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# MISCELLANEOUS BILLS

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## HEARING

BEFORE THE

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### SUBCOMMITTEE ON GENERAL LEGISLATION

OF THE

### COMMITTEE ON ARMED SERVICES

### UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 2738—TO PROVIDE THE EQUALITY OF TREATMENT FOR  
MILITARY PERSONNEL IN THE APPLICATION OF DEPENDENCY  
CRITERIA

S. 3203—TO AMEND CURRENT LAW BY EXTENDING THE EX-  
PIRATION DATE IN POWERS OF ATTORNEY EXECUTED BY  
MEMBERS OF THE ARMED FORCES WHO ARE IN A MISSING  
STATUS

S. 3310—TO AUTHORIZE ONE REAR ADMIRAL OF THE NAVAL  
RESERVE IN THE JUDGE ADVOCATE GENERAL'S CORPS OF THE  
NAVY

H.R. 14909—TO PROVIDE CONTINUANCE OF INCENTIVE PAY TO  
MEMBERS OF THE UNIFORMED SERVICES FOR THE PERIOD  
REQUIRED FOR HOSPITALIZATION AND REHABILITATION  
AFTER TERMINATION OF MISSING STATUS

H.R. 14911—TO AUTHORIZE MEMBERS OF THE ARMED FORCES  
WHO ARE IN A MISSING STATUS TO ACCUMULATE LEAVE  
WITHOUT LIMITATION, AND FOR OTHER PURPOSES

H.R. 14915—TO AUTHORIZE AT GOVERNMENT EXPENSE THE  
TRANSPORTATION OF MOBILE HOMES OF MEMBERS IN A  
MISSING STATUS

H.R. 14537—TO EXTEND THE AUTHORITY TO GRANT A SPECIAL,  
30-DAY LEAVE FOR MEMBERS OF THE UNIFORMED SERVICES  
WHO VOLUNTARILY EXTEND THEIR TOURS OF DUTY IN  
HOSTILE-FIRE AREAS

SEPTEMBER 7, 1972

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## MISCELLANEOUS BILLS

THURSDAY, SEPTEMBER 7, 1972

U.S. SENATE,  
SUBCOMMITTEE ON GENERAL LEGISLATION  
OF THE COMMITTEE ON ARMED SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2 p.m. in room 212, Old Senate Office building, Senator Harry F. Byrd, Jr., chairman.

Present: Senator Byrd (presiding).

Also present: Labre R. Garcia, professional staff member.

Senator BYRD. The subcommittee will come to order. The chair will try to proceed expeditiously.

Today the Subcommittee on General Legislation meets to consider a number of legislative items which have been passed by the House and other bills which have originated in the Senate. The bills under consideration are:

1. H.R. 14909: To provide continuance of incentive pay to members of the uniformed services for the period required for hospitalization and rehabilitation after termination of missing status.

2. H.R. 14911: To authorize members of the Armed Forces who are in a missing status to accumulate leave without limitation, and for other purposes. A bill similar to that has been introduced in the Senate by Senator Thurmond of South Carolina, and any testimony pertinent to H.R. 14911, I assume, would be pertinent to the Senate bill also.

3. H.R. 14915: To authorize at Government expense the transportation of mobile homes of members in a missing status.

4. S. 3203: To amend current law by extending the expiration date in powers of attorney executed by members of the Armed Forces who are in a missing status.

5. S. 2738: To provide the equality of treatment for military personnel in the application of dependency criteria.

6. H.R. 14537: To extend the authority to grant a special, 30-day leave for members of the uniformed services who voluntarily extend their tours of duty in hostile-fire areas.

7. S. 3310: To authorize one rear admiral of the Naval Reserve in the Judge Advocate General's Corps of the Navy.

We have with us Lt. Gen. Leo Benade of the Department of Defense who, I understand, will be the principal witness on each of the enumerated bills.

General Benade, we are pleased to have you with us, and you may proceed in your own way.  
(The bills follow:)

[S. 2738, 92d Cong., 1st sess.]

A BILL To amend titles 10 and 37, United States Code, to provide for equality of treatment for military personnel in the application of dependency criteria

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That title 10, United States Code, is amended as follows:

(1) Clauses (C) and (D) of section 1072(2) are amended to read as follows:

“(C) the husband;

“(D) the unmarried widower;”.

(2) Section 101(36) is repealed.

SEC. 2. Section 401 of title 37, United States Code, is amended by striking out the second sentence.

SEC. 3. The text of section 420 of title 37, United States Code, is amended to read as follows:

“A member of a uniformed service may not be paid an increased allowance under this chapter, on account of a dependent, for any period (1) during which that dependent is entitled to basic pay under section 204 of this title, or (2) the spouse of such member is being paid an increased allowance under this chapter on account of that dependent.”

[S. 3203, 92d Cong., 2d sess.]

A BILL To amend the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, in order to extend under certain circumstances the expiration date specified in a power of attorney executed by a member of the Armed Forces who is missing in action or held as a prisoner of war

Whereas it is declared to be a policy of the United States Government to assist those members of the military service, and their families, who are listed as missing in action or prisoners of war as a result of the Vietnam conflict; and

Whereas the indeterminable status concerning the ultimate fate of those men so listed as missing in action or prisoners of war has created problems concerning their legal status in management of their personal affairs: Now, therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 App. U.S.C. 511), is amended by striking out “The term ‘persons in military service’” and inserting in lieu thereof “the term ‘person in the military service’, the term ‘persons in military service’”.

SEC. 2. The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, is further amended by adding at the end thereof a new section as follows:

“SEC. 701. (a) Notwithstanding any other provision of the law, any power of attorney which—

“(1) was duly executed by a person in the military service who is listed as missing in action or as a prisoner of war by the Secretary of the military service of which such person is a member,

“(2) designates such person's wife as his attorney in fact for certain specified purposes or for any and all purposes, and

“(3) contains an expiration date which occurs subsequent to such person being listed as missing in action or a prisoner of war by the Secretary of the military service of which such person is a member, and which occurred prior to the date of enactment of this section or one which occurs subsequent to the date of enactment of this section,

shall be automatically extended for the entire period of time that such person is listed as missing in action or a prisoner of war by the Secretary of the military service of which such person is a member. Any power of attorney extended by the provisions of this section shall have the same validity and legality for all purposes in the same manner and to the same extent as if the expiration date specified therein had not occurred.

“(b) No power of attorney executed subsequent to the date of enactment of this section by any person in the military service shall be extended by virtue of

the provisions of subsection (a) if the terms of such document, on its face, clearly indicate that the power granted by such document is to expire on the date specified therein regardless of whether such person, subsequent to the date of execution of such document, is reported missing in action or a prisoner of war.

“(c) The provisions of this section shall apply only in the case of persons in military service who executed powers of attorney during the Vietnam era (as defined in section 101 (29) of title 38, United States Code).

“(d) As used in this section, the term ‘prisoner of war’ includes being forcibly detained or interned by a foreign government or power.”

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[S. 3310, 92d Cong., 2d sess.]

A BILL To amend title 10, United States Code, to establish the authorized strength of the Naval Reserve in officers in the Judge Advocate General's Corps in the grade of rear admiral, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) clause (3) of section 5457 (a) of title 10, United States Code, is amended to read as follows:

“(3) Supply Corps—7.”

(b) Section 5457(a) of such title is further amended by redesignating clause (6) as clause (7) and adding after clause (5) a new clause (6) as follows:

“(6) Judge Advocate General's Corps—1.”

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[H.R. 14537, 92d Cong., 2d sess.]

AN ACT To amend section 703(b) of title 10, United States Code, to extend the authority to grant a special thirty-day leave for members of the uniformed services who voluntarily extend their tours of duty in hostile fire areas

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 703(b) of title 10, United States Code, is amended by striking out “June 30, 1972” and inserting in lieu thereof “June 30, 1973”.

Passed the House of Representatives July 17, 1972.

Attest.

W. PAT JENNINGS,  
Clerk.

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[H.R. 14909, 92d Cong., 2d sess.]

AN ACT To amend section 552(a) of title 37, United States Code, to provide continuance of incentive pay to members of the uniformed services for the period required for hospitalization and rehabilitation after termination of missing status

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 552(a) of title 37, United States Code, is amended to read as follows:

“(a) A member of a uniformed service who is on active duty or performing inactive-duty training and who is in a missing status, is—

“(1) for the period he is in that status, entitled to receive or have credited to his account the same pay and allowances, as defined in this chapter, to which he was entitled at the beginning of that period or may thereafter become entitled; and

“(2) for the period required for his hospitalization and rehabilitation after termination of that status, under regulations prescribed by the Secretaries concerned, with respect to incentive pay, considered to have satisfied the requirements of section 301 of this title so as to entitle him to a continuance of that pay.

However, a member who is performing full-time training duty or other full-time duty without pay, or inactive-duty training with or without pay, is entitled to the pay and allowances to which he would have been entitled if he had been on active duty with pay.”

Passed the House of Representatives July 17, 1972.

Attest.

W. PAT JENNINGS,  
Clerk.

[H.R. 14911, 92d Cong., 2d sess.]

AN ACT To amend titles 10 and 37, United States Code, to authorize members of the armed forces who are in a missing status to accumulate leave without limitation, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 701 of title 10 United States Code, is amended—

(1) by inserting “and subsection (g)” after “subsection (f)” in subsection (b); and

(2) by adding the following new subsection:

“(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the sixty-day limitation in subsection (b) and the ninety-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

“(1) the Secretary concerned receives evidence that the member is dead; or

“(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37.”

SEC. 2. Section 501 of title 37, United States Code, is amended—

(1) by striking out “section,” in the first sentence of subsection (d) and inserting in place thereof “section and for accumulated leave under subsection (h) of this section;” and

(2) by adding the following new subsection:

“(h) Payment shall be made for all leave accumulated under section 701(g) of title 10 as soon as possible after the name of the person concerned is removed from a missing status, as defined in section 551(2) of this title.”

SEC. 3. This Act becomes effective as of February 28, 1961.

Passed the House of Representatives July 25, 1972.

Attest.

W. PAT JENNINGS,  
Clerk.

[H.R. 14915, 92d Cong., 2d sess.]

AN ACT To amend chapter 10 of title 37, United States Code, to authorize at Government expense, the transportation of house trailers or mobile dwellings, in place of household and personal effects, of members in a missing status, and the additional movement of dependents and effects, or trailers, of those members in such a status for more than one year

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That chapter 10 of title 37, United States Code, is amended as follows:

(1) The catchline of section 554 and the corresponding item in the analysis for that section are each amended by inserting “trailers; additional movements;” after “household and personal effects;”.

(2) Section 554(a) is amended by adding the following at the end: “Under regulations prescribed by the Secretaries concerned, and in place of the transportation of household and personal effects, a dependent, who would otherwise be entitled to transportation of household and personal effects under this section, may transport a house trailer or mobile dwelling within and between the areas specified in section 409 of this title for use as a residence by one of the following means—

“(1) transport it and be reimbursed by the United States;

“(2) deliver it to an agent of the United States for transportation by the United States or by commercial means; or

“(3) have it transported by commercial means and be reimbursed by the United States.

If a trailer or dwelling is transported under clause (2) or (3) of this subsection, that transportation may include one privately owned motor vehicle which may be shipped at United States expense. Transportation, and incidental costs, authorized by this section shall be at United States expense without any cost limitation, and any payment authorized may be made in advance of the transportation concerned.”

(3) Section 554(b) is amended by adding the following at the end: "In addition, he may authorize additional movements of, and prescribe transportation for, the dependents and household and personal effects, or the dependents and house trailer or mobile dwelling, of a member who is officially reported as absent for a period of more than one year in a missing status."

Passed the House of Representatives July 17, 1972.

W. PAT JENNINGS,  
*Clerk.*

Attest.

**STATEMENT OF LT. GEN. LEO E. BENADE, U.S. ARMY, DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY PERSONNEL POLICY), OFFICE OF ASSISTANT SECRETARY OF DEFENSE (M. & R.A.); ACCOMPANIED BY REAR ADM. MERLIN H. STARING, U.S. NAVY, JUDGE ADVOCATE GENERAL, U.S. NAVY; AND CAPT. DOROTHY COUNCIL, OFFICE, DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY PERSONNEL POLICY)**

General BENADE. Thank you, sir.

Mr. Chairman, I am Lt. Gen. Leo E. Benade, the Deputy Assistant Secretary of Defense for Military Personnel.

I appreciate this opportunity to appear before your subcommittee and express the support of the Department of Defense for seven proposals which are the subject of this hearing today. Since the chairman has already enumerated them, sir, I will omit designating each of the bills again.

I will comment briefly on each bill. A more detailed discussion of, and justification for, these bills is set forth in the seven attachments to my statement, and I ask that they be included in the record as part of my statement.

Senator BYRD. They will be so included.

General BENADE. Four of these bills—H.R. 14909, H.R. 14911, H.R. 14915, and S. 3203—are intended to enhance the benefits available to members of the Armed Forces in a prisoner-of-war or missing status and to their families.

The first bill, H.R. 14909, would permit continued payment of incentive pay for hazardous duty to members of the uniformed services who have been in a missing status, including those captured or illegally detained by a foreign government, for the period of hospitalization and rehabilitation required after they return from a missing status, even though all the requirements for performance of hazardous duty might not be met. Because of the length and circumstances of their confinement, it must be expected that many will require extended periods of hospitalization and rehabilitation following their repatriation.

We do not believe their family income should be reduced during such hospitalization and rehabilitation by elimination of incentive pay, as is required under present law.

Senator BYRD. Would you delay just a moment at that point?

General BENADE. Yes, sir.

Senator BYRD. Before we proceed to the next piece of legislation, let me ask you several questions about this. What are your cost estimates related to this legislation if enacted?

General BENADE. There would be no additional budgetary requirements on H.R. 14909, Mr. Chairman; in other words, this would continue an already existing level of payments so there would be no additional budgetary requirement.

Senator BYRD. Who are the individuals who would be the principal recipients of the benefits and how many do you estimate are involved?

General BENADE. There are, as of May 6, Mr. Chairman, 1,428 individuals who were in receipt of incentive pay at the time they went into a missing status.

Senator BYRD. When you use missing status, does that include the prisoners as well as those missing in action?

General BENADE. Yes, sir; it does.

Senator BYRD. Can you provide, by service, the numbers in a missing status as a result of the Vietnam war?

General BENADE. Yes, sir; the total or just those affected by this particular bill, sir? I can give you both, sir.

Senator BYRD. Why not give us both.

General BENADE. All right, sir.

The number affected by this bill who are in receipt of incentive pay are: Navy, 265; the Marine Corps, 64; the Army, 246; the Air Force, 853. That is a total of 1,428.

The total number of prisoners of war and missing in action in Southeast Asia, is 1,773.

Senator BYRD. That total includes the 1,428?

General BENADE. Yes, sir; it does.

Senator BYRD. Give me that figure again.

General BENADE. One-thousand seven hundred seventy three is the total.

Senator BYRD. Thank you.

General BENADE. The breakdown by services, sir, would be 442 for the Army, 284 for the Navy, 129 Marine Corps, 918 Air Force, to make the total of 1,773. I would be very happy to furnish for the record, Mr. Chairman, a complete breakdown, including a recapitulation by year of when they were lost.

Senator BYRD. I think that would be well to do that, if you will, General.

General BENADE. Yes, sir.

(Figures follow:)

AMERICAN PRISONERS OF WAR AND MISSING IN ACTION IN SOUTHEAST ASIA (AS OF AUG 26, 1972)

	Missing	Captured	Total
By country:			
North Vietnam.....	453	425	878
South Vietnam.....	495	106	601
Laos.....	288	6	294
Total.....	1,236	537	1,773
By service:			
Army.....	357	85	442
Navy.....	127	157	284
Marine Corps.....	104	25	129
Air Force.....	648	270	918
Total.....	1,236	537	1,773

## STATISTICAL RECAPITULATION BY YEAR LOST

	1964	1965	1966	1967	1968	1969	1970	1971	1972
Missing.....	4	54	204	226	294	176	86	79	113
Captured.....	3	74	97	179	95	13	12	11	53
Totals.....	7	128	301	405	389	189	98	90	166

Senator BYRD. As a practical matter and speaking generally, it appears that the Air Force accounts for about 50 percent of that total?

General BENADE. Yes, sir; most of these would be the crews of our aircraft.

Senator BYRD. This appears to the chairman to be a very desirable piece of legislation.

You may proceed, General, to H.R. 14911.

General BENADE. Thank you, sir.

H.R. 14911 would relieve military personnel in a missing status of the 60- and 90-day limitations which currently apply to the accumulation of leave. Reimbursement for unused leave would be allowed to these men upon their repatriation or to their survivors.

Senator BYRD. Let me ask you this: Could you provide the fiscal data and the cost estimates associated with this bill if enacted?

General BENADE. Yes, sir.

The estimated cost of these men were to be released during fiscal year 1973 would be \$13.835 million.

Senator BYRD. Does that include the leave to which they are already entitled?

General BENADE. Yes, sir; this would include a cash settlement for all leave which they had accrued during a missing status.

Senator BYRD. You say \$14 million?

General BENADE. About \$14 million, sir. The amount, of course, increases with each year because each year additional leave is accumulated by the men in a missing status.

For example, sir, the figure I gave you is an estimated fiscal 1973 cost. The cost for fiscal 1974 would increase somewhat over that, and the cost for 1975 would be still higher depending on the further length of captivity or missing in action status.

Senator BYRD. I don't know whether my arithmetic is right or not but would that break down to \$10,000 per individual if all 1,400 were released which, of course, we would hope they would be?

General BENADE. It could be greater than that for some individuals, Mr. Chairman, but less than that on the average. I would be happy to provide a table which would show the average payment that would be made for each year of leave for each grade.

Senator BYRD. I think it would be well to do that.

General BENADE. As an example, Mr. Chairman, in the case of an O-6, the payment for a month's basic pay and quarters and subsistence, which is what is payable for accrued leave, would run just short of \$2,000, on an average. If the same individual were a prisoner of war or missing in action for 7 years, the amount could be \$14,000 in that case.

For a lower ranking individual who had been a prisoner or missing for a shorter period of time, the amount might be half of that or less.

Senator BYRD. The way it works now is that you include the amount that he has been receiving for quarters as well as the cash that he receives?

General BENADE. It includes basic pay, Mr. Chairman, basic allowance for quarters and basic allowance for subsistence.

Senator BYRD. Now you are speaking of all servicemen?

General BENADE. Yes, sir.

Senator BYRD. And the leave policy is 30 days per year?

General BENADE. Thirty days per year; yes, sir.

Senator BYRD. Could you provide for the record a chart indicating entitlements of service members by grade used in computing the accumulated leave?

General BENADE. Yes, sir; I can. I have such a chart with me, sir, and I would be very happy to provide it.

Senator BYRD. We will make that a part of the record.

(Chart follows:)

AVERAGE ACCRUED LEAVE PAY FOR 1 YEAR—(30 DAYS LEAVE) AT JAN. 1, 1972 RATES

Grade	Without Dependents	With Dependents
O-6	\$1,944	\$1,990
O-5	1,645	1,685
O-4	1,402	1,439
O-3	1,133	1,170
O-2	854	891
O-1	687	720
W-4	1,253	1,289
W-3	1,049	1,085
W-2	852	889
W-1	715	752
E-9	963	963
E-8	814	814
E-7	684	684
E-6	581	581
E-5	487	487

Note: Includes base pay, BAQ and BAS at rates prescribed by title 37 U.S.C. 501.

Senator BYRD. If the dependents of a person carried in the missing status are paid these entitlements and the service member is later determined to have died in combat, are the recipients obligated to repay the Government?

General BENADE. No, sir; they would not be. First of all, under the proposed legislation, Mr. Chairman, payment would be made only when the member concerned is removed from a missing status. Therefore, notwithstanding the death of a member while in a missing status, he continues to accrue leave until a determination is actually made of the date of his death or when the Secretary makes a presumptive determination of death based on such evidence as he might have available.

Under the Missing Persons Act such individuals are entitled to continue to receive, until such a death determination is made, all the pay and allowances to which they were entitled when they went into the status. Such payments are made to the survivors and there is no recoupment.

Senator BYRD. To take the case that you mentioned a moment ago of an O-6 being entitled to \$2,000—

General BENADE. Yes, sir.

Senator BYRD (continuing). Or that roughly, in the case of a person now in missing status, is that \$2,000 to be paid to his family each year?

General BENADE. No, sir; no payment is being made right now. During the period that he is in a missing status what would continue to accrue to the man's account would be such pay and allowances as he was actually receiving when he went into the missing status. What accrues to his account and its disposition, would be in accordance with such instructions as the individual may have made when he entered the service or whenever he might have made a subsequent determination.

Senator BYRD. The entitlements are not being paid now to the families?

General BENADE. The leave entitlement, Mr. Chairman, is not normally paid in cash to an individual. An individual is paid in cash for accrued leave only when he leaves the service, otherwise he simply carries the leave from year to year. You are allowed to accumulate a maximum of 60 days and if you enter a fiscal year with more than 60 days to your credit you simply lose it.

Senator BYRD. Of course, the purpose of this bill is to change that insofar as those who are missing?

General BENADE. To provide for the cash payment for leave that these individuals would have accumulated while they were in a missing status. Perhaps an example might clarify it, Mr. Chairman.

Let's take the case of an individual who might have had 60 days of leave when he was shot down and became a prisoner of war. We will say that he is a prisoner of war for 4 years. He has had no leave, of course, during those 4 years. Normally, he would have been entitled to and hopefully taking 30 days of leave a year. This means that during those 4 years at 30 days a year there is an additional 120 days. In the absence of a law such as we are requesting here, these 120 days are lost. The 60 days that he started with represent a maximum permitted under the law. There is an exception for those in a hostile fire zone; they are permitted to accumulate up to 90 days. This bill would authorize a payment in cash when he is released from prisoner-of-war status for the 120 days of leave that he was not able to use, which under existing law he could not be paid for.

Senator BYRD. The question of the family repaying the entitlement would not arise because they hadn't been paid in the first place?

General BENADE. That is correct, sir. You could have a case of an individual missing in action and he might be carried in a missing-in-action status for perhaps 4 years. At that time, we will say, a Secretarial determination of death is made and the widow would be paid whatever pay and allowances he had accrued, including the cash payment for the 120 days.

Now you could further assume, Mr. Chairman, that by some turn of events during the following year, some uncontrovertible evidence might come up which would conclusively establish the actual date of death as having occurred a year before the Secretary made the determination. Notwithstanding that, there would be no recoupment from the widow.

Senator BYRD. I think there should not be.

Will you comment briefly on the effective date of this legislation, the rationale, if enacted?

General BENADE. The effective date of the legislation would be February 28, 1961. The rationale for the selection of that date is that it marks the earliest date of a period during which we record any individuals as having been missing in action in the Vietnam conflict.

Senator BYRD. Is the individual who was listed as being missing in action on February 28, 1961, still missing in action?

General BENADE. No, sir; our records show there were 105 people placed in a missing status from 1961 through 1963. Since then they have all been returned to U.S. control or declared dead.

Senator BYRD. All 105?

General BENADE. Yes, sir.

Senator BYRD. What do you regard as the date which starts the Vietnam era?

General BENADE. It is a date in August 1964, sir. If you will bear with me for a moment, I can find that. Yes, title 38, United States Code, section 101, indicates the Vietnam era as beginning August 5, 1964. It is title 38, United States Code section 101 (29).

Senator BYRD [reading].

The term "Vietnam era" means the period beginning August 5, 1964, and ending on such date as shall thereafter be determined by presidential proclamation or concurrent resolution of the Congress.

General BENADE. Yes, sir.

Senator BYRD. Thank you, General.

You may proceed to the next bill.

General BENADE. H.R. 14915 would authorize additional movements of dependents and household goods and personal effects of those who are in missing status. At the present time one movement of household goods and effects of such members is authorized.

The bill also provides for the movement at Government expense of trailers and mobile homes of servicemen carried in a missing status. There is currently no authority for such moves.

Senator BYRD. What budget data or cost estimates have you that are associated with this bill?

General BENADE. There would be no additional budgetary requirements to the Department of Defense, Mr. Chairman. It would be absorbed within existing requested appropriations.

Senator BYRD. Can you explain how this works? Could a dependent family make a move and, if so, how many while the serviceman is in a missing status?

General BENADE. At present, Mr. Chairman, they can make only the one move. The problem that has been generated with the passage of time, sir, is that as the years go by cases develop where it has been determined that it would be proper and the right thing to do to permit more than one move.

For example, Mr. Chairman, we are aware of some cases where, when the wife has first been informed as to her husband's POW or missing status, she is not always able to make the proper decision and sometimes she elects to go to a place where, with the passing of time, circumstances reveal that was not the best choice.

In some other cases, Mr. Chairman, the children grow up, and it may become necessary or desirable to change the location of the household in order to send the children to the proper school, for example, to take advantage of lower rates in a State institution of the legal State of residence of the wife. In other instances, Mr. Chairman, we have cases where the wife has received certain training in order to go to work and she has to move to where the job availability is. We have had a few unfortunate cases brought to our attention where sometimes the wife will move in with in-laws and it doesn't work out and it might be better to move.

Senator BYRD. Could you estimate how many service families might be benefited by this?

General BENADE. No, sir. We have no precise way of determining. We would make a rough estimate of about 10 percent of the wives of the missing in action might desire to take advantage of this, Mr. Chairman. There would be about 116 families, that might take advantage of this.

Senator BYRD. It seems reasonable and fair.

Let's go to S. 3203.

General BENADE. S. 3203 would extend the expiration date of a power of attorney executed by a member of the Armed Forces who is missing in action or held as a prisoner of war. Although the Department of Defense supports the intent of this proposal, we urge enactment of the substitute draft bill which was attached to our legislative report of February 28, 1972.

This substitute bill incorporates certain technical changes and extends the applicability of the proposal to powers of attorney granted to persons other than the missing member's wife.

Senator BYRD. During the 91st Congress, the Senate passed a bill—S. 3795—on the same subject matter but that bill was never considered in the House prior to adjournment. Are there any differences between the earlier bill and the one now before us?

General BENADE. The bill that passed the Senate, sir, was amended originally to include not only the wife but also any other persons designated as attorney in fact by the member.

Our draft of February 28, 1972, would extend this to include not only the wife but also parents and other relatives designated by the member.

Senator BYRD. Do you know why the House did not consider that? Adjournment, I understand, prevented it. S. 3203 does not take care of the total problem; is that correct?

General BENADE. In its present form, sir, S. 3203 is limited to the wife.

The proposed substitute draft that we provided in February would include not only the wife but also the parents and any other relative who might have been designated by the individual.

Senator BYRD. In section 3(c) of the proposed bill (S. 3203) the provisions of the bill are confined to individuals who executed powers of attorney during the Vietnam era as defined in the code. I was going to suggest that we read that into the record for clarification purposes.

but it is already a part of the record; namely, that the Vietnam era begins August 5, 1964.

General BENADE. Yes, sir.

Senator BYRD. I think that takes care of the first four bills.

Would you want to proceed to the other three?

General BENADE. Yes, sir. The three other bills propose certain changes in the law dealing with military personnel dependency criteria, extension of the authority for special, 30-day leave for military personnel who voluntarily extend their tours of duty in hostile-fire areas, and flag authorization in the Judge Advocate General's Corps of the Naval Reserve.

S. 2738 would change the statutory definition of a military dependent by making the spouse of a female member of the services a presumptive dependent. This would accord to him the same rights, benefits, and privileges which now accrue to the wife of a male member of the military services.

Senator BYRD. It would be from conformity, I assume, with the equal rights for women amendment which passed the House and the Senate some time ago?

General BENADE. That is correct, sir.

Senator BYRD. How many military occupational specialties exist that cannot be performed by female service members?

General BENADE. I believe that the primary military occupational specialties which exclude women today, sir, are those of the combat elements.

Senator BYRD. What reaction have you gotten to Admiral Zumwalt's plan to put women aboard ships?

General BENADE. Expressing a personal opinion, Mr. Chairman, I think the reaction internally in the service has been fairly well, but I note from the newspapers that some of the wives are less than pleased.

Senator BYRD. Yes. I have heard a little of that, too. [Laughter.] You may proceed with the next bill.

General BENADE. All right, sir. H.R. 14537 would extend the current authority to grant a special, 30-day leave for members of the services who voluntarily extend their tours of duty in hostile-fire areas. The current law was first enacted in 1966. It has twice been extended, and as it now stands the law expired June 30, 1972.

I would like to explain, Mr. Chairman, that we had requested an extension of the law. The House did pass the requested extension, but I think the pressures of other business in both bodies have delayed consideration of this bill so that is the reason for the law having terminated on June 30. Despite the small troop strength that we have in Southeast Asia and Vietnam, the Commander of the U.S. Forces in Vietnam feels this is a desirable provision and would like to see it continued so long as we have forces in Vietnam.

Senator BYRD. The expiration date of the proposed legislation is June 30, 1973?

General BENADE. Yes, sir.

Senator BYRD. If the peace negotiations are no more productive than they have been, you probably would need to, or would want to, extend that beyond 1973?

General BENADE. It is very possible, Mr. Chairman. As I indicated, it is my understanding and belief that as long as we have forces in Southeast Asia, it is desirable to have a provision such as this. It would seem to me that we would be back again next year requesting a further extension, if we have not had any progress in peace negotiations.

Senator BYRD. Let's hope we have progress and not try to look beyond June 30, 1973.

General BENADE. Yes, sir.

Senator BYRD. What is now considered a hostile-fire area, and how does a person qualify for such pay?

General BENADE. There are presently four hostile-fire areas, Mr. Chairman, all of Vietnam, both North and South Laos, Cambodia, and an enclave in the demilitarized zone of Korea. It is just a small portion of the demilitarized zone, but from time to time in the past there has been gunfire exchange and we have suffered a few casualties there. So it was designated as a hostile-fire zone some time ago. Those are the only areas.

Senator BYRD. What about Thailand?

General BENADE. No, sir. Thailand is not a hostile-fire area.

Senator BYRD. Explain how this special 30-day bonus operates.

General BENADE. The individual must volunteer for an extension of duty in a hostile-fire area of not less than 6 months. If he does so volunteer, he can be provided an additional 30 days of leave which is not chargeable against his regular leave. He is also provided transportation to and from the States.

Senator BYRD. If he extends for 6 months, he gets a 1-month leave?

General BENADE. Yes, sir.

Senator BYRD. There is no entitlement in Thailand?

General BENADE. No, sir; not of this particular item.

Senator BYRD. How about Air Force pilots who fly over North Vietnam?

General BENADE. If they are based in Thailand, sir, they could and do qualify for hostile-fire pay. This is because they are flying in the air-space over Vietnam.

Senator BYRD. What about naval pilots off carriers?

General BENADE. Yes, sir. You qualify for hostile-fire pay, Mr. Chairman, if you enter the hostile-fire area, and you have to perform a minimum of 6 days of duty per month in the hostile-fire area or satisfy certain other requirements—you must actually be exposed to hostile fire or you must be wounded and so on.

Senator BYRD. Do naval vessels off the Gulf of Tonkin qualify?

General BENADE. I can supply for the record—

Senator BYRD. They do?

General BENADE. I don't know about Gulf of Tonkin. I can supply for the record the precise longitude and latitudes. There are certain areas of the sea adjacent to the land mass where vessels inside that area would qualify, sir.

(The information follows:)

## FACT SHEET

Subject: Special Pay for Duty Subject to Hostile Fire (37 U.S.C. 310).

The Uniformed Services Pay Act of 1963 added a new category of special pay of \$55 per month (raised to \$65 per month in 1965 by Public Law 89-132), for officers and enlisted members serving in locations designated by the Secretary of Defense as "hostile fire areas." This statute provides that members may be entitled to this special pay for any month during which they are:

- (1) Subject to hostile fire or explosion of hostile mines.
- (2) On duty in an area in which they are in imminent danger of being exposed to hostile fire or explosion of hostile mines.
- (3) Killed or wounded by hostile fire, explosion of hostile mines, or other hostile actions. If hospitalized for treatment of wounds or injury, they are entitled to this pay during hospitalization for not more than 3 months after the month in which injured.

Currently, there are four officially designated hostile fire areas. They are:

- (1) Vietnam (North and South);
- (2) Korea (Enclave of DMZ);
- (3) Kingdom of Laos; and
- (4) Cambodia.

(NOTE.—See attachment No. 1 for complete description of areas.)

## LIST OF ATTACHMENTS

1. Description of hostile fire areas.
2. Map of Vietnam combat zone and Vietnam-Laos-Cambodia hostile fire areas.
3. Map of Korean hostile fire area.
4. Table of combat zone and hostile fire area entitlements.
5. Condition of Entitlement.

## ATTACHMENT NO. 1

## DESCRIPTION OF HOSTILE FIRE AREAS

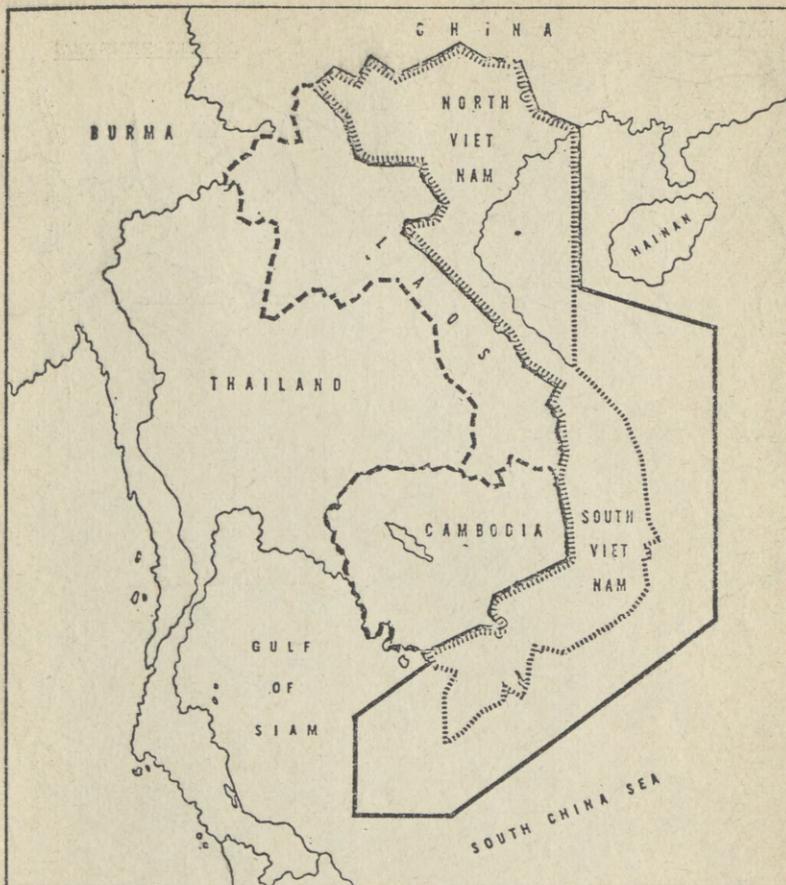
*Vietnam.*—The total land area of North and South Vietnam, including inland waters, and the adjacent sea area west of a line from a point on the East Coast of Vietnam at the juncture of North Vietnam and China, southeastward to 21-00N, 108-15E then south to a point where it intersects a line 12 miles seaward from the base line from which the breadth of the territorial sea is measured as shown on large scale charts of the coast of South Vietnam; then continuing on that line to 10-16N, 103-38E, thence northeast to 10-21N, 103-44E, thence on straight lines to 10-23N, 103-49E; 10-26N, 103-54E; 10-30N, 103-55E; 10-30N, 104-01E; 10-28N, 104-06E; 10-16N, 104-14E thence northeast to the juncture of the Cambodia and Vietnam border; and the airspace thereover.

*Korea.*—That portion of the Republic of Korea north of the Imjin River and south of the DMZ extending from the intersection of the river and the DMZ on the west (coordinates 969903), along the DMZ to a point in the vicinity of Pinil (coordinates 097095), then southeast to the north bank of the Imjin River in the vicinity of Chajip'O (coordinates 119060).

*Kingdom of Laos.*—The entire Kingdom of Laos.

*Cambodia.*—The total land area of Cambodia, including inland waters, and adjacent sea area from the juncture of the Cambodia and Vietnam border, Southwest to coordinates 10° 16' N, 104° 14' E thence to 10° 28' N, 104° 06' E, thence to 10° 30' N, 104° 01' E thence to 10° 28' N, 103° 55' E, thence to 10° 26' N, 103° 54' E, thence to 10° 23' N, 103° 49' E, thence to 10° 21' N, 103° 44' E, thence to 10° 16' N, 103° 38' E, thence 12 miles seaward from the base line from which the territorial water of Cambodia is measured to a point 12 miles seaward from the border of Cambodia and Thailand and thence to the juncture of the border of Cambodia and Thailand and the airspace thereover.

SOUTHEAST ASIA BENEFITS



\* Zone For:



- (1) INCOME TAX EXCLUSION (E.O. 11216)
- (2) VIETNAM SERVICE MEDAL
- (3) FREE MAIL
- (4) DUTY FREE ENTRY OF GIFTS (\$50)

Zone For:



- (1) HOSTILE FIRE PAY



- (1) HOSTILE FIRE PAY

Explanation

INCOME TAX EXCLUSION:

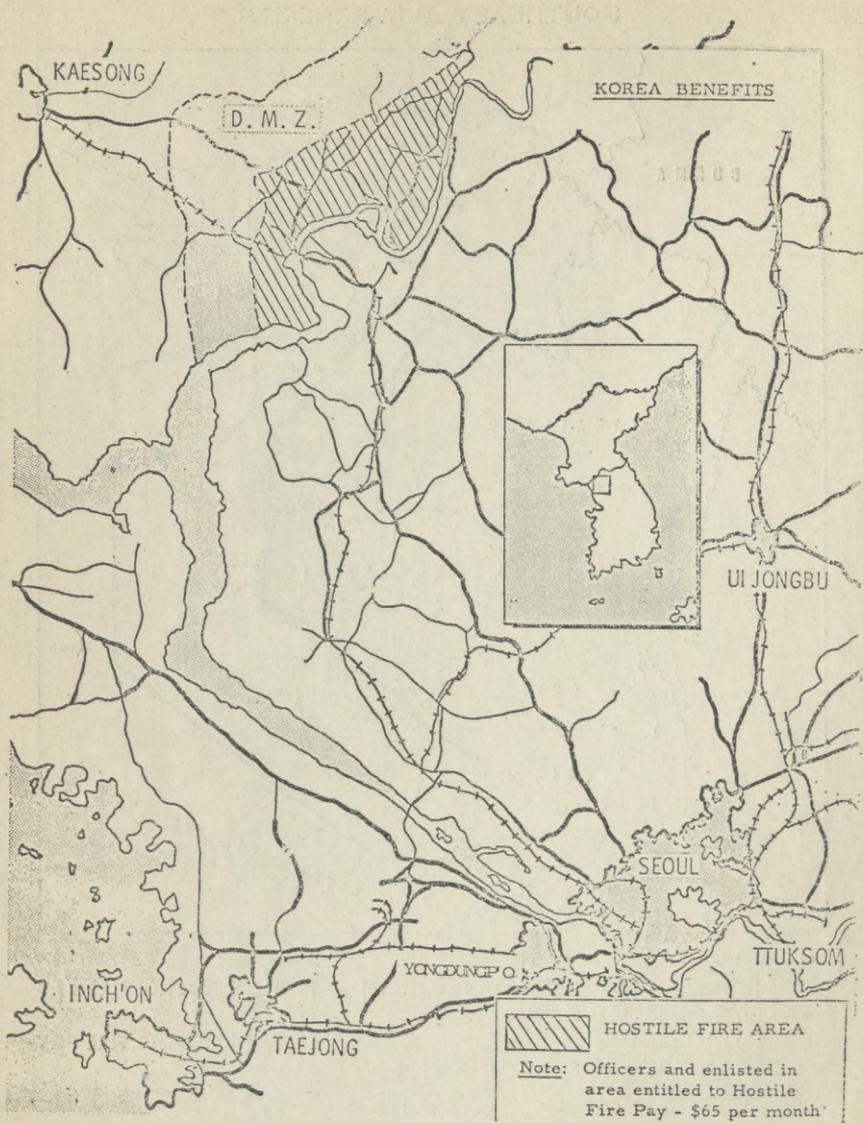
- (1) Enlisted Personnel and WO's - All Pay
- (2) Officers - First \$500 of Monthly Pay

HOSTILE FIRE PAY

- (1) Officers and Enlisted Personnel - \$65 per month

\* Vietnam Combat Zone - Designated by the President in Executive Order 11216, April 24, 1965 with effective date Jan 1, 1964.

ATTACHMENT No. 2



ATTACHMENT No. 3

ENTITLEMENT TO CERTAIN BENEFITS  
(VIETNAM - LAOS - THAILAND - KOREA)

If The Member Is Based In	Is He Entitled To:			
	Income Tax Exclusion	Hostile Fire Pay	Free Mail Privilege	Duty-Free Entry For Gifts (\$50 or Less)
Vietnam	Yes	Yes	Yes	Yes
Laos and Cambodia	Yes	Yes	No	No
Thailand	No	No	No	No
	For crews who fly into Vietnam airspace  Yes	For crews who fly into Vietnam airspace or Laos airspace Yes		
Korea	No	Yes Limited to 45 sq miles along DMZ	No	No

## NOTES:

- Income Tax Exclusion  
Enlisted and WO - All Pay  
Officers - First \$500 per month
- Hostile Fire Pay  
Officers and Enlisted - \$65 per month

ATTACHMENT No. 4

HFP--CONDITIONS OF ENTITLEMENT			
R U L E	A	B	C
	When a member who is entitled to basic pay	and	When HFP accrues
1	is permanently assigned for under orders contemplating temporary duty for 30 consecutive days or more) and is required to perform duty in a designated hostile fire area		from the first day of the month in which he arrives in the area, through the last day of the month in which he is transferred and permanently departs from that area (note 1).
2	performs assigned duties connected with military operations in a designated hostile fire area, for a minimum of 6 days within 1 calendar month	is not entitled to HFP under rule 1	for the month in which the duties were performed.
3	performs assigned duties connected with military operations in a designated hostile fire area, for a minimum of 6 consecutive days, beginning in 1 month and ending in the following month	is not entitled to HFP under rules 1 or 2, or for the month in which duties began	for the month in which the duties end.
4	is a directed participant in a specific land, sea, or air tactical or strategic combat operation within a designated hostile fire area	is not entitled to HFP under rules 1, 2, or 3	for the months in which participation took place.
5	is subject to hostile fire while performing duty in a designated hostile fire area (note 2)	is not entitled to HFP under rules 1 through 4	for the month in which he was subject to hostile fire.
6	is not on duty in a designated hostile fire area	participates in a hostile encounter while on duty or on board the same vessel or aircraft which was the subject of hostile fire, or in the case of land forces, while assigned to the same military unit and performing duty with the unit at the time of the hostile action (note 3)	for the entire month during which the hostile action occurred.
7	is killed	death, injury, or hospitalization results from hostile fire, explosion of a hostile mine, or other hostile action (notes 4 and 5)	from the first day of the month to and including the date of death.
8	is wounded or injured		for the entire month in which the wound or injury occurred
9	is hospitalized outside HFP area		through the date hospitalization is terminated or for 3 months after the month in which the wound or injury occurred, whichever is earlier.
10	is confined in a designated hostile fire area as a result of court-martial sentence	his pay is subject to total forfeiture	through the day before the effective date of the non-pay status

## NOTES:

1. If member is absent from the designated area for an entire calendar month, he is not entitled to HFP for that month.
2. Consider a member as having been "subject to hostile fire" if he was close enough to the trajectory or point of impact or explosion of hostile ordnance so that he was in danger of being wounded, injured, or killed.
3. All members serving on a vessel or aircraft are entitled to payment. In case of land forces, only those of the unit (patrol, squad, platoon or larger unit) which are in the immediate vicinity

of the trajectory or point of impact or explosion of hostile ordnance and are placed in danger of being wounded, injured, or killed from such causes are entitled to payment.

4. It is not necessary that death, injury, or wound occur in a designated hostile fire area.

5. Members are casualties as the result of hostile action if they have been so defined under applicable casualty regulations (AR 600-10, Marine Corps Order 3040.4, AFM 30-4 and BUPERS).

## ATTACHMENT No. 5

Senator BYRD. Those planes that are used to mine the harbor at Haiphong, do they qualify?

General BENADE. I believe they would, sir.

Senator BYRD. How beneficial do you find this to be?

General BENADE. Extremely beneficial, sir. Certainly during the period when we had higher troop strength. From 1966 when this provision was first authorized by the Congress, we have had a total of about 205,000 men who have voluntarily extended for 6 months or more.

Senator BYRD. Have you any valid statistics on numbers who voluntarily extended? You say 200,000?

General BENADE. 205,000, yes, sir. I have the precise figures and I would be happy to furnish them for the record, sir.

Senator BYRD. Suppose you do that.

General BENADE. For the period November 2, 1966 through June 30, 1972, 7,413 officers and 198,730 enlisted personnel, an overall total of 206,143, had taken the special 30-day leave gained by voluntarily extending their Vietnam tour at least 6 months. Participation data con-

tinue to confirm the original belief that a number of dedicated individuals would volunteer to serve longer than the required period of service in Vietnam if the period could be broken into reasonable segments.

Senator BYRD. Do people on temporary duty in a hostile-fire zone draw this pay?

General BENADE. If they are on temporary duty for at least 6-days in a 30-day period they can qualify.

Senator BYRD. At least 6 days?

General BENADE. Yes, sir. In other words, you can't qualify just by going in for temporary duty one day.

Senator BYRD. Is 6 days a reasonable time?

General BENADE. Yes, sir. We have found it so. I think it is important, Mr. Chairman, that we remember the conditions and the circumstances that prevailed in South Vietnam. At the time, in particular—

Senator BYRD. We are talking about now.

General BENADE. Even now, sir, because the conditions there are so different. That the possibility of exposure to hostile fire exists anywhere in the country, even in billets and barracks in Saigon, the terrorist tactics—

Senator BYRD. What about the State Department personnel in areas such as Saigon?

General BENADE. They don't have a hostile-fire pay.

Senator BYRD. What about AID personnel or other civilian government personnel?

General BENADE. I think they receive up to 25 percent additional pay, sir, by virtue of being stationed in those areas. It is a significant pay differential in their favor, sir.

Senator BYRD. What pay differential is there for the military?

General BENADE. There is none, sir, except for this hostile-fire pay of \$65 a month.

Senator BYRD. When you say 6 days, does that mean a pilot would need to take six flights over one of those hostile-fire areas?

General BENADE. I think the actual exposure to hostile fire, if they are shot at qualifies them without more. Just being shot at would qualify them. In other words, a single mission could qualify them, sir, for hostile-fire pay for that month.

Senator BYRD. This legislation would grant a special 30-day leave for members who voluntarily extend?

General BENADE. Yes, sir.

Senator BYRD. You mentioned the \$65 a month for those in hostile-fire areas?

General BENADE. Yes, sir.

Senator BYRD. They are two different things?

General BENADE. They are two different things, yes, sir.

The main benefit to be gained from this particular bill, Mr. Chairman, is that many individuals are willing to extend for 6 months or more but they would like to get home to see their family or friends, and to have a rest and recuperation from the rigors of the hostile-fire zone.

Senator BYRD. I think this has served a good purpose in the past.

You undoubtedly feel we should continue it?

General BENADE. Yes, sir; and we are being guided, I would emphasize, by the recommendations of the commander of our U.S. forces in Southeast Asia.

Senator BYRD. Let's go now to the next bill.

General BENADE. The next bill, S. 3310, would establish an authorized strength of one rear admiral in the Judge Advocate General's Corps of the Naval Reserve. This would be accomplished by reducing the authorized rear admiral strength of the Supply Corps of the Naval Reserve by one—from eight to seven. Thus the total authorized rear admiral strength would not be altered.

(Attachments to General Benade's statement follow:)

#### ATTACHMENT 1

H.R. 14909 is designed to permit continued payment of incentive pay for hazardous duty to members of the uniformed services who have been in a missing status, including those captured or illegally detained by a foreign government, for the period of hospitalization and rehabilitation after termination of the missing status, even though all of the requirements for performance of hazardous duty might not be met.

A missing status is defined in 37 U.S.C. 551 as follows:

"Missing status" means the status of a member of a uniformed service who is officially carried or determined to be absent in a status of—

- (A) missing;
- (B) missing in action;
- (C) interned in a foreign country;
- (D) captured, beleaguered, or besieged by a hostile force; or
- (E) detained in a foreign country against his will."

Under present law, section 552 of title 37, United States Code, a member who is in a missing status is entitled to receive all pay and allowances while he is missing to which he was entitled at the beginning of the period of his missing status. Accordingly, a member who is entitled to incentive pay for hazardous duty immediately prior to entering missing status continues to be so entitled while he is in a missing status. This entitlement ceases upon termination of the missing status. Thereafter, the repatriated member does not qualify for such incentives as flight pay until the month he has again fulfilled the minimum requirements as to hours of flight.

The average period our men have been missing or imprisoned is over five years. More than 450 of them have been in a missing status longer than any other American military man. Because of this and the circumstances of their confinement, we anticipate that extensive periods of rehabilitation and hospitalization will be required before the members will be physically qualified to perform hazardous duties. The combination of the prolonged absence and the period of rehabilitation will dissipate any accumulated qualifying time and grace periods under the provisions of Executive Order No. 11157, which governs entitlement to incentive pay for hazardous duty. Recognizing the fact that these men may not be able to perform hazardous duty after their return, we feel that it would be unjust to terminate entitlement to hazardous duty pay during the period of rehabilitation and hospitalization.

An attempt was made previously to provide such extended coverage by proposing an amendment to Executive Order No. 11157. The Comptroller General of the United States expressed doubt that amendment of the Executive Order in the manner proposed would be within the authority conferred upon the President under section 301 (a) of title 37, United States Code. He advised that such relief should be sought through legislation.

The proposed legislation intentionally excludes a termination date for entitlement to incentive pay while undergoing hospital treatment and rehabilitation. This was done in recognition of the fact that different periods of time will be required for full rehabilitation. Some members may be incapable of full rehabilitation and subsequently would be separated from the Service. In either case it will be a medical determination as to when the member should be returned to duty

or when, as a patient, he has reached the maximum benefit to be gained from hospitalization and rehabilitation. When that maximum benefit has been reached, the member would be separated from military service, and further long-term care, if required, would become a responsibility of the Veterans Administration.

We strongly urged favorable consideration of this legislation. Its enactment will provide further evidence of this nation's concern for a group of Americans who are undergoing extreme hardship as a direct result of having faithfully served our country.

It is expected that the costs resulting from the enactment of this legislation will be minimal and will not result in increased budgetary requirements for the Department of Defense.

#### ATTACHMENT 2

H.R. 14911 is designed to authorize members of the armed forces in a missing status to accumulate leave without limitation and to reimburse them or their survivors for leave accrued while in that status.

The purpose of this bill is to amend the appropriate sections of titles 10 and 37, United States Code, thereby authorizing our military POW/MIA and other missing personnel to accumulate leave beyond the 60 or 90 day limitations imposed by current statutes. It is further intended that reimbursement for leave accumulated while in a missing status be made to these personnel upon their return to military control or to their survivors upon a determination of death.

Military leave is accrued by a service member at the rate of 2½ days per active duty month, for a total of 30 days per annum. Under the provisions of title 10, U.S. Code, section 701(b), a service member may not carry-over more than 60 days leave from one fiscal year to another. However, pursuant to section 701(f) of title 10, U.S. Code, those personnel who are entitled to the Special Pay for duty subject to hostile fire for a continuous period of at least 120 days may accumulate 90 days leave for carry-over purposes. In other words, except for the Special-Pay qualified personnel, the maximum leave that may be accrued at the beginning of a fiscal year is 60 days. This is based on the presumption that under normal circumstances a member should be able to program his leave during a fiscal year in such a manner as to allow himself the opportunity to use the annual 30 days leave he is authorized. When duty requirements or personnel considerations prevent this planning, an accrual up to 60 days is authorized. In recognizing the difficulty associated with this planning while undergoing the hardships and demands of combat duty, the accrual limited is extended to 90 days.

However, the POW or MIA or other missing member is unable to use his accrued leave. This inability is not due to improper planning nor to combat service. Rather, it is an absolute impossibility, in every sense of the word.

This bill would apply to members who become missing as a result of combat zone activity. It would also apply to anyone entering a missing status, including those who enter the "missing status" from an area not designated for entitlement to special pay for duty subject to hostile fire. It is the position of the Department of Defense that in order to insure equitable treatment for all members while in a "missing status" their entitlement to continue to accumulate leave should not be limited by a geographical area or by the administrative act of designating an area as a "hostile fire pay area." The number of personnel involved in the non-combat zone area, for whom entitlement under this act would be possible, is very small. In fact, we have reason to believe as few as two would be so qualified as of this date. On the other hand, the number of personnel carried as POW's and MIA as a result of the present Vietnam conflict are 1,773 as of August 26, 1972. (See attached sheet)

These 1,773 are not the only Southeast Asia eligibles under the provisions of this bill. Since the bill has an effective date of February 28, 1961, the date the first member entered "missing status" in the South Vietnam conflict, there have been personnel who were carried in a missing status for varying periods of time and have either been returned to military control or confirmed as being deceased. The exact number of such personnel is not available at this time. Only when those members, former members, or their survivors submit claims for reimbursement will an exact determination be possible.

Since the bill provides for the payment of these accrued leave amounts in the final settlement of the accounts of a deceased member who dies while in a "missing status," the accrual period and the terminal date for payments become

significant. The date for calculating the accrued leave of a deceased member will either be through the date the Secretary concerned receives evidence that the member is dead, or through the date that his death is prescribed or determined under 37 U.S.C. 555. This same section 555 will probably be used in final determinations arising after the termination of hostilities in Southeast Asia.

Under 37 U.S.C. 556 the Service Secretary or his designee is charged with the responsibility of making status determinations in these cases. Thus, this bill would authorize leave to be accumulated while in a "missing status" up to the date of the Secretarial determination of the actual or presumptive date of death under 37 U.S.C. 556 and would be paid to the member's estate or his survivors. The actual date of death for these personnel must be based on the evidence and information available, such as aircraft wreckage and remains, intelligence data, eye-witness reports of released prisoners, and other similar sources. In certain cases where conclusive evidence such as this may not be available, a presumptive date of death will be made, predicated on circumstantial evidence. Use of the date of the Secretarial determination as a termination date for a deceased member's entitlement applies a common criterion that does not depend on accidental or chance availability of evidence to support an earlier date of death. The anguish of the survivors and their distressing uncertainties are borne equally without regard to the availability of information on which a finding of death may be made and the bill insures comparable treatment in determining their entitlement.

The cash settlement provisions of the bill apply to all leave accumulated while in a "missing status." This leave is to be accounted for separately and is subject to the cash settlement after release or removal from the "missing status." The provision for cash settlement insures equal treatment for all and thereafter allows normal operation of the leave system and convalescent leave to provide for the needs of those who are repatriated. Payments for unused accrued leave are prescribed under 37 U.S.C. 501 and are based on basic pay and subsistence and quarters allowances.

The Department of Defense wholeheartedly supports this bill as being one way that a grateful nation can express its appreciation and understanding of one of the problems endured by these service members, their courageous sacrifice and the incredible anxiety being experienced by their families. As the law and regulations now stand many of these members could be deprived of over 200 days of leave entitlement because of their imprisonment by the enemy or otherwise in a "missing status." Unless the authority contained in this bill is enacted, our Country will not be able to compensate our prisoners of war, or other missing personnel, for the loss of the leave to which they are entitled under law and which they would enjoy under normal circumstances. Therefore, we urge enactment of this bill to avoid compounding the hardships and inequalities which these brave men and their families continue to suffer.

Based on information available, costs associated with this bill are as follows:

	Fiscal year—				
	1972	1973	1974	1975	1976
Army.....	1,192,000	1,551,000	1,932,000	2,302,000	2,672,000
Navy.....	3,502,000	4,162,000	4,864,000	5,545,000	6,226,000
Air Force.....	6,397,000	7,686,000	9,041,000	10,363,000	11,685,000
Total.....	11,091,000	13,399,000	15,837,000	18,210,000	20,583,000

Costs were developed based on reviews of records pertaining to the POW and MIA personnel from the Southeast Asian conflict carried in "missing status" as of May 1972. For ensuing fiscal years it was considered to be less confusing and complicated if no attempt was made to predict increases to current numbers since the grades of such persons would be an unknown variable. Promotions, pay increases or projected deaths also cannot be accurately estimated under these conditions. Thus, the current figures were projected through 1976 with only an estimated 6.4% basic military pay increase effective January 1, 1973 and with an annual increase of 30 days leave for each individual now in that status.

## AMERICAN PRISONERS OF WAR AND MISSING IN ACTION IN SOUTHEAST ASIA (AS OF AUG. 26, 1972)

	Missing	Captured	Total
By country:			
North Vietnam.....	453	425	878
South Vietnam.....	495	106	601
Laos.....	288	6	294
Total.....	1,236	537	1,773
By service:			
Army.....	357	85	442
Navy.....	127	157	284
Marine Corps.....	104	25	129
Air Force.....	648	270	918
Total.....	1,236	537	1,773

## STATISTICAL RECAPITULATION BY YEAR LOST

	1964	1965	1966	1967	1968	1969	1970	1971	1972
Missing.....	4	54	204	226	294	176	86	79	113
Captured.....	3	74	97	179	95	13	12	11	53
Total.....	7	128	301	405	389	189	98	90	166

## ATTACHMENT 3

H.R. 14915 would amend chapter 10 of title 37, United States Code by providing that, in the case of a member who has been in a missing status for an extended period of time, the Secretary concerned may authorize additional movements of his dependents and household effects.

Section 554 (b) of title 37 currently permits the Secretary concerned to authorize transportation for the dependents and household and personal effects of a member who is in a missing status to the member's official residence of record, to the residence of his dependents, or, on request of the dependents, to another location approved by the Secretary concerned. However, the Comptroller General of the United States, in an October 1970 decision, held that the dependents of members in a missing status were limited under the existing law to one movement of themselves and their household and personal effects.

The national concern for the well-being of imprisoned and missing servicemen has been enunciated in many ways. We fully recognize that the families of these men live a life of uncertainty which, in some circumstances, precludes long-term planning with respect to the establishment of a permanent residence. Many of our men have been missing or imprisoned for several years; some have entered their eighth year, and more than 450 of them have been in a missing status longer than any American had previously been held. These circumstances create situations where additional moves are not only appropriate but, in some cases essential to the well-being of the families. This bill will provide the authority necessary to meet that need.

There exists a related problem which requires legislative action. In another October 1970 decision, the Comptroller General held that there is no authority for the payment of trailer allowances to dependents of members in a missing status. For those families who live in mobile homes or house trailers the absence of authority for even an original move means that they must remain at the location where they find themselves. Over a long period of time, this circumstance can work a hardship. Authority to make an original move and, in appropriate situations, additional moves of the mobile home would be consistent with our goal of recognition of the very great sacrifices being made by our missing men and of making the lives of their dependents as tolerable as possible under the circumstances. H.R. 14915 provides for this authority.

There remains one additional factor to be addressed. It is possible that some of the moves authorized by this bill, and indeed the original movements presently authorized, may cost more than the amount authorized to be paid by the Government. This could occur where the weight allowance authorized for a particular

pay grade is exceeded or where excess costs are incurred in the movement of mobile homes due to repairs enroute or flagging costs.

In the normal case, the member's pay account would be checked to effect collection of such excess costs. In this situation, it would be unconscionable to effect such collection with respect to the dependents of members in a missing status. H.R. 14915 authorizes these movements at the expense of the Government without cost limitation.

The enactment of this legislation will result in no increase in budgetary requirements of the Department of Defense.

#### ATTACHMENT 4

S. 3203 is designed to extend the expiration date specified in a power of attorney executed by a member of the armed forces who is missing in action or held as a prisoner of war.

The proposed legislation would alleviate a situation which adversely affects the families of prisoners of war and of members missing in action. Due to the prolonged period some members have been in one or both of these categories and due to the fact that little or no official information is available, some powers of attorney have passed their expiration dates. The bill provides that such expiration dates would be extended as long as the member remained in a missing or a prisoner status, if the document was executed prior to the date of enactment of this bill. This would then enable the designee to continue to act on behalf of the missing member, within the limits of the authority granted. The expiration date would not be extended if the terms of the document clearly indicate that the power granted is to expire on the date specified therein, regardless of whether such person is reported missing in action or a prisoner of war after the date of execution of the document.

It is unknown how the proposed legislation will impact on state interests. It is also unknown how many dependents and next-of-kin of missing members would be assisted through its enactment. We assume, however, the enactment would certainly assist a number of families of our missing members.

The Department of Defense urges the enactment of this bill subject to certain technical changes and the extension of the applicability of this proposal to powers of attorney granted to persons other than the missing member's wife. A substitute draft bill was attached to our legislative report of February 28, 1972 which incorporated these suggested changes. The Department urges the prompt enactment of that substitute draft bill.

Enactment of either bill will not result in any increased budgetary requirements for the Department of Defense.

#### ATTACHMENT 5

S. 2738 is designed to change the statutory definition of a military dependent by making the spouse of a female member of the armed forces a presumptive dependent and thereby accord to him the same rights, benefits and privileges which now accrue to the wife of a male member of the military services.

The purpose of this bill is to amend title 10 so as to remove the limitation that the spouse of a female member or former member be considered a dependent only if he is in fact dependent on the member or former member for more than half of his support. Clause (1) of the bill would remove this limitation for the purpose of determining eligibility for dependent medical or dental care. Further, in the case of a deceased member or former member, the bill would remove the stipulation that an unremarried widower of a deceased member or former member will be considered a dependent only if, because of mental or physical incapacity, he was in fact dependent on the member or former member at the time of her death for over one-half of his support.

Clause (2) of the bill would repeal subsection 101 (36) of title 10, United States Code, which prescribes that the spouse of a female member shall be considered a dependent only if he is in fact dependent on the member for his chief support, and that a child of a female member may be considered a dependent only if the father is dead or if the child is in fact dependent on the member for his chief support.

Section 2 of the bill would delete from section 401 of title 37, United States Code, the restriction that, for the purpose of determining eligibility for allow-

ances, a person may not be considered a dependent of a female member unless he is in fact dependent on her for over one-half of his support.

Section 3 of the bill would amend section 420 of title 37, United States Code, to preclude both the husband and wife, when they are members of the uniformed services from claiming increased allowances on behalf of the same child.

The current statutory definitions of dependents do not impose a factual test of dependency for the spouse of a male member. His children are presumed to be dependents if they qualify by reason of age or other stipulations applicable to the specific benefit concerned. Factual tests do apply in some instances in which a child has reached majority or to claims of dependency of parents or parents-in-law. The definitions are applicable only to those statutes which refer to "dependents." Laws relating to death benefits administered by the Department of Defense, for instance, are specific as to eligible beneficiaries and make no distinction between male and female spouses.

With regard to dependent medical care, elimination of the existing tests of dependency in the case of the husband or the unmarried widower of a female member would authorize the husband or widower the full range of military medical care on a space available basis, and the medical care in civilian facilities at government expense subject to the deductions prescribed in the Dependent's Medical Care Act, 10 United States Code 1071.

The effect of eliminating similar factual tests of dependency presently prescribed in title 10, United States Code, in the case of the husband and child or children of a female member on active duty or in the National Guard or Reserve components, would have the following effects:

If her husband is not a member of the uniformed services entitled to basic pay, a married female member without children could become entitled to an increased allowance for quarters, and to transportation of her husband on change of station. The entitlement to the quarters allowance would not accrue unless the married female member was on active service as opposed to serving in the National Guard or Reserve components not on active duty, inasmuch as neither a male or female member of the Reserve components not on active duty is entitled to the quarters allowance.

If her husband is a member of the uniformed service entitled to basic pay, a married female member without children generally would not become entitled to an increase in the allowances enumerated above (37 USC 420). In that event, however, the member and her spouse would, under the bill, each be considered to be a dependent of the other. Thus, if quarters adequate for a member with dependents are unavailable, each would be entitled to the "without dependents" allowance, even though single quarters are available and/or are actually occupied by either one. Under existing laws, if single quarters are available for the wife and she is in pay grade 0-3 or below, she is not entitled to an allowance. The couple, therefore, is entitled only to the husband's single quarters allowance which is less than that prescribed for dependents. Under the bill, in most cases, the combined "without dependents" allowances would exceed the "with dependents" allowances prescribed in the case of a married member whose spouse is not a member of the uniformed services entitled to basic pay.

In both instances just discussed, it was assumed there were no children. Where there are children, a female member is already entitled to increased allowances if the child or children are in fact dependent on her for over one-half of their support. Elimination of this factual test of dependency could confer an entitlement to increased allowances for children, but there will be few such cases.

The Department of Defense recognizes that enactment of this legislation would constitute a fundamental change in the laws governing dependency criteria as pertaining to married female members of the Armed Forces. The proposed changes would do much, however, to equalize the treatment of military personnel regardless of sex and would remove a source of irritation to our married female members who are faithfully serving their Country.

In view of the limited number of female personnel in the military service, it is estimated that enactment of the proposed legislation would result in no increase in budgetary requirements of the Department of Defense.

#### ATTACHMENT 6

H.R. 14537 extends the authority to grant a special thirty-day leave for members of the uniform services who voluntarily extend their tours of duty in hostile fire areas.

Since 1965 the normal tour of duty in Vietnam for military personnel has been 12 months. From the standpoint of stability and continuity, the 12-month tour is less than ideal. Nonetheless, we believe that any involuntary increase in the tour length would be inequitable and would affect morale adversely. The tour length policy has been reviewed several times, and it is our firm conviction that retention of the 12-month tour is essential to combat efficiency, health and morale, and that except for the most senior officers, any extension should be entirely voluntary.

Prior to June 30, 1972, Section 703 (b) of title 10, United States Code, provided for individuals committing their service for at least six (6) additional months in a hostile fire area a net period of thirty (30) days leave, not chargeable to any other leave account, at a location selected by the individual with transportation at Government expense. Without extension of this legislation, any leave, including travel time, granted under such a program would be chargeable to the individual's leave account. Additionally, transportation could be furnished only on a space available basis.

The law was first enacted in 1966, by the 89th Congress, to be effective only in the case of members who extended their required tours of duty on or before June 30, 1968. In 1968 the 90th Congress amended the law to extend the terminal date two additional years, and on July 2, 1970 the law was amended to extend the terminal date another two years. As it now stands, the law expired June 30, 1972.

The acceptability of this legislation may be illustrated by the number of individuals assigned to Vietnam who have participated. For the period November 2, 1966 through June 30, 1972, 7,413 officers and 198,730 enlisted personnel, an overall total of 206,143, had taken the special 30-day leave gained by voluntarily extending their Vietnam tour at least six months. Participation data continue to confirm the original belief that a number of dedicated individuals would volunteer to serve longer than the required period of service in Vietnam if the period could be broken into reasonable segments.

Although force levels in Vietnam have been reduced considerably, this program would continue to provide extensions of such personnel in lieu of replacements. The Commander, Military Assistance Command, Vietnam, has indicated that he desires continuance of this program as long as U.S. forces are required in Vietnam.

The cumulative effect of the longer in-country service of those who extend their tours of duty has some impact on the requirement for replacements and hence, results in some savings to offset the transportation costs. The relative value of continuing the authority, however, is not in monetary savings that might be achieved but, rather, in effectiveness attained through the continuity of service in Vietnam of area oriented, trained, experienced, motivated personnel.

Enactment of this legislation would extend this authority until June 30, 1973. No increase in budgetary requirements is anticipated as a result of its enactment.

#### ATTACHMENT 7

S. 3310 is designed to establish an authorized strength of one rear admiral in the Judge Advocate General's Corps of the Naval Reserve.

The Judge Advocate General's Corps was established by law in 1967 as a staff corps of the Navy. Upon creation of the new Corps, Regular and Reserve officers who were law specialists in the line of Navy became members of the Judge Advocate General's Corps by operation of the new law. Before passage of the law, these officers could aspire to flag rank as line officers. The new law, however, was unaccompanied by a statutory authorization for Naval Reserve rear admirals in the new staff corps, thus depriving Naval Reserve judge advocates of any possibility of promotion to flag rank.

Section 5457 (a) of title 10, U.S. Code, contains statutory authorization for Naval Reserve rear admirals in the line and various staff corps of the Navy. For example, the Supply Corps, with over 4500 Naval Reserve officers, is authorized to have eight Naval Reserve rear admirals, and the Chaplain Corps, with fewer than 1000 Naval Reserve officers, is authorized to have one Naval Reserve rear admiral. Section 5457 (a) makes no provision, however, for a Naval Reserve rear admiral in the Judge Advocate General's Corps, which has more than 1500 Naval Reserve officers.

Authorization for a Naval Reserve rear admiral in the Judge Advocate General's Corps is thus necessary to provide a degree of parity between the various staff corps in the area of Naval Reserve career opportunity and incentive. Furthermore, it is planned that the flag officer authorized by this bill will occupy a high level mobilization billet in the Office of the Judge Advocate General. The importance of such a billet in the event of mobilization warrants flag rank for the incumbent.

The establishment of an authorized strength of one rear admiral of the Naval Reserve in the Judge Advocate General's Corps would be accomplished by reducing the authorized rear admiral strength of the Supply Corps of the Naval Reserve by one (from eight to seven), and authorizing, in its place, a rear admiral strength of one in the Judge Advocate General's Corps of the Naval Reserve. Thus, the bill would not alter the current total authorized rear admiral strength of the Naval Reserve.

Enactment of this bill will not result in any increased budgetary requirements for the Department of Defense.

Senator BYRD. Has the Navy ever had a flag position in the Reserve Judge Advocate General's Corps?

General BENADE. No, sir; they have not. This would be the first.

Senator BYRD. Of the eight positions in the Supply Corps, how many flag officer positions are currently filled?

General BENADE. I believe all eight are filled but I would like a verification of that. Yes, sir.

Senator BYRD. How do you reduce it from eight to seven?

General BENADE. A vacancy would be coming up, Mr. Chairman, and it would simply not be filled.

Senator BYRD. And the judge Advocate General, the new position in the Judge Advocate General Corps, could not be filled until there is a vacancy in the Supply Corps?

General BENADE. Until the Supply Corps is reduced from eight to seven, yes, sir.

Senator BYRD. Does the Supply Corps of the Naval Reserve object to losing one flag officer slot?

General BENADE. I don't think they particularly like it, sir, but they recognize that from an equity standpoint the Supply Corps has a total of 3,164 officers in the Reserve, and they have an authorization of eight flag positions for the 3,164. The Judge Advocate General's Corps has 1,145 Reserve officers and no flag officers. It is the only corps in the Reserve of the Medical, Chaplain, Supply, Civil Engineers and Dental that does not have a flag officer authorized at the moment.

Senator BYRD. Do you regard the number of flag officers allotted the Supply Corps to be heavy?

General BENADE. No, sir; I don't consider it excessive. I am sure the Navy does not. I think in this case it is simply a question of equity. There is an urgent need for at least one to be in the Judge Advocate Corps of the Naval Reserve and it is a question of allocating one more equitably.

Senator BYRD. Was the Supply Corps consulted on this and if so when?

General BENADE. May I ask at this point, sir, Admiral Staring of the Navy who is here and perhaps to help me on that.

Senator BYRD. Admiral?

General BENADE. He is the Judge Advocate General, sir, of the Navy.

Admiral STARING. Mr. Chairman, within the past 24 hours we discovered that, while the Supply Corps had known of the legislative proposal and had been apprised and was aware of the response made by the Department to the request for comment to the committee, they had not been formally solicited. They were consulted within the past 24 hours and registered the objection that General Benade mentioned to you, sir. The decision was made by the Navy Department that, nevertheless, the department would not oppose the bill.

Senator BYRD. What was their objection?

Admiral STARING. The objection would simply be that they now have and are using eight flag officers in their Reserve structure, and they were reluctant to lose one of them, sir?

Senator BYRD. By what procedure will they lose one, retirement?

Admiral STARING. Yesterday I had a briefing on proposed continuation proceedings in the Reserve flag community for the entire Navy. I know that next month they are proposing to have continuation boards to screen flag officers of the Naval Reserve of all of our communities and staff corps. The purpose of that screening is to continue on active duty only some of the officers now holding those positions, and to require the others to retire, and to create vacancies for promotions in all communities. The number of candidates who are eligible for consideration is large, and there is no prospective attainment of retirement age or mandatory retirement in those communities that will provide the required promotion flow.

Senator BYRD. You have eight flag officers in the Supply Corps Reserve. Do you have the ages of those eight?

Admiral STARING. I know that none of the eight in the Supply Corps Reserve are going to be coming up for age retirement within the next 5 years.

Senator BYRD. None—will not?

Admiral STARING. Will not; none of them will be coming up for age retirement.

Senator BYRD. How do you get this extra?

Admiral STARING. The extra number would be obtained by screening those who have had a certain number of years in grade. It is my understanding that the current proposal is that in October of this year they will have a continuation board to look at all flag officers of all the communities who have had at least 4 years in grade, and they will have a forced attrition of one or two in the various communities.

Senator BYRD. The committee has a letter from the Reserve Officers Association of the United States in regard to this matter. It is signed by John T. Carlton, executive director.

Without objection, this letter will be included in the record at this point.

(The letter follows:)

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES,  
Washington, D.C., September 6, 1972.

HON. JOHN STENNIS,  
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We would appreciate the opportunity to make our views known to you relative to the Hearings on S. 3310 which your Committee will consider tomorrow. The purpose of this bill is to establish an authorized strength

for officers in the Naval Reserve in the Judge Advocate General's Corps in the grade of Rear Admiral.

Several years ago, the Judge Advocate General's Corps was established within the Navy by law. The law provided for two flag officers in this Corps for the Regular Navy. At the same time a Judge Advocate General's Corps was established within the Naval Reserve, but through inadvertence, Section 5457(a) of Title 10, U.S. Code which authorizes the number of flag officers in the Naval Reserve, was not amended to allow for a proportionate number of flag officers in this new Corps of the Naval Reserve.

This means that the Judge Advocate General's Corps of the Naval Reserve is the only Corps in any of the Services which precludes the promotion of its officers above the grade of Captain or Colonel.

The Navy, with the approval of the Secretary of Defense, has endeavored to correct this situation for several years, but the proposed legislation has always failed.

Simple justice demands that this discrimination against the legal officers in the Naval Reserve be ended, and that they be given an opportunity to compete for the Rear Admiral grade within their own Corps on a proportionate basis.

S. 3310 will correct this inequity. We respectfully urge your Committee to report his bill favorably, with the hope that it will be enacted into law during this session of the Congress.

Sincerely yours,

JOHN T. CARLTON,  
*Executive Director.*

Senator BYRD. Without objection, these communications from the VA and the Attorney General will be made a part of the record.

(The letters follow:)

OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D.C., March 22, 1972.*

HON. JOHN C. STENNIS,  
*Chairman, Committee on Armed Services,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3203, a bill "To amend the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, in order to extend under certain circumstances the expiration date specified in a power of attorney executed by a member of the Armed Forces who is missing in action or held as a prisoner of war."

The stated purpose of the bill is to assist the families of members of the military service who are missing in action or prisoners of war as a result of the Vietnam conflict. Section 2 would facilitate the management of the personal affairs of such members by extending, for the period of time the member is listed as missing or as a prisoner, the effectiveness of any power of attorney which (1) was duly executed by a person in military service, (2) designates the member's wife as his attorney in fact, and (3) contains an expiration date which occurs while the member is listed as missing in action or as a prisoner of war. The automatic extension would apply both to those powers of attorney which expired before the date of enactment of the section and to those which would otherwise expire subsequent to enactment. A power of attorney executed subsequent to enactment would not be extended if the terms of the document clearly indicate that it is to expire on a date specified notwithstanding the grantor's status as missing in action or as a prisoner of war. The automatic extension provision is further limited to powers of attorney executed during the Vietnam era, as defined in 38 U.S.C. 101(29).

Whether S. 3203 should be enacted involves policy considerations as to which the Department of Justice defers to the Departments directly concerned with persons in the military service.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,  
*Acting Attorney General.*

VETERANS ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,  
Washington, D.C., March 22, 1972.

HON. JOHN C. STENNIS,  
*Chairman, Committee on Armed Services,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report by the Veterans Administration on S. 3203, 92d Congress, a bill "To amend the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, in order to extend under certain circumstances the expiration date specified in a power of attorney executed by a member of the Armed Forces who is missing in action or held as a prisoner of war."

This bill is identical to S. 3795, 91st Congress. That measure, with a technical amendment which would extend the application of its provisions to a power of attorney made in favor of "any other person", as well as the wife of the Armed Forces member, passed the Senate on September 28, 1970. However, it was not considered by the House of Representatives before adjournment of the 91st Congress.

S. 3203, if enacted in its present form, would provide that notwithstanding any other provision of law any power of attorney (1) executed by a person in the military service who is listed as missing in action or as a prisoner of war, (2) which designates such person's wife as his attorney in fact for certain specified purposes or for any and all purposes, (3) containing an expiration date which is subsequent to such person being listed as missing in action or a prisoner of war, shall be automatically extended for the entire time that such person is listed as missing in action or a prisoner of war. Any power of attorney so extended by the provisions of the bill would have the same validity and legality for all purposes in the same manner and to the same extent as if the expiration date specified therein had not occurred.

The bill would not extend the expiration date of a power of attorney executed after the date of enactment if the power of attorney on its face clearly indicates that it is to expire on the date specified therein regardless whether such person subsequent to the date of execution is reported as missing in action or a prisoner of war.

The measure would apply only in the case of persons in the military service who executed powers of attorney during the Vietnam era as defined in 38 USC 101(29). That section defines the "Vietnam era" as beginning on August 5, 1964, and ending on such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress. For the purposes of the bill the term "prisoner of war" includes those being forcibly detained or interned by a foreign government or power.

The Soldiers' and Sailors' Civil Relief Act was designed to afford broad protection to persons while in military service. Except for Article IV, relating to the guaranty of certain commercial life insurance premiums, the provisions of the Act are not administered by the Veterans Administration, although our loan assistance activities are sometimes affected if the veteran has re-entered the service. Most of the provisions of the Act are construed and enforced by the courts in individual cases.

The Department of Defense and the Department of Justice would appear to have considerable interest in the type of legislation proposed by S. 3203 and the Committee may desire to obtain their comments on the bill. Under the circumstances, the Veterans Administration defers to the views of those Departments as to the merits of the proposed legislation.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DONALD E. JOHNSON,  
*Administrator.*

Mr. GARCIA. With respect to S. 3203, Mr. Chairman, the Department of Defense has recommended certain technical changes to the bill as proposed by the sponsor and I would just like for the record

to show that Senator Dole, who did sponsor that legislation, has no objection to the Defense-recommended technical changes.

Senator BYRD. The record will so show.

Does counsel have any questions for the witnesses?

Mr. GARCIA. I may have just one.

With respect to the moving of mobile homes, General—

General BENADE. Yes, sir?

Mr. GARCIA (continuing). You mentioned flagging costs. I don't think I know what that means—flagging costs—in your statement.

General BENADE. In my statement?

Mr. GARCIA. It is in the attachments, attachment 3 on page 2, at the end of the first paragraph.

General BENADE. In the attachment? I am sorry.

Mr. GARCIA. Yes.

General BENADE. The payment is made to town authorities. May I introduce, Mr. Chairman, Capt. Dorothy Council of my office. Captain Council identifies the flagging costs as being costs incurred in the movement of the mobile trailer. In passing through some communities warning flags must be posted and guidance provided to take the trailer through the particular community.

Senator BYRD. Still in regard to S. 3203, attachment No. 4 says this:

It is unknown how the proposed legislation will impact on state interests. It is also unknown how many dependents and next of kin of missing members would be assisted through its enactment. We assume, however, the enactment would certainly assist a number of families of our missing members.

General BENADE. Yes, sir.

Senator BYRD. What do you mean by impact on State interests?

General BENADE. Several States, Mr. Chairman, have enacted laws purporting to extend powers of attorney executed by servicemen missing in action or who are prisoners of war.

The bill, as you recall, sir, is an amendment to the Soldiers and Sailors Relief Act. I don't see it as a serious constitutional problem, but we did want to bring to the attention of the committee that there have been some enactments by some of the States on this matter.

Senator BYRD. I think that this testimony will meet the needs of the committee in order to consider these seven pieces of legislation.

We thank you, General, and we thank you, Admiral.

General BENADE. Thank you, Mr. Chairman.

Senator BYRD. The committee will go into executive session after these hearings. Before doing so I would like to include Senator Hughes statement on S. 2738, in the record.

#### STATEMENT OF HON. HAROLD E. HUGHES, U.S. SENATOR FROM IOWA

Mr. Chairman, I appreciate this opportunity to express my support for S. 2738, which aims at providing equal treatment for men and women military personnel in the application of dependency criteria. The bill would reduce the inequities in family benefits for American women in military service.

I introduced this legislation after receiving the following letter from a constituent of mine, an Iowa woman serving in Vietnam:

AUGUST 4, 1971.

SENATOR HAROLD HUGHES,  
U.S. Senate Building,  
Washington, D.C.

DEAR SIR: Currently pending before Congress are several bills dealing with changes in Armed Forces policy. I understand one of these deals specifically with policy concerning women members of the services. There are several instances where women are undeniably treated as second class citizens in the Army. This is particularly true if she is married; especially if she is married to a civilian.

According to Department of Defense military manual section 30242 entitled "Dependents of Female Members" subsection a: a female member cannot declare her husband a dependent unless he is blind, or physically handicapped, or mentally deficient." Therefore I cannot declare my husband a dependent even though he is a full time college student. According to section 30311 entitled "Common Residence Requirements" (FSA-I only) Section A (1) and (3) and Section B (1) I am not authorized a housing allotment or separation pay even though my husband and I have not been able to live together since I entered the Army. We are not eligible for on post housing. At some posts where bachelor quarters are available for nurses, I understand that I would be expected to either live in the bachelor quarters or give up my single quarters allowance to live off post with my husband. Prior to coming to Vietnam I had to maintain two households, at great expense. In addition to this my husband is not entitled to the medical or dental benefits which wives of military men receive.

When I went to the finance center with my problem I was shown the regulation and informed that "Women are second class citizens in the Army." The Inspector General of the 24th Evacuation Hospital suggested that I write to you concerning this unfair policy. The discrimination here is obvious and everyone with whom I discuss the matter agrees with me. With the present regulations they are unable to assist me.

There are many women in the Armed Forces in circumstances, similar to mine. Do we not deserve equal treatment? I have exhausted the channels of communication provided me and now I appeal for your assistance. I have voluntarily entered the Army and willingly accept its responsibilities. However, I feel that I am entitled to the benefits which I am being denied solely because of my sex.

Sincerely,

ALLEENE M. PINGENOT,  
First Lieutenant, ANC.

Under current law and Department of Defense regulations, women members of the military are not able to claim their husbands as dependents under the same conditions as servicemen. This legislation would provide the husband or children of a woman in military service the same rights, benefits, and privileges which are now available to the wife of any man in the service.

Equal pay for housing is included, which will make it easier for married women in service to live off base with their husbands. Inequities in medical and dental benefits would be ended. These benefits are available today to the wives and children of servicemen while most husbands of women military personnel do not qualify. In numbers, women are just a very small part of our military personnel, so the budget requirements of the Department of Defense would not be increased.

Women live a demanding life in military service. Their sacrifice is great and their benefits should be equal to those of our men in uniform. If we accept women into military service along with men, then

we should not impose different standards on women for payment of benefits. I am hopeful this legislation will receive early approval.

Senator BYRD. Also, the record should show that as a practical matter, the hearing was held on both H.R. 14911 and S. 3416 today since they are identical pieces of legislation.

(Whereupon, at 2:50 p.m., the hearing was adjourned, the subcommittee to reconvene subject to the call of the chair.)



