middle age and leaving the military with generally non-

transferrable skills.

It is unlikely that very many members of Congress who voted for the USFSPA understood the full implications of reclassifying retired pay as "property," particularly property which cannot be sold, bartered, traded, transferred or passed to heirs. Congress did, however, open the floodgates in describing military retired pay as a "pension," which it is not. Indeed, if it were a pension, the military member could retire with no further obligation to the nation. However, because the retiree remains part of the manpower resource available for recall in the event of a national need, what she/he receives is more accurately described as "reduced pay for reduced future service."

Recruitment and retention are emerging as major problems for the military services. One of the influential factors is the perception of military members that they cannot count on Congress to honor commitments which they perceive as having been made. While not the most important of these, the impact of the USFSPA on military careers is one of them.
Simply put, it is time to stop this blatant unfairness targeted solely against military veterans. It is time to reform the Uniformed Services Former Spouse Protection Act. It is time to treat military members and veterans with the gratitude that they deserve. There was a time when this nation treated military service as a noble calling. However, the USFSPA, as currently implemented, is just another way of negatively targeting those who serve. Indeed, nowadays all too many gestures on the part of this nation discourage military service, and most certainly discourage a full career to retirement.

Mr. Chairman and committee members, thank you for your patience and your attention. We ask that you do whatever you can to protect the military veteran's full receipt and protection (without judicial slight-of-hand) of disability compensation. Work to stop USFSPA retirement payments upon the remarriage of the spouse; and support the proration of any USFSPA award to the military member's grade at the time of the dissolution of the marriage -- and not at the grade in effect at the time of the military member's retirement, often several years later.

Mr. Chairman, thank you for this opportunity to discuss an important, often avoided situation. We ask you to use your considerable influence to change the law to one of fairness to all parties concerned. As always, this association is ready to support you on matters of mutual concern.

Non Commissioned Officers Association of the United States of America

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STATEMENT OF

SERGEANT MAJOR MICHAEL F. OUELLETTE, USA,

(RET)

DIRECTOR OF LEGISLATIVE AFFAIRS

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

ON

GARNISHMENT OF VA AND MILITARY RETIREMENT

BENEFITS

U.S. HOUSE OF REPRESENTATIVES

SECOND SESSION, 105TH CONGRESS

AUGUST 5, 1998

Chartered by the United States Congress

Mr. Chairman, the Non Commissioned Officers Association of the USA (NCOA) appreciates the opportunity to present testimony before this committee on the garnishment of benefits paid to veterans for child support and other court-ordered family obligations. The Association's comments and recommendations represent the views and concerns of its noncommissioned and petty officer membership. Hopefully, this committee will consider the comments and recommendations to be of value and assistance.

NCOA is most appreciative for this committee's efforts to bring issue of garnishment and the problems encountered by military veterans who are divorced to light. These issues are ones that have been ignored for years and consequently the problems faced by military retirees have been entirely misunderstood. This hearing provides an excellent forum to discuss, analyze and critique the wide-ranging impact of garnishment actions and court ordered divisions of VA disability compensation and military retired pay as a result of divorce action.

NCOA fundamentally believes that all retirees must be held accountable in terms of court-ordered alimony and child support obligations. Therefore, the current provisions of law that permit the garnishment of VA disability compensation and military retirement for only those reasons are considered to be fair and just in the eyes of this Association. NCOA, however, strongly opposes the expansion of the Uniformed Services Former Spouses Protection Act (USFSPA), Public Law 97-252, 10 U.S.C. 1408, into the area of VA disability compensation. It has become common practice by some state divorce courts to bypass the Mansel decision and meet USFSPA awards of military retired pay as property settlements in military divorce actions by considering them to be alimony. There is considerable debate over a former military spouse's entitlement to a portion of a military members retired pay; however, former spouses should not receive any portion of the member's adjudicated award of any level of VA disability compensation. The USFSPA allows former spouses to raid additional protected VA disability income by

allowing court-ordered garnishment of VA compensation for alimony payments. Congress must stop this practice!

"Dancing in the Dark"

There can be no doubt that the major complaint made by NCOA members and others looking for assistance and relief in conjunction with a divorce action is the mere existence of the USFSPA. Their frustrations occur during or after entering into divorce proceedings because they are not aware of the USFSPA or do not fully understand the impact on their future income until it is too late. The law seems to be a well-kept secret that keeps military members "dancing in the dark" during the course of their military careers. Consequently, they never fully realize that the military retired pay benefit is not entirely their own and is being earned, many times equally, by their marital partner.

Congress Bears Full Responsibility for USFSPA

In 1982, Congress enacted USFSPA in order to override the 1981 McCarty decision of the Supreme Court which found that "...the military retirement system confers no entitlement to retired pay upon the retired member's spouse and does not involve even a limited community property concept....moreover, the application of community property principles to military retired pay threatens grave harm to clear and substantial federal interests." Regardless of this decision, Congress successfully passed the USFSPA that gave the state divorce courts authority to treat disposable military retired pay as property of both the military retiree and the spouse. However, Congress limited court ordered direct payment to the former spouses to 50 percent of disposable retired pay. Unfortunately many courts, military retirees and former spouses have misinterpreted this to mean that Congress intended a 50 percent division of retired pay. Clarification of the intent would be welcome. The playing field would then be level. Today, it is significantly slanted in the former spouses' favor.

Greater USFSPA Impact on Enlisted People

Although the application of the USFSPA greatly affects all military retirees involved in divorce actions, the financial impact is greater on the enlisted member simply because of the differing levels of actual retirement pay on which the court-ordered divisions are made. Division of a percentage of E6 retired pay along with additional alimony and child support requirements, virtually leaves that retired E6 financially destitute in many cases. Also, many divorce decrees require the military retiree to pay monthly Survivor Benefit Plan (SBP) premiums with the former spouse named as the beneficiary of the SBP annuity. This leaves the enlisted military retiree with little to no amount of his earned retirement benefit and no alternative to provide a new family with any protection in the event of death.

The USFSPA is Inequitable for All

Since the USFSPA defines disposable retired pay as property under law, it creates additional issues the Congress will have to come to grips with now and in the future. These concerns will be raised by those on both sides of the USFSPA issue. The concerns center largely around the fact that under the USFSPA military retired pay is treated as property and the fact that legal determinations stipulate that the right to property cannot be terminated by remarriage or change in status of the former spouse. Military members caught-up in divorce proceedings ask the following questions:

1) If USFSPA property awards cannot be terminated upon remarriage, why then are they terminated upon my death and why should a retiree then be required to participate in SBP to maintain the property income for a former spouse in the event of death?
2) If military retired pay is considered property in divorce cases, how then can it be taxed as income by the Internal Revenue Service (IRS)?

3) If military retired pay is property, how then can court-ordered awards be based on retirement pay levels at the time of actual retirement and not the actual date of divorce?
4) How can it be that a service member must serve 20 years to be eligible for military retired pay while a spouse becomes eligible under USFSPA immediately upon marriage?
5) If the contributions of the military spouse to the overall success of the military community and the careers of their military partners, why then is the military retiree held responsible to pay for those contributions with their own USFSPA retired pay property payments?

Proponents of USFSPA also ask relative questions regarding the "property" issue. For instance:

1) If military retired is considered property under the USFSPA, why then does it terminate upon the death of the former spouse and is not property which can be passed on to surviving heirs?
2) If retired pay is property, why is an ex-military spouse required to participate in SBP in order to continue the property award upon death?
3) Understanding that military retired pay levels are different because they are base on grade and years of service of the military member, why are earned retired pay property awards to ex-spouses under USFSPA based on the service members' status or rank at the time of retirement instead of the time of divorce?

NCOA considers the issues raised by such questions to be extremely important to the overall validity of the UFSFPA. It seems that military retired pay is only considered property when there is no cost to the government. If a "property" classification requires costs to the government, then it (retired pay) is considered something other than property.

The USFSPA's Potential Impact on Recruiting/Retention

In view of the fact the military services are reporting significant shortfalls in recruiting and retention targets, NCOA suggests the very existence of the USFSPA could greatly contribute to future military manning shortfalls. This Association would not even want to speculate that an enlisted member of the armed forces with career aspirations would make a decision to end his military career because of the USFSPA; however, when the overall benefits of continued service are scrutinized, there is a strong possibility that the thought of possibly having to share a military retired pay benefit with an ex-spouse in a potential divorce action, could add to a decision to terminate service. After all, when:

- military members are currently serving under three (3) entirely different retirement systems, all with significantly reduced retired pay levels;
- military pay is currently estimated to be 13.5 percent below civilian sector pay;
- military members understand that congressional efforts to improve military life through the increase of monthly allowances, is money that will not taken into retirement;
- out-of-pocket costs are being levied on military retirees to obtain medical and dental care;
- the stability or existence of the commissary benefit is questionable.

There has to be some consideration given to the fact that their future retired pay benefit could be lost in a possible divorce action through a division of property determination, coupled with additional alimony and child support payments, could very well erase any advantage of career service and leave the military retiree with insufficient funds to even purchase his retirement benefits.

Recommendations

Based on all of the concerns presented. NCOA offers the following recommendations to this committee for consideration:

- 0 Direct that VA disability compensation be fenced from any USFSPA property settlement awards.
- 0 Although it questions the classification of military retired pay as property in divorce actions. NCOA recommends that USFSPA awards be terminated upon remarriage just as SBP annuities are terminated upon remarriage prior to age 55.
- 0 Establish a 10-year marriage requirement to be even eligible under the USFSPA.
- 0 Eliminate the "windfall" advantages of the current USFSPA by direc .ng that all property awards under the act be based at the grade and income of the military member at the time of divorce and not the time of retirement.
- 0 But most important of all. make it possible for every military retiree to be treated the same all every other American in a divorce court and resolving all the related questions and problems associated with the USFSPA by simply **repealing the act**. The playing field on which military divorces are played on must be leveled in the interest of fairness.

Thank You

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Non Commissioned Officers Association of the USA (NCOA) does not currently receive, nor has the Association ever received, any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

BIOGRAPHY
OF
MICHAEL F. OUELLETTE
DIRECTOR OF LEGISLATIVE AFFAIRS

Mr. Michael F. Ouellette currently serves as Director of Legislative Affairs. Non Commissioned Officers Association of the United States of America (NCOA). He is a registered Congressional Lobbyist whose responsibilities include a wide range of military personnel and survivor benefits to veterans' legislative issues. He formerly served as Co-Chairman of The Military Coalition from January 1, 1993 until February 22, 1996. He currently serves as the NCOA representative to the National Military and Veterans Alliance.

A retired Sergeant Major, Mr. Ouellette joined the NCOA National Capital Office in 1991 following twenty-six years of military service with the United States Army. His final assignment was as the Sergeant Major to the Adjutant General of the Army, US Total Army Personnel Command (PERSCOM), Alexandria, Virginia, and covered the period 1988 through 1991.

Ouellette's period of service included numerous tours of duty within the United States and overseas tours in the Republic of Vietnam, Japan and Germany. His military decorations included the Legion of Merit, the Meritorious Service Medal (with 3 Oak Leaf Clusters), the Army Commendation Medal (with 3 Oak Leaf Clusters), and the Army Achievement Medal (with 2 Oak Leaf Clusters). He is a graduate of the US Army Sergeants Major Academy (Class #25) and holds an Associates Degree in Applied Science and General Management from El Paso Community College, El Paso, Texas.

He is a former President of the Potomac Chapter, AG Corps Regimental Association and the PERSCOM Sergeants Major Association. He currently maintains membership status in the NCOA Museum Association, Veterans of Foreign Wars, the Knights of Columbus, the Exchange Club, American Legion, the 4th Infantry Division Association, and AUSA.

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CHARTERED BY CONGRESS

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TESTIMONY OF

MARK H. OLANOFF, CMSgt, USAF (Ret)
LEGISLATIVE DIRECTOR

THE RETIRED ENLISTED ASSOCIATION

before the

HOUSE VETERANS AFFAIRS COMMITTEE

5 AUGUST 1998

★ ★ ★ **UNITED WE STAND** ★ ★ ★

Biography of Mark H. Olanoff, CMSgt, USAF (Ret)
Legislative Director
The Retired Enlisted Association

CMSgt Mark H. Olanoff enlisted in the U.S. Air Force on September 27, 1967 after graduating from Darby Township High School in Glenolden, Pa. After completion of basic military training and technical training he was assigned to Osan AB, Korea in 1968 working in the military personnel division. Chief Olanoff served in numerous military personnel assignments at Othello AFS, Washington; RAF Bentwaters, England and Griffiss AFB, NY. He was discharged from the U.S. Air Force on July 30, 1976 and joined the New Jersey Air National Guard in Atlantic City, New Jersey serving in positions of Non-Commissioned Officer in Charge (NCOIC), Customer Assistance; NCOIC, Consolidated Base Personnel Office and Chief, Personnel Systems Management. Chief Olanoff transferred to the Air Force Reserve at Dover AFB, Delaware on June 19, 1986 serving as Chief, Personnel Systems Management until Feb 9, 1991. Chief Olanoff assumed the position of Chief, Personnel Systems Management for the 436th Airlift Wing (as a federal civil servant) from Feb 10, 1992 until May 22, 1993.

On April 1, 1992, Chief Olanoff assumed the position as the Senior Enlisted Advisor to the Commander of the 512th Airlift Wing, Dover AFB, DE. In this position, Chief Olanoff served as the Commander's representative on all enlisted issues. During his tenure in this position, Chief Olanoff was TDY to the Persian Gulf. He served in this position until his retirement from the Air Force Reserve on June 10, 1996.

On April 1, 1996, Chief Olanoff assumed the position of Veterans Service Officer for the State of Delaware assisting Veterans with Veterans Affairs (VA) claims and representing the Commission of Veterans' Affairs at many meetings and functions. He was appointed to the VA Veterans Integrated Service Network (VISN) 4 Management Advisory Committee, which includes the areas of Pennsylvania, Delaware, parts of South New Jersey and parts of West Virginia.

Chief Olanoff assumed his current position as Legislative Director for The Retired Enlisted Association on December 16, 1996.

He holds an Associate in Applied Science from the Community College of the Air Force in Human Resource Management (April 1980) and a Bachelor of Arts in Political Science from Stockton State College, Pomona, New Jersey (May 1986).

Chief Olanoff is a graduate of the 8th Air Force Leadership School at Barksdale AFB, LA and a distinguished graduate of the Air National Guard NCO Academy at the Professional Military Educational Center in Knoxville, Tennessee.

Chief Olanoff's military awards include the Meritorious Service Medal with one oak leaf cluster, the Air Force Commendation Medal with two oak leaf clusters, the Air Force Achievement Medal with one oak leaf cluster, the Armed Forces Expeditionary Medal, the National Defense Service Medal with one service star and the Southwest Asia Service Medal with one service star.

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Retired Enlisted Association does not currently receive, has not received during the current fiscal year or either of the two previous years any federal money for grants or contracts. All of the Association's activities and services are accomplished completely free of any federal funding.

Mr. Chairman and honorable members of the Committee, I am Mark Olanoff, Legislative Director of The Retired Enlisted Association (TREA). My biography is attached. On behalf of the 100,000 members and auxiliary of TREA, National President Dave Pahl and National Auxiliary President Ethel Hale, I appreciate having the opportunity to come before you and address an issue that is vitally important to a particular class of veterans, military retirees.

Military retirees, those who have spent the better part of their lives in service to their nation, often have a percentage of their retirement pay waived in order to receive disability compensation from the Department of Veterans Affairs. A retiree is forced to make this decision because the law states that a military retiree cannot receive 100% of their retired pay and disability compensation. Their retirement pay must be reduced based on the percentage of the disability. It is important to remember that the payment received from the Department of Veterans Affairs is not retired pay, but compensation for a disability sustained in service to our country. Unfortunately, there are those who would like to strip this service-connected compensation from retirees.

Marriages ending in divorce has become a common occurrence in our society, including the military community. Nearly 50% of all marriages end in a divorce. I would dare say that the percentage within the military community is the same if not higher. The stress put on families by the long hours, constant moving and stressful jobs no doubt wares on the individuals in a marriage. In order to protect the spouses of members of the Armed Forces, Congress, in 1982, passed the Uniformed Services Former Spouse Protection Act, Public Law 97-252; 10 USC 1408. This in despite of the fact that the Supreme Court ruled in the 1981 McCarty decision that "...the military retirement system confers no entitlement to retired pay upon the retired member's spouse and does not involve even a limited community property concept...moreover, the application of community property principles in military retired pay threatens grave harm to clear and substantial federal interests." Unfortunately, the legislation which Congress assumed would help many has only damaged the lives of retirees, particularly those receiving disability. The USFSPA gives judges issuing the divorce decree the right to award up to 50% of a retirees pay to a former spouse as part of the settlement. However, judges have

failed to recognize the fact that VA disability compensation is not retirement pay. Disability compensation is not where payments to court-ordered obligations should be paid from. Now, military retirees who are disabled, and the more severely disabled the worse this situation becomes, are forced to surrender up to all of their retirement pay and a portion of their disability pension. This in despite of the fact that the USFSPA is supposed to protect disability pay from being garnished and that the United States Supreme Court reinforced this fact in its ruling in Mansel vs. Mansel in May, 1989. However, state courts continue to ignore this federal law by garnishing VA compensation under Title 42 which is in conflict with Title 10 of the United States Code.

This is just one of many examples of how uniformed service retirees are discriminated against by the Uniformed Services Former Spouse Protection Act. This legislation, in its attempt to protect ex-spouses, has destroyed the lives of tens of thousands of retirees. TREA constantly receives phone calls from retirees, and their current spouse, who are suffering under this legislation. At this time, I would like to briefly share examples of retirees who have been abused by the system they have sworn to protect. I have hard from an Air Force Chief Master Sergeant (Ret.) whose alcoholic former spouse nearly cost him an Air Force career by getting the then-Active Duty Chief an Unfavorable Information File (UIF). Any current or former member of the Armed Forces knows how devastating a UIF can be. This retired Chief manage to overcome this difficulty, only to retiree at a higher rank and have the ex-spouse reopen the divorce and seek more money. Or an Army E-8, divorced in 1989 after 18 years of marriage. Only to see his wife marry a man 9 months older than his own son. A man who had been convicted of breaking into the retirees house and was in prison when the ex-spouse married him. Now, a percentage of his retirement goes to support his ex-wife and her new husband. Finally, I have received a call from retirees whose former spouse proceeded to remarry several other retirees only to divorce them all and receive a percentage of their retirement pay. What are we to tell these individuals who gave their careers to their nation? Where is the justice in legislation which punishes members of the Armed Forces for being just that? Mr. Chairman, these are just three examples of the hundreds we receive on a yearly basis.

The Uniformed Services Former Spouse Protection Act has been used to make a mockery of the Armed Forces of the United States and those who wear the uniform. Information available on the Internet urges women to "Aim High," the Air Force recruiting motto, and marry a career military man so they can divorce him and be "guaranteed a financially secure future." Five pages of information (Attachment #1) gives specifics of how to marry into the military, receive the benefits, get divorced and continue to receive the financial rewards. This is a slap in the face not only of military retirees and the Armed Forces, but also of this honorable body, the Congress of the United States. I believe that Congress passed the USFSPA with the best of intentions, however, as this information attests to, it has been manipulated and misconstrued to drive those who served the nation honorable into financial ruin.

Mr. Chairman, we military retirees seek equity with our civilian counterparts. When we joined the uniformed services, we expected to move around the world and we were well aware of the risks involved in military service. We also expected to be treated as equals in the Courts of the United States. Instead, former spouses of members of the uniformed services can reopen divorce cases for more money, can continue to receive payment even after they remarry, and can receive more money if the retiree finishes their career at a higher rank than when the divorce took place. This is blatant discrimination against military retirees. Civilian divorce settlements do not allow one former spouse to reopen the claim, or change the amount received because of a promotion in the workplace. Military retirees deserve equity.

Members of the Committee, this is not a gender issue, as some will lead you to believe. This is not about an issue that is anti-wife or anti-children. We certainly believe that former spouses should have some form of compensation, particularly when they have had no opportunity to develop careers of their own. We believe that parents have a tremendous obligation to ensure that their children are cared for. The sense of honor, duty and obligation learned in the military will, no doubt, help ensure these things. What this issue is about is all members of the Armed Forces, male and female, officer and enlisted. This is about a group of American citizens who are being held to a different set of laws then everyone else. These American citizens seek equality.

It is on this basis that TREA would like to express its support for House Resolution 2537, the Uniformed Services Former Spouse Equity Act of 1997, introduced by Chairman Stump. This legislation would protect both the service member and their former spouse. Former spouses would still be entitled to up to 50% of retired pay, in addition to whatever child support and other amounts the Courts deem necessary. However, payments to the former spouse would cease upon remarriage, VA disability compensation would be adequately protected and divorce decrees would be final. As military retirees, we do not believe we are asking for something outrageous, just something already practiced outside of the military.

Mr. Chairman and members of the Committee, thank you for granting The Retired Enlisted Association the opportunity to address you today on this most important issue to military retirees.

Atch #1

LADIES...

HOW do you make Uncle Sam secure your future...?

you ask...'HOW can I make the poster slogan to come true...?'

it's EASY...

Marry, then Divorce

a career Military service member!

- **No requirement to enlist (civilian spouses do not take oath of service).**
- **No deployments or combat threat danger (if war; you are removed to a safe area).**
- **Secure housing available at most military installations (overseas and CONUS).**
- **Pick the member with the correct job title and you could travel the world with him.**
- **Education and employment opportunities are made available to military wives.**
- **Medical & dental benefits available (overseas for command sponsored spouses).**
- **Excellent child care facilities should you become pregnant.**
- **Annual Cost of Living Allowance (COLA) increases.**

Some Specifics...

You may avail yourself of all these benefits and retire when you are ready with a generous government allowance **for life**---merely by divorcing your military mate. You may even continue to enjoy medical care and shopping privileges on military bases if you have been married long enough at the time of divorce. During your divorce, the government will treat you as faultless. There is no penalty for adultery, neglect, mental abuse, or any other misconduct on your part. No-Fault divorce states (such as California) and the USFSPA (Uniform Services Former Spouses Protection Act) have seen to it that you come first. Social Security benefits to which you are entitled will be unaffected. Nor will you be prevented from receiving child support and alimony. **Best of all, payments will not stop if you remarry.**

Although your military spouse must serve for a least 20 years before he (see fine print below) is eligible for retirement pay you can divorce him, and then come back when he retires and collect your chunk from his retirement pension!! That's correct ladies. . . take a LONG sabbatical (visit mommy or go to college)

and then return when he retires and surprise him with an introduction to the USFSPA and your lawyer!

If, however, you are married for a **10-year period that coincides** with your spouse's military service, you are entitled to receive your chunk of his retirement pay directly from the government pay offices. You won't have to deal directly with an embittered former spouse to get your money (the Defense Finance and Accounting Service-DFAS and Congress will consider your 'service' more important than that of your former military service member and mate). In addition, the **payments to you will be based on the rank of your former spouse upon his retirement, not the rank at time of divorce** (divorce at lower rank, go to college, and collect later when the former spouse retires at a higher rank). This ensures your future as it boosts the 'share' to you based on any promotions your former mate receives following your divorce. But, It gets even better. . . .You may also marry and divorce more than one military member (not at the same time, ladies don't be greedy now) and collect a share of retirement from each of them, thereby building a substantial nest egg for your golden years. Those of you who are crafty and sharp may even require in the divorce proceedings that the military member maintain life insurance policies (see Important Details, Item 7, below).

Yes ladies, Marry a military member today, get divorced, and then marry the one you really, aaaah...love...another military member (even repeating the whole procedure if you want) or a civilian (and settle down) it makes no difference to Uncle Sam!

Important "How to do it" Details . . .

First: Planning is most important

Second: Build a trusting relationship with your service member. He will not suspect a thing as he will be busy with his military career. Be sure you stay married to your mate for at **least 10 years!**

Third: It is very important that you build a trusting relationship in order to support your mate **and his career.** Be exuberantly happy about military life because you **must entice** him to go for 20 years! Career status is obtained upon the second enlistment, the 6th to 8th year of service. After he is almost half way to retirement and signed his enlistment contract obligating him on the 6th or 8th year to another 4 year term it would be doubtful that he would get out once you've divorced him. You will receive a portion of his retirement pension based upon this formula: (time in years your marriage coincides with his enlistment) X (his pension dollar amount/rank when he retires. NOT at the time of divorce) X (0.5) take that total and divide it by the number of years he spent in the military. **For example:** He is 2 years in the service (half way through his first hitch and an E-3 pay grade) when you get married. You support his career. When his first hitch is up he enlists for the second. On the 8th year you support him so well that he signs up for the third enlistment obligating him to 12 years (and most likely at least 20 years. He won't through the past 12 away!). On the 12th year you watch your 10 years of service time and marriage come up. You get him to **first reenlist again** obligating him to 16 years **and then** surprise him with divorce papers. You leave and go to college (or mommy) having **completed just over 10 years of coincided service and marriage.** He is devastated but stays in, **he has to**, plus it is the only thing he has that is stable now. On his 16th year, realizing he has only 4 years to go for retirement, he stays in. He retires with 20 years service as an E-8 (about $1400/month). You come back (with your lawyer of course) and surprise him (after being gone for 8 years) with a lesson in the USFSPA (he will not know anything about it because the military does not tell their career service people about it). This is what you will get: (10 yr.) X ($1400) X (0.5) divided by (20) equals $350.00. You will receive **at least** this amount per month (for YOU) for the rest of your life (the judge may award you more based on child care and alimony too--it is

important to pick a tough divorce state for you to seek residency in)! If your marriage time was even one day under 10 years you would have to get him to send you the check. He would not do it!! (After your surprise return you can bet he is not happy to see you one bit). Because you were smart and stayed for that magic 10 years DFAS will send you your check directly and there is nothing he can do about it! Unlike the civilian divorce world in which you can get child support and alimony . . .with the military you get a pension TOO!

Fourth: Save money, you will need at least $1500 for a divorce lawyer. You should be able to accomplish this by salting away 'extra' money or skimming money from bank accounts. Obtain as large a life insurance policy on your mate as possible without arising suspicion.

Fifth: Be sure to retire/or seek residency in a no-fault divorce state. This should be no problem as most states in America are now no-fault divorce. You may determine which states are 'no-fault' by contacting your local divorce attorney in the yellow pages of any telephone book. This can be a bit of a problem and so it would be wise to know the cantankerous and contrary state divorce court trends/laws. If you stay until he retires then of course you can help influence him on where you would like to settle down (Ha Ha). If you divorce before he retires you will have to know the state he retires in and how hard the state you are in will fight for you (it's a lawyer thing. Good lawyer...more money!). Do NOT go to ALABAMA. You may end up with only egg on your face! At present Alabama likes the military veteran and not the spouse.

Sixth: Secure and Retain a good divorce Attorney. This is most important so 'shop around' as they will have to fight for you in court---you will win, but the better the attorney, the better your monthly retirement amount. Cost to you, minimum of $1500 but could go as high as $5000. This is still nothing to be concerned about as you will be receiving a monthly check for the rest of your life and, if you have planned properly, skimming and saving $5000 from your service members pay **while you are still married** should not be a problem for you! In your declaration for divorce you need say only two words 'irreconcilable differences'. But, you may also have some fun here as you will not be held accountable to prove anything you say. So...Attack! Make up stories. Lie! Remember this is family law not civil law so the divorce declaration will not be held as an important legally binding document as to whether you lied or not! Your motive for divorce is not important to the No-Fault divorce court judge. If you lawyer is crafty (most are) he can manipulate the court session so that your case will be seen by a female judge! Aaaah yes, how sweet the screwing will be!! But act business-like in court try not to smile or laugh because divorce is treated as a business in no-fault divorce states --- and business means money and money is serious! No-Fault divorce is a mechanical operation not a human situation!

Seventh: Execute your plan. Move out, and surprise your mate with officially served divorce papers (Christmas and birthdays are the days of choice) and let your lawyer and the courts take over. Because your soon to be ex is getting on in age (mid to late forties) be sure to have life insurance policies up to date and premiums paid in full just in case your former service member and marriage partner stresses out and dies of a heart attack.

* ** * Congratulations * ** *

you are now free and wealthy!
Contact your local senator or congressional representative and tell them...

"Thanks!!"

Examples of Success . . .

- There are between 60,000 to 84,000 veterans (DFAS statistic) presently affected and financially ruined. They are unheard from, lost, unable to defend their position, and confused by the back-stabbing they have received from their Country, and Congress (just like when the Vietnam war was going on and this country turned its back on their military...you remember?). Congressional apathy is good for the divorcing spouse!
- The "Horror Stories" at the web site of the American Retirees Association (ARA) can attest to your assured success.
- California Divorce Page: A male who got the shaft! He solicits for money ($1.00) but you have just screwed one guy (your mate). Don't give him a thing! Screw him too!! That-ta girl!
- Other examples are difficult to obtain because this "military-veteran-pension-extortion" is a subculture of sorts and information is not readily available. Searching the Internet at various 'divorce' web sites and contacting other female 'friends' can help.
- Your best source of information is your local divorce attorney (near any military base) and their expertise and guidance in dealing with and manipulating the USFSPA. They will help provide you with an assured future. After all, that's how they make their living!
- Visit the Divorce Institute for an Internet instant and easy divorce. No-Fault divorce is in! Marriage is out! Don't be a fool and trust someone who has spent 20 plus years in the military. Screw-em now!
- See present on-going military divorce situations at The FLA Military Divorce Bulletin Board. This will be a very helpful site for you as you can post questions to some of your concerns and not have to give up your name. Find out about the state he retired to before hand. You could not do better than to be privy to this valuable source of on-going No-Fault Military Divorce experience.

Warning . . .

- True Christians will have difficulty in dealing with the above process because though it is true it is also well...un-Christian! So you may have to deal with your conscience (and God) but you really can get over this as time will cause your past conniving motives to fade and tweaking your attitude with a new group of FRIENDS and attitudes such as "fend for yourself" will numb your conscience and allow you to enjoy yourself. Hold your head up high...look right into that mirror...and tell yourself..."I'm a good girl"...God will forgive me!!

- This opportunity does not apply to those married to and/or divorced from CIA, Foreign Service, and Federal Civil Service employees. It also does not apply to any other civilian employment. It is unique to the military services only!

Fine print

Men: you too can have the same secure future as the government is not allowed to discriminate; however, it is a bit trickier as the system is set up to benefit the female. Contact your local divorce attorney in the yellow pages of any telephone book. Be sure they know the USFSPA and your rights to the same treatment as the Ladies.

I am a 23 year USAF veteran with a 16 year marriage and 9 year old handicapped daughter and a forced no-fault divorce. . . I have the Experience!

Idea from Nov 15, 1996 issue of the ARA newsletter, page 4, by David Evans

STATEMENT OF
RICK SURRATT
ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
AUGUST 5, 1998

Mr. Chairman and Members of the Committee:

I am pleased to appear before you on behalf of the more than one million members of the Disabled American Veterans (DAV) and its Women's Auxiliary to present our views on current law and practices regarding garnishment of veterans' benefits for child support and other court-ordered family obligations. We believe this is an area deserving of your attention and remedial legislation because of the inconsistency of interpretation and application of the pertinent laws among the states and because of the inequities that can result for our Nation's veterans.

Conflicts between state and Federal law, as well as differences among the domestic relations laws of the states, provide fertile ground for problems in the area of rights to Federal benefits. Under our constitutional scheme, laws governing family relations are reserved to the states. However, where national interests are involved, Congress may pass laws that affect individual rights in this area. Veterans' rights are, of course, a matter of Federal law. Where matters within Federal control overlap with matters subject to state regulation, Federal law may take precedence over or preempt inconsistent state laws. In determining property and other rights of the parties related to Federal benefits in divorce actions involving veterans and retired military members, state courts must apply Federal laws. In these matters, the states have not always felt constrained to honor or fulfill the intent of Federal law and have been inconsistent among themselves in the effect they give Federal law. Perhaps because laws on family relations are rooted in strong traditions and typically under states' jurisdiction, the states are reluctant to observe Federal law and dispose of cases in ways that impinge on local discretion and run against that grain. This situation has not served veterans well, and benefits intended for them are often diverted to third parties who made no sacrifices and contributed nothing toward the defense of the Nation.

In domestic relations matters, veterans' benefits can become subject to actions for separate maintenance, alimony, child support, and division of marital property. Veterans are primarily concerned with questions regarding what obligations and liabilities their benefits might be subjected to or what rights others may have to their benefits. "Garnishment" is merely one means, or enforcement option, by which courts can gain access to those benefits. Garnishment, per se, as a process is not the primary concern for veterans, although it is a matter of concern for VA because states sometimes disregard VA's immunity to garnishment orders. Absent a waiver of sovereign immunity by Congress, the states do not have power to garnish Federal agencies, even where the states can properly order veterans to pay others from their benefits. Therefore, our discussion is more broad in scope than the garnishment process and focuses on the authority

or ability of the states to order veterans to pay spouses, ex-spouses, or dependents from their veterans' benefits.

Also complicating the issue is the interaction and confusion between four legal avenues that give veterans' dependents and former spouses access or claims to veterans' benefits: (1) VA can in its discretion administratively award an apportionment from a veteran's benefits to a separated spouse or a dependent under 38 U.S.C. § 5307; (2) state courts order veterans to pay, or award, part of their benefits to dependents and ex-spouses under state laws governing support and maintenance, and property division; (3) state courts, under authority of the Uniformed Services Former Spouses' Protection Act (USFSPA or "the Protection Act"), award part of veterans' military retired pay to ex-spouses in divorce actions; and (4) state courts may apparently, under a specific waiver of sovereign immunity in the Child Support Enforcement Act (CSEA or "the Enforcement Act"), garnish veterans' benefits to satisfy obligations for child support or alimony.

The administrative apportionment process appears to be working reasonably well. Veterans or persons seeking apportionments may contest adverse decisions on appeal to the Board of Veterans' of Appeals and the courts that have appellate jurisdiction over VA decisions. VA has no authority to apportion a veteran's benefits to a former spouse. Under § 5307, apportionment can be made to "spouses," which 38 U.S.C. § 101(31) defines as a person who is "a wife or husband." Of course, a dependent child's apportionment may be paid to a former spouse as the custodial parent. VA will apportion a veteran's benefits when the veteran "is not reasonably discharging his or her responsibility for the spouse's or children's support." 38 C.F.R. § 3.450(a)(1)(ii), (c). VA does not apportion a veteran's benefits where "the total benefit payable to the disabled person does not permit payment of a reasonable amount to any apportionee." 38 C.F.R. § 3.458. A veteran's benefits will not be apportioned where the spouse has been found guilty of conjugal infidelity, § 3.458(b), or held himself or herself out to be the spouse of another person, § 3.458(c). In determining whether and to what extent to apportion a veteran's benefits, VA gives consideration to whether the apportionment would cause a hardship for the veteran, to the amount of benefits the veteran receives, the veteran's resources in relation to the resources of those on whose behalf apportionment is sought, and the special needs of the veteran or dependents. Ordinarily, VA will not apportion more than half of a veteran's benefit because that would constitute an undue hardship on the veteran, and VA will not apportion less than 20% of the veteran's benefits because that would not provide a reasonable amount for the apportionee. 38 C.F.R. § 3.451.

The greatest area of concern is actions by state courts in ordering support payments from VA disability compensation. There is a strong belief, supported by the holdings of some courts, that such court awards are contrary to Federal statute and congressional intent. Nonetheless, opposition to these actions have been frustrated by a decision of the Supreme Court that held veterans' benefits are not exempt from court-ordered support awards, and recent amendments to the CSEA add more cause for concern. This is one area where Congress should enact legislation to override judicial interpretation and leave no doubt about the exempt status of veterans' benefits.

Under long-standing law, veterans' benefits are supposed to be exempt from the claims of third parties. Laws dating back to at least 1924 provide that veterans' benefits are exempt from taxation and the claims of creditors. "[C]ompensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, or IV; and shall be exempt from all taxation." World War Veterans' Act, 1924, Pub. L. No. 68-242, § 22, 43 Stat. 607, 613. That provision was replaced and broadened: "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." Act of Aug. 12, 1935, Pub. L. No. 74-262, § 3, 49 Stat. 607, 609 (codified at 38 U.S.C. § 454a). Although there have been several amendments relating to other matters, this language pertaining to the exempt status of veterans' benefits remains essentially the same today. The current iteration of this statute, codified at 38 U.S.C. § 5301, provides: "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."

This law provides three separate exemptions: (1) "from taxation"; (2) "from the claim[s] of creditors"; and (3) from "attachment, levy, or seizure by or under *any legal or equitable process whatever.*" (Emphasis added.) These exemptions apply to benefits "due or to become due," "under any law administered by the Secretary," and "either before or after receipt by the beneficiary." Inarguably, this language is clear and emphatic so as not to be misunderstood, and intends a broad exemption and protection against diversion of veterans' benefits to persons other than the veterans entitled. However, by their own judicially created exceptions for purposes of support payments and alimony, the courts have undermined and subverted the protection Congress granted veterans. These strained, convoluted, and inconsistent pronouncements by the courts make it apparent the courts changed the law to meet their own notions of what the public policy should be.

When creditors have sought to seize veterans' benefits, the courts have generally enforced the provision that exempts such benefits both before and after receipt. For example, in *Culp v. Webster*, 25 Cal. App. 2d 759, 762, 70 P.2d 273, 275 (1937), the court said:

> Finally, the words "either before or after receipt by the beneficiary" put an end to all arguments, such as have been made under similar exemption statutes, on the question whether the exemption continues to cover money paid to the veteran after he has received it. Plainly, it does, under the statute, so long at least as the money is retained by the veteran or held for him by some depositary.

In *Porter v. Aetna Casualty and Surety Co.*, 370 U.S. 159, 161-62 (1962), a case involving an action against a veteran by a creditor, the Supreme Court of the United States, citing the

provision that exempts such benefits "either before or after receipt by the beneficiary," rejected the creditor's position that the benefits lose their exemption after deposited in a bank account. The Supreme Court held that legislation of this type should be liberally construed to protect funds granted by Congress for the maintenance and support of veterans. *Porter*, 370 U.S. at 162. Citing *Porter*, the court, in *American Training Services, Inc. v. Veterans Administration*, 434 F.Supp. 988, 995 (D.N.J. 1977), said: "The monies which are paid are preserved by statute for the sole use of the veteran." Because the courts have no authority to order garnishment of veterans' benefits, several have not accorded veterans the same respect in divorce actions and in that application have not honored the principle that the benefits retain their exempt status after receipt and are not subject to seizure through any legal or equitable process. Several courts have ordered veterans to pay alimony and support from their veterans' benefits, while a few have held that § 5301 (or its forerunners, 38 U.S.C. § 454, 38 U.S.C § 454a, and 38 U.S.C. § 3101) exempts veterans' benefits from support orders.

Two of the earlier decisions on this issue upheld the protection of veterans' benefits. The first, a Maryland case, articulates well the intent of the exemption. In this case, the court denied enforcement of the veteran's agreement to pay 30% of his compensation to a women whose marriage to him was annulled. The Court said:

> The manifest intention of Congress in incorporating this provision in this act was to guard those unfortunates who had been disabled in the service of their country from imposition of others or the depletion of their maintenance and support by their own improvidence, and to assure to them a certain subsistence. In the broad terms of the statute above quoted, it was manifestly intended to accomplish this definite purpose. The statute should be construed broadly in favor of disabled soldiers in order that the purpose and intent of the act might be fulfilled.
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> . . . .
>
> The very purpose of the act of Congress imposing a prohibition on assignments of the compensation awarded to disabled soldiers justifies a broad construction when necessary to satisfy the spirit of the act and to accomplish its laudable designs. For the purpose of this case "assignment" should be defined as, "allotting or apportionment to a particular person or use or for a particular time" of title or interest in property. . . .
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> . . . .

The obvious purpose of these provisions is to afford continuous support and maintenance of those who have suffered because of their military service. The very terms employed, such as pensions, compensation, insurance, maintenance, and support allowances paid, as in this case, and in most instances by installments extending over a period of time and through guardians or trustees, show the object and purpose to be that above stated. This conclusion is further supported by those

> statutory provisions and guarantees with which these bounties of the government are surrounded and vouchsafed to those persons for whom they are intended. These conclusions are further fortified by the obvious solicitude of the government lest these allowances be dissipated or diverted to uses other than that of continuous maintenance and support.

Yake v. Yake, 170 Md. 555, 183 A. 555 (1936).

In the second case, a Tennessee court held that veterans' benefits could not be awarded for the wife's support because such benefits are " exempt from attachment, levy, or seizure under any legal or equitable process in any proceeding adverse [to the veteran]." The court noted that "[p]roperty or funds not assignable are not subject to seizure under legal process. *Brewer v. Brewer*, 19 Tenn. App. 209, 84 S.W.2d 1022 (1933).

Other courts have not hesitated to hold to the contrary, however, using a variety of reasoning. In an often cited case, *In re Flanagan*, 31 F.Supp. 402 (D.D.C. 1940), the court held that the divorced wife of a mentally incompetent veteran was entitled to alimony out of the veteran's disability compensation. The court reasoned that the law exempted veterans' benefits from creditors, but that alimony is not a debt. The court also reasoned that the exemption was intended to protect the family and dependents of a veteran. The district court held: "A divorced wife is a dependent no less in the status created by the divorce decree than in that fixed by the marriage bond." Without citation or discussion of any legislative history or other evidence of congressional intent, the court also held: "Congress did not intend to put such benefits beyond the reach of a divorced wife." *Flanagan*, 31 F.Supp. at 402.

A Georgia court, in *Hannah v. Hannah*, 191 Ga. 134, 11 S.E.2d 779 (1940), acknowledged that the law protects veterans' benefits before and after receipt by the veteran, but followed the reasoning of other courts that the law bars seizure by creditors, and not wives. The court held: "alimony is not such a debt, or claim, as was intended to be exempted by the statute." *Hannah*, 191 Ga. at 138, 11 S.E.2d at 781. The court dismissed the broad language of the statute that provided veterans' benefits "shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever." The court said: "We do not, however, view this additional language as extending the exemption beyond the claims of creditors and to thereby cover a claim of the character of alimony." *Id.* Citing *Flanagan*, the court said "[t]hough the language of the statute is broad, . . . it was held in a well-considered opinion not to exempt disability payments from a claim of alimony." *Hannah*, 191 Ga. at 139, 11 S.E.2d at 782.

An Iowa court also followed the reasoning that alimony is not a debt, and that the exemption does not apply to alimony, therefore. This court also followed earlier decisions that held Congress intended these exemptions to benefit rather than work against wives. *Bagnall v. Iowa-Des Moines Nat'l Bank & Trust Co.*, 238 Iowa 905, 925, 29 N.W.2d 597, 608 (1947).

Massachusetts circumvented the exemption rather than expressly holding that it does not apply to veterans' benefits. In *Cohen v. Murphey*, 368 Mass. 144, 148, 330 N.E.2d 473, 475-76 (1975), the court said: "In view of our disposition we do not pass on the husband's contentions

that benefits are exempt from support claims under 38 U.S.C. § 3101 . . . . Whatever the effect of any exemption, we think it does not prevent consideration of Federal benefits in determining the amount of support to be ordered." Of course, if the amount of support requires that the veteran pay part or all of it from his compensation, the exemption has necessarily been breached, and this court's pretending otherwise is blatantly disingenuous. Incidentally, veterans' benefits do not lose their exemptions merely because they are commingled with other funds. *E.g., Wilson v. May*, 169 Miss. 281, 152 So. 878, (1934); *Appanoose County v. Henke*, 207 Iowa 835, 223 N.W. 876 (1929).

Because military retired pay is deemed to be property which is divisible between the parties in a divorce action and because veterans sometimes waive military retired pay to receive VA disability compensation in lieu of the retired pay, the courts have addressed the § 5301 exemption in the context of property divisions. In Texas, a community property state (in community property states, the property acquired by either spouse during the marriage is the property of both spouses and is generally divided equally between them in a divorce), the courts have held the exemption in § 5301 applies against division of marital property in a divorce action. In *Ex Parte Johnson*, 591 S.W.2d 453 (Tex. 1979), the veteran was in receipt of VA disability compensation in lieu of military *disability* retired pay he had waived to receive the greater VA amount. The court held that, under the preemption doctrine, the Supremacy Clause of the United States Constitution preempted the state court's order dividing the veteran's compensation with his divorced wife. The court held that the award of 50% of the veteran's future compensation "amounts to a seizure" and "conflicts with the clear intent of Congress that these benefits be solely for the use of the disabled veteran." *Johnson*, 591 S.W.2d at 456. The Court held that veterans' benefits could not be treated as "property."

In a similar case, *Arrambide v. Arrambide*, 601 S.W.2d 197 (Tex. Civ. App. El Paso 1980), a former wife sought partition of the veteran's military retirement benefits. The veteran claimed to have waived his retired pay to receive VA benefits and relied on the exemption in then § 3101. The court held that to the extent the lower court had awarded disability benefits to the spouse, it erred because Federal law prohibited such award.

In *Ex Parte Burson*, 615 S.W.2d 192 (Tex. 1981), the veteran had, after the court awarded part of his military retired pay to his former spouse as a property division, waived his retired pay to receive VA compensation. The court held that the divorce decree could not prohibit the veteran from making the election to receive exempt disability compensation as permitted by Federal law and that Federal law preempted the courts from requiring the veteran to satisfy the award to the spouse out of his compensation. The court said that "Federal preemption of veterans benefits for disability does not leave room for their defeat, either by implication or indirection."

A New Mexico court, in *Miller v. Miller*, 96 N.M. 497, 498, 632 P.2d 732, 733 (1981), followed Texas law (because the retired pay was earned in Texas) that veterans' benefits received in lieu of the retired pay through a waiver are not divisible or assignable as community property. However, the *Miller* court, without addressing the exemption in § 5301, held that alimony could properly be awarded, even though the source of funds for its payment was disability

compensation. *Miller*, 96 N.M. at 499, 632 P.2d at 734. The court held that such award of alimony was authorized by the Child Support Enforcement Act, codified at 42 U.S.C. §§ 659-662.

A California court held in *Costo v. Costo*, 156 Cal. Rptr. 85, 156 Cal. App. 3d 781 (1984) that VA benefits are exempt from division as community property. In addition to citing § 5301 (then § 3101) for the proposition that veterans' benefits are exempt, the court relied on a provision in USFSPA, codified at 10 U.S.C. §1408(a)(4)(B), which excludes from "disposable retired pay" subject to division as marital property amounts waived to receive VA compensation. The court held that "a state court may not treat the portion of appellant's military retirement waived in order to receive veterans' benefits as community property subject to division."

A Pennsylvania court, in *Parker v. Parker*, 335 Pa. Super. 348, 351-52, 484 A.2d 168, 169-70 (1984), held that the exemption in § 5301 (then § 3101) does not apply against a wife seeking alimony pendente lite (temporary alimony pending divorce and a possible award of permanent alimony) because the wife is not a creditor and the claim for alimony is not a debt. The Court said: "Suffice it to say, 38 USCA § 3101(a) does not preclude consideration of these benefits by the court as a source of income coincident to appellant's ability to pay and upon which an award of alimony pendente lite may, in the particular circumstances of the case, be based." *Id.* The veteran had also argued that a provision in CSEA (since amended) barred awarding alimony from his veterans' benefits. The provision he relied on excluded VA compensation from monies that were subject to alimony payments. The court held that while it may be true that this provision excluded veterans' compensation from the waiver of sovereign immunity that consents to garnishment of Federal agencies, "nothing here persuades us that these benefits cannot be considered in determining the amount of the award." *Id.* at 353-54, 484 A.2d at 170-71.

Louisiana has held, despite § 5301 which provides an exemption for veterans' benefits, and despite the USFSPA provision, 10 U.S.C. 1408(a)(4)(B), that excludes from property division and alimony amounts of retired pay waived to receive disability compensation, that veterans' compensation received in lieu of military retired pay is property for purposes of division of marital assets under Louisiana's community property laws. *Campbell v. Campbell*, 474 So.2d 1339 (1985). This goes far beyond what other courts have held, because they have recognized that spouses and others have no property interest in veterans' benefits. If other states were to take this holding seriously and follow it, the result could be that veterans' disability compensation would routinely go in the pockets of ex-spouses rather than disabled veterans. Unlike spousal support, fault of the parties or financial need are not factors in the division of marital property. It would make no difference if the marriage terminated because of the spouse's adultery or willful abandonment of the disabled veteran. In community property states, a veteran's former spouse might automatically receive 50% of the veteran's future compensation for the remainder of the veteran's or spouse's life. It would not matter that the veteran's sole source of income is disability compensation, nor that the spouse is fully employed, is much better off financially, and has no need for a half of the veteran's disability compensation. The spouse would continue to receive half of the veteran's compensation even after remarriage. The community property concept is not founded on the common law principle that there is a moral obligation to support a spouse and dependent children, but rather on the business relationship that exists between the

husband and his wife for their mutual economic benefit. In non-community property, or equitable distribution, states, the result might be similar or even worse: a spouse might receive more than half of the veteran's disability compensation if the court deemed it appropriate.

A Vermont court has held that § 5301 does not preclude consideration of veterans' disability compensation as a source of income from which to award alimony. *Repash v. Repash*, 528 A.2d 744, 745 (Vt. 1987). The veteran also argued that § 1408(a)(4)(B) provided protection to his compensation. The court, in noting that the veteran's compensation was not received by virtue of a waiver of retired pay and in holding that this provision in USFSPA only exempts compensation when it is received in lieu of retirement pay, demonstrates one absurd contradiction that arises from the courts' treatment of these laws. A veteran who receives VA disability compensation without a waiver of retired pay has no protection while a veteran, merely because he or she receives the same compensation through a waiver of retired pay, is protected (or was protected before the most recent amendment to CSEA), at least from actions awarding support under USFSPA.

Shortly thereafter the Supreme Court, in *Rose v. Rose*, 481 U.S. 619 (1987), held that (1) VA authority to apportion disability compensation was not intended to vest VA with exclusive authority over awards of compensation for child support, (2) that § 5301 does not preempt state courts' jurisdiction over compensation and does not protect veterans' disability compensation from seizure to pay court-ordered support, and (3) that the provision in CSEA, 42 U.S.C. § 659(a), that exempted veterans' benefits only exempted them from garnishment, not court orders for support. Regarding the effect of § 5301, the Court in *Rose* essentially rewrote the law to suit the outcome it thought desirable. In his dissent, Justice White observed: "the order that appellant pay over a portion of his veterans' disability benefits on pain of contempt constitutes a "seizure" of benefits. The plain language of § 3101(a) prohibits *any* seizure of veterans' benefits, but the Court ignores that prohibition and creates an exception out of whole cloth." *Rose*, 481 U.S. at 645. In an earlier decision, the Supreme Court reached the opposite conclusion about the identical language. *Wissner v. Wissner*, 338 U.S. 655, 659-60 (1950). In *Wissner*, the court held that a judgment which ordered the diversion of future veterans' benefits to another as soon as they were paid constituted a seizure contrary to the same provisions now in § 5301. *Id.* Similarly, in *Ridgway v. Ridgway*, 454 U.S. 46, 60-61(1981), the Supreme Court again rejected arguments that the intent of the "anti-attachment statute" (in that case another VA statute with the same language as § 5301) was only to protect veterans' benefits from creditors. The court, citing the language of statute, said of that argument: "This contention, however, fails to give effect to the unqualified sweep of the federal statute." The Court said that, in addition to exempting benefits from the claims of creditors, the statute "prohibits, in the broadest terms, *any* 'attachment, levy, or seizure by or under any legal or equitable process whatever,' whether accomplished 'either before or after receipt by the beneficiary.' " *Ridgway*, 454 U.S. at 61 (emphasis added). The Court further explained that the anti-attachment provision ensures the benefits actually reach the beneficiary by preempting all state law that stands in its way and protecting the benefits from legal process of any state. The Court said: "It prevents the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of congressional policy." *Id.* The Court went on to acknowledge that these provisions might allow a veteran to avoid his or her obligation to support dependents, but

said that it was within the province of Congress to determine public policy of that nature. *Id.* In *Rose*, the Court departed from the principle that such public policy is within the power of the Congress. Reviewing the *Rose* decision, another Federal court observed that the Supreme Court recognized an exception to the broad prohibition in § 5301, contrary to its plain language, to further what was viewed by the Supreme Court to be proper public policy. This was justified by the argument that, in so doing, the Court was being Congress' helper by carrying out the real purpose Congress had in mind, as if Congress did not understand what it was doing when it crafted the language it enacted into law. *Lewis v. Grinker*, 965 F.2d 1206, 1215 (2d Cir. 1992).

It is important to remember that *Rose* involved child support and did not hold that VA compensation is subject to alimony awards. Although VA law gives divorced spouses no right to veterans' benefits, state courts have continued to consider compensation in computing awards of alimony.

The courts also have taken liberties with the Protection Act, and the law itself invites abuse. Congress enacted the Uniformed Services Former Spouses' Protection Act, Pub. L. No. 97-252, 96 Stat. 730 (1982) as a rider in the fiscal year 1993 Defense Authorization Act in reaction to the Supreme Court's decision in *McCarty v. McCarty*, 453 U.S. 210 (1981). The *McCarty* decision held that the current Federal law preempted the application of state community property law to military retirement pay. The Court acknowledged that, "[h]istorically, military retired pay has been a *personal entitlement* payable to the retired member himself as long as he lives." USFPA authorized state courts to treat retired pay as property for purposes of division of marital assets and as pay for purposes of support payments. As noted already, Congress exempted VA disability compensation from the calculation of disposable retired pay subject to property division and awards of support. For convenience, this embodies a contradiction in that military retired pay is considered both property and pay. Pay and property are accorded different treatment in domestic relations laws. The retired pay is taxed as income but treated as property for purposes of division of marital assets. Entitlement to alimony generally ends upon remarriage of the spouse who receives it, but payments of retired pay to a spouse as a property division continue after remarriage. Under USFSPA, up to 65% of the retired member's pay may be awarded for property division and support in combination. The law ignores the factors that typically govern support awards, such as fault grounds for divorce, merit, and relative financial needs of the parties. In a book primarily on USFSPA by Frank W. Ault and Marsha L. Thole, *Divorce and the Military*, the authors provide several examples of undeserving, perhaps designing, spouses being unjustly enriched under USFSPA. The first such example, said to be the facts in an actual case, exemplifies the type of abuse that can result:

> *You were taken prisoner of war and sent to a North Vietnam POW camp from the fall of 1967 until repatriation in 1973—seven years. You were released and returned home only to be served with divorce papers. Then picture being told by a court that it has found that the "date of separation" from your spouse was April 1, 1970, and she did not have to repay any of your pay and allowances that she spent after the date of separation, that she was entitled to your accrued leave pay, monies paid to you under the War Crimes Act for inhumane treatment, and she was entitled to your remaining pay, even though California law stated that*

earnings and accumulations after the date of separation were separate property. This was on top of the fact that she openly had affairs during the time you spent in the North Vietnam prison. The court also awarded her your home, your car, and 42.7 percent of your military retired pay, and you were ordered to pay child support and spousal support (despite her remarriage to one of the attorneys who represented her in the divorce). And, despite your four children all telling the court they wanted to live with you, you received custody of only the two older children.

The Supreme Court has acted to uphold exemptions for VA disability compensation in USFSPA. In *Mansell v. Mansell*, 490 U.S. 581, 594-95 (1989), the Supreme Court held that the Protection Act did not "grant state courts the power to treat as property divisible upon divorce military retirement pay that has been waived to receive veterans' disability benefits." The effect of this decision is placed in question in light of subsequent amendments to CSEA, however.

CSEA operates to waive sovereign immunity of the Federal Government to permit state courts to garnish Federal agencies to enforce child support and alimony obligations. To the extent it consents to garnishment, it necessarily also contemplates such underlying awards by the state courts and presupposes no Federal preemption against such awards. Under 42 U.S.C. § 659, Government agencies, the Armed Forces, Federally owned corporations, and the Postal Service may withhold monies of individuals, representing "remuneration for employment," in compliance with court orders of the states. Section 659(h)(1)(A)(ii)(V) includes as remuneration for employment periodic benefit payments "by the Secretary of Veterans Affairs as compensation for a service-connected disability paid to a former member of the Armed Forces who *is in receipt of retired or retainer pay* if the former member has waived a *portion* of the retired or retainer pay in order to receive such compensation." (Emphasis added.) Under § 659(h)(1)(B)(iii), "periodic benefits under title 38, United States Code, except as provided in subparagraph (A)(ii)(V)" are not subject to CSEA. The child support that may be withheld includes such other things as attorney's fees. § 659(i)(2). "Alimony" for purposes of the act includes support to divorced spouses and attorneys' fees. § 659(i)(3).

CSEA appears to do the exact opposite of USFSPA, § 1408(a)(4), as it pertains to spousal or child support payments. Where § 1408(a)(4) exempts the amount of retired pay waived to receive VA compensation, § 659(h)(1)(A)(ii)(V) appears to subject the very same to garnishment. As with § 1408(a)(4), § 659(h)(1)(A)(ii)(4) does not, by its language have any application to compensation when the veteran has not waived retired pay to receive it. Neither do these statutes, by their language, appear to apply to compensation when all retired pay has been waived and the veteran receives only VA compensation.

Thus, the net effect of 38 U.S.C. § 5301, as construed in *Rose*, together with 10 U.S.C. § 1408, according to its plain language, and 42 U.S.C. § 659, according to its plain language, appears to be as follows. Under *Rose*, any disability compensation, whether received by a veteran who did or did not retire from the military, is subject to state court child support orders, notwithstanding § 5301. Although several state courts also order veterans to pay, from their compensation, alimony to separated and divorced spouses, the Supreme Court has not affirmed

the validity of such awards. Under § 1408, disposable military retired pay (does not include amounts waived and received as VA compensation) is subject to marital property division in community property and equitable distribution states and alimony and child support orders. However, under § 659, for enforcement of child support and alimony awards, state courts can garnish Armed Forces retired pay accounts for retired pay and presumably garnish VA for the compensation the retiree receives in lieu of retired pay as long as the veteran still receives some amount of retired pay in addition to the compensation. It could be argued that, although § 659 consents to garnishment, it does so only in theory because a valid underlying court order is still required, and, inasmuch as § 659 only consents to garnishment, it cannot remove the preemption in § 1408, which still precludes making support awards from compensation received in lieu of retired pay. Even in the unlikely event one were to successfully argue that § 659 is nothing more than a garnishment statute and cannot operate as an implied repeal to negate the Federal preemption in § 1408, he or she would still confront *Rose*, however. For child support, *Rose* left no exemption for compensation under any circumstances, although *Rose* does not authorize garnishment.

Consequently, neither compensation nor retired pay enjoy any real protections from unwarranted state actions or state actions that disregard the purposes of disability compensation and retired pay. Because these are Federal benefits created to further Federal goals, the Federal Government should exercise some reasonable control over them to ensure they are not misused for the state's self-serving purposes and diverted to uses never imagined or intended. Borrowing from the Supreme Court's reasoning in *Ridgway*, Congress should enact legislation that "prevents the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of congressional policy." Given the liberties state courts, and the Supreme Court, have taken with the plain language of existing law, the new legislation and the legislative history would have to leave absolutely no doubt about its import and intent and leave no room for courts to reasonably misconstrue its provisions. Such legislation is also needed to give those who serve our country some degree of justice and assurance that their earned benefits will be protected from improper court-ordered seizure or attachment. It might be expecting too much to anticipate that a more ironclad law would reduce litigation and save veterans and the state and Federal governments expenditures for litigation, but that is also a worthy goal. Should Congress agree that legislation is needed, we believe there are several factors and principles deserving consideration.

Although the DAV has a current resolution that supports legislation to amend the law to make the administrative apportionment process the exclusive means by which veterans' benefits can be awarded for dependents, we certainly advocate protections for veterans in any law that would permit courts to make such awards, if Congress takes that course. It is in that vein that we make the following observations and recommendations.

We should never lose sight of the fact that it is the veteran who, in addition to strictly a loss in earning power, suffers the pain, limitations in the routine activities of daily life, and the other social and lifestyle constraints that result from disability. The needs and well-being of the veteran should always be the primary, foremost, and overriding concern when considering claims against a veteran's disability compensation. The moment we let that objectivity become obscured

by the emotions and sympathies that occur in the unfortunate, sometimes turbulent, break up of marriages, the purpose of compensation is forgotten and subverted, just as we have seen in the court decisions discussed here. Compensation is a personal entitlement of the veteran, without whom, there could never be any secondary entitlement to compensation by dependent family members. Therefore, Federal law should place strict limits on access to veterans' benefits by third parties to ensure compensation goes mainly to support veterans disabled in the service of their country. The law should be restrictive and precise enough to ensure that, properly applied, it would never permit an able-bodied spouse to take and enjoy part of the veteran's payment for the effects of disability he or she suffers.

Moreover, with the changed roles of the genders in our modern society, there is more equality between husbands and wives as far as opportunities to earn a living. Both spouses are now wage earners in many families. Both pursue higher education and individual careers. Many of the equitable reasons for awards of alimony and related public policy goals no longer exist. These circumstances viewed along with the fact that the veteran is disabled compels restraint when considering laws that may subject the veteran's disability compensation to the claims of others.

While alimony may still have its place in today's society where one spouse is disadvantaged or if there is a substantial imbalance between the resources or earning capacity of the husband and wife, ex-spouses have not been an object of veterans' programs. The Federal government has no interest in an ex-spouse's support. Congress has not authorized veterans' entitlements to be provided to benefit ex-spouses. There are legitimate reasons to provide a measure of ancillary benefits to a spouse who bears, along with the veteran, some of the disadvantages and hardships related to the experience and status of a veteran. Various veterans' benefits do that. Once the spouse is no longer a partner in the veteran's household and no longer a member of a veteran's family, veterans' laws do not provide benefits for that spouse, and we should not allow the states to award the spouse part of the benefits intended for veterans and their dependent family members. That is not to say that ex-spouses of veterans are undeserving; it is simply to say that Federal benefits for veterans should not be used to fill their needs. The welfare of ex-spouses has never been a purpose for dispensing veterans' benefits. Where appropriate, the state governments can provide for their well-being to the same extent and through the same regular services it provides nonveterans. Veterans' children are inherently different, however. They are naturally entitled to be supported by the veteran, and they are the veteran's responsibility from a legal and moral standpoint. Disabled veterans have a responsibility to support their dependent children. Even so, disability compensation should be the last source considered for awards of child support, and the law should require reasonable exhaustion of alternatives before disability compensation, in excess of the additional amounts paid to the veteran on account of dependents, is apportioned to children through court orders and decrees. Because VA resources can be better used for other purposes, we do not believe VA should be subject to garnishment to enforce such orders, however. Awards of temporary alimony to separated spouses should only be made through administrative apportionments. Otherwise, problems would likely arise when temporary alimony is converted to permanent alimony upon divorce.

If Congress were to agree that veterans' benefits should be awarded to separated spouses and dependent children exclusively through the administrative apportionment process, the DAV suggests that § 5301(a) be amended as follows to include the words underlined: "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and, notwithstanding any other provision of law, such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever for any purpose, either before or after receipt by the beneficiary." If Congress wishes to permit court-ordered child support awards, § 5301 could be amended as follows: (1) add the underlined words to subsection (a) to read "Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and, notwithstanding any other provision of law except as provided in subsection (b) of this section, such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever for any purpose, either before or after receipt by the beneficiary."; (2) add a new subsection (b) to provide for the terms and limits on child support awards; (3) add a new subsection (c) to provide that VA will not be subject to garnishment orders: and (4) redesignate current subsections (b) through (e) as subsections (d)-(f). This amendment would correct the § 659 problem without encroaching on, or subjecting this change to, the jurisdiction of other congressional committees.

Finally, at a minimum, Congress should enact legislation that preempts states from treating compensation and other veterans' benefits as property to be divided with spouses in divorce actions. The damage this will do to the compensation program and the absolute inequities of tolerating such outrageous actions are obvious.

The DAV sincerely appreciates this Committee's interest in this important issue and its initiative in beginning the process for considering an appropriate remedy. We would be happy to supplement our views here to address any legislation that might be proposed as a result of this hearing. We hope our analysis and views are helpful, and we appreciate the opportunity to appear before you to share our concerns and present our recommendations.

DISCLOSURE OF FEDERAL GRANTS OR CONTRACTS

The Disabled American Veterans (DAV) does not currently receive any money from any federal grant or contract.

During fiscal year (FY) 1995, DAV received $55,252.56 from Court of Veterans Appeals appropriated funds provided to the Legal Service Corporation for services provided by DAV to the Veterans Consortium Pro Bono Program. In FY 1996, DAV received $8,448.12 for services provided to the Consortium. Since June 1996, DAV has provided its services to the Consortium at no cost to the Consortium.

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Curriculum Vitae
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Judicial Appeals Representative before the United States Court of Veterans Appeals, DAV, September 1989 to March 1994.

National Appeals Officer before the Board of Veterans' Appeals, DAV, June 1989 to September 1989.

National Service Officer, DAV, September 1976 to June 1989.

Other Information

Principal author of DAV's portion of *Independent Budget*

Mr. Chairman, on behalf of the Jewish War Veterans of the U.S.A. (JWV), our organization appreciates that you have made the time to hold this hearing. The entire issue of the Former Spouse Protection Act (FSPA) is of interest to our organization because it impacts on the morale of our active duty forces. JWV maintains a very strong interest in national security and any issue which may affect the morale and welfare of our active duty personnel is of vital importance to this organization.

JWV fully supports the prompt and regular payment of child support. Military retirees, like all parents in the civilian community, have both a moral and a legal obligation to provide child support.

However, Mr. Chairman, the FSPA has been and is an extremely controversial piece of legislation as to alimony without there being an evaluation of due process in the granting of the same. Since the first hearings nearly two decades ago, this legislation has contributed to confusion in the courts at all levels. There is extensive anecdotal evidence showing that state courts are using judgements which conflict with the legislation, and that the Military Services are caught in between.

Mr Chairman, thank you very much for holding this hearing. As a member of the Military Coalition, JWV urges prompt future hearings on the issue of the FSPA. JWV believes the FSPA legislation needs to reevaluated, reconsidered and revised to reflect today realities and to clarify the many misunderstandings existing in this legislation.

Required Funding Statement:

The Jewish War Veterans of the U.S.A. is a non-profit veterans membership organization, as described in section 501(c)(4) of the Internal Revenue Service Code. JWV is registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

Neither the Jewish War Veterans of the U.S.A. nor Colonel Herb Rosenbleeth, U.S.A. (Ret), has received any Federal grant or contract relative to the subject matter of this testimony, or any other subject matter, during the current or two previous fiscal years.

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