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ON

H.R. 2817, H.R. 3677, and H.R. 6270

LEGISLATION RELATED TO BENEFITS FOR FORMER
SPOUSE OF A MILITARY RETIREE

BEFORE THE

MILITARY COMPENSATION SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

MAY 28, 1980



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(II)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY COMPENSATION SUBCOMMITTEE,
Washington, D.C., Wednesday, May 28, 1980.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2212, Rayburn House Office Building, Hon. Bill Nichols (chairman of the subcommittee presiding).

Mr. NICHOLS. The subcommittee will come to order.

The purpose of the hearing today is to receive testimony on several bills related to benefits for the former spouse of a military retiree. Three bills lie before the subcommittee on this matter.

H.R. 2817, introduced by Mrs. Schroeder, would automatically assign a portion of a member's retired pay to a former spouse based on the number of years of military service and the number of years of marriage while the member was in the military. The marriage would have to last at least 10 years. In addition, the military member would be required to join the survivor benefit plan upon retirement unless the former spouse and the current spouse agreed to permit an election out of the plan. If the retired member participates in the plan, the survivor benefit would be divided between the surviving spouse and former spouse. This legislation would apply only to those cases where both the divorce and the retirement of the member occur after the date of enactment.

Authority currently exists to garnishee active duty or retired pay of civil service and military personnel if the member fails to honor a court-ordered alimony or child support decision. In addition, authority also exists to assign retired pay to a former spouse in the case of a civilian government employee in conjunction with a community property settlement.

H.R. 3677, introduced by Mr. Hance, of Texas, would extend the authority to assign retired pay to a former spouse of a military retiree based on a court ordered community property settlement. The provisions would be effective only in the future; however, community property settlements reached in the past would be honored in the future without further court action.

H.R. 6270, introduced by Mr. Fisher, is substantively identical to H.R. 3677 but includes additional provisions related to operating procedures.

We face a number of emotional issues related to this subject matter. These include specifically, (1) the automatic division of retired pay; (2) the automatic division of survivor benefits; (3) the requirement to elect coverage in the survivor benefit plan; (4) the option to cover a former spouse under the survivor benefit plan; and (5) the retroactivity of any change that the committee might make.

From a more general, but perhaps more fundamental perspective, we must address the issue of the responsibility the Government has to care for the former spouse of a service member.

The benefit system is designed to attract and retain the quantity and quality of military personnel needed. To this end, it must provide equitable compensation in conjunction with a benefit package that provides the incentive to choose the military as a career. Providing benefits to dependents can be justified, in part, on the basis of comparability with the private sector. However, extending certain benefits to former spouses neither directly enhances career attractiveness nor addresses a problem with regard to comparability.

Whether the Federal Government provides assistance to former spouses of military personnel through a military benefit program or whether that assistance is provided through standard social programs, that assistance is a payment from the public at large to a specific group. It is not for services rendered in the military or an entitlement earned; it is a transfer payment.

The problems experienced by former spouses are not unique to former spouses of military personnel, or civil service personnel, or foreign service personnel. The problems are shared by all former spouses to one degree or another. Including the dollar impact of a temporary solution for former spouses of military members in the defense budget hides the real problem and delays the proper solution.

[H.R. 2817, H.R. 3677, and H.R. 6270 follow:]

96TH CONGRESS
1ST SESSION

H. R. 2817

To amend chapter 73 of title 10, United States Code, to provide that a former spouse of a member of the uniformed services who is married to such member for ten years or more shall be entitled to a portion of such member's retired pay and to a portion of the annuity of a surviving spouse of such member, and that such member may not elect not to provide such an annuity without the consent of the spouse and any former spouse of the member, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1979

Mrs. SCHROEDER introduced the following bill; which was referred to the
Committee on Armed Services

A BILL

To amend chapter 73 of title 10, United States Code, to provide that a former spouse of a member of the uniformed services who is married to such member for ten years or more shall be entitled to a portion of such member's retired pay and to a portion of the annuity of a surviving spouse of such member, and that such member may not elect not to provide such an annuity without the consent of the spouse and any former spouse of the member, and for other purposes.

I—E

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3

4 ANNUITY OF FORMER SPOUSE WHILE MEMBER IS

5 RECEIVING RETIRED OR RETAINER PAY

6 SECTION 1. (a) Chapter 73 of title 10, United States
 7 Code relating to annuities based on retired or retainer pay, is
 8 amended by adding after subchapter II thereof the following
 9 new subchapter:

10 "SUBCHAPTER III—FORMER SPOUSE ANNUITY

"Sec.

"1461. Definition.

"1462. Former spouse annuity based on retired or retainer pay.

"1463. Reduction in retired or retainer pay.

"1464. Regulations.

11 "§1461. Definition

12 "In this subchapter, 'former spouse' means a former
 13 wife or husband of a person who was married to that person
 14 for not less than ten years.

15 "§1462. Former spouse annuity based on retired or re-
 16 tainer pay

17 "(a) A former spouse of a person entitled to retired or
 18 retainer pay is entitled to an annuity—

19 "(1) if married to the person throughout the
 20 period of service credited to the person for the purpose
 21 of computing the retired or retainer pay of such
 22 person, equal to 50 per centum of the amount of such

1 retired or retainer pay (determined without regard to
2 the reduction under section 1463); or

3 “(2) if not married to the person throughout the
4 period of service credited to the person for the purpose
5 of computing the retired or retainer pay of the person,
6 equal to the amount which bears the same ratio to the
7 annuity to which the former spouse would have been
8 entitled if paragraph (1) of this subsection applied as
9 (A) the number of years of service credited to the
10 person for the purpose of computing the retired or re-
11 tainer pay of the person during which the former
12 spouse was married to the person bears to (B) the total
13 number of years of such service.

14 An annuity under this section shall be increased from time to
15 time in the manner prescribed for increases in retired or re-
16 tainer pay under section 1401a of this title.

17 “(b)(1) An annuity of any person under this section com-
18 mences on the later of the day after the person upon whose
19 service the annuity is based becomes entitled to retired or
20 retainer pay or the first day of the month in which the person
21 becomes a former spouse within the meaning of section 1461
22 of this title.

23 “(2) Such annuity and the right to such annuity termi-
24 nate on the last day of the month before—

1 “(A) the former spouse dies or remarries before
2 becoming sixty years of age;

3 “(B) the former spouse becomes entitled to an an-
4 nuity under section 1448(d) or 1450 of this title;

5 “(C) the person upon whose service the annuity is
6 based begins service on active duty; or

7 “(D) the person upon whose service the annuity is
8 based dies.

9 **“§ 1463. Reduction in retired or retainer pay**

10 “The retired or retainer pay of a person entitled to re-
11 tired or retainer pay shall be reduced by the amount of an
12 annuity of any former spouse of such person under section
13 1462 of this title that is based on the marriage to such
14 person.

15 **“§ 1464. Regulations**

16 “The President shall prescribe regulations to carry out
17 this subchapter. Such regulations shall, so far as practicable,
18 be uniform for the armed forces, the National Oceanic and
19 Atmospheric Administration, and the Public Health
20 Service.”.

21 (b) The table of subchapters at the beginning of chapter
22 73 of title 10, United States Code, is amended by adding at
23 the end thereof the following new item:

“III. Former Spouse Annuity..... 1461”.

1 ANNUITY OF FORMER SPOUSE AFTER MEMBER DIES

2 SEC. 2. (a) Section 1447 of title 10, United States
3 Code, relating to definitions applicable to the Survivor Bene-
4 fit Plan, is amended—

5 (1) by adding at the end of paragraph (2) the fol-
6 lowing new sentence: "For the purpose of this clause,
7 retired or retainer pay shall be determined without
8 regard to any reduction under section 1463 of this
9 title."; and

10 (2) by adding at the end thereof the following new
11 paragraph:

12 "(6) 'Former spouse' means a former wife or husband of
13 a person who was married to such person for not less than
14 ten years."

15 (b)(1) Subsection (a) of section 1448 of title 10, United
16 States Code, relating to the application of the Survivor Bene-
17 fit Plan, is amended—

18 (A) in paragraph (2)—

19 (i) by striking out "is married" both places it
20 appears and inserting in lieu thereof "is married,
21 has a former spouse,"; and

22 (ii) by striking out "he elects" and inserting
23 in lieu thereof "he, his spouse, and his former
24 spouse (if any) elect"; and

1 (B) in paragraph (3), by inserting "and former
2 spouse (if any)" after "spouse" each place it appears.

3 (2) Subsection (b) of each section is amended by striking
4 out "who is not married" and inserting in lieu thereof "who
5 is not married, does not have a former spouse,".

6 (3) Subsection (d) of such section is amended by striking
7 out "to which the otherwise eligible spouse" and all that
8 follows and inserting in lieu thereof "which the member
9 would have received (after any reduction which would have
10 been made under section 1463) if he had been eligible for that
11 pay on the day before he died, based upon his years of active
12 service, and the Secretary shall pay to the former spouse (if
13 any) an annuity equal to 55 percent of the amount of the
14 annuity which would have been payable to the former spouse
15 under section 1462 if the member had been eligible for re-
16 tired or retainer pay on the day before he died.".

17 (c) Section 1450 of title 10, United States Code, relat-
18 ing to beneficiaries under the Survivor Benefit Plan, is
19 amended—

20 (1) in subsection (a)—

21 (A) in clause (1), by inserting after "or wid-
22 ower" the following: "and the eligible former
23 spouse (if any)"; and

24 (B) in clause (2), by striking out "if the eligi-
25 ble widow or widower is dead, dies, or otherwise

1 becomes ineligible" and inserting in lieu thereof
2 "if the eligible widow or widower and the eligible
3 former spouse and dead, die, or otherwise become
4 ineligible";

5 (2) in subsection (b), by inserting "or former
6 spouse" after "widow or widower" each place it ap-
7 pears; and

8 (3) by striking out the first two sentences of sub-
9 section (e) and inserting in lieu thereof "If no annuity
10 under this section is payable to a widow or widower
11 because of subsection (c), any amount deducted from
12 the retired or retainer pay of the deceased under sec-
13 tion 1452 of this title shall be refunded to the widow
14 or widower. If, because of subsection (c), the annuity
15 payable to the widow or widower is less than the
16 amount established under section 1451 of this title, the
17 annuity shall be recalculated under that section."

18 (d) Subsection (a) of section 1451 of title 10, United
19 States Code, relating to the amount of annuities under the
20 Survivor Benefit Plan, is amended to read as follows:

21 "(a)(1)(A) Subject to paragraphs (2) and (3), the monthly
22 annuity payable to a widow or widower who is entitled under
23 section 1450(a)(1) of this title to an annuity shall be—

1 “(i) 55 percent of the base amount, if the annuity
2 is provided by virtue of eligibility under section
3 1448(a)(1)(A) of this title, or

4 “(ii) a lesser percentage (determined by the Secre-
5 tary of Defense in accordance with subsection (d)) of
6 the base amount, if the annuity is provided by virtue of
7 eligibility under section 1448(a)(1)(B) of this title.

8 Any such annuity shall be reduced by the amount of any
9 annuity payable under section 1450(a)(1) of this title to a
10 former spouse of the person providing the annuity.

11 “(B) Subject to paragraphs (2) and (3), the monthly an-
12 nuity payable to a former spouse who is entitled under sec-
13 tion 1450(a)(1) of this title to an annuity shall be the amount
14 that bears the same ratio to the amount of an annuity com-
15 puted under the first sentence of subparagraph (A) for a
16 widow or widower of the person providing the annuity as (i)
17 the number of years of service credited to such person for the
18 purpose of computing the retired or retainer pay of such
19 person during which the former spouse was married to such
20 person bears to (ii) the total number of years of such service.

21 “(C) The monthly annuity payable to a dependent child
22 who is entitled under section 1450(a) of this title to an annu-
23 ity shall be—

1 “(i) 55 percent of the base amount, if the annuity
2 is provided by virtue of eligibility under section
3 1448(a)(1)(A) of this title, or

4 “(iii) a lesser percentage (determined by the Sec-
5 retary of Defense in accordance with subsection (d)) of
6 the base amount, if the annuity is provided by virtue of
7 eligibility under section 1448(a)(1)(B) of this title.

8 “(2) If a widow or female former spouse has one de-
9 pendent child, the monthly annuity of such widow or former
10 spouse under this subchapter shall be reduced by an amount
11 equal to the mother's benefit, if any, to which the widow or
12 former spouse would be entitled under title II of the Social
13 Security Act (42 U.S.C. 401 et seq.) based solely upon serv-
14 ice by the person concerned as described in section 210(l)(1)
15 of such Act (42 U.S.C. 410(l)(1)) and calculated assuming the
16 person concerned lived to age sixty-five.

17 “(3) When the widow, widower, or former spouse
18 reaches age sixty-two or there is no longer a dependent child,
19 whichever occurs later, the monthly annuity of the widow,
20 widower, or former spouse under this subchapter shall be re-
21 duced by an amount equal to the amount of the survivor
22 benefit, if any, to which such widow, widower, or former
23 spouse would be entitled under title II of the Social Security
24 Act (42 U.S.C. 401 et seq.) based solely upon service by the
25 person concerned as described in section 210(l)(1) of such Act

1 (42 U.S.C. 410(l)(1)) and calculated assuming that the person
2 concerned lived to age sixty-five. For the purpose of the pre-
3 ceding sentence, a widow, widower, or former spouse shall
4 not be considered as entitled to a benefit under title II of the
5 Social Security Act to the extent that such benefit has been
6 offset by deductions under section 203 of such Act (42
7 U.S.C. 403) on account of work.”.

8 (e) Section 1452 of title 10, United States Code, relat-
9 ing to reductions in retired or retainer pay, is amended—

10 (1) in subsection (a)—

11 (A) by striking out “a spouse and a depend-
12 ent child” in the first sentence and inserting in
13 lieu thereof “a former spouse” and by inserting
14 “and former spouse (if any)” after “in favor of his
15 spouse”;

16 (B) by inserting “or an eligible former spouse
17 and a dependent child” in the second sentence
18 after “an eligible spouse and a dependent child”;
19 and

20 (C) by inserting “or former spouse” in the
21 third sentence after “eligible spouse”;

22 (2) in subsection (b), by inserting “or former
23 spouse” after “spouse” each place it appears;

24 (3) in subsection (e), by inserting “or former
25 spouse” after “spouse”; and

1 (4) by adding after subsection (f) the following
2 new subsection:

3 “(g) If a person to whom section 1448 of this title ap-
4 plies has a former spouse who is entitled to an annuity under
5 section 1462 of this title—

6 “(1) the annuity of such former spouse under such
7 section shall be reduced by an amount which bears the
8 same ratio to the reduction in retired or retainer pay
9 prescribed by or under this section as the amount of
10 such annuity bears to the amount of such retired or re-
11 tainer pay before the reductions in such retired or re-
12 tainer pay under this section and under section 1463;
13 and

14 “(2) the reduction under this section in the retired
15 or retainer pay of such person (A) shall be made after
16 the reduction in such pay under section 1463, and (B)
17 shall be reduced by the amount of the reduction under
18 clause (1).”.

19 (f) Section 1455 of title 10, United States Code, relating
20 to regulations to carry out the Survivor Benefit Plan, is
21 amended by inserting “and his former spouse (if any)” in
22 paragraph (1) after “and his spouse”.

23

EFFECTIVE DATE

24 SEC. 3. The amendments made by this Act shall apply
25 with respect to any individual who after the date of the en-

1 actment of this Act becomes a former spouse (as defined in
2 section 1447(6) of title 10, United States Code) of an individ-
3 ual who becomes entitled to retired or retainer pay after the
4 date of the enactment of this Act.

○

96TH CONGRESS
1ST SESSION

H. R. 3677

To amend title 10, United States Code, to authorize the Secretary concerned to comply with the terms of a court decree, order, or property settlement in connection with the divorce, annulment, or legal separation of a member or former member of the uniformed services receiving retired or retainer pay, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1979

Mr. HANCE introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to authorize the Secretary concerned to comply with the terms of a court decree, order, or property settlement in connection with the divorce, annulment, or legal separation of a member or former member of the uniformed services receiving retired or retainer pay, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) chapter 71 of title 10, United States Code, is
4 amended by adding at the end thereof the following new
5 section:

1 **“§1407. Payment of retired and retainer pay in compli-**
2 **ance with court orders**

3 “(a)(1) Payment of retired pay or retainer pay that
4 would otherwise be made to a member or former member of
5 an armed force shall be paid (in whole or in part) by the
6 Secretary concerned to another person if and to the extent
7 expressly provided for in the terms of any court decree of
8 divorce, annulment, or legal separation or the terms of any
9 court-approved property settlement agreement incident to
10 any court decree of divorce, annulment, or legal separation.

11 “(2) Any payment under paragraph (1) to a person bars
12 recovery by any other person.

13 “(b) Subsection (a) shall apply only to payments of re-
14 tired pay and retainer pay made by the Secretary concerned
15 after the date of receipt by the Secretary concerned of writ-
16 ten notice of such decree, order, or agreement, and such
17 additional information and documentation as the Secretary
18 concerned may prescribe.

19 “(c) In this section, ‘court’ means any court of any
20 State, the District of Columbia, or the Commonwealth of
21 Puerto Rico.”.

22 (b) The table of sections at the beginning of such chap-
23 ter is amended by adding at the end thereof the following
24 new item:

“1407. Payment of retired and retainer pay in compliance with court orders.”.

1 SEC. 2. The amendments made by the first section of
2 this Act shall apply only to payments of retired pay and
3 retainer pay for months beginning after the date of the
4 enactment of this Act.

○

96TH CONGRESS
2D SESSION

H. R. 6270

To amend title 10, United States Code, to provide for the payment of retired and retainer pay of members or former members of the uniformed services in compliance with the terms of any court decree, order, or property settlement made in connection with a divorce, annulment, or legal separation.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 1980

Mr. FISHER introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to provide for the payment of retired and retainer pay of members or former members of the uniformed services in compliance with the terms of any court decree, order, or property settlement made in connection with a divorce, annulment, or legal separation.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That chapter 71 of title 10, United States Code, is amended
- 4 by adding after section 1406 the following new section:

1 **“§ 1407. Payment of retired and retainer pay as provided**
2 **in a divorce, annulment, or separation decree**
3 **or in a court order in connection with a di-**
4 **vorce or legal separation**

5 “(a) Payment of retired or retainer pay which would
6 otherwise be made to a member or former member of an
7 armed force shall be paid (in whole or in part) by the Secre-
8 tary concerned to another person to the extent expressly pro-
9 vided for in the terms of any court decree of divorce, annul-
10 ment, or legal separation or in the terms of any court order
11 or court-approved property settlement agreement incident to
12 any court decree of divorce, annulment, or legal separation.

13 “(b) Subsection (a) shall only apply to payments of re-
14 tired or retainer pay made by the Secretary concerned after
15 the date notification of the obligation to make payments pur-
16 suant to any decree, order, or agreement referred to in sub-
17 section (a), and any other information required by the Secre-
18 tary to be submitted pursuant to subsection (g)(2), is received
19 by the appropriate agent designated for receipt of such notifi-
20 cation pursuant to subsection (g)(1) (or, if no agent has been
21 designated for the armed force of the member or former
22 member, then upon the Secretary concerned).

23 “(c) Whenever any person who is designated by law or
24 regulation to accept notifications under this section receives
25 any such notification, such person shall respond to the notifi-

1 cation within thirty days (or within such longer period as
2 may be prescribed by the Secretary concerned) after the date
3 of receipt of the notification and shall, as soon as possible but
4 not later than fifteen days after the date of receipt of such
5 notification, send written notice that the notification has been
6 received (together with a copy thereof) to the person whose
7 retired or retainer pay is affected by the decree, order, or
8 agreement specified in the notification at his duty station or
9 last-known home address.

10 “(d) Normal pay and disbursement cycles shall not be
11 required to be varied in order to comply with any decree,
12 order, or agreement referred to in subsection (a).

13 “(e) Neither the United States nor any disbursing officer
14 shall be liable with respect to any payment made from retired
15 or retainer pay due or payable from the United States to any
16 person pursuant to a notification of a decree, order, or agree-
17 ment referred to in subsection (a) that is regular on its face, if
18 such payment is made in accordance with this section and
19 regulations issued to carry out this section.

20 “(f) If more than one notification of a decree, order, or
21 agreement referred to in subsection (a) is received with re-
22 spect to the same retired or retainer pay due or payable to
23 any person, then such retired or retainer pay shall be availa-
24 ble to satisfy such decrees, orders, or agreements on a first-
25 come, first-served basis, with any such decree, order, or

1 agreement being satisfied out of any amount of such retired
2 or retainer pay as remains after the satisfaction of all such
3 decrees, orders, and agreements of which notification has
4 been previously received.

5 “(g) The President shall promulgate regulations to im-
6 plement this section. Such regulations shall include a require-
7 ment that the Secretary concerned cause to be published (1)
8 his designation of an agent or agents for the purpose of ac-
9 cepting notice of decrees, orders, and agreements under sub-
10 section (a), who shall each be identified by title of position,
11 mailing address, and telephone number, and (2) an indication
12 of the data reasonably required in order for the Secretary
13 promptly to identify the person with respect to whose retired
14 or retainer pay the notification is given.

15 “(h) In this section, ‘court’ means any court of any
16 State, the District of Columbia, or the Commonwealth of
17 Puerto Rico.”.

18 SEC. 2. The table of sections at the beginning of such
19 chapter is amended by adding after the item relating to sec-
20 tion 1406 the following new item:

“1407. Payment of retired and retainer pay as provided in a divorce, annulment, or
separation decree or in a court order in connection with a divorce
or legal separation.”.

Mr. NICHOLS. We have witnesses to testify before us today who will reflect the widely divergent views of individuals affected by the legislation we are considering. Because the witness list is lengthy, I would ask our witnesses to be as concise as possible. Of course, we will be glad to accept detailed statements for the record. And without objection, I will direct that the record remain open for additional statements for a period of 2 weeks.

Our first witness will be Hon. Patricia Schroeder, a distinguished and very valuable member of the House Committee on Armed Services, from Colorado.

STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE FROM COLORADO

Mrs. SCHROEDER. Thank you very much, Mr. Chairman. And I appreciate the subcommittee's holding these hearings and giving us this chance to testify on this bill, on this very, very important issue dealing with former military spouses.

I have entered three bills: one dealing with the civil service; one dealing with the Foreign Service; and one dealing with the military service, and I will address this a little later.

In essence, you, Mr. Chairman, summarized fairly clearly what my bill does. One of the reasons it is absolutely necessary is that the former military spouse's situation has been aggravated severely lately by several relevant social changes.

If you look at the divorce rate, it has doubled in the last 10 years. And you will find that the number of long-term marriages ending in divorce has increased substantially.

Second, you will find all but three States have moved to no-fault divorce since 1974—and that means that there is very limited support or alimony provided in most cases. So the garnishment area of the law really doesn't help in those areas.

Third, alimony really isn't a substitute for a vested property right if you happen to be fortunate enough to live in one of the three States that might still give alimony; because alimony always ceases with the death of the wage earner. So that really isn't an adequate substitution either.

I think military spouses are different than people in the mainstream of society. If the military spouse wanted to go to work, invest her own income and build her own property rights, she really couldn't unless someone knows where you can vest pension rights in a month or 2 years.

It is very, very difficult to have careers that can be plugged in for 18 months and then unplugged and moved on somewhere else. I can't even think of any plan that would allow you to do that.

I think that my bill is a fair way of going about this. It would provide a pro-rata share of the spouse's retirement pay if they are married for at least 10 years and also a pro rata share of the survivor's benefits. I also feel very strongly we should make the survivor's benefits mandatory unless the spouse and the retiree have said they don't want it. This approach is based on the premise that marriage is an economic partnership and that a spouse makes a very significant contribution to that partnership.

I am very pleased with the President's Commission on Pension Policy which, in its interim report, has agreed with this whole concept and has come out and said pension should be defined as a property right and the spouses should be entitled to the pro rata portion of the benefits that were earned during their marriage.

Why is this so important? If you look at the average American family, the basic assets they have are No. 1, a house and No. 2, a pension. Really, we are not the world's best savers. We wish we were but we are not, so we have got to face it.

In the military it is very difficult to acquire a house. A house would clearly be considered a property right that would be divided among the parties, and yet because military personnel are moving around so much and the cost of housing, especially of late, would make it almost prohibitive for most military families to buy in and buy out of a house every 18 months or 2 years, it would be dubious how much equity they could really gain anyhow.

Basically, their pensions are much more important than for the normal person in civil service or the private sector. You take a couple that gets married and establishes a household; the husband is moved around to a lot of different places in a society where we place very high value on home and family. We encourage the women to stay at home, and yet if they do all that and something goes wrong later on with the marriage we find a most severe form of economic discrimination. We give a lot of honor but absolutely no monetary value for the service, for the family, and for the country.

Unfortunately, the honor a woman gets for staying at home and raising children will not buy groceries, pay medical bills, or send the kids to college. A recent book called "The Air Force Wife," written by Nancy Shea, states—

* * * Every Air Force wife has three basic responsibilities: (1) To make a congenial home, (2) to rear a family of which he will be proud, and (3) to strengthen her husband's morale.

I think that has clearly been a good statement of what military wives have always been asked to do. In fact, some of the armed services have even given retirement certificates to the wife acknowledging their long years of service with their husbands. I don't think there is anyone in this country who thinks being a military wife is an easy job. It is probably one of the most difficult jobs in the country. They really have been overlooked.

What has happened so many times is that when divorce occurs, and they have no economic fall-back of their own because they have been moving around the country or the world, they then turn to their congressional offices and about all you can do is tell them they can go get food stamps.

I think that is very demoralizing. You have a displaced homemaker who is going to also go into trauma and to have that added to it I think is cruel, to say the least.

A surviving spouse would be entitled to benefits based on the number of years of marriage during creditable service, as well as the remainder of the survivorship benefit not claimed by the first spouse, including credit for any years during which the employee was not married. That is how you could work it out of the surviving spouse.

Why do I think the survivor's benefit should be mandatory unless

all affected individuals elect out of the program? I found many people did not realize when they made that decision how irrevocable it was and what it really meant.

I think a lot of widows never know until the death of their spouse they have no survivors' benefits. Then once again, it is too late.

Just to look at some quick statistics and I won't cite many: As of September 1977, there were 1,155,000 military retirees drawing retired or retainer pay, and of that number only 55,446 provided survivors' benefits for their spouses.

Now I know and you know that the answer is always, well, if you put in for survivors' benefits they subtract something from the retiree's income while he is drawing the retirement income, and that is true. But it really isn't that big an amount.

For example, for the average enlisted man whose retirement pay equals \$423 per month, the reduction for the survivors' benefit would be only \$15 per month. For the average officer who receives \$841 per month, the reduction would be only \$57 per month.

Once again, that is a phenomenal package. I do think both parties should make the decision whether or not that package should be purchased, because you are getting terrific coverage.

Unlike civil service and Foreign Service members, military personnel do not pay into the military retirement system, although since 1957 members of the armed services have made mandatory contributions for social security coverage.

So I think it is a little bit different here. Many people will say the military is also different because of the social security coverage. Let me point out several things there.

First the former spouse cannot draw social security benefits regardless of her age until the military spouse retires and begins collecting the social security benefits himself.

We have seen many incidents where the military member will retire but then begin another career at midlife and may work beyond their own age 65, so the spouse would not be entitled to any social security. Others have said this would be a windfall if they got both social security and the survivor benefit plan payment.

They just don't understand how it works; because the social security benefits are subtracted from the survivors' benefits and that is not anywhere near a windfall. We all know social security was never meant to be the entire retirement income of anyone.

If you look at America today you find the fastest growing poverty group in America is female. A lot of people keep saying we wish it weren't that way—we wish there weren't divorces—we wish families wouldn't be coming apart. A lot of us wish that, but we still have to deal with the way the country is today. That is a very serious problem and we find that the displaced homemaker and the divorced spouse figures very heavily into those poverty calculations.

Other countries are starting to recognize the former spouse's rights. The United Kingdom, West Germany, Canada, the Swiss, all have pension systems generally splitting the survivors' benefits between the divorced wife and the surviving wife on the basis of how long each was married. They had faced this issue, and I think we are a little bit behind.

Since I introduced this legislation several years ago at least the Civil Service now recognizes court orders awarding a portion of retired pay. We have had many, many military personnel saying they would like to give their former spouse a portion of their retirement and survivors' benefits but can't do so under the law.

So, many people, who would like to do this and who feel it is an earned right, have been told they can't do that under the law. The foreign service bill has moved along very rapidly, and they have added a provision that the committee might look at.

Rather than the flat pro rata share, that provision asserts that the pro rata division is a presumption—it presumes there should be a pro rata division—but the division is subject to affirmation, modification, or change by a State or family court. Now that may be something that the committee would like to look at, if people get overly worried about the automatic mandated pro rata share. Because that provision does allow the courts to vary the division if there is an overwhelming case it should be changed. Because of the various different States' jurisdiction, because of the potential of foreign domicile, because of attorneys and judges needing to have some guidance in this area, I really hope that we can come forward with some Federal legislation and set some precedent.

Not all States are as fortunate as California where there was a legal malpractice case against a lawyer and they ordered him to pay a client \$100,000 for his failure to include the military pension as a part of the property settlement.

Most States have not gone that far. Many people suffer from lack of good legal counsel during this period. I would hope we could move forward rapidly and get this area cleared up as many other countries have. And as we have at least started some movement in the civil service and foreign service area.

Again, I thank you for your patience. I have had letters here from USO and other organizations, and from all sorts of different people. But I am sure the subcommittee has seen them also.

I thank you and would be happy to try to answer any questions.
[The following information was received for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 13, 1980.

Hon. BILL NICHOLS,
Chairman, Subcommittee on Military Compensation,
Washington, D.C.

DEAR CHAIRMAN NICHOLS: I would like to submit the following statement into the record of the hearing on H.R. 2817 which your subcommittee held on May 28, 1980.

In my testimony on H.R. 2817, I told the subcommittee in facts and figures why my bill needs to be adopted. However, I think the best argument for the bill lies in the hundreds of letters and cases I have received on the bill. The facts and figures come to life. For this reason, I would like to submit in the record some cases I have received from all over the country on my bill. They demonstrate the urgent need for legislation like H.R. 2817.

I would also like to enter into the record an excerpt from the President's Commission on Pension Policy on the Treatment of Spouses and a copy of an article by Judy Mann from the Washington Post on the plight of Military wives.

Thank you.

Sincerely,

PATRICIA SCHROEDER,
Congresswoman.

USO,
GREATER JACKSONVILLE AREA,
USO COUNCIL, INC.,
Jacksonville, Fla., Apr. 25, 1980.

Re H.R. 2817.

Hon. PATRICIA SCHROEDER,
U.S. House of Representatives, 1507 Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSWOMAN SCHROEDER: From more than a decade of experience of working with military and their families, I am knowledgeable of the need for the legislation, encompassed in H.R. 2817, which you have entered for action.

I, personally, support the provisions of H.R. 2817 as presented in "The Military Retirement Income Equity Act—Questions and Answers," which I have received from your office via Miss Pamfilis and USO, Inc.

I find much within the country's treatment of military in general to be repulsive. The lack of provisions which would be provided to a former spouse of a military person is not inconsistent with the general treatment afforded to military, however, it is this former spouse who, through marriage, endured the brunt of much of the ill treatment, and in not providing a pro rata share of a former spouse's retirement pay is a further needless slap in the face to one who has given a good portion of their life to the maintenance of a family structure for the cause of national defense.

I wish to commend you for sponsoring H.R. 2817 and, as an individual, I will work toward it's approval. I would appreciate learning if there exists corresponding legislation in the Senate and it's sponsors.

Sincerely yours,

WILLIAM O. REINOLD.

SOCIETY OF MILITARY WIDOWS,
NATIONAL HEADQUARTERS,
La Mesa, Calif., June 7, 1980.

Hon. PATRICIA SCHROEDER,
Congresswoman, House of Representatives,
Washington, D.C.

DEAR PAT: Thank you for your letter inviting us to enter our Society of Military Widows case in the H.R. 2817 Hearing Record. We support your bill asking for equal justice for ex-military wives of 10 years or more. We are most grateful for your support of S. 91.

Would you consider championing the forgotten widows or fight for those women whose retired husband with over 20 years of service died before September 21, 1972? These women were included in the original S. 91, introduced by Strom Thurmond.

We believe the continued neglect of pre-Survivor Benefit Plan deceased military retirees widows is a flagrant injustice. The premiums under the old, self-sustaining 1953 Retired Serviceman's Family Protection Plan (RSFPP) were outrageously high and extremely out-of-line with the 1948 family protection plan Congress provided for federal civil service personnel. As a result, during the RSFPP program's 19-year existence, only 15 percent of the military retirees could afford RSFPP participation. By comparison, 90 percent of all federal civil service retirees participated in their far less expensive and federally-subsidized 1948 family protection plan program.

When the new military Survivor Benefit Plan Program was enacted in 1979 all living military retirees were eligible to participate in it, whether or not they had previously participated in the old RSFPP program. For the living military retirees Survivor Benefit Plan participation did not involve a penalty, additional cost or restriction, regardless of the retirees' advanced age or health condition. Widows of deceased military retirees were forgotten. Many of these retirees' widows are denied a VA pension for their husband's over 20 years of honorable military service, often in two and sometimes three wars. The proposed Survivor Benefit Plan amendments do not include these old and often poverty level widows because their husbands failed to participate in the old RSFPP program, although some were widowed before the 1953 RSFPP program became law. Living retirees

had the same opportunity for RSFPP participation as deceased retirees. Due to high cost premiums, 85 percent could not afford to do so. Living retirees were allowed 18 months during which to decide whether or not they wanted to sign up for the new 1972 Survivor Benefit Plan; widows of deceased retirees were forgotten.

In view of the unquestioned eligibility of pre-Survivor Benefit Plan retirees to participate in the Survivor Benefit Plan, we believe widows whose retired husbands died before September 21, 1972 are grossly discriminated against. In 1958, Public Law 85-465 was enacted to amend the federal civil service family protection program. This law provided survivor annuities for all widows of federal civil service personnel, whose husbands died before the 1948 civil service family protection program was enacted. Military personnel are Government employees. Fairness demands that widows of pre-1972 deceased military retirees be included in the 1972 military Survivor Benefit Plan program, concurrently with the widows of active duty personnel whose husbands died before the Survivor Benefit Plan was enacted.

Additional discrimination against military Government employees exists in the 1916 Federal Employees Compensation Act (FECA), Public Law 64-267. This law encompasses all non-military Government employees who die or are injured in the performance of their officially assigned duties. Death compensation under FECA is 50 percent of full salary for the widow alone, and up to 75 percent of full salary for a widow with two or more dependent children. Minimum salary for compensation payments is General Schedule Pay Grade GS-2, step 1; and the maximum salary is Pay Grade GS-15, step 10. Under present pay schedules FECA death compensation ranges from a minimum of \$338 a month for a widow alone and up to a maximum of \$3,132 a month for a widow with two or more dependent children, based on the husband's salary, regardless of tenure in federal service. In contrast, for deaths resulting from the performance of military officially assigned duties, the widows' compensation under the Dependency and Indemnity Compensation (DIC) law ranges from a minimum of \$326 a month for Pay Grade E-1, and up to \$835 a month for Pay Grade O-10. The DIC program for military widows is supplemented by social security payments if there are dependent children or the widow is over 62 years of age, or over 50 years old if totally disabled. The Survivor Benefit Plan annuity only applies if the service member had over 20 years of service. When the Survivor Benefit Plan annuity is higher than the widow's DIC payment, the DIC payment is subtracted from the Survivor Benefit Plan annuity. When the widow becomes entitled to a social security payment at age 62, it too is subtracted from the remainder of the Survivor Plan annuity. This gross discrimination against military personnel who die in the performance of their officially assigned duties dates back to 1916, four years before women had the right to vote in federal elections. Corrective action is long overdue.

A Report by the Comptroller General of the U.S. (GAO Report FPCD 78-49) of December 29, 1978, gives a grand scale overview of the 38 Federal retirement systems. Of the lot, the military retirement system is by far the most inferior. It is the only retirement system that is not properly funded and realistically vested. In view of this, it's a small wonder that over the years only 10 percent of all inductees and volunteers who entered military service remained long enough to accumulate 20 years of service and received 'retired pay', dearly paid for by working for low salaries. The Department of Defense, who has demonstrated so little compassion for the aged widows of its pre-Survivor Benefit Plan deceased retirees, is a poor risk for career service. After a man acquires a family, regardless how patriotically dedicated he may be, he can not afford to remain in military service due to low pay, long hours, and many family separations. The military retirement system requires up-dating so that it will be competitive with federal civil service and private industry retirement systems. A survey taken several years ago rated a military career third from the bottom of about fifty evaluated careers. This is an ill omen for the security of our nation. Remedial action is most urgently needed.

You may use this letter as our testimony and would appreciate having it entered in the Record of your bill.

Sincerely,

KATHRYN BREESE-WHITING,
National President.

DEAR CONGRESSWOMAN SCHROEDER: In reference to House Bill 2817—I would like to enter my case in the record of the hearings:

My husband divorced me in 1972 after deserting me and our six children in 1963. During this time I have had to struggle to get any money for support. The Court awarded me a minimal amount of child support and alimony which has not been adequate through the years. I had a nervous breakdown trying to keep my home and children through the years.

He has refused to sign the home which I have paid on all these years over to me and as a result I have been unable to be funded for repairs which are badly needed. I would be able to get help on repairs from HUD but since the house is in both our names they will not assist me.

My husband is retired since 1958 and collects a good pension and I feel that I have raised his children, helped him in his career in our early years of marriage, made a home wherever we happened to be when he traveled in the Military, and should have a fair portion of his Pension.

Through his divorcing me I have lost all health benefits, Commissary privileges, etc.

If you should need any more information please let me know I also would be willing to testify in support of the Bill.

Very truly yours,

DEAR PAT: Thank you for your recent letter concerning H.R. 2817. I certainly would like to enter my case in the record of the hearings you have mentioned.

Ours was a sad case of a high-ranking Air Force officer, Lt. Col. retired, who deserted his beautiful family after twenty years of military way of life. We travelled everywhere with him and endured the hardships that are expected as a military family. He left to marry a much younger woman.

At age 51 and with many illnesses, I am unable to work. They have termed women like myself as displaced homemakers . . . and I can see why. I have absolutely no medical insurance and there seems to be no way to get it under present law. My right foot needs surgery badly but I cannot afford medical attention of any kind and have not had a medical check-up since my husband deserted in 1974. In order to survive, my three children and I were awarded a fair amount of support, but he made his whereabouts unknown, and left the state to avoid payments. We then had to attach his pension for only 50 percent of his retirement amount, but \$600, (total) a month is poverty level and we have been forced to survive on that.

The Parent Locator Service (HEW) located his address in California. As soon as we brought the URESA papers through to California court, he just moved again and defaulted the order. Does the law simply allow these men to desert any time they choose? Do the children and myself really deserve this kind of suffering?

Yes, indeed. . . . I would like to enter my case in the record . . . and if need be, I would be more than pleased to appear personally before the lawmakers. I am a living example of hundreds of women my age who have been brutally deserted by retired military who are allowed this convenient escape from responsibilities . . . BECAUSE the law says they can!!

I would also like to know if you are at all aware of any law, method, etc. wherein we could locate my ex-husband after desertion. . . . URESA DOES NOT WORK . . . all they do is move again! Our present arrearage amount is over \$25,000 . . . no wonder, the children and I are half starving! Thanks, and PLEASE do respond and keep me posted on H.R. 2817!! I'll be glad to go to Washington any time, to plead my case!

Sincerely,

MAY 30, 1980.

Hon. PATRICIA SCHROEDER,
2437 Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSWOMAN SCHROEDER: Thank you for your reply of May 23, 1980 and enclosed information on H.R. 2817 and H.R. 2472. You advised that hearings were scheduled for May 28, and if I desired to enter my case in the record, send it along before June 11, 1980. I DO, and here it is.

After 30 years of marriage, my husband has elected to live in a spousal relationship with a divorced woman, as of July 1979. I am presently living on support

money and have filed legal separation papers. On July 2, 1980, Pennsylvania's revised no-fault divorce laws go into effect allowing one spouse to get a divorce over the protests of the other. It appears that I will be a former spouse before the end of this year, and everything I have worked for will be gone.

My husband, who is presently employed, has 25 years of creditable military service. At age 60, September 1986, he will be eligible for retirement pay and all related military benefits.

I have been a homemaker during my marriage. Now at age 54, after 30 years of marriage and 25 years of military service, as a former spouse I will have no retirement, pension plan, or social security to my credit. I will also lose the military medical care and other benefits. At this late date in life, there is not enough time left to prepare for anything—just hope that one can survive.

Both bills appear to be fair and just and I'm sure they are long overdue. However, I question the retroactive area. Why should my husband's second wife of less than 5 years be signed up for survivor benefits when I was married to him during the 25 years of service? I believe that a divorced spouse who was married to a service member for at least 20 years during creditable service, and who has not remarried at age 60, should be entitled to the survivor benefits, making it retroactive.

It is hoped that these bills will be given serious consideration and passed very soon. It is tragic when the military member takes everything and the spouse is left penniless, and without access to any benefits.

Sincerely,

DEAR MRS. SCHROEDER: I would like to enter this case in the Hearings on Bill H.R. 2817 and H.R. 3337 held on Wednesday, May 28 at 2 P.M. in Room 2212 of the Rayburn House Office Bldg., Washington, D.C.

My marriage took place in August 1949. My former spouse re-enlisted in the Navy in June of 1950. We moved to Norfolk, Va., from Philadelphia and purchased a house there in Princess Anne County. From 1951 I went back and forth from Philadelphia to Norfolk each time the ship came into port. This commuting got to be extremely expensive and hazardous so in 1956 we purchased a home and settled down permanently in Virginia. For long periods of time, I was alone while my spouse went on 6, 7, 8 and 9 month cruises on various ships. The longest period of time we ever had shore duty in 16 years was for a 2 year period in Dam Neck, Virginia. This period of time was the closest we ever got to a normal married life.

When this period was over and my spouse had to go out to sea again the drinking became a way of life for him. To combat the loneliness, boredom and sameness of duty the men drank and drank. Most of the men seemed to be encouraged to do this by the Navy itself, parties were being held constantly and the drink was literally poured over each other's heads. I actually saw this happen myself at a We'come Home party that was held by the *USS Coral Sea*—the party was held at the Center in the Norfolk proper area and the beer flowed in the aisles—and everywhere else. I found out later this party cost the Welfare and Recreation fund approximately \$3,000, a tremendous amount of money in those days when inflation had not yet been so rampant.

In any case, the drinking problem in my home was becoming more and more pronounced. I enlisted the aid of my doctors, my family, the Navy Relief Society and finally the National Council on Alcoholism. During this period of time, after ten years and the loss of three children, I found myself pregnant. Having lost three pregnancies, and to try to preserve this pregnancy I left my husband in Virginia and elected to stay with my mother to help me preserve my sanity and my pregnancy. With the help of wonderful people at the Philadelphia Naval Hospital I was able to give birth to a daughter by Ceasarian Section. This was a period of extreme joy for me and in this joy, I wished to preserve a family life for both my husband and my new baby. On this note, after my daughter reached 6 weeks of age, I agreed, on the urging of my spouse, to return to Norfolk and take up as a family should. Still on the very same night that I returned to Norfolk, my spouse chose this opportunity to leave home and become intoxicated to the point of passing out.

This event prompted me to talk my spouse into going for professional help. In all due honesty, he did try after an extremely bad binge—during this period my second child, a daughter was born in 1961. She, too, was born by Ceasarian Section—Again his binges became more and more frequent and more and more uncontrolled and terrifying.

To add to this unpleasant time of my life, I also now had the added burden of worrying what problems my spouse's binges were doing to our children. When they were small, I could say that their father was ill; as time went on that was impossible. Added to the problem of alcoholism, the problem of keeping a home together was becoming more and more difficult. I never knew what money I would have—on one particular cruise my spouse left me with \$2.35 which he had promised to supplement by sending my allowance the next day, which was his payday. After waiting more than three days and still no money, with milk, food, fuel and vitamins all literally gone, I called him in Newport, R.I. only to be told that he had no money to send me. I called my priest, he in turn gave me \$25.00 for fuel oil on the promise that I would go to the Navy Relief Society for food money. This I had to do to feed my children. This, by the way, was the most degrading thing I had ever done.

Again we went through the business of drying out, etc. and all the accompanying promises, etc. In despair, I went back to work when my youngest child was 15 months old to insure that I would never have to beg again for food. This I have done from that time on and I am working to this day. When my spouse retired from the Navy in 1965 (his drinking was making it exceedingly difficult not to get into serious trouble) the problems were multiplied. He could not locate a job he thought worth having—this added to the frustrations he was encountering which added to the drinking which created more problems. When he became violent one night when under the influence of drink, I knew I had to leave to preserve my sanity. I discussed this with my priest and he, in turn, agreed that I had no choice but to find a safe haven for my daughters. I left everything in Norfolk, packed what few things I could in the old car I had and went to Philadelphia. My mother had died in the meantime and I spent a few weeks with one sister after another until I could gather together enough money to get our own apartment. My previous boss, was kind enough to help me secure a transfer of employment after explaining the sudden departure from my previous place of employment. I shall always be grateful to this kind man for his patience and assistance during this period.

I have been divorced since April 1973 after almost 24 years of marriage. My spouse, upon order from the court, supported the girls with \$130.00 a month until my youngest child reached 18. Not once in all that time has there been any clothing, dental care, doctor care, food or additional help contributed by him. The support and welfare of the children was left to me. This burden I assumed—willingly—it was in the best interests of the children to grow up in a serene atmosphere which I have tried to create. However, the financial burden has been tremendous. This must be the most difficult job for a single parent to tackle.

Which brings me to the reason I am entering my case in the record of the hearings for the passage of bill H.R. 2817 and H.R. 3337.

It is true that these men and women put in the time and earned the right to a retirement pay. But it is also true that the spouses of these people have a right, too, to a portion of these earnings also. I am now 56 years of age, working desperately to insure my future so that I do not become a burden to the taxpayers. The years when my career could have been furthered were spent trying to raise my children. One has only so much energy to devote to outside interests under these circumstances.

Many women are in the same situation. These are inequities I feel sure can be corrected. I trust and pray my narrative regarding my life as serviceman's wife will be of interest to those hearing testimony on the merits of requiring passage of this bill. I would have liked to be at the hearings but did not have enough advance notice to make arrangements for a trip to Washington, D.C. Please be of assistance in passing this bill, I urge all who have the ability to correct an injustice.

Sincerely,

DEAR MRS. SCHROEDER: This letter may be too late to be included in the record of hearings on H.R. bill 2817 but I wish to express my support for it and make a plea that there is a real need for consideration of making some portions retroactive.

Consider my situation—I am 53 years old, I have a disability which is the residual from having two laminectomies and a spinal fusion. I am also plagued with hypertension, Ischemic heart disease, myasthenia gravis and chronic bron-

chitis. At this writing I am convalescing from a myocardial infraction suffered on May 17, the third one since 1968.

In spite of the surgery that was necessary for my back I feel that I could have returned to my profession of nursing, R.N. psychiatric specialty, if the condition had not been aggravated so soon after surgery with the moving due to my husband's assignment to Wiesbaden, Germany, where the third floor of a stairwell was our home until after the second heart attack and the doctor ordered that we be allowed to move to a first floor apartment. That assignment to Germany also caused me the loss of my civil service status because I was unable to find a job under civil service in the nursing field. With that loss also went my medical insurance coverage leaving only that provided by the military for wives of military.

With the divorce those benefits went as well as the coverage from the company which my ex-husband works for. I receive \$134.00 a month from my husband which helps to pay insurance premiums for hospital insurance only. The frequent trips to the doctors office for checkups which include EKG's, laboratory checks and all the medical supervision necessary for my bundle of problems bite very deeply into the disability compensation that I receive for my back injury from Worker's Compensation. In addition there is the portion paid out for help in keeping a place to live in halfway clean, getting food and transportation to and from the doctors. Shelter and utilities are a must.

I can't impress on you too strongly the need for that bill to cover those of us already divorced and retired in keeping with the needs. Surely you must realize that we are the next overwhelming wave of welfare recipients, some of us caught in the twilight zone of not being old enough for social security, too old to re-enter the work arena (or too ill) or have income that puts us out of the eligibility range for aid but not enough to live on in view of the current economic situation. We wives of 20 and 30 years of marriage now divorced feel like we have been dumped and dumped on. How can we tell our children "ask not what your country can do for you * * * ." and expect them to believe we mean it?

I was married for 22 years and feel that my situation is better than some wives who have children to be concerned about. I do not expect to live long enough to benefit from any action but I hope for help for others so desperately in need.

Sincerely,

TREATMENT OF SPOUSES

Significant gaps in coverage exist for spouses of workers who are participants in social security and employee pensions. In addition, some features of social security and employee pensions concerning the treatment of spouses and survivors have become outdated due to changing life-styles and marital patterns.

Social security was designed at a time when most American women were lifelong homemakers who depended upon their husbands for support. At that time, it seemed reasonable that retirement income payable to women through social security should be based on their status as dependents. Today the law entitles a wife (or husband) to a spouse benefit equal to 50% of the husband's (or wife's) benefit. When one spouse dies, the law entitles the survivor to 100% of the deceased spouse's benefit. Individuals entitled to both a spouse and worker benefit receive, in effect, only the greater of the two benefits.

Today the social security system no longer serves the same society it was designed for 40 years ago. The role of women and family structures have changed dramatically since the 1930s. Now, most women work for pay, although their work patterns vary. Some women have lifelong careers in the paid labor force, others temporarily leave the labor force to raise children and others will be lifelong homemakers. While the current system is well-suited for women in this latter situation, it does not provide commensurately for paid work by both spouses. The divorce rate has dramatically increased since the 1930s. Today, the probability is about one in three that a new marriage will end in divorce. Recent changes to the system made in response to rising divorce rates still do not deal adequately with problems of divorced spouses.

Because of the change in family life-styles, the Social Security Administration recently reviewed the treatment of spouses under the social security law. They documented several problem areas. The Commission at this time has limited its focus to old age benefits for three groups: widows, divorced spouses and two-earner couples.

Widowed persons, comprising about three-fourths of the elderly poor, are the largest group for whom old age income is inadequate (see Chart 4). Survivors are entitled to receive social security benefits based on their deceased spouses' wage record in lieu of their own wage record. While in some instances this provides an adequate income, in three cases it may not.

First, if the former spouse dies several years before the survivor reaches retirement age, the survivor will receive benefits computed on an outdated earnings base. Unlike all other beneficiaries, the deceased spouse's earnings record is indexed by the inflation rate, not by increases in wages. Except for recent years, wages normally increase faster than prices. As a result, a survivor's benefit is related to the standard of living at the time of the spouse's death, rather than the standard of living at the time the survivor begins receiving benefits.

Second, a survivor's monthly benefits are lower to the extent that he or she elects to take an actuarially reduced benefit as early as age 60. It appears that most young survivors do in fact take early retirement benefits.

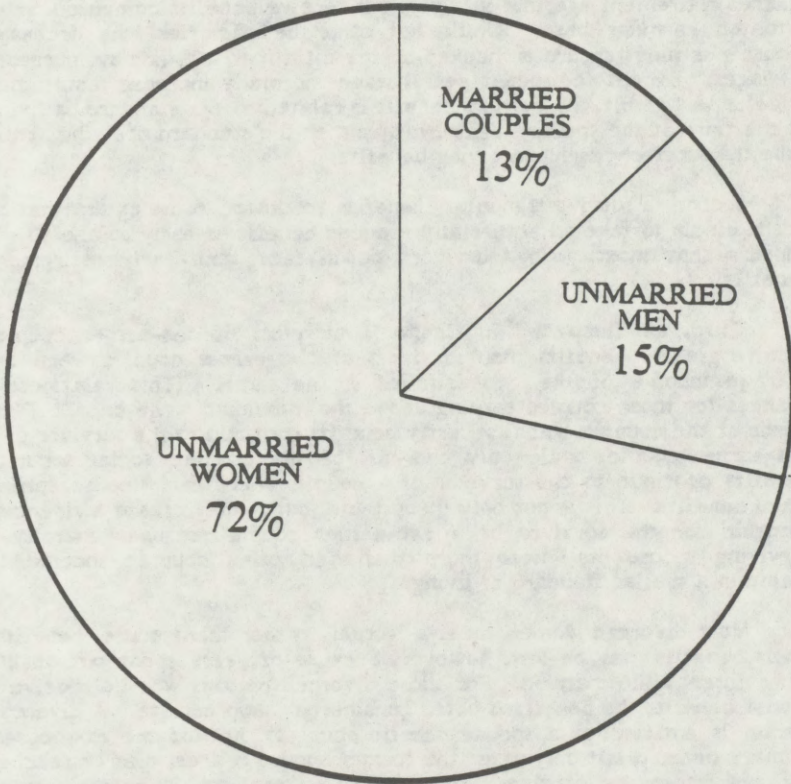
Third, as illustrated in Chart 5, survivors of one-earner couples receive greater benefits than survivors of two-earner couples when the average income of the two families is the same. (This relationship changes for those couples earning above the maximum wage base.) Two-thirds of the couple's social security benefits continue to the survivor of a one-earner couple, while only one-half of the couple's social security benefits continue to the survivor of a couple where each spouse earned equal benefits. This is not only inequitable, but it may create a financial hardship for the survivor of a two-earner couple because generally a surviving spouse may need more than half of a couple's income to maintain a similar standard of living.

Most divorced women receive worker, rather than spouse, benefits. Their benefits may be low, however, because of years spent out of the labor force while married. For those divorced persons who do receive a spouse benefit, the benefit is often considered inappropriate. A divorced person is entitled to a spouse benefit equal to 50% of the ex-spouse's primary benefit, but only after the former spouse retires, dies or reaches the age where the earnings offset no longer applies. When the former spouse dies, the dependent's benefit doubles. While these provisions may be reasonable for married couples, there is little cause to retain these rules for a divorced couple where the spouses are financially independent. For example, unless the former wife was receiving alimony or other financial support from the ex-spouse, there is little logic as to why the spouse benefit should double when the ex-spouse dies. For marriages that last only a small portion of the worker's career, there is little rationale for basing the spouse benefit on the former spouse's entire wage history.

Of greatest concern from both an adequacy and equity point of view, is the two-thirds and one-third distribution of benefits between the worker and the divorced spouse. The spouse benefit was designed as a supplement to the larger primary benefit and it may be inadequate for a person maintaining a separate household. Also, for lifelong marriages, the two-thirds and one-third distribution conflicts with the philosophy of marriage as an equal partnership.

CHART IV

THE ELDERLY POOR
(THE DISTRIBUTION OF AGED UNITS
WITH INCOMES BELOW THE POVERTY LINE,
BY MARITAL STATUS AND SEX, 1976)



¹ Married Couples are counted as one unit.

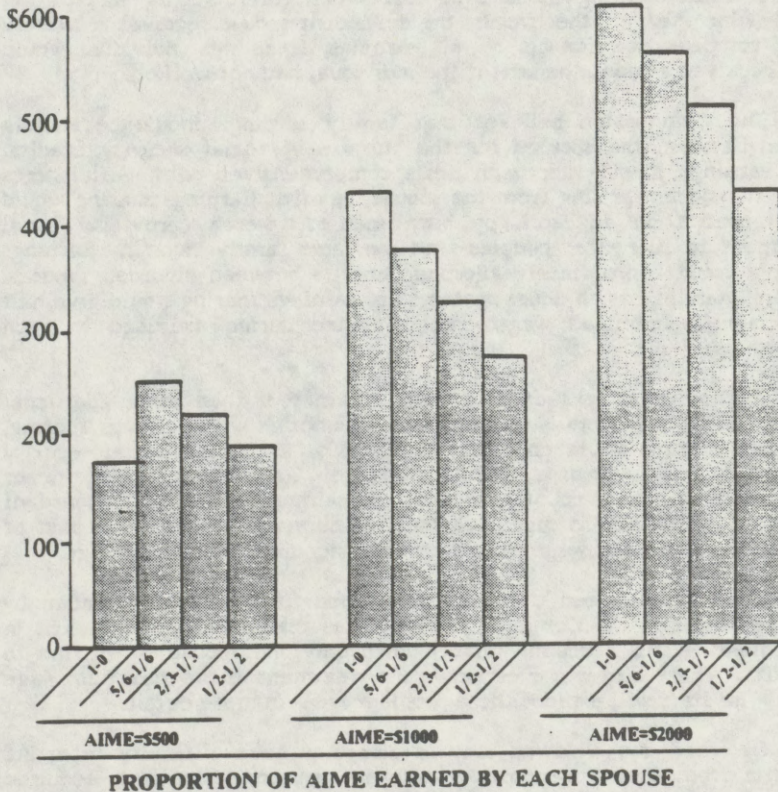
² For 1976 the poverty line for those age 65 or older was \$3,445 for married couples and \$2,730 for single persons.

Source: U.S. Department of Health, Education, and Welfare, Social Security and the Changing Roles of Men and Women, 1979.

PRESIDENT'S COMMISSION ON PENSION POLICY

CHART V

MONTHLY SOCIAL SECURITY BENEFITS FOR SURVIVORS OF RETIRED COUPLES UNDER CURRENT LAW BY PROPORTION OF AIME* EARNED BY EACH SPOUSE



*AIME = Average Indexed Monthly Earnings.

This is average lifetime couples earnings indexed by wage increases. It is used to calculate Social Security benefits and represents the portion of wages subject to the Social Security tax.

1-0 = One-earner married couple.

5/6-1/6 = Two-earner married couple, with one spouse earning 5/6 of the couple's wages.

1/2-1/2 = Two-earner married couple with each spouse earning 1/2 of the couple's wages.

Source: President's Commission on Pension Policy

Retired couples with the same family income may receive different total family benefits depending upon the proportion of income earned by each spouse. As shown in Chart 6, one-earner couples receive greater benefits than two-earner couples. (This relationship changes for those couples earning above the maximum wage base.) All one-earner couples receive a spouse benefit equal to 50% of the primary benefit based on the covered income of the worker. Two-earner couples may receive no supplemental spouse benefit or, in some cases, a spouse benefit based only on the higher earning spouse's benefit which reflects only part of the family's income. In other words, the dependent spouse receives relatively little compensation for his or her earnings, since this individual would have received a spouse benefit if the individual had not worked.

The Commission believes that family earnings should be equally shared between the spouses for the purpose of social security credits. This earnings sharing approach deals comprehensively with deficiencies under the system arising from the spouse benefit. Earnings sharing would base benefits on all work by both spouses, thereby providing equal treatment to all retired couples with the same family income. Earnings sharing would appropriately allocate benefits between divorced spouses. Viewing marriage as an equal partnership, earnings sharing would give half the couple's combined wage credits earned during marriage to each spouse.

If the widow(er)'s benefit were eliminated, then some additional protection for survivors is necessary in conjunction with earnings sharing. Earnings sharing would continue only half of a couple's social security benefits to a survivor of a lifelong marriage. Generally a survivor needs more than half of a couple's income to maintain a similar standard of living. Therefore, it is suggested that the survivor inherit all or part of the deceased spouse's wage record that was acquired during marriage.

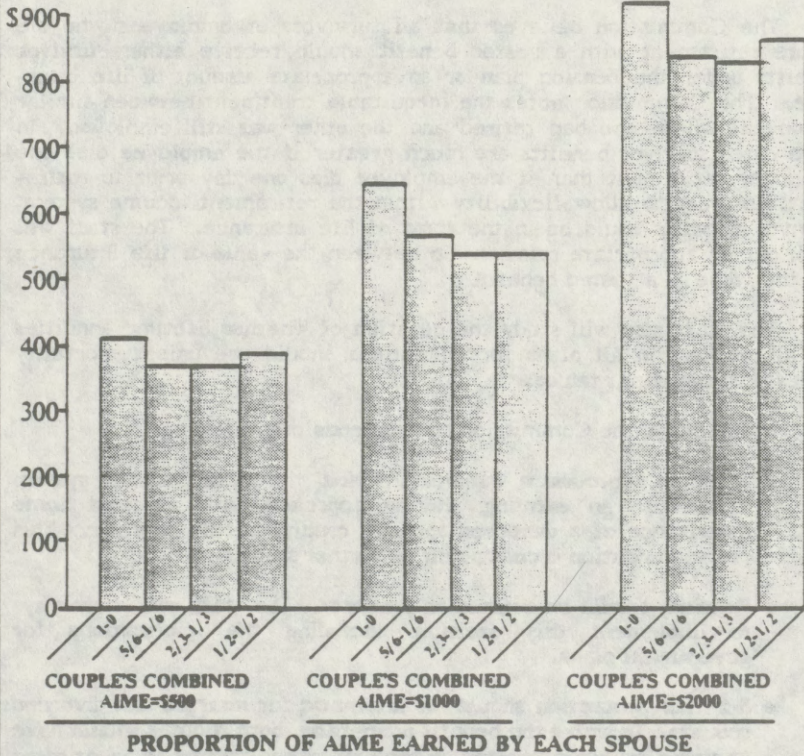
While it is agreed that the spouse benefit should be replaced by earnings sharing, the Commission recognizes that complications exist in implementing this decision, notably when only one spouse is entitled to benefits. There also is a question on the treatment of the maximum wage base. The staff will explore these problem areas in more detail.

Divorced and widowed spouses also may have difficulty receiving benefits from their ex-spouses' employee pensions that were acquired during marriage. Whether pension assets are considered in divorce settlements is largely dependent upon whether the divorce law of the state equally divides property acquired during marriage and whether the pension or future pension is considered property for purposes of division. Whether pensions are paid to survivors of retired workers depends upon whether the worker elects to reduce the initial pension in order to provide continuing benefits to the survivor. In addition, many plans do not offer the joint and survivor option for divorced spouses.

The Commission believes that pensions should be defined as property. Therefore, pensions should be taken into account when people divorce, and survivor protection should be automatic for married and divorced spouses. For divorced spouses, the survivor protection should be prorated based on years of pension service accrued during marriage. The staff will investigate the administrative difficulties of entitling divorced spouses to benefits.

CHART VI

MONTHLY SOCIAL SECURITY BENEFITS FOR RETIRED COUPLES UNDER CURRENT LAW BY PROPORTION OF AIME* EARNED BY EACH SPOUSE



*AIME = Average Indexed Monthly Earnings.

This is average lifetime couples earnings indexed by wage increases. It is used to calculate Social Security benefits and represents the portion of wages subject to the Social Security tax.

1-0 = One-earner married couple.

5/6-1/6 = Two-earner married couple, with one spouse earning 5/6 of the couple's wages.

1/2-1/2 = Two-earner married couple with each spouse earning 1/2 of the couple's wages.

Source: President's Commission on Pension Policy

While the Commission believes that survivor benefits are a necessary part of the retirement income system, it recognizes that in some instances a couple may have sufficient reason for not electing such coverage. Therefore, couples should be allowed to waive the joint and survivor annuity if both spouses are informed of the provision and recognize the implications of waiving the option. To prevent abuses, the Commission suggests that survivor protection may be waived only if both spouses sign an agreement that is witnessed by the plan administrator (or an administrator's agent) and after being informed of the provision by a representative of a plan.

The Commission believes that all survivors of employees who die before retirement with a vested benefit should receive either survivor benefits under the pension plan or an appropriate amount of life insurance. The Commission notes the inequitable treatment between similar employees where one had retired and the other was still employed. In some cases survivor benefits are much greater if the employee dies one day after retirement than if the employee dies one day prior to retirement. In order to allow flexibility within the retirement income system, survivor benefits could be in the form of life insurance. The staff will work out an appropriate relationship between the value of life insurance and the value of a vested benefit.

The staff also will study the question of whether lifetime annuities for all workers in all plans for all options should use unisex mortality tables or sex-distinct tables.

In summary, the Commission recommends the following:

- After an appropriate transition period, the social security system should use an earnings sharing approach with at least some inheritance of a deceased spouse's credits by the survivor. This recommendation is contingent on further study.
- Pensions should be defined as property. The staff will study ways to implement this decision, including the implications for government plans.
- Survivor protection should be automatic for married and divorced spouses. To waive the benefit protection, both spouses should have to sign a waiver witnessed by the plan administrator or agent after having been informed of the provision by the administrator.
- For divorced spouses, the survivor protection should be prorated based on years of pension service accrued during marriage. The staff will study the implications.
- All survivors of employees who die before retirement with a vested benefit should receive either survivor benefits under the pension plan or life insurance benefits. More study should be done on the proper value of these benefits.
- A study will be done on whether lifetime benefits for all workers in all plans for all options should use unisex mortality tables or sex-distinct tables.

FORMER MILITARY WIVES WAGE WAR FOR BENEFITS

(By Judy Mann)

When he retired from the Air Force in 1977, Col. John Abell enrolled in something called the survivors benefit program. The idea was that he would pay a certain amount of money each month to guarantee that if he died first his wife would receive 55 percent of his retirement pay for the rest of her life.

But Abell and his wife, Nancy, are separated now and they have discovered that should they divorce, she will no longer be eligible for survivors benefits. "The law does not provide for that survivor's benefit protection to be continued even if both people wish to do it, which seems somewhat unreasonable to me," says John Abell. "I would like to do it in my own case," he says, "and not being allowed to is sort of annoying."

The survivors benefit program is the latest in a series of military benefits that former spouses are trying to get Congress to reform. Hearings are scheduled today on bills that would allow retirees to assign benefits to an ex-wife as well as to divide them between spouses, and on bills that would allow former spouses to receive automatically a pro-rated share of the military person's retirement.

Ex-wives of military personnel have in the past testified on behalf of legislation that would allow them to continue being covered under military health plans. As the law stands now, these women after 20 to 30 years of marriage, lose their military health coverage when they are divorced and they are often too old or too ill to qualify for civilian health insurance plans.

If the spouse in the military remarries—even if he is retired—the new spouse automatically becomes eligible for these medical and survivors benefits, even if she has put no time into the spouse's military career. That, according to a number of organizations for former military wives that are springing up across the country, is unfair, John Abell agrees.

"It seems to me that some of these entitlements rightfully, at least in the moral sense, belong to the first wife. In the case of my wife, we had been married 23 years. She had those benefits all of her adult life. She was married to a military person throughout his career until his retirement. It doesn't seem unreasonable to me that she be afforded those benefits even after divorce."

Military wives, says John Abell, put up with an awful lot. "Military families are constantly moved when they don't want to. Until recent years, at least, they haven't ever been able to make any money on housing. There just are all kinds of problems with being in a military family that are induced by the frequent relocation. The children pay a considerable price for that as well.

"The military wife put up with some undesirable circumstances, some hardships she might not put up with as the wife of a civilian," says John Abell. "It doesn't seem unreasonable to me to extend to such women something like medical insurance. I don't see how people could argue strongly against that."

The Defense Department is arguing strongly against it, saying medical coverage for ex-spouses could cost as much as \$45 million a year.

But allowing the survivors' benefits to be assigned to former spouses or prorated between spouses, and prorating retirement benefits to ex-spouses would entail nothing more than the administrative costs. And, as Rep. Patricia Schroeder, (D-Col.) who is sponsoring legislation to do this has pointed out, it might keep some of these former military wives off public assistance rolls, where some of them are ending up.

Schroeder's legislation would make the survivors benefit program mandatory unless waived by all spouses involved, and would give the ex-wife a prorated share of the retirement if she has been married to a military person 10 years or more. The bill "acknowledges that the pension is an earned benefit of the wife as well as the husband," say Andrea Pamfilis, a legislative aide to Schroeder.

Nancy Abell is president of a new organization called Ex-Partners of Servicemen for Equality, which was formed to lobby Congress on behalf of former military wives. She says she is "very fortunate. . . . I will be getting a good amount of support," from her husband. But, she says, "some of the ways these men have left these women and ended the marriage are just atrocious.

"We feel these men could not have advanced in their careers if we hadn't been watching the home front and raising the children, often while they're overseas, and it's kind of a blow when they turn around at the end of their careers and prefer some younger woman to you."

Former wives of military and of Foreign Service officers argue that because their husbands' careers required them to move frequently they were unable to pursue their own careers. Then when they are divorced, they end up with no career and, often, no dependable source of support.

Their chief opposition in their quest for benefits is coming from organizations of military officers. An amendment that would have allowed ex-spouses to receive a share of the Foreign Service officers pension was recently defeated in committee by one vote. Abell says her organization will be meeting soon with Foreign Service wives to exchange ideas.

"We get letters constantly from women who are welfare cases, women with terminal illness who have no medical coverage," says Nancy Abell. "There are a lot of desperate women who are really fearful for the future.

"Younger women are having a chance to get educated about all of this," she says. "Wives are refusing to give up their careers. The younger men are leaving the service rather than accepting the transfers. Had we known 20 years ago that was going to be happening to us, we might have said, 'Hey, we're not leaving our careers.'"

"But," she says, "our career then was supporting the military men. The younger women now are smart."

[Note: Other letters are retained in subcommittee files.]

Mr. NICHOLS. Thank you, Mrs. Schroeder.

I believe you might want to check your figures related to participation in the survivor benefit plan. You indicate only 55,000 military retirees provided spouse benefits. My figures are a little different from yours. I think you may mean 55,000 survivors are now receiving these benefits.

Mrs. SCHROEDER. I will check this. I really got these from DOD.

Mr. NICHOLS. My figures show there are about 28,000 participants in RSFPP, and about 586,000 participants in the survivor benefit plan.

Mrs. SCHROEDER. I would still find that a bit shocking in that it is below 50 percent.

Mr. NICHOLS. I agree; it would be desirable, as inexpensive as the insurance is. It would seem more people would take it.

Going back to World War II, a strong effort was made even down to company commander to get 100-percent signup on insurance; this was in Germany during the shooting war. There were some people that just didn't want to take it.

Let me go back. You mentioned the divorce rate doubling in the last 10 years. That is a staggering figure. Is that divorce rate in the Nation, or is that in military?

Mrs. SCHROEDER. In the Nation. It is a little hard to get statistics from the different services. I think that the military and the foreign services had a little higher rate than the national rate.

Mr. NICHOLS. What are these retirement certificates that you mentioned, that the Armed Forces present to the wives? I am not familiar with them.

Mrs. SCHROEDER. My understanding is—

Mr. NICHOLS. There is no monetary reward?

Mrs. SCHROEDER. No.

Mr. NICHOLS. Just a pat on the back, "thank you for being a good wife to the serviceman over the years."

Mrs. SCHROEDER. That is right. You can't eat it or wear it and it won't protect you from the rain.

Mr. NICHOLS. As I understand the thrust of your bill, you make no presumption as to which of the parties might be the culprit in the divorce. Whether it is the husband's fault, running off with his sec-

retary, or being the type of husband he shouldn't be, or whether it is the wife's fault. You simply say if a woman lived with a military man for 10 years, then she is entitled, automatically entitled, to a portion of his pay?

Mrs. SCHROEDER. That is right.

First of all, I think 10 years means it wasn't a frivolous fling. Anybody who lives together 10 years and says, well, it was terrible, the entire 10 years, you wonder why in the world they didn't wake up. It is not like they are talking about a 6 months' vesting.

What we are saying is that while she was there, she contributed to his ability to earn that money.

Mr. NICHOLS. Let me get into another area here.

One might argue that your bill focuses only on military retirees. I believe you stated that you had introduced similar legislation in other areas of the Federal Government.

The division of retired pay under your bill, couldn't it conceivably be contradictory to a decision that the court might hand down relative to the pro rata share?

For example, suppose the amount of alimony that the court would award would be less than the pro rata share of the retired pay according to your bill—or in some situations, the court could conceivably not provide any pay, and yet your bill would mandate a pro rata share.

How do you feel about this? In some cases, couldn't the argument be used that we would be creating a different set of inequities here?

Mrs. SCHROEDER. I don't think so. In fact, I think it is kind of in the vein the whole country is moving. As I said, all but three States have now introduced no-fault divorce.

In a way, that is what this is talking about. The problem with alimony is that it often costs more to collect it than it is worth. To be very honest, if someone wants to be stubborn, you can have a garnishment right but to go out and use it is very costly.

My guess is the court would say, you are getting this. It would be like splitting the mortgage payments on the house. It would be automatic. It is property rather than the maintenance. Because the maintenance has not been very well done in the past.

Mr. NICHOLS. I don't believe there is a Member of Congress in this room that hasn't gotten letters from former wives asking for help to collect alimony payments and the child support payments? The man is delinquent. The court order said he should do so and so.

Would your bill be retroactive?

Mrs. SCHROEDER. We can't do it retroactive, unless the parties involved want to. We could make it permissive if you wanted to, to go back and make an assignment. Other than that you would have to be prospective, legally.

Mr. NICHOLS. Mr. Wyatt.

Mr. WYATT. Thank you, Mr. Chairman.

Pat, I am a little concerned about the provisions that are automatic. Is this under any circumstances?

Mrs. SCHROEDER. Under the circumstances that the marriage lasted at least 10 years and it was during creditable service in the military. It is not like somebody you were married to before you were in the military. It would be somebody you are married to during 10 years or more of creditable service in the military.

Mr. WYATT. This would vest in the wife or former spouse?

Mrs. SCHROEDER. Yes. It is based on the same thing as social security. We have change social security for the whole private sector. There is a 10-year vesting in the spouse automatically in social security. There is no court assignment. There is nothing else. That seems to be the way the whole free world is moving with pensions and everything else.

If you are married 10 years, spousal benefits are vested, social security or otherwise.

Mr. WYATT. When you vest, do you vest 50 percent of the benefit or use a formula?

Mrs. SCHROEDER. We use a formula. It is, you don't vest just 10 percent if you have 10 years of creditable service. The maximum amount would be 50 percent, say if your spouse were in the military for a full 20 years and you were married a full 20 years and got the divorce later. Then you would get 50 percent.

Mr. WYATT. Social security doesn't work that way. Doesn't the wife of a person who gets social security benefits get a certain payment under any circumstances?

Mrs. SCHROEDER. If they have been married 10 years.

Mr. WYATT. Social security and military retired pay are not the same thing.

Mrs. SCHROEDER. They are not the same thing. But you see more and more in the private sector this vesting. Most courts have held these divisions proper—and as I stated California's court awarded a malpractice suit of \$100,000 against an attorney that didn't include military retired pay.

Military retired pay has not been allowed to be considered property by the courts. And when they have considered it property, this is the kind of formula that the courts have normally used to divide the property. It is considered as a division of property rather than alimony or support, if you see what I am trying to say.

Mr. WYATT. Let me get to that point though. It is a division of property. What if the wife works during this time? Does this provision require the husband to get 50 percent of the wife's retirement benefits, whatever plan she might have been in?

Mrs. SCHROEDER. Sure. The court would take that into account. We can't do that in legislation.

Mr. WYATT. As I read this, you automatically assign a portion of the military retired pay to the wife.

Mrs. SCHROEDER. Or to the husband.

Mr. WYATT. What about her benefits that she has built up?

Mrs. SCHROEDER. If she is in the military at the same time?

Mr. WYATT. What if she is doing something else? She automatically gets 50 percent of the husband's benefits but he doesn't get—

Mrs. SCHROEDER. She doesn't automatically get 50 percent. She gets a pro rata share. It is following the way the court handles property settlements in the private sector.

Mr. WYATT. If you are not dividing her benefits that she might make—

Mrs. SCHROEDER. They would, because her benefits would either be in the private sector in which the courts do divide it in the same way. They often consider it a "wash." For example, if I were to get divorced with a public pension, and he with a private pension, under the pri-

vate pension they would be giving me a percentage of his vested entitlement; under the civil service now, which would apply to mine, the courts would give him a portion of mine. They would probably say, "It is silly for you to get half of his and he to get half of mine. Why don't you go ahead and work it out?"

Mr. WYATT. There is latitude in that system. That latitude is determined by the courts. I want to be sure you have that same latitude in this bill.

Mrs. SCHROEDER. Mr. Wyatt, right now the way it is, he could get half of hers in the private sector and she couldn't get any of his. It is all a one-way street. That is what I am trying to say.

The courts can't tap military retired pay. This bill will allow military retired pay to be treated in the same manner that pension benefits are treated in the private sector when the courts deal with it.

The real problem is most spouses can't work in the military long enough to ever vest. It is probably very, very few—maybe one-half of 1 percent.

Mr. WYATT. What if they both retire and she marries another military person?

Mrs. SCHROEDER. It would depend on his status and where he was. Did he have a prior spouse?

Mr. WYATT. The prior spouse is the woman in question.

Mrs. SCHROEDER. No.

Mr. WYATT. She has divorced a retired military individual. She is married to a military individual who retired.

Mrs. SCHROEDER. All right.

Mr. WYATT. Then she is getting the full benefit of retired pay from her current husband and half the benefit from the former husband?

Mrs. SCHROEDER. Not if she remarries. She would probably lost that right.

Mr. WYATT. Does your bill cover that?

Mrs. SCHROEDER. It could cover that; yes.

Mr. WYATT. It could cover it, if the courts have made that ruling.

Mrs. SCHROEDER. You have to make sure the second—

Mr. WYATT. Getting to my point, your bill does not require automatically that 50 percent?

Mrs. SCHROEDER. No; not 50 percent. It could be 25 percent.

Mr. WYATT. Whatever it may be, the mandatory provision is what I am trying to get to.

You have a mandatory provision in this bill. What if it is a no-fault divorce?

Mrs. SCHROEDER. I have a mandatory provision in the bill. I like that. I am saying there are some people that don't like that. In the foreign service, what they put in there is, the pro rata is assumed but that the court can set it aside.

If you don't like my mandatory provision, we could lift that provision out of the foreign service bill. That is, at least, a way to set it aside. My experience has been the court has looked at the mandatory provision and said in all States, this and this and this," and they do the property division.

If it worries people and they think it is a problem, you can then put only the presumption in, and that would cover it.

Mr. WYATT. Thank you.

Mr. NICHOLS. Pat, let me pose a hypothetical situation, which may be a little farfetched. Suppose the gentleman from Texas married an Army nurse, and he lived with this Army nurse for 10 years, and she is retired. Does he have any rights under your bill?

Mrs. SCHROEDER. Yes.

Mr. NICHOLS. The same?

Mrs. SCHROEDER. Yes. It isn't just a one-way street.

Mr. NICHOLS. Mr. Emery.

Mr. EMERY. Thank you, Mr. Chairman.

A few minutes ago, I think you started to give us an example relating to social security. How does the 10-year vesting provision under your bill differ from that of the social security system?

Mrs. SCHROEDER. It really doesn't. The social security vests after 10 years of marriage. We lowered it to 10 about 3 or 4 years ago. This says you have no property right to the pension unless you have been married 10 years.

Mr. EMERY. There is a fundamental difference. You are talking about a percentage of the military person's own benefit; is that correct?

Mrs. SCHROEDER. Except, actually the social security is a much stronger case for not having a vesting provision, because you pay in part of your salary to social security.

Mr. EMERY. The difference is, I believe, under social security you are not contesting an entitlement to the person's own benefits but a benefit in your own right?

Mrs. SCHROEDER. They are not subtracting the spouse's benefits from the husband's. That is correct.

Mr. EMERY. The final difference between social security and yours, under the social security system, you are providing another benefit equal to a percentage of his own.

Mrs. SCHROEDER. That is right. In social security, you must remember he is paying in all the time. Military pensions are 100-percent Government subsidized.

Mr. NICHOLS. Mr. Dougherty.

Mr. DOUGHERTY. What is your comment on the idea if a woman remarries she would lose the benefits? Not being a lawyer, I am not familiar with what the other circumstances are.

Mrs. SCHROEDER. In many circumstances, that has happened. It depends on the case. Sometimes you don't want to put people in the position which we have done a lot in this country of forcing them to live together, older people to live together so they don't lose benefits. I think you want to look at this.

In other words, I treat this really as a property right. If a couple had a house they bought during that 10 years and they got a divorce, she would get the money from half the house and he would get the money from half the house. If she remarried, she wouldn't have to give back half the house.

I see the pension the same way. He was or she was able to accrue the pension benefits because they were both working together during that 10-year period. It really is a property right and not like alimony or support. I think it should be that way; because otherwise you encourage people to have to play all sorts of games—live together and do all sorts of things—not to lose it.

That is why I like the pro-rata treatment, viewing it as a property right they both earned during the 10 or 20 or 30 years of creditable service, just like you would if you were buying a house or car.

Mr. DOUGHERTY. How many States have no-fault divorce?

Mrs. SCHROEDER. Now we have 47 of the 50. Since 1974, there has been a real movement in that direction.

Mr. Dougherty. I am concerned about the situation in which a military man, not agreeing to a divorce, would simply desert her.

Mrs. SCHROEDER. Well, I think most States, after a period of desertion, allow divorce.

Mr. DOUGHERTY. A legal separation?

Mrs. SCHROEDER. Yes. Now it is automatic. Now that no fault is in, it is automatic after a certain period of time.

Mr. DOUGHERTY. Thank you. That is all I have, Mr. Chairman.

Mr. NICHOLS. Mrs. Schroeder, did I understand you to say you feel the survivor benefits ought to be mandatory?

Mrs. SCHROEDER. I think they should be mandatory unless the spouse, be it male or female, signs off.

For example, my spouse should be entitled to my survivors' benefits unless he sits down and says, no, I don't want them. I shouldn't spring it on him when he becomes a widower, "You get the kids and no money."

I just think both parties should make that decision—once again, because both parties contribute to helping earn that income and those benefits. And I just think that we have to treat them as equal economic partners in that.

Mr. NICHOLS. In this morning's Washington Post, I read a very interesting article, addressing survivors' benefits. If a man divorces his wife, we will say, and he has the 55-percent survivor benefit annuity made out to her previously, under current law, he cannot elect to make it out to her, in part, and to the new wife, in part; he is precluded from doing that.

Does your bill handle that?

Mrs. SCHROEDER. By having both spouses deal with that, I think we should give them the flexibility to change that. No, he should not be able to retract the right of the first spouse, if she was married during his creditable years of service.

What my bill would allow: two surviving spouses W-1 and W-2, splitting the survivor benefits in that instance.

Mr. NICHOLS. Does it mandate it be split?

Mrs. SCHROEDER. It mandates if there is a survivors' benefit, it be split. The surviving spouse, W-1, gets the percentage that equals the number of years of marriage while in the military over the total years of military service, and W-2, gets the remainder. That is how you would split that survivors' benefit in that instance.

Mr. NICHOLS. Mrs. Byron.

Mrs. BYRON. No questions.

Mr. WYATT. One short question: Mrs. Schroeder, the President's Commission on Pension Policy interim report recommended that the divorced spouse be permitted to have part of the pension, in general. Is this to be handled by the courts?

Mrs. SCHROEDER. They recommend that it be treated that way. The formula in the bill is the formula that most courts have used in the private sector. That is where it came from. We are not mandating all courts use this system; but this is how they have figured it out in the past.

It really seems to be standard operating procedure. I think almost anyone in family law uses that when determining how the property settlement should be devised.

Mr. WYATT. Thank you.

Mr. NICHOLS. Thank you, Mrs. Schroeder.

The next witness is Mr. Fisher from Virginia.

**STATEMENT OF HON. JOSEPH L. FISHER, A REPRESENTATIVE
FROM VIRGINIA**

Mr. FISHER. Thank you, Mr. Chairman, I appreciate this opportunity.

I have introduced a bill to permit the Department of Defense to comply with the terms of court-ordered property settlements in divorce cases involving retired military personnel.

I also want to compliment you for holding these hearings. It is a real problem faced by many of my constituents, as well as others over the country.

Unfortunately, divorce is becoming a common occurrence in our society. Many retirement and other income maintenance programs were designed when family structure was relatively stable. As our society undergoes changes, the policies designed for the old society must change also. When divorce was rare, the major concern for spouses in a retirement program centered on survivor benefits. That remains a concern, but interests of divorced spouses of retired personnel must also be considered now.

Many people think that retirement benefits earned during the time that a man and woman were married should be considered part of the joint property to be divided at the time of the divorce. Some State divorce laws already recognize this joint interest in retirement income. My bill would make it possible for divorced spouses to receive a portion of the retired pay of former military personnel if such payment is part of a court decree or property settlement. This bill parallels Public Law 95-366, a 1978 law which permits the Office of Personnel Management to honor court decrees granting part of a civil service retirement annuity to a divorced spouse. The Foreign Service also has this provision.

In no way does this bill provide for an automatic sharing of retirement benefits. The State divorce courts would continue to have jurisdiction over the division of property at divorce. A court will have to decide that a spouse is entitled to a portion of the retired pay and then she—for we are talking about women for the most part—must apply for it. My bill requires the Department of Defense to notify the retiree that a deduction is to be made from his retirement benefit for payment to the divorced spouse. Unless an error has been made, such as incorrect identification, the retiree would not be able to stop the deduction.

Most of the spouses, the women, who will benefit from this bill are those divorced after 15, 20, or more years of marriage. Many of them

were good military wives, following their husbands from post to post, around the country and overseas, never having the time to make careers for themselves outside the home.

For various reasons their marriages fail after many years. The wives, usually are in their late forties or fifties, are either unable to find jobs or find jobs at low salaries. They often need financial help for the present. They will almost certainly need help in their retirement years because they will have very little if any credit for retirement benefits of their own.

If the divorce court agrees that the wives should receive some shared benefit from their husbands' service, then the law should not stand in the way of their obtaining the money. This bill is far from a solution to the financial problems of older divorced women, but it is a step toward helping them.

Another problem, not addressed in my bill, is the continuation of benefits after the retiree dies. As a divorced spouse, the woman is not entitled to a survivor benefit under the present law. This is a serious deficiency because the death of the retiree means the cessation of all payments, whether made voluntarily by the retiree or under court order as in my bill.

I would propose amending my bill to extend benefits to divorced survivors. I will be introducing a new bill for that purpose. Thus, if a court-ordered property settlement included survivor benefits, the retiree would be permitted to take a reduced benefit to provide the protection for his divorced spouse and the benefit could be paid after his death. This addition could be modeled on a provision included in the Foreign Service Personnel Act amendments recently reported by the Post Office and Civil Service Committee.

I hope that the committee will take favorable action on my bill, H.R. 6270, as soon as possible to provide divorced military spouses the same treatment already permitted divorced civil and Foreign Service spouses. In addition, I hope that the concept of my bill will be extended to survivor benefits.

Thank you, Mr. Chairman.

Mr. NICHOLS. Thank you, Mr. Fisher. As I look at your bill and Mr. Hance's bill, it seems to me that the major difference between these two bills resides in the additional provisions contained in your bill related to operating procedures; that is, the specifications that finance officers charged with making payments cannot be sued for moneys disbursed in accordance with the valid court order requirement for time and location and so forth.

Do you feel very strongly about these additional provisions in the bill?

Mr. FISHER. These are reasonable procedural safeguards modeled on provisions in other programs.

Mr. NICHOLS. You seem to make a specific point that your bill in no way mandates that the spouse will get 50 percent or 25 percent. You leave it up to the court in the State involved in there.

Mr. FISHER. Yes.

Mr. NICHOLS. Why do you feel they should not mandate this?

Mrs. Schroeder makes the argument that the lady lived with the husband for 10 years or better.

Mr. FISHER. Well, that is probably the principal difference between this approach or Mr. Hance's as I understand it, and Mrs. Schroeder's.

I am willing to rest with the settlements arrived at in the regular process in the various States. It would probably take a little time, should my bill pass, for divorce lawyers and judges and so on to learn about it. But it wouldn't take too long. I would assume that lawyers representing spouses who might be in this situation would point out this possibility at the time settlement was considered and arranged, and then it would be up to the settlement and the parties to the settlement to work that out.

I well realize that there could be differences among States in the way this matter is dealt with. But it does seem to me there is a good deal of virtue in sticking primarily with the way of handling these matters that we have been following.

Mr. NICHOLS. Then your bill would be retroactive to the extent that if a court had ordered a certain payment in 1979 or 1978, your bill would permit that attorney now to go into the military and say hold this back.

Mr. FISHER. With respect to new settlements being reached.

Mr. NICHOLS. To new settlements being reached?

Mr. FISHER. I am not entirely certain of that point. Perhaps it is more accurate to say it is not addressed explicitly in my bill. However, the way it is done in various States would continue.

Mr. NICHOLS. I think that is a rather important feature. I know there will be a lot of interest in the retroactivity, and how far back you are willing to go, whether you go 10 years, 5 years or 1 year, or would it be effective on the President's signature?

Mr. FISHER. I believe, Mr. Chairman, the bill might be amended to do that, but it doesn't do it as now written.

Mr. NICHOLS. Mr. Wyatt.

Mr. WYATT. Thank you, Mr. Chairman.

Mr. FISHER. I guess we go back to the problem I was partially addressing to Mrs. Schroeder. Now I want to turn it around. What if the court did not address the question under your bill? For some reason the attorneys did not address the question of retirement benefits, or the division of benefits. Would the benefit then go entirely to the husband?

Mr. FISHER. It would, unless the settlement specified otherwise.

Mr. WYATT. So, if by some chance the settlement did not incorporate a division, then the retirement benefit would go entirely to the husband?

Mr. FISHER. That is correct.

Mr. WYATT. This is the problem I was getting to with Mrs. Schroeder. I don't necessarily like the fact it is mandatory under all circumstances.

At the same time I can see a problem if somehow a prorata share is not defined in the bill. Would you object to it being mandatory if it was not addressed by a court settlement?

Mr. FISHER. I don't think so. Although the way the bill is put forward now, it relies on word getting around fairly rapidly. So that divorce settlements would be made in the light of the new legislation.

I hesitate to go very far in a mandatory direction; because I wish

to preserve the tradition or the integrity or the standing of decisions made in the divorce courts in the several States.

Mr. WYATT. Of course, if the divorce courts made a decision, it would override the law, wouldn't it? What I am saying is that if there was no decision made, that there would be mandatory provisions in here? In other words, if it was overlooked?

Mr. FISHER. Yes. That is a possibility.

I would be interested in looking into that.

Mr. NICHOLS. Mr. Emery.

Mr. EMERY. No questions, Mr. Chairman.

Mr. NICHOLS. Mrs. Byron.

Mrs. BYRON. With the military family that is constantly on the move, and quite frequently they have just moved into an area when the divorce proceedings start, it is very difficult for them to go into a court where they are not familiar with the laws of that State. Until you get this concept well defined throughout the country, that this is a part of the formula that should be used in military divorce cases, I think you are going to have a tremendous drawback for those individuals that are being represented. This gives me a lot of concern.

I think what Congressman Wyatt was driving at was that there are benefits there that I think quite frequently people will be unaware of that should be considered in a divorce settlement. Because I think quite frequently, due to the situation and the nature of the case, unless you have divorce attorneys that are used to dealing with military cases, this is a factor that is going to be overlooked in many instances.

Mr. FISHER. That is possible. My impression is that the grapevine works rather efficiently among military people. At least that is the experience of a representative of a district that probably has more retired military than maybe any other part of the country. The grapevine is remarkable.

Mrs. BYRON. That is one factor that does concern me.

Mr. FISHER. Possibly there is some way of getting this possibility on the table at the time divorce settlements are worked out, without mandating that it be done. In a sense, mandate that it be introduced into the proceeding.

Mrs. BYRON. I think it has to be an option that is explained, and is exposed during the proceedings as opposed to something after everything is signed and sealed and will come forward 5 or 10 years later on, when it becomes a factor.

Mr. FISHER. My reaction is the same as to Mr. Wyatt. I would like to think about this, and if there is some way of changing this so that the possibility would have to be brought up when the parties are discussing the settlement, as opposed to mandating that it be done. That would preserve the tradition or the independence of the States courts, and at the same time make sure that this is not overlooked as a possibility.

I promise you I will give some thought to that, and try to introduce something that would be realistic here.

Mr. NICHOLS. Mr. Dougherty.

Mr. DOUGHERTY. No questions.

Mr. NICHOLS. Thank you, Mr. Fisher.

Mr. FISHER. Thank you, Mr. Chairman.

Mr. NICHOLS. Our next witness is Congressman Kent Hance from Texas who has mentioned his bill to me on more than one occasion.

I believe, Mr. Hance, you come from one of the eight States where you have community property settlements. Am I right.

Mr. HANCE. That is right.

Mr. NICHOLS. We are delighted to have you before the committee. You may proceed.

STATEMENT OF HON. KENT HANCE, A REPRESENTATIVE FROM TEXAS

Mr. HANCE. I appreciate your kindness in mentioning I had mentioned this to you on more than one occasion. I do appreciate your having these hearings. In thinking back, this committee spent a tremendous amount of time and effort on the physicians' pay bill, and I congratulate you on finally getting that thing worked out. I understand why this bill could not be heard at an earlier date.

I would like to request that my written statement be made a part of the record, and that I be allowed to just speak briefly. Then Carolie Mullan, a constituent of mine from Lubbock, Tex., would like to say a few words if that would be alright.

Mr. NICHOLS. Without objection.

Mr. HANCE. The one thing I would point out is in 1968, I started practicing law in Lubbock, Tex., where Reese Air Force Base is located. After handling several divorce cases I found one thing that was unusual. On retirement benefits you never could really get a serious consideration from an attorney representing a gentleman that was in the Air Force, simply for this reason: We will go ahead and stipulate she can receive half of the retirement benefits as of the date of the divorce. In other words, if they had been married 10 years and he was going to retire at the end of 20 years, then she would get one-half of the retirement for the first 10 years, which would come out at the end to be one-fourth of the total retirement benefits.

The problem is, they say sure, we will go ahead and stipulate to that. You put it in the property settlement agreement. Once it came time to try to collect the property settlement on the retirement benefits, however, you just could not do it. To do so it would cost you more than it would be worth, simply because people would move, they would move to other States. It would be hard to get service on them. It would be hard to get full faith and credit in another court in another State.

I think the thing that I would like to point out about my bill is that H.R. 3677, simply authorizes the appropriate secretary to issue two checks that reflects the court ordered division. I think this is the most important point.

In addition, this bill does not divide the retirement pay. I think if you pass the bill that divided the retirement pay you would be opening up a can of worms.

It would cost many of your military people, who would have to be reassigned, and you would almost have the military in the position of being a divorce court. I think it would be both difficult to administer and costly.

The State courts under my bill retain the authority to divide the retirement pay. The additional point I would make is that under the bill that passed for the Civil Service Commission back in 1978, the Commission is permitted to do simply what this bill would allow the

military to do, that is to split the checks in accordance with the division made by the State court. To do otherwise I think you would be infringing on the divorce law of each State which for the history of this country has been settled by family and domestic relations law of each State.

The other thing I would say in closing is that whether we like it or not, if you look at what is happening—Congresswoman Schroeder mentioned the number of divorces and I am talking as someone that was in the private practice and who had a lot of domestic relations cases—most of the people that come to see you, especially women that are married to someone in the military and getting a divorce their career has been their husband's career. These women are not in a position to go out into another career immediately.

The other thing is they spent 10 or 15 or 20 years with an individual. In doing so they must have worked to promote that individual's career. It is, as you said earlier, even emotional and very sad, if they are put in a position they cannot receive any retirement benefits. I think this bill addresses the problems without creating problems, in that the State courts still maintain the right to make the final judgment.

I would like for Mrs. Mullan to say a word at this time if it would be OK. I would point out this is one of the first bills I introduced after I was elected. I have been in contact with her, and I think her testimony will be very good.

[The statement of Hon. Kent Hance follows:]

WRITTEN STATEMENT OF HON. KENT R. HANCE

Mr. Chairman, Members of the Subcommittee: I am pleased to have the opportunity to speak to you today on the problems of the divorced military spouse. Specifically, I would like to discuss the difficulty encountered by a former spouse who has been awarded a portion of retirement or retainer pay. At present, if a retired military person whose retirement benefits are the subject of a pending or final divorce action leaves the jurisdiction of the court, it is practically impossible to assure that payment will be made in compliance with court ordered division of retired benefits.

The gravity of the situation is evident in the following hypothetical example which unfortunately is typical:

"A woman who was married for 23 years to a member of the armed services is divorced. The court, realizing the contribution she made to her husband's career and to the raising of their family, awarded her a portion of the retirement benefits. They moved often, as is common in the military, and the social norms of just a few years ago did not favor women entering the working world. Obviously, she never had the opportunity to pursue a career. Like many women connected with the military, her career was her husband's. Shortly after the divorce was final, her husband disappeared, perhaps to another State, perhaps to another country. In the three years since the divorce was final she has never received one penny of the retirement benefits that were awarded to her by the court. Trying to locate her former husband to serve him with notice of contempt of court and to obtain future benefits resulted in substantial attorney's fees, or perhaps she did not have the resources available to finance even in part such a search. Often the only recourse in such cases is federal assistance in the form of food stamps or Supplemental Security Income (S.S.I.) at substantial cost to the taxpayer. This is a classic example of a situation where a legal right is rendered meaningless because of the absence of an effective remedy."

Retirement plans are perhaps the single most valuable asset of many middle class families. When pension plans are divided by the courts, private insuring companies, after being presented with the proper documents, comply with the courts by sending two checks—one to each spouse—every month. Why can't military retirement benefits that have been divided by the courts be treated in the same manner?

Former spouses of Civil Service personnel faced the same situation until 1978 when Public Law 95-366 amended the U.S. Code authorizing the Civil Service Commission to comply with court orders that divide Civil Service retirement plans. H.R. 8771 which became Public Law 95-366 passed on January 23, 1978 under suspension of the rules by a vote of 369 to 7. The measure passed the Senate by voice vote. In the Committee report 95-713 both the Civil Service Commission and OMB supported enactment of this proposal. Not one member of the Armed Services Committee who was present to vote on H.R. 8771 voted against the bill. Clearly, there is support within the committee for remedial legislation of this type. Clearly, precedent has been set and the intent of Congress expressed in this regard.

On April 24, 1979, I introduced H.R. 3677 which is nearly identical to Public Law 95-366. By amending title 10 of the U.S. Code to authorize the Secretary concerned to comply with the terms of a court decree, court order, or property settlement in connection with a divorce, annulment, or legal separation of a member or former member of the uniformed services receiving retirement pay, this legislation would provide a simple, low cost means of solving the problem of enforcement of the terms of such court orders.

H.R. 3677 simply authorizes the appropriate Secretary to issue two checks that reflect the court ordered division. This proposal does not divide the retirement pay. The State Courts retain this authority. The bill does not propose unusual or untested solutions. It does not even address the issue of garnishment of delinquent payments—it merely offers the same protection and right to military spouses that is available to Civil Service and privately insured spouses.

I thank you for your attention and urge your favorable consideration of H.R. 3677.

Mr. NICHOLS. Before you present your testimony, would you outline a little bit about Texas law?

Texas is one of the eight States—

Mr. HANCE. That has a community property law, that is right.

Mr. NICHOLS. Your bill would apply to all 50 States, though?

Mr. HANCE. Right.

Mr. NICHOLS. Across the country.

Mr. HANCE. Right.

Mr. NICHOLS. Do you consider the current Federal law inadequate in Texas divorce cases?

Mr. HANCE. No question about it. I think they are in every instance, simply because the collection procedure—it would not affect the domestic relations laws of any State. It would only affect the ability to collect on the retirement.

I think there is no question about it. In a community property law State probably the results are a lot more severe than they would be in other States, maybe.

STATEMENT OF CAROLIE MULLAN

Ms. CAROLIE MULLAN. Thank you, Mr. Chairman, members of the committee. I would like to thank you for the opportunity to speak today and for giving us the time for this hearing.

I was married for 26 years to an officer in the Air Force who is now retired. My husband enlisted in the Air Force in 1952, 1 year after our marriage, and retired from the service in 1976, 1 year before our divorce, which occurred in Texas, one of the eight community property States.

Because we were divorced in a community property State we divided all assets of our marriage according to the community property principles of the State. The marital property in a community property

State also includes retirement plans, perhaps the single most valuable assets of most middle class families today.

The courts of the noncommunity property States take cognizance of the value of the retirement plans as a marital asset by the allocation of alimony. Alimony is not an option for a State court in many of the community property States. When State statute mandates a fair and equitable division of the community property in divorce actions, the courts in the community property States have no choice but to divide the retirement funds with the knowledge that because of the lack of enforcement procedures at the Federal level, the division may in actuality be grossly unfair to the spouses of retired military persons.

This division occurs, in these States, whether the retirement fund is sponsored by a private company, the Federal civil service, or the military. The difference lies in the enforcement of these respective divisions. Private insurance companies, fearing law suits, voluntarily send two checks, one to each spouse, when ordered to do so by the State courts. Public Law 95-366 amended title 5 of the United States Code in 1977 and authorized the Civil Service Commission to comply with court orders and send two checks, one to each spouse when so ordered by the courts.

I call your attention to the language of the report of the Committee on Governmental Affairs concerning the need for this 1977 legislation. I quote:

In the Committee's view, the enactment of legislation which permits Federal cooperation with state law and court orders is clearly needed. This committee shares the opinion of the Civil Service Commission that H.R. 8771 (which became 95-366) is the proper approach to the problem of benefits for former spouses.

In my divorce, a Texas court in order to satisfy the community property laws of the State divided the military retirement pay into two equal shares, since the military career of my husband had taken place entirely within the years of our marriage. I received from my husband my share of the retirement for exactly 4 months in 1977. At the end of that time he left the State, and the jurisdiction of the court, taking great pains to hide his whereabouts from me. At the present time there is no way to force a retired military person to pay a share of the retirement pay to a former spouse, as ordered by the State court, if that military person chooses to leave the jurisdiction of the State Court, and elects to disregard the orders of the court.

As of this moment my former husband owes me an amount in excess of \$24,000, an amount representing my share of the retirement pay for the past 3 years. During this period my attempts to locate him and collect this debt have cost me more than \$3,500 in attorney and court fees. I have yet to receive any portion of the amount owed to me.

There is no way to accurately assess the numbers of persons affected adversely in this manner. We have no organization capable of protecting our interests. We have no funds to stage elaborate lobbying and publicity campaigns. We have no method of identifying each other and making contact with each other. We have no government agency or department speaking for us, and yet it is a conservative estimate that thousands of former spouses of military persons are left with no direct retirement benefits as a result of these community

property State divorce actions, and the lack of enforcement procedures on the part of the Federal Government. These numbers are growing daily as courts continue to divide the military retirement plans.

These people so affected spent many years contributing time and effort to the joint marital enterprise. This joint enterprise included a career in the military, one of whose compensations was presumed to include a share in a retirement plan. Unprepared to support themselves adequately because of the demands and frequent moves of the shared military career, as well as the disadvantage of the advanced age at which they are catapulted into the work force, many are forced to avail themselves of welfare and other Government funded assistance or, the alternative, live at a near poverty level because they are being deprived of their own property, property which was awarded to them by the divorce courts of the States, but property which cannot be collected without the cooperation of the Federal Government.

The consequences of this inequitable situation have indirect effects as well as direct. One effect is the tremendous cost to State and Federal Government, in assistance and support to these persons, assistance and support which will only increase as the spouses age, and ultimately must attempt to exist on minimum social security benefits.

Litigation and litigation efforts thrive on this type of situation, adding to the problem of already crowded court schedules; litigation efforts that are expensive and generally futile, seldom enduringly successful. Another consideration is the effect on the retired military person who is all but encouraged by the present situation to break the law by refusing to comply with the court orders. It is easy to leave the State, and sometimes the country, and place themselves outside, and above the law; actions which must be emotionally and psychologically detrimental to these former members of the armed services of the U.S. Government.

This situation as it exists today, and as I have described it, is grossly discriminatory. Persons divorced in the 41 noncommunity property States are assured that their rights of property will be protected and enforced. One large group, the former spouses of military persons who have divorced in the community property States, and have received by order of their own State courts a previously determined share of the military retirement fund are being denied the equal protection of the law.

Congressman Hance's bill, H.R. 3677, does not propose radical, innovative action. It does not divide military retirement pay. It is remedial legislation which, if enacted, would allow the Federal Government to enforce the orders of the State courts by sending two retirement checks, one to each spouse, according to and only in the instance of, the orders of the courts of the State.

For these reasons I urge you to consider favorably H.R. 3677, which will remedy this basic injustice in our federalistic system. I thank you for the time and consideration you are giving this matter.

Mr. HANCE. Madam Chairman, since I am running a little late to make the vote, if there are no other questions for me—

Mrs. BYRON. You may be excused.

Mr. HANCE. If there are questions later I will be happy to come back and answer them.

Mrs. BYRON. While you are here, if you don't mind, this is putting you a little bit on the spot, but are you at all familiar with Mrs. Schroeder's bill in comparison with the one Mr. Hance is submitting?

Ms. MULLAN. Yes.

Mrs. BYRON. Do you have a position on the differences?

Ms. MULLAN. I approve of the concept of Mrs. Schroeder's bill because I think it is based on the same thing I am talking about. And that is, I think there is no other career in which both parties are so involved as there is in a military career, each contributing their own share to it. So I think benefits should also be shared. But, I think it is a little bit more of a radical step and maybe one we are not ready yet to mandate this sort of thing for the entire country. I think it is possible it would step on the State divorce courts instead of the Federal Government.

In this instance what we are asking for is simply assistance in enforcing the orders of the courts. It is an enforcement we cannot obtain any other way. There is no way to get it and get it collected under the Federal Government.

Mrs. BYRON. Thank you very much.

General Tice.

STATEMENT OF MAJ. GEN. R. DEAN TICE, USA, DEPUTY ASSISTANT SECRETARY FOR MILITARY PERSONNEL POLICY, DEPARTMENT OF DEFENSE

General TICE. Madam Chairman and members of the committee, I am Maj. Gen. R. Dean Tice, the Deputy Assistant Secretary of Defense for Military Personnel Policy. Today Mr. William R. Amis, the Assistant Director of Compensation is accompanying me. If you have no objection, Madam Chairman, I would like to submit my prepared statement for the record and summarize the major points for the committee.

The subject being addressed in the three bills under consideration today involves the treatment of military retired pay during divorce. I realize this is a subject that lends itself to emotional considerations, personal viewpoints, and differing conclusions. Because of this, we have attempted to address the bills against some objective goals.

First, we believe that any legislation should not place the Government in a position of liability resulting from a divorce decree. Second, we believe that the decisions of a State court should not be binding on the Federal Government with regard to individual rights. Also, we believe it is important that the fact of military service should not be relevant in determining the rights between spouses. Obviously, we believe that any legislation should be enforceable without administrative burden.

The divorce courts often consider military retired pay as an item of income or as community property, depending on the State laws, in the financial settlements of a divorce action. Military members, both active and retired, are subject to the rulings of the State divorce courts since the States exercise powers in domestic relations matters. Failure to comply with those decrees places members in violation of State law and subject to legal process. It has long been the Department's view that members are obligated by the terms of a divorce decree and are legally

required to meet the financial settlements set out by the State domestic relations courts.

The entitlement of individuals under retirement or pension plans is of concern to the administration. Recognizing that comprehensive national guidelines are needed, the President's Commission on Pension Policy was established, and legislation was enacted to complement the Commission's efforts. They are in the process of studying the Nation's pension and retirement programs and will be making their recommendations on appropriate measures that should be taken.

It is our understanding that one area under study is the status of divorced spouses under pension programs, and that the issue will be included in their recommendations. When the Commission was being established, the President asked for a moratorium on piecemeal liberalization in pension programs, except where essential. Consequently, we suggest that the committee may wish to defer action on the pending legislation until we have the benefit of the Commission's study and recommendations.

A divorced spouse is not entitled to a portion of a member's retired or retainer pay. That compensation is paid as a result of performing military duty, or as recompense for the physical inability to perform the duties of military service resulting from injury or disease.

However, in instances of divorce, there is an entitlement for a divorced spouse under the social security system. Since 1957, military service has been covered employment, and members are full participants, as are other wage earners. Under that system, benefits are provided for a divorced wife, a surviving divorced wife, and a surviving divorced mother.

Entitlement, and the resulting benefits, are based on the wage earner's covered employment which determines the primary insurance amount and the benefit level. Because of the military participation in social security, unlike other major Federal personnel systems, the divorced spouse of a military member does have entitlement status for social security benefits which other divorces of Federal employees may not have.

Against this background, I would like to discuss briefly the three bills under consideration.

H.R. 2817 would establish an entitlement status not specifically related to the performance of military duties. A divorced spouse of a member would be independently entitled to a portion of military retired or retainer pay by virtue of marriage. Additionally, entitlement would be extended to a portion of the survivor benefit plan annuity. As proposed, the bill does not incorporate amendments made in the survivor benefit plan by the enactment of Public Law 95-397. Also, the bill appears to establish a perpetual annuity entitlement notwithstanding whether a remarriage occurs before or after age 60.

The integration of SBP annuities with dependency and indemnity compensation payments also is interrupted. Although social security integration is preserved, the bill does not include the exemption feature enacted as a feature of Public Law 95-397. Because of the integration offset feature in the SBP, it is possible that neither a spouse or former spouse would receive any of the SBP annuity since the offset would be applied against the divided annuity.

Enforcement of this legislation would be extremely difficult. We would be required to establish new administrative, accounting, and pay systems to identify, validate and execute payments. Such systems would be subject to multiple variables, such as remarriage status, age, address changes, VA entitlement status, social security entitlement status, and interpretations of State laws.

With these considerations in mind, and the fact that the President's Commission on Pension Policy is addressing the status of divorced spouses, the Department of Defense does not believe that the bill should be favorably considered at this time.

H.R. 3677 and H.R. 6270, unlike H.R. 2817, does not establish an entitlement status. Its provisions are similar to the features of Public Law 95-366. Under these bills, the Secretary concerned would be authorized to comply with the terms of a court determination terminating a domestic relation. The provisions apply to members of the Armed Forces, rather than members of all the uniformed services. Additionally, H.R. 6270 provides certain operating procedures and requires the issuance of implementing regulations.

Madam Chairman, we have no objection with these bills, however, we do have some technical problems with the legislative language. We would be glad to work with your staff to resolve these concerns. Our concerns are on the dissimilar treatment of retired or retainer pay depending upon the form of financial determinations made by the courts—garnishment for alimony and child support versus financial settlements in a divorce decree.

Another concern involves amounts of retired pay waived for the award of VA disability compensation. Our final concern centers around the lack of authority to establish uniform procedures for the execution of payments under H.R. 3677 since other laws require other deductions or limits the amount of pay subject to process.

My statement for the record elaborates on these concerns. Although we have objection to H.R. 3677 and H.R. 6270, we believe that H.R. 6270 is more complete assuming the limitations and exclusions set out in other law and other statutes apply.

Madam Chairman that concludes my summary, and I would be glad to answer your questions.

WRITTEN STATEMENT OF MAJ. GEN. R. DEAN TICE

Mr. Chairman and Members of the Committee:

I am Major General R. Dean Tice, the Deputy Assistant Secretary of Defense for Military Personnel Policy. It is a pleasure to have the opportunity to continue working with this Committee and to present the views of the Department of Defense, on behalf of the Administration, as you consider three bills which address the treatment of military retired pay during the termination of a domestic relation. Today, I am accompanied by Colonel Aaron G. Dorough, the Director of Compensation and Mr. William R. Amis, the Assistant Director of Compensation.

Under the present construct of law, a divorced spouse has no entitlement to any portion of a member's retired pay. This compensation item is paid to the member as a direct result of performing military duty, or as recompense for the physical inability to perform the duties of military service resulting from injury or disease. Public funds are appropriated annually for this purpose and may not be diverted for other reasons.

The divorce courts often consider military retired pay as an item of income or as community property, depending on the State laws, in the financial settlements of a divorce action. Members, like other citizens, are bound by the decisions of the State courts. In order to complement this State process, the United States has waived immunity from suit to allow the garnishment of military retired pay to meet child support or alimony obligations resulting from a divorce.

Military members, both active duty and retired, are subject to the rulings of the State divorce courts. They are not exempt from the decisions of the courts and are legally bound to comply with the court decree. Failure to do so places them in violation of State law and subject to legal action. It has long been the Department's position that members are obligated by the terms of a divorce decree and are legally required to meet the financial settlements set out by the State domestic relations court.

I'm sure you are aware that the President's Commission

on Pension Policy has been established to perform a comprehensive review of the Nation's retirement programs. When the Commission was being established, the President asked for a moratorium on new piecemeal retirement liberalizations, except where essential, pending completion of the study. The Congress passed legislation, that was enacted, recognizing the Commission's charter and that effort. It is our understanding that the Commission will be addressing the status of divorced spouses under the pension and retirement programs. In recognition of the Administration's efforts on pension policy and the Congresses' endorsement of that effort, the Committee may wish to defer action on the three bills pending issuance of the final report by the President's Commission on Pension Policy and consideration of their recommendations on the status of divorced spouses.

Mr. Chairman, before I discuss the three bills I would like to make an observation. The matter under consideration involves the termination of a marriage and the conditions under which that union is dissolved. The issue is very personal and one that lends itself to emotional involvement. Personal attitudes and beliefs are bound to play a role in an individual's perception of how the matter should be addressed. Without doubt, each viewpoint, either pro or con, has compelling arguments that support the differing conclusions. Consequently, we believe that the matter should be considered as objectively as possible without emotion, since the legislation has the potential of effecting retired members and survivors of members, plus the men and women currently serving on active duty who may be involved in divorce actions.

In matters concerning domestic relations, it has long been held that the subject falls under the jurisdiction of the individual States. In a recent ruling of the Supreme Court (99 S. Ct. 802), the opinion of the court held that "...Insofar as marriage is within temporal control, the States lay on the guiding hand. The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not the laws of the United States." Against this background of State vs.

Federal jurisdiction, we believe that there should be several objectives against which any legislation on the subject should consider. We do not believe that the Federal Government should be placed in a position of liability resulting from divorce decrees. Also, the decisions of state courts should not be binding on the Federal Government as to the rights of individuals. Additionally, the nature of federal service or employment should not be a criteria in determining the rights of individuals in a divorce action. Obviously, any legislation should be enforceable without complex administrative procedures.

Unlike the other major federal personnel systems, active military service is considered "covered employment" for social security purposes. Public Law 84-881, the Servicemen's And Veterans' Survivor Benefits Act of 1956, brought military personnel on active duty into the contributory Social Security system effective January 1, 1957. As full participants in the Social Security system, military members are, in general, entitled to the same benefits and are subject to the same eligibility criteria and rules as are other employees. By virtue of that participation, there is an entitlement to social security benefits that accrues to a divorced wife.

There are three categories of divorced wives that are entitled to social security benefits. Section 402(b) of title 42, United States Code, sets out the criteria for a divorced wife. 42 USC 402(e) addresses the benefits for a surviving divorced wife, while 42 USC 402(g) provides benefits for a surviving divorced mother. I would like to discuss the general features of these benefits.

A divorced wife is entitled to social security benefits when she becomes age 62 or older. In order to qualify, the former wife must be unmarried and have been married to the wage earner for at least 10 years or more. The 10 year criterion became effective January 1, 1979; prior to that time, the duration of marriage had to have been at least 20 years. In order to be eligible, the divorced wife may not be drawing a benefit based on her own covered earnings. The benefit derived is based

on the covered wages of the worker. From that base, the Primary Insurance Amount is calculated, and the divorced wife is entitled to that benefit, depending on her age at date of application.

A surviving divorced wife is also entitled to social security benefits, if the marriage was for 10 years or more. The divorced wife must be unmarried and age 60 or older. If she is disabled, age 50 is the rule. In this situation the surviving divorced wife may not be entitled to a surviving divorced wife benefit if she is entitled to benefits on her own covered earnings. Under this authority, the survivor benefit is based on the wage earner's covered earnings and the resulting Primary Insurance Amount.

A surviving divorced mother is also entitled to benefits from social security. To be entitled to this benefit, the surviving divorced mother must be unmarried and have a child or children in her care entitled to the child/children's benefits. There is no time of marriage requirement for this benefit. As in the other cases, the benefit is not available if the surviving divorced mother is entitled to a social security benefit based on her own covered earnings. The benefits under this entitlement are based on the Primary Insurance Amount calculated from the wage earner's covered employment earnings.

In each of these three entitlements, the benefits available to a divorced wife are not subject to the maximum family benefit that would normally prevail.

With these observations in mind, I would like to discuss each of the bills:

H. R. 2817 would provide that a former spouse of a member, who is married to that member for ten years or more shall be entitled to a portion of the member's retired pay. Additionally, entitlement would be established to a portion of the annuity for a surviving spouse of the member, and the bill would provide that a member may not elect not to provide a survivor annuity without the consent of the spouse and any former spouse.

Section One of the bill would add a new subchapter III to chapter 73 of title 10, United States Code, to provide a former spouse annuity. To be eligible for such annuity,

the former wife or husband must have been married to a member for ten or more years. The bill provides a maximum annuity amount of up to 50 percent of retired or retainer pay adjusted at the same time and by the same percentage as adjustments to military retired pay under the provisions of 10 USC 1401a. The annuity to a former spouse would commence when the member become entitled to retired or retainer pay or the first day of the month in which the individual become a former spouse, whichever occurred later. The proposed annuity would terminate upon: the former spouse's death or remarriage before age 60, entitlement to an annuity under the Survivor Benefit Plan (SBP) for members of the uniformed services, entry on active duty, or death of the member. The former spouse annuity would be reduced from a member's retired or retainer pay under prescribed regulations for members of the uniformed services.

In addition to establishing a former spouse annuity, the proposed legislation amends the SBP for members of the uniformed services by extending eligibility to a former spouse who had been married to a member for at least ten years. Public Law 95-397, enacted September 30, 1978, amended sections 1447, 1448, 1450, 1451, and 1452 of title 10, United States Code. In certain instances, the amendments proposed by H. R. 2817 do not conform to the Code as amended; however, the intent of the proposed legislation is to require a member to provide SBP coverage to a former spouse. As proposed, the SBP former spouse annuity would be based on the retired or retainer pay to which a member was entitled, notwithstanding any reductions in retired or retainer pay resulting from that pay which would be required by the proposed reductions for a former spouse annuity. A member's election to participate or not participate in the SBP would be dependent on joint agreement among the member, the spouse, and former spouse, to include notification by the Military Department to a spouse or former spouse of decisions not to participate in the SBP. Additionally, the bill interrupts the integration of SBP payments and Dependency and Indemnity Compensation paid by the Veterans Administration. In instances of dual entitlement by a

spouse or former spouse, the SBP payment would be subdivided between the eligible spouse and former spouse. H. R. 2817 preserves the integration of social security benefits but does not include the exemption feature enacted as a provision of Public Law 95-397. As proposed, however, the offset of social security benefits based solely on military service has the likelihood of eliminating the entire SBP annuity as divided between a spouse and former spouse. The bill further provides that former spouse annuities are recalculated if a member has a former spouse and the member elects participation in the SBP as revised by the bill.

During divorce proceedings and the financial settlements that are made in the domestic relations courts of the States, military retired pay may be considered as income. Under certain States' jurisdictions, retired pay may also be considered as property, rather than income. Additionally, the benefits to which spouses are entitled as dependents of members are also often considered by the courts. The financial settlements made by the State-courts reflect the judicious application of State law and members are legally bound by the decisions of those courts, as are other individuals. To complement State-court decrees, federal law has been enacted to permit garnishment of military retired pay to meet alimony and child support payments. It can be viewed that legislation extending this entitlement status would be interjecting certain State's community property rights into federal entitlements. Although community property laws exist in eight States, the majority of divorce law has evolved from common law. This is a complex issue that transcends entitlement matters, and one that may be more appropriate for consideration through the judicial systems. The Supreme Court decision I cited earlier did address a divorced spouse's entitlement to a portion of a Railroad Retirement Act pension. The State court applied the State's community property law. The Supreme Court opinion, based on an interpretation of a restrictive clause, reversed the State's ruling and held that

benefits and expected benefits resulting from the Railroad Retirement Act are not community property and not subject to division.

As we have interpreted this bill, we see it as an attempt to assure an income level for divorced spouses. I am sure that in certain instances there is no benefit available. However, for the divorced spouse of a military member, there is an entitlement from the social security system. That benefit is not present for federal employees since that employment is not under the social security systems. With this consideration in mind, and the fact that the President's Commission on Pension Policy is addressing a similar issue, the Department of Defense does not believe that the bill should be favorably considered at this time.

Mr. Chairman, I would like to now turn to H. R. 3677, and H. R. 6270. Those bills would authorize the Secretary concerned to comply with the terms of a court decree, order, or property settlement in connection with the divorce, annulment, or legal separation of a member or former member.

The provisions of H. R. 3677 and H. R. 6270 are similar to the features of Public Law 95-366, September 15, 1978, applicable to the Office of Personnel Management and the civil service retirement system. Under the provisions of these bills the Secretary concerned would be authorized to comply with the terms of a court determination in connection with terminating a domestic relation. Either total or partial retired or retainer pay shall be paid to another person as provided by the court decree. The provisions apply to the retired or retainer pay of Army, Navy, Marine Corps, Air Force, and Coast Guard members. It does not apply to the retired pay of members of the uniformed services retired from the Public Health Service and the National Oceanic and Atmospheric Administration. The bills do not establish an entitlement status to a portion of a member's retired or retainer pay for the former spouse of a member. Additionally, H. R. 6270 sets out certain operation procedures for the compliance with

the terms of the court order and requires the issuance of regulations to implement the features of the bill.

The Department of Defense is concerned that the subject legislation will create a dichotomy with regard to the disbursement of retired or retainer pay. Public Law 93-647, section 459, waived the United States' sovereign immunity from suit to allow garnishment, or similar process in the nature of garnishment, for the enforcement of child support and alimony obligations of retired members of the uniformed services. The Tax Reduction and Simplification Act of 1977, Public Law 95-30, section 509, made substantial changes in the garnishment provisions, clarified Congressional intent, and authorized issuance of regulations to establish uniform procedures. Under this law, the definition of alimony specifically excludes payments or transfer of property made in compliance with any community property settlement, equitable distribution of property, or other division of property between the spouses. It does not include disability retired pay computed under laws in effect before October 1, 1949 or the amount of retired pay based on percentage of disability. Additionally, a limitation was placed on disposable earnings subject to garnishment. Disposable earnings are that part of an individual's retired pay remaining after lawful deductions. Effective June 1, 1977, a limit of 50 percent was placed on the disposable earnings subject to garnishment or similar process for child support and alimony for a person supporting a second family, to include a spouse or dependent child. A limit of 60 percent of the disposable earnings was established for a person who was not supporting a second family. These percentages are included by an additional 5 percent in each situation if there are outstanding arrearages more than 12 weeks old. A State garnishment procedure may not attach more than 65 percent of a retired member's retired pay. By contrast, H. R. 3677 and H. R. 6270 would permit the payment of the entire or partial amount of retired pay, whether that pay is based on years of active service or service connected disability. The operation of the garnishment laws and H. R. 3677 and H. R. 6270 if enacted, would result in different treatment to retired members

depending upon the form of financial determinations made by the courts; garnishment for alimony and child support vs. financial settlement in a divorce decree.

For further consideration is the fact that members, retired for nondisability or disability reasons, may be entitled to the payment of disability compensation from the Veterans Administration. The amount of such compensation is determined by the independent evaluation of the Veterans Administration and is based on the degree of impaired earning capability resulting from a service-connected disability. If disability compensation is awarded, the member must waive that portion of retired or retainer pay equal to the amount of the disability compensation. Under the provisions of H. R. 3677, and H. R. 6270 disability compensation payable by the Veterans Administration would be exempt from process. In many instances, the disability compensation exceeds retired or retainer pay, or constitutes a large portion thereof.

The bill provides that payments of retired or retainer pay which would otherwise be made to a member shall be paid to another person. As presented, we assume that certain portions of retired or retainer pay would be exempt from the provisions of the bill, similar to those under Public Law 95-30 or when required by other sections of law. However, under H. R. 3677 there is no authority for the Secretary concerned to establish uniform procedures for such payments.

Mr. Chairman, we have no objection to H. R. 3677 and H. R. 6270 however we do have some technical problems with the legislative language in these bills. We would be glad to work with your staff to resolve these concerns. As we view the intent, it appears that the bills are aimed at removing obstacles as to the treatment of military retired and retainer pay in the same manner as private pension rights. We agree that a member's federal entitlement to retired or retainer pay should not be interrupted by state process. Additionally, we agree that the entitlement to retired pay should not be applied prejudicially against a member by virtue of a service career. I do want to emphasize, however, that the various

States view entitlement differently. Some consider it income, while others consider it property. The financial arrangements of a divorce decree depend on the State laws being administered and interpreted by the State courts. Although we have no objection to H. R. 3677 and H. R. 6270, we believe that H. R. 6270 is more complete, assuming the limitations and exclusions set out in Public Law 95-30 and other statutes apply.

Mr. Chairman, that concludes my prepared statement. I would be pleased to answer questions that the Committee may have.

Mrs. BYRON. Thank you, General.

First of all, let me apologize to those of you that my colleagues had a vote on the floor and they should be returning shortly. They let me vote first because they thought I could run faster.

General, let me ask you a personal question. You are married, are you not?

General TICE. Yes, I am.

Mrs. BYRON. Obviously, you have given some personal opinions in regard to the bills that we have been discussing today?

General TICE. Certainly.

Mrs. BYRON. Would you mind reflecting with us a little bit?

General TICE. My wife probably deserves more of my retirement than I do. But I think the issue here is that the federal system would be violating what is left to the States, with reference to settlement of property.

The two bills, the ones introduced by Congressman Fisher and Congressman Hance, we think make sense because that brings the Armed Forces in conformance with what the civil service provisions are. And, of course, would alleviate the problems that were just testified to preceding me, wherein the spouse, the divorced spouse, moved out of the State and the divorce court has no jurisdiction. We don't think that is correct.

The Department could support the provisions of those two bills that brings them in conformance with what we have for civil service, assuming the technical points which I refer to in my State for the record are considered.

Mrs. BYRON. OK. Let me ask another question in that same area. Would you support an amendment to the survivor benefit plan that would allow a military retiree to provide a survivors' benefit to a former spouse if the military retiree wanted to make that election?

General TICE. I would have no difficulty with supporting that. You know under the current law, the survivor benefit ceases as soon as the individual is divorced. If he or she remarries, then the survivor benefit plan goes to the new spouse after the marriage has been consummated for 1 year.

Mr. NICHOLS. Mrs. Byron, do you want to continue that line of questioning?

Mrs. BYRON. Yes; following that along; the formula now, it goes after 1 year of a new marriage to the new spouse.

What would you think of a provision that would allow a retiree to elect to divide up the benefits between a current and former spouse?

General TICE. I think if they made that choice, it could work just as is currently done for a wife with children. But it would have to be a part of the legislative package to provide that proviso.

Mrs. BYRON. Yes. Thank you.

Mr. NICHOLS. I didn't understand exactly the thrust of the question. I think my concern is close akin to what Mrs. Byron is referring to. The story in the Post this morning; it seems to me that if an officer elects to take care of two wives, there is no more dollars from the Government involved.

General TICE. That is correct, Mr. Chairman.

Mr. NICHOLS. It doesn't upset the actuarial tables in any way, yet he does not have that right now.

General TICE. No.

Mr. NICHOLS. My question is, do you see any objection to the possibility of giving him that right?

General TICE. I have no objection to that, no, sir.

There is no way the entitlement can be increased as you stated. You only have so much to divide.

Mr. NICHOLS. Yes; I understand that.

General, garnishment of active duty retired pay for alimony and child support requires in some instances a new court order periodically—for example, every 90 days. In some cases I am told that this can be burdensome and quite expensive, up to \$500 per court order. What is the source of this requirement, and in your judgment, should this requirement be modified?

And finally, would you suggest that perhaps the court might increase the amount of alimony to reflect the administrative cost in terms of this collection?

General TICE. Sir, with your permission, I have had Mr. Amis research this part of your question there. I would like to ask him to respond to that, if I may.

Mr. AMIS. Mr. Chairman, the garnishment seizures and the garnishment laws, as you know, are State laws. The source for the requirement to file garnishment writs rests in the State law.

With regard to your second question, could it and should this requirement be modified? There too, it would be a requirement in the State legislature to modify their garnishment laws themselves as themselves as there is no Federal jurisdiction in that area.

Could the court increase the amount of alimony to reflect the amount of administrative cost: Right now in the definition of alimony and child support the court cost and attorney fees are included in that definition for the amounts that can be garnished.

Mr. NICHOLS. Would you say \$500 is a bona fide figure?

Mr. AMIS. I would find nothing to say that it is a bad figure. I think it depends on who your attorney is and where you are filing.

Mr. NICHOLS. I didn't mean whether it was high or low. I meant was I stating the case correctly?

Mr. AMIS. I believe so.

Mr. NICHOLS. General, I know this question is a little out of your ball park, but it does relate to administration. Public Law 95-366 permits the Government to comply with the terms of a court order for community property settlement awarding a portion of the civil service retired pay to a former spouse.

Has any serious administrative problem you know of arisen within the civil service sector in implementation of this law?

General TICE. Sir, we checked with the Office of Personnel Management, they indicate to date they have not had any serious problems. However, there is some concern with regard to the definition that was resolved by the regulation, concerning especially the employee contributions. The GAO now has that as one of their projects to look into to see if there are some changes that ought to be made in that area, sir.

Mr. NICHOLS. Do you have any comment?

Mr. AMIS. The only thing, as I understand from Office of Personnel Management, they were experiencing difficulty with is in the termi-

nology of the law. They were able to resolve that through the regulation and establish it there.

There are still some concerns they have on the facility benefits and how that fits into the law itself. As General Tice indicated, there are some questions on the refund of contributions that employees make to the retirement fund. They don't consider these as serious problems or insupportable, but for a more detailed report, the committee may wish to ask OPM to comment on the matter itself.

Mr. NICHOLS. This would be in your ball park. What about the problems that may have arisen relative to the garnishment of military pay for the purpose of alimony and child support?

Mr. AMIS. With regard to that, Mr. Chairman, when the law was enacted several years ago, there were different States involved and each of the centers that administer the garnishment law had to be familiar with each of the State laws. There was a staffing problem; they had to find qualified people to be able to follow through with those things.

Some of the problems that they have been having at the finance centers is that some of the State courts are not complying with their own State laws. They get different opinions, and different forms of writ coming out of the State courts served on the finance center. The finance center checks under the State laws to see if it is an appropriate writ, and they find variation in the State law as compared to the writ of garnishment itself from the court.

It is sent back to the court for clarification, in accordance with the State law, and the court oftentimes refuses to do so. It puts the finance center on the horns of dilemma. They must comply, yet, if they do comply they are in violation of the State garnishment law.

It could be of major concern. Another problem we are having is in the amount that is being garnished. We are finding in many cases the individual for whom the pay is being garnished is receiving less than perhaps they should. In many instances the representing attorney will receive anywhere from one-third to 50 percent of the amount being garnished—leaving the individual that is taking the action with a little amount of money.

Mr. NICHOLS. If the gentleman will yield. Don't State laws stipulate a minimum percentage? Surely they wouldn't let the attorney get it all, would they?

Mr. AMIS. No, that is true. Various State laws do have limits, I believe, but in many instances if they don't have the writ of garnishment issued with the attorney's fees as part of the amount, then the attorney is free to charge whatever fee that he will. In many instances, they work on a percentage of recovery.

Mr. NICHOLS. As high as 50 percent in some cases?

Mr. AMIS. In some cases, yes.

Mr. NICHOLS. Mr. Wyatt.

Mr. WYATT. I just have one question regarding your line of comment. You say the finance office is concerned about the amount of dollars that is going to a person receiving the benefits because of attorneys' fees?

Mr. AMIS. That is right, Mr. Wyatt. As you know, when Federal moneys are garnished the disbursing officers are required to comply with the laws under which we are sending the money to the individual

or to the court. Let me put it that way. It is heartbreaking in some instances to see that the people for whom the benefit has been enacted are not actually receiving the amounts of money which they perhaps should be entitled to or perhaps are expecting.

Mr. WYATT. How does that happen? In other words, you are sending them the amount of money that you are supposed to send them, or do you have to sometimes under a writ also send to the attorney a certain amount of money?

Mr. AMIS. What we do is send the amounts of money either to an officer of the court or to the former spouse's representative, in many cases the attorney.

Mr. WYATT. She gets the money from them?

Mr. AMIS. That is right.

Mr. WYATT. I hate to be harsh. That to me is an unconscionable act. I am not sure that that is the proper concern of the finance office or the Congress, unfortunately. We start trying to get into that area, if we do, that is why I was concerned.

I agree with you, I think it is a horrible situation. At the same time, that situation exists. I am not sure how that is any concern to the Office of Personnel Management or the disbursing office or the finance office, really.

You are surely not recommending we attempt to set some limit on fees?

General TICE. No. For sure we don't want to get into the divorce proceedings.

Mr. WYATT. We can't get into the divorce proceedings, or shouldn't. That was really my question.

I am glad we all agree on that. I think we do.

Mr. NICHOLS. Thank you, General. We appreciate your testimony very much, sir.

Our next witness is Mrs. Winniefred Cowan, who is here representing the Ex-partners of Servicemen for Equality.

Mrs. Cowan, do you have a prepared statement?

Mrs. COWAN. I have introduced testimony and I have summarized it here.

Mr. NICHOLS. Fine. Your complete statement will be made a part of the record.

You may proceed.

STATEMENT OF WINNIEFRED COWAN, EX-PARTNERS OF SERVICEMEN FOR EQUALITY

Mrs. COWAN. Thank you, Mr. Chairman and members of the committee. I am Mrs. Winniefred Cowan. I represent Ex-Partners of Servicemen for Equality, an organization formed within the past year of former spouses of both officers and enlisted personnel of the Armed Forces. I thank you, on behalf of our organization, for the opportunity to be a witness before this subcommittee today.

Our organization is one of several recently formed nationwide with a combined membership of approximately 1,000 women * * * and growing. Our aim is to seek legislation that will alleviate what we believe to be discriminatory practices affecting the ex-spouse and children of military persons.

The majority of military wives we represent are those who married prior to 1960 and who accepted the traditional role of man as breadwinner and woman as homemaker. Our correspondence shows the military wives of this era sublimated their own career desires and opportunities to be a military wife. Now these wives find themselves in their later years cast aside by their husbands, left to flounder for their own support and completely "stripped" of all benefits and security they had hoped to have because they felt they had worked for and earned them toward their retirement. If this military wife had been told from day of marriage that the pension and benefits belonged "only" to the husband, perhaps she would have chosen a different life. We believe that future military marriages will be affected greatly when the wife becomes aware of this inequity.

Furthermore, these military wives found career opportunities virtually nonexistent (if they should have wanted a career) because of the uncertain duration of residence * * * and because of the general attitude prevalent in the military environment * * * an attitude which discouraged the military spouse from working by demanding total dedication to the military way of life.

A military wife has always been expected to nurture her husband's career from the sidelines by regular attendance at wives' club functions, entertaining, doing volunteer work, attending command functions, caring for the children, home and other domestic responsibilities, keeping the home fires burning in the husband's many absences as well as providing the normal services of confidante and companion.

It was instilled early in that young military wife's mind that these things were important to the advancement of the husband's military career. There must be some truth to all that was told these women, for upon the husband's retirement from active duty, these women were presented with certificates of appreciation signed by the chief of staff of the various services commending her and giving "grateful appreciation for her own unselfish, faithful and devoted service. Her unfailing support and understanding helped to make possible her husband's lasting contribution to the Nation."

We have in our testimony examples of the types of letters and tragic stories we are receiving . . . tales of lives being degraded and reduced to seeking welfare, lowly forms of employment or even reduced to being supported by one's own family. Other areas about which we have had numerous complaints are the cases where the husband has fled the State and refused to pay court-awarded money, where the husband has refused to assist in obtaining ID cards for the children, or is habitually "just late enough" with his payments as to make bill paying uncertain. It is traumatic and costly to have to go to court repeatedly to get the military spouse to abide by the court order.

Certainly these examples indicate a gross injustice being borne by the ex-spouse of a military member, especially in lengthy marriages. We have available today other letters which further illustrate the tragedies affecting ex-spouses of military members and which indicate the disastrous results the loss of benefits has on them . . . and their children . . . and society as a whole. Certainly financial—and emotional—relief is long overdue. To penalize a woman for devoting peak earning years to her military husband, their home, family and "her country" by casting her aside, after 20, 30, 35 years and taking away her benefits and security that she earned is truly devastating.

The military man on the other hand retires with a lifetime pension, and years of skills to apply to a second career which, in most instances, also yields a second retirement as well as additional medical and dental benefits and other fringe benefits.

We feel Federal legislation is necessary because State laws vary and all too often lawyers and judges are not familiar with military life, sacrifices made, or the monetary value of the pension and retirement benefits. We have evidence that many State courts completely ignore these facts in divorce settlements. Federal legislation also could guarantee timely payment of the court-awarded funds in such a manner that they could not be cut off by the military member at some future date. This would greatly relieve the anxiety of the ex-spouse as she would then know that she would receive the money on time and in the correct amount.

We strongly urge the passage of legislation for the bills before this subcommittee today—H.R. 2817, 6270, and 3677—for the reasons given in our testimony. We would like to point out that the military person is under court order but many are not paying. We commend the sponsors of these bills presently before this subcommittee and those committee members present today to hear our testimony.

I would like to add this comment—private versus military pension. Children are being forced to bear the burden of caring for the ex-wife because the laws and courts are not providing for her in the event the husband and father predeceases her—i.e., life insurance. In many States the law does not allow the courts to order the military member to take out insurance.

It is our sincere hope that our Congress will provide for the former military wife as it has for former wives of members and former members of the civil service.

We do not desire to take away benefits of the military member. We only seek those benefits and security which we feel we have earned and are entitled to by virtue of our contributions to the military member and indirectly by virtue of our contributions to our country.

We feel very strongly that “they also serve who only stand and wait.”

WRITTEN STATEMENT OF WINNIEFRED COWAN

Mr. Chairman, and members of the subcommittee, I am Mrs. Winniefred Cowan, and I am here today with Mrs. Nancy Abel. We represent Ex-Partners of Servicemen for Equality, an organization formed within the past year and whose membership is composed of former spouses of both officers and enlisted personnel. While our membership is still relatively small, our numbers are growing daily, and our organization is but one of several formed nationwide.

I thank you, on behalf of our organization, for the opportunity to be a witness before the subcommittee today. Our organization, like sister organizations formed nationally over the last year, was formed in an attempt to alleviate discriminatory practices affecting the ex-spouse and children of military persons.

These foundational groups are still fairly small, being composed of as many as several hundred ex-spouses who have become aware of our existence without publicity. This membership represents only the “tip of the iceberg.” The many thousands who will undoubtedly join us, when made aware of our aims, are estimated to greatly increase our ranks.

1. Medical benefits for ex-spouses and dependents;
2. Survivor Benefit Plan which should be service-connected and prorated according to the length of service-connected years of marriage;
3. Military pensions should be considered an asset in any divorce or property settlement. Present state laws provide for such in only seven community

property states. Federal legislation is needed to make this uniform in all fifty states.

4. Legislation for the direct and timely payment to an ex-spouse, from retired and retainer pay of members or former members of the uniformed services, to comply with the terms of any court decree, order, or property settlement made in connection with a divorce, annulment, or legal separation.

5. Authorization of continued use of services and facilities of post exchanges and commissaries to certain former spouses of members of the armed services, both active and retired; and to retain said privileges for dependents placed in the ex-spouse's custody.

Historically, couples marrying prior to the 1960's accepted the traditional role of the man as breadwinner and the woman as homemaker. Indeed, society frowned at the idea of a woman working outside the home—nor could society envision the decay of the family which would result in so many single parent homes. As our correspondence shows, many military wives sublimated their own career desires and opportunities, only to find themselves in later years cast aside by their husbands and left to flounder for their own support. This, at a time when:

1. The military wife has no experience in the work world;

2. Her age is detrimental to prospectives prolonged work which would yield her pension benefits of her own.

In the case of military marriage this inequitable situation affecting the military wife and mother is even more amplified. The very nature of military life requires frequent relocation due to strategic assignments and hardship tours which necessitate the "non-working" wife assume total responsibility in her husband's absence. Being uprooted, as often as every 12-24 months, at times with little advance notice, severely reduced a spouse's opportunity for work. Many in our organization have been told by prospective employers that they are undesirable candidates for a position based on their uncertain duration of residence. Additionally, women marrying military men prior to the 1960's found career opportunities virtually non-existent when coupled with the general attitude prevalent in a military environment—an environment discouraging the military spouse from working by demanding total dedication to the military way of life.

A military wife has always been expected to nurture her husband's career from the sidelines by regular attendance at wives' club functions; entertaining; doing volunteer work; attending command functions; taking care of children, home, and other domestic responsibilities; keeping the home fires burning in his absences for whatever the duration, as well as providing the normal services of confidant and companion which was expected of a wife. It was instilled early in the young military wife's mind that these things were important to the advancement of the husband's military career. There must be some truth to all that was told these women, for upon the husband's retirement from active duty, these women in our organization were presented with "Certificates of Appreciation" signed by the Chief of Staff of the various services commending her and giving "grateful appreciation for her own unselfish, faithful and devoted service. Her unflinching support and understanding helped to make possible her husband's lasting contribution to the Nation."

It should be noted that present-day military wives are also affected. While the current military wife may find she does not have to march in cadence to as strict a demand for performance, some conformity to military convention is, nevertheless, expected. The present-day military wife (like those of past years) also finds her own potential career patterns drastically altered by lack of opportunity to pursue a consistent career path due to the uncertainty of how long it will be before she has to move.

The role of the military wife (or any wife) in today's society is grossly underestimated when it pertains to a dollar and cent valuation. A wife's contribution to society is complex in that she makes it possible for the husband to work unencumbered while she rears the next generation. This contribution to a marriage has not even been considered worthy of social security provisions for that individual in her own right. The inequity is even more severe when applied to the military wife who holds the home intact during the husband's prolonged absences, as required by deployment, hardship tours, or absence due to war.

The military spouse should not be penalized for accepting role demanded by the military establishment. To rule her contributions to the military marriage as "merely" contributions is an insult to women who sacrificed a career of their own to provide a home for their husband and children. Such an insult is even more devastating when one considers that:

1. Our culture all but condemned working women until the recent decade ;
 2. Most husbands would not even tolerate the thought of a working wife, as if it reflected some inability for him to provide adequately for his family.
 Our correspondence offers daily evidence of the tragedies being inflicted upon former spouses of military members. I would like to offer the following examples, which are representative of the type of letters and stories we are receiving:

1. The case of a young woman whose husband returned from Vietnam as a paraplegic. She alone waged war with the Veteran's Administration to obtain his veteran's benefits. She supported him through school and once he graduated, he left her with three small children as he said, "to find himself."

2. A military marriage of 29 years ended in divorce after retirement. The military member obtained a divorce outside the United States and immediately married another woman.

3. Dissolution of a 37-year military marriage to a high-ranking military man whose express wish had been for his wife to provide a good home for him and his children. He was responsible for the termination of the marriage. Eighteen days after the divorce was granted, the husband married a woman he had known only two months. At age 60, the ex-spouse, who spent all but 6 months of the husband's total military service as his wife, lost all her benefits and security and the new wife (who has contributed nothing to military life) is the recipient of all the benefits.

4. Dissolution of a 30-year marriage. While on duty in West Pac, the military man telephoned his wife from Subic Bay to inform her he had filed for divorce. The divorce became final just six months before he retired.

5. Another military marriage of 24 years ended in divorce after retirement. The wife was awarded alimony and half of the husband's retirement pension, but the husband fled the state and she has received nothing since the award was granted. A warrant for his arrest is still pending. Since the divorce she has had two radical mastectomies. She is being supported by a mother and sister—she is 53 years old.

6. A 25-year military marriage ended in divorce after the military man retired. The wife received court-awarded money for a few months and then the husband left the state, remarried, and the money to the ex-wife stopped. Since it was a community property state, the ex-wife has not been able to have his pay garnished and she has spent over \$6,000 trying to correct this situation. She suffers from spinal arthritis so she is unable to work at a full-time job. She has been forced to live on food stamps, welfare checks, and what little her daughter has been able to provide for her.

These stories only serve to illustrate the stories we receive daily. The tales of lives being degraded and reduced to seeking welfare, lowly forms of employment, or even reduced to being supported by one's own family. This correspondence prompted us to send out questionnaires and to begin compiling statistics, the results of which we offer into the record at this point:

1. Presently, one third of those returning the questionnaire are ex-spouses of enlisted personnel;

2. The average age of the woman when the divorce was initiated was 44;

3. The average length of the marriage was 22½ yrs;

4. The average number of moves made during the military marriage was 12;

5. The average number of children the wife is left with is 3—the average amount of child support awarded is \$172.25 per child;

6. The average length of time from start of the divorce to final papers is 16 months;

7. Only 6 percent of our members were awarded part of the husband's retirement by the courts—most did not even know they were possibly entitled;

8. The average salary able to be earned by the wife is \$10,700—that with an average educational level on only one year of college!;

9. Over 75 percent of the husbands remarried—on the average, within 10 months of the divorce;

Others areas in which we have yet to compile statistics, but have had numerous complaints, are the cases where the husband has fled the state and refused to pay court-awarded monies; where the husband has refused to assist in obtaining ID cards for the children; or is habitually "just late enough" with his payments as to make bill-paying uncertain or inconvenient—for very few courts are awarding garnishment of the husband's pay, and even when it has been awarded he has the ability to have it changed or cut off.

Certainly these examples indicate a gross injustice being borne by the ex-spouse of a military member, especially in lengthy marriages. We wish to offer other letters to you today as further illustration of the wide range of tragedies inflicted on the ex-spouses and to indicate the disastrous results the loss of benefits has on them and their children.

Our statistics magnify the fact that financial relief for the ex-military spouse is long overdue. It is humiliating and devastating for the ex-spouse to be reduced to economic degradation, poverty, or welfare. Professional employment advisors clearly concede the difficulty in placing a woman in a position after age 40, admitting the near impossibility as she approaches 50, and that by 60 she is hireable (if at all) mostly by charitable organizations who traditionally pay poorly. Add to this the general reluctance of employers to hire any woman recently divorced or in the process of divorce for what is termed her uncertain "emotional state." This is by far the severest type of economic discrimination—to penalize a woman for devoting peak earning years to her home and family and then to be cast aside not only by her husband but also rejected by the business world. Her husband retires with a good salary, and years of skills to apply to a second career—a second career which, in most instances, also yield a second retirement plan as well as additional medical and dental benefits as well as other fringe benefits.

Our organization urges federal legislation be enacted to provide for a pro-rated share of the military member's pension based on the number of service-connected years of marriage. We feel that federal legislation is necessary in that state laws vary and all too often lawyers and judges are not familiar with military life, sacrifices made, or the monetary value of the pension and retirement benefits. In fact, many state courts completely ignore these facts in divorce settlements. Federal legislation would guarantee timely payment of the funds in such a manner that they could not be cut off by the military member at some future date.

In summary, we urge the passage of legislation for the following bills for the following reasons:

H.R. 2817 (Schroeder). Re: Military Retirement Income Equity.

Since marriage has long been considered a partnership, the military pension, upon dissolution of a military marriage, should be prorated based upon the time spent in the military marriage. This is essential to alleviate the injustice to the ex-spouse of a military member and to prevent them from being a burden to the welfare system and/or to their children and families. Neither taxpayer nor children should be forced to shoulder the responsibility that rightfully belongs to the military member.

H.R. 6270 (Fisher). Re: To amend Title 10 United States Code, to provide for the payment of retired and retainer pay of members or former members of the uniformed services in compliance with the terms of any court decree, order, or property settlement made in connection with a divorce, annulment, or legal separation.

Federal legislation is essential to ensure that payment of a court-awarded decree, order, or property settlement made in connection with a divorce, annulment, or legal separation is received regularly and in timely fashion by the ex-spouse. This legislation should provide for the direct payment to the ex-spouse from the retired or retainer pay of members or former members of the uniformed services, perhaps by direct allotment through the military pay system. Authorizing payment of court-awarded funds upon presentation of the court order itself without requiring the permission of the military member would greatly relieve the anxiety of the ex-spouse that the funds would arrive on time and in the correct amount.

H.R. 3677 (Hance, Re: To amend Title 10, United States Code, to authorize the Secretary concerned to comply with the terms of a court decree, order, or property settlement in connection with the divorce annulment, or legal separation of a member or former member of the uniformed services receiving retired or retainer pay.

We urge that Congress pass this bill for the same reasons as given for H.R. 6270.

H.R. 3151 (Burton). Re: Medical and Dental benefits for certain former spouses of members of the uniformed services.

We urge that passage of this legislation include former spouses who face great economic disadvantage in later life in trying to obtain adequate health insurance at reasonable expense. For ex-spouses of military members medi-

cal care has been freely and readily available and many did not carry health insurance with private companies during their marriage to the serviceman. Many cannot provide such coverage due to age, greatly reduced economic situations caused by the divorce, or chronic conditions developed during the period of marriage which make them ineligible for coverage.

We commend the sponsors of the bills presently before this subcommittee and those committee members present today to hear our testimony. Certainly this is a positive step toward correcting the gross injustices to the spouse who has sacrificed years of her life (and a career of her own) in order to provide a home for her military husband and their children.

We sincerely hope that our Congress will provide for the former military wife as it has for former wives of members and former members of the Civil Service. We call your attention to the fact that President Carter, in 1978, signed legislation (H.R. 8771) which became Public Law 95-366 and which allows ex-wives of members or former members of the Civil Service to receive a portion of the former spouse's pension as part of a property settlement.

We do not desire to take away benefits of the military member. We only seek those benefits to which we feel we are entitled to by virtue of our contributions to the military and indirectly by virtue of our contributions to our country.

We feel very strongly that "they also serve who only stand and wait."¹

Mr. NICHOLS. Thank you, Mrs. Cowan.

Mr. Wyatt, do you have any questions?

Mr. WYATT. No; Mr. Chairman.

Mr. NICHOLS. Mrs. Byron.

Mrs. BYRON. No questions.

Mr. NICHOLS. We thank you and appreciate your coming and your testimony.

Mr. COWAN. Thank you.

Mr. NICHOLS. The next witness is Ms. Vivian Filemyr, who is associated with Action for Former Military Wives.

Mrs. Davis will be making the presentation.

STATEMENT OF MARION WINGO DAVIS, SAN ANTONIO, TEX.

Ms. MARION WINGO DAVIS. Mr. Chairman, members of the subcommittee, thank you for scheduling this hearing today. I am Marion Wingo Davis, from San Antonio, Tex., and I have a special feeling for the military and military way of life. My father was a navy person and I am happily married to a career air force officer and have been for 14 years.

Action for Former Military Wives was formed in October 1979 by the insertion of a small ad in five Texas metropolitan dailies. The response was immediate and an organizational meeting was held in December 1979 in Austin, Tex., with interested women from Austin and the San Antonio area. The name Action for Former Military Wives was chosen and objective, statement of intent and purposes were outlined.

The organization was dedicated to the preparation and public dissemination of information regarding the status and difficulties encountered by former wives of military service personnel of all ranks directed to Members of Congress, publications of national readership, the media and to all whom our situation could be of interest.

The immediate objective was to rally women from all areas of Texas into a cohesive group speaking as one voice to the question of non-

¹ Milton, from his poem, "On His Blindness." This phrase was a patriotic motto for wives and families of military members during World War II.

receipt of earned benefits of retirement moneys as awarded by courts of law in Texas.

Our ultimate objective was to encourage women in all 50 States to join our efforts as they experienced the same difficulties, but focalizing particularly on Texas where the problem is acute. Apparently, word of mouth is an effective communication medium. Existing organizations in California, Colorado, Washington, D.C., Maryland and Virginia joined is in a coalition and individual responses have been received from 10 other States. Members' families knowing of the hardships faced by their daughters and grandchildren are inserting ads in almost all of the remaining states.

Of equal importance to nonreceipt of the former spouse's benefits was the problem of nonreceipt of moneys awarded for child support and the withdrawal of identification cards held by underage children, thus cutting them off from medical and other privileges which by birth they are entitled.

Encompassing all of the above and compounding the problem was the apparent lack of marketable skills of former military wives with underage children to obtain jobs of any remunerative value. Years of moving at the behest of the military left them with a lag in professional careers (if such was the case), modest education and the immediate need for supporting a family which left little opportunity or money to channel into any bettering of their position.

Inability to afford needed medical treatment manifested in this group as a recurring and nightmarish problem. Unable to work, many women were forced to apply for welfare and State aid for themselves and their children. For others, trying to maintain a job, despite ill health, only exacerbated preexisting physical illnesses.

These problems were very evident in the first replies from our ad and have repeated themselves over and over again as new members have joined us.

A representative descriptive study recently completed in the San Antonio chapter found the following from a sample group of women in that area:

Average age at time of divorce-----	50 years.
Average years of marriage-----	24 years.
Average years of service-connected marriage-----	20 years.
Average number of moves in the military-----	11.

Service branches represented:

Air Force-----	64 percent.
Army-----	34 percent.
Navy-----	2 percent.

Officer Wives, 51 percent; NCO wives, 49 percent.

Thus, the composite of the former military wife is a 50-year-old woman with 24 years of marriage, 20 of which were during the years of her husband's active duty, with representation being equally divided throughout the ranks of the military.

Further, 56 percent stated they had serious health problems; 30 percent did not have any health problems and 13 percent did not respond.

Fifty-eight of these women awarded percentages of the retiree's benefits have never received any portion of their awarded benefits; 24 percent receive a part of their awards and 18 percent were not told

of their entitlement and, thus, receive nothing, the percentages not written into decrees of divorce.

[A separate survey studying the number of children involved in these families and support awarded received and not received is being conducted now.]

Action for Former Military Wives seeks to redress these situations. The State of Texas highlights most graphically the impossible position of former military wives. It is a community property, nongarnishment, nonalimony and no-fault divorce State. As the statutes are currently interpreted, women in Texas find it extraordinarily difficult to obtain their moneys from service pay centers, if not impossible.

We do not have alimony and we do not have garnishment to aid us in obtaining our portion of the awarded community property. Litigation is expensive and the preponderance of women do not have the financial means to file proceedings of contempt or initiate legal action of any kind.

Any initiation for further legal action is not only prohibitive financially but is made doubly difficult by the well established fact that a great number of former husbands leave the State or the country or "go underground," using post office boxes, unlisted telephone numbers and the many other ways available to avoid citation. Inordinate amounts of money have been spent in efforts to locate former spouses; every avenue explored until means are exhausted. When women have approached the military services for assistance, they are told such a request is an invasion of privacy. The retention of their moneys by the former spouse is also an "invasion."

We feel it to be incumbent upon us to state that there are men who are honoring their obligations, supporting their children and in every way maintaining their integrity and we would not disparage their efforts. They are to be commended. But many do not. And it is these men and the hardships of their noncompliance that have made it necessary for us to turn to you gentlemen for redress of an impossible situation.

We ask for your recognition of years of service also given to the military, of our earned portion of retirement benefits awarded in State courts fully competent to render judgment but who are impotent to assist women in the obtaining of their moneys.

We understand that you have received many communications from women in Texas and throughout the United States concerning this problem. We are delighted that they have taken the time to write you and to have the confidence in you for redress of their problems. These letters are a far better statement of facts than any our organization could present to you.

The financial need is very great, children remain the responsibility of a man and their needs should be met jointly, not by one spouse ill-equipped to support them. The woman who shared the years of military duty, both the pleasures and hardships and the children from that marriage should not be abandoned to the fates; they are not kind. What is being asked of you is simply to make it possible for women in all 50 States, upon proper presentation of documents to respective pay centers, to obtain their court-awarded percentages of

retirement benefits, annuities and child support as found by courts to be reasonable.

I am enclosing for your reference a "fact sheet" of Action for Former Military Wives as a supportive attachment to this statement.
[The following information was received for the record:]

JUNE 7, 1980.

HON. BILL NICHOLS,
Chairman, Military Compensation Subcommittee, House of Representatives,
Washington, D.C.

GENTLEMEN: Action for Former Military Wives was originally organized to assist spouses of retired military servicemen divorced in Texas.

Texas is a community property state and Texas women have been awarded a percentage of the retiree's benefits as community property. However, receipt of these benefits has been next to impossible in Texas.

Since our organization has become more widely known, we have received letters from representative areas of the entire country. It does not seem that our problem is peculiar to Texas, the problem of non-receipt of benefits awarded is pandemic throughout the United States.

Testimony of our organization, individuals, a government-funded agency representing women, as well as associations representing active and retired military servicemen have been heard by your Subcommittee.

We do not believe we can better our original statement to you gentlemen. But we do feel the women who have written seeking help need to be heard. The financial injustices, turn-downs they have experienced should also go on record. We believe they should be heard and their testimony be entered into the record for your review.

The following excerpts are gained from letters received. All letters from which these excerpts have been taken are in the files of Action for Former Military Wives and will be presented upon request. Many more not contained in this submittal bear witness to the overwhelming need for passage of H.R. 3677 in this session of Congress. It is in your power, gentlemen, to rectify a situation that grows more rampant each day and more unsupportable.

We, therefore, submit testimony of several women who speak for themselves toward the need for legislative assistance in obtaining benefits they helped earn.

Millbrook, N.Y.

"... I married my husband in 1941. I've had 56 years in the military life. I followed my husband to Europe and Japan and raised five children during our army career. . . . We agreed we could not live together . . . at the age of 56 without employable skills, and having long-standing health problems that would not permit me to seek a job . . . I would be forced to go on social services."

Fayetteville, N.C.

"... the wife do not have the opportunity to establish a pension of her own . . . no one pay her to travel or raise children and keep the house when her husband is oversea fighting for his country a wife have to stay home to lay awake wondering if her husband will make it back home she has a lot to worry her but who cares when she old if she has to go on welfare to get help . . . Speaking of equal rights why don't the army wives have equal rights? We have worked hard for husband we stood by them when they needed us now when they die and leave us what are we suppose to do go to the dogs I suppose."

Fayetteville, N.C.

"We had five children together, however, one lived only two days (born in Istanbul, Turkey). Our last child who will be 19 in June, was born with Down's Syndrome (mongoloid) and she is living with me. . . . When Col. D—— died, the children received nothing—there was no estate, everything was in his widow's name. Celeste, who is incapacitated, was the only one eligible for Survivor's Benefit Annuity which amounts to \$127.91 a month. His widow receives SBA of \$1,088.80 each month."

Warren, Ohio

"... My husband brought me and our three daughters to Ohio on September 5 and on September 19, he told me he saw no future to our relationship and was seeking an attorney about the dissolution of our marriage—so that he could be

free to find happiness. . . . We are now in the process of haggling over a settlement agreement. I am quickly learning that in a divorce or dissolution, the woman who has not been "gainfully employed" outside the home during the marriage is definitely on the losing end and with no apparent means of redress or protection through the law. . . . I have lost 14 years of pay increases and I have lost 16 years of contributions toward a retirement fund and/or social security so that when I reach retirement, I will have to live on a much smaller monthly income." (Note: This woman was a teacher when she married in 1963.)

Fairborn, Ohio

" . . . After the operation my husband deserted me and has been out of contact with his whole family and his children as well. Just recently I heard from his sister, that he has been going all over the country trying to get the "best deal" for a divorce. He has established residence in Aurora, Colorado for that purpose."

Newport, R.I.

"I am 61 years old, divorced after 22 years of marriage. . . . When we were divorced, I was stripped of all my privileges, and I feel I earned some of these privileges. It is not a total loss, believe me, I have eight lovely grandchildren which are my life. . . . I do know that the fact we are divorced today—the fact that we were separated so much contributed to it, . . . but I feel that if I was not so independent because I was mother and father for so long, and ran the house and everything, maybe we would be together today. Those days, they did not have people helping you, like visiting you and checking to see if everything was O.K., etc. like they do now. Only once when my husband was at sea do I remember the Navy being concerned—was when the mail situation was very bad, and I mean very bad—I would receive about 15 letters at a time and the rest of the time, nothing and the Captain aboard ship sent me a letter asking me (and all the other wives too) to be patient and they hoped to straighten the mail situation soon."

Fort Thomas, Ky.

"We were married in 1945, one week after I graduated from college with a degree in Psychology. Our first child was born two years later and there was no way I could develop a career of my own and raise children while moving all over the world. My husband wanted me free to take care of our children and home. And frankly, that is exactly what I wanted to do. * * * Now, after 28 years of his 30 years, I am not eligible for any services on an Air Force base, nor do I have any financial security if he should die. A woman who did not spend one day as an active Air Force wife receives them all. This is so unjust that I feel something must be done."

Midwest City, Okla.

"The person, man or woman, who has spent 20 years in the service has been more or less protected both monetarily and medically and even legal assistance. They both share a common goal and endure the hardships of low income (although steady) the moves from one base to another and irregular working hours. They accept the rules set down by the base commander and teach their children to go by the rules. The retired serviceman deserves his paycheck, but his wife also deserves her share of the retired pay and the survivors benefits. The divorced wife is left penniless after the child support has gone, is not covered by Medicare and cannot find work to support herself and the children who are over 18 years of age. * * * I could write of the many hardships I have had after two years of being divorced and 23 years of marriage prior to that time to a career serviceman, who is now out of the service, a doubledipper, a college graduate, thanks to the benefits and has remarried taking all the survivor and insurance policies with him."

Jonesboro, Ga.

" . . . All in the world that needs to be done is a redistribution of the funds that are already earned and are being paid out each month."

Morrow, Ga.

"Most of the ex-spouses today are wives who served by their husbands during time of war. They have spent many lonely hours in worry and fear for the safety of their loved ones. They are the ones who helped serve their country as well as their husbands did. We are the ones who now find themselves put out to battle a new war of our own. This war is trying to get established in a world

of computers. We are not educated in this new field, we are not of an age that the employers want to even consider training. We are not at an age or financially able to go to school and learn a new field."

Laingsburg, Maine

"My former husband . . . retiring in 1967 after 21 years of service. Not long after that we were divorced because my husband wished to marry a younger woman. On the day of his wedding, he came to the house and demanded my military I.D. card which entitled me to shop at the base exchange and the commissary where prices are considerably less than in the civilian community. His new wife and her children then received these benefits while I and our six children, who were still all living at home with me, were denied them. Through 21 years we were married and in the service, we moved 23 times all over the United States and overseas. Do you have any idea what it is like to make such moves with six children?

Boulder City, Colo.

"A great injustice has been served against the divorced wife of a military man. She stands beside and helping her husband during the years of military service, and the hardships and sacrifices are not less hers than his. The earnings of the benefits were earned by her no less than he. In many cases of the divorced wife of a retired military man, the main fault lies in his inability to adjust to the transition to civilian life, and he becomes caught in the "New Life-New Wife" syndrome. As a result, the woman who spent her years as a military wife loses not only her dreams and future, but she is forced to stand idly by and lose the fruits of her past as well. To make her heartbreak worse, she often sees her benefits presented to someone who spent not one hour as a military wife. This is not only an injustice, it is a disgrace, and an open insult to the taxpayer who may someday have to help support her."

Las Vegas, Nev.

"In view of the present taxpayer rebellion, it seems reasonable to think that once the public realizes that if any of these former wives are forced for any reason to become welfare recipients, the already over-burdened taxpayer will wind up picking up the tab as usual. Thus, the taxpayer will be faced with supplying the retirement pay for servicemen, supply dollars for the benefits of his present dependents and any dependents from a former marriage, and the possible welfare benefits of a former wife."

Oravada, Nev.

"Is it true an army officer is a resident of any state he chooses to file for a divorce" Mine chose North Dakota. This is not a community property state. He had not lived in that state for at least 10 years. The law says he must have lived there at least one year prior to getting a divorce. He was there about one week."

La Vista, Nebr.

"I was married 32 years to a man who retired after 32 years. * * * It is a terrible mental strain to live month to month wondering and worrying about whether or not I will get my alimony and child support payments next month. He has told me SHE wants him to take me to court—again—and get the payments lowered. Our agreement, at the time of the divorce, was that he would have allotments made out of his military pay for the alimony and child support payments; one year later, and in spite of the court's notices and my pleadings, he has not done this."

Humphreys, Mo.

"Mine is a long story of 30 years of marriage in which I followed my husband, gave up good paying Civil Service jobs and other jobs when and wherever I could find them to help pay bills so that he could stay in the service. Now I am left with an 11-year old child to support while he enjoys the privilege of \$450 plus each month and I, at 51 years of age, am trying to find work * * *."

Englewood, N.J.

"* * * the greatest injustice has been perpetrated on women who divorce military men already retired. These women who spent their best years raising children under the very difficult circumstances of military life, are left alone to face the financial hardships of providing for themselves during their declin-

ing years as well as the children's college educations while the retired husband enjoys for himself alone the entirety of a very good pension. Court orders serve no purpose since the military will not reveal the whereabouts of the defaulting retired member. This results as a cost surcharge to the taxpayers not only in pension funds but also in relief money not withstanding the moral degradation brought onto innocent women and children."

Millville, N.J.

"As an army wife who spent 20 years of my life married to a career officer * * *. The fruits of my labors now stand in sharp contrast to those being enjoyed by my ex-husband, who is retired on a \$24,000 annual retirement salary. My salary last year as a clerk was \$6,000—I have no savings, no assets and no prospects for a comfortable retirement. I do not relish the prospect of spending my retirement years dependent on the welfare system or my children. I feel as if I have earned a portion of my ex-husbands retirement * * *."

Albuquerque, N.M.

"I have not been idle * * * but despite my efforts I do not have the earning power of a younger women, and am unable to adequately provide for my young son and myself. At the age of 54, I enrolled in a business, secretarial course, did very well in my subjects and graduated with high hopes of obtaining a job in that field, not so. I pursued every lead, every opening but had no luck. With a roomfull of young experienced ladies an employer cannot be forced to hire the older inexperienced woman."

Santa Fe, N.M.

"... I, specifically, was a 20-year military wife, waited and worked to help regain the release of a POW husband for six years and then found myself in this situation."

Golden, Colo.

"During our marriage I raised four children, moved 21 times, endured three war tours and was a very devoted wife and mother. I served my husband, family and country well. Now I am 52 years old, untrained and will be in six more months without any of the benefits our salary helped to establish during this period. I am also, unfortunately, under constant medication for a heart ailment."

Stratham, N.H.

"... my husband, a retired Air Force major, shot me four times at point blank range in full sight of my two minor children. ... my husband was found guilty of attempted murder and is serving the maximum sentence. One issue my husband is taking to the State Supreme Court is the legality of garnishment of military pay. To date, the Garnishment Center in Denver has refused to honor all court orders sent by this state. ... On March 20 we had another hearing to meet the Air Forces' demand that the child support be separated from the spousal support. Now they think I may get the \$500 child support but they demand another clarification of the arrears—child support/spousal. Denver is very doubtful that I will ever receive either the spousal support or the percentage of the arrears that is designated spousal support. In the meantime, I teach school and bring home \$123 weekly ... is because of the pension issue which will be argued before the State Supreme Court at the end of this month. It is an important case because the State of New Hampshire has never addressed the issue of military pensions and their place in property settlements."

Action for Former Military Wives urges your favorable consideration of H.R. 3677 as recognition of our years of participation and support of the "military way of life," as recognition of our membership on the "team" during World War II, Korea, Berlin blockade, Vietnam and all the in-between interruptions of family life that the readiness of our Nation depends upon. We were there when it counted and now we want to be counted.

Our organization thanks you for the opportunity of being heard and for the privilege of appearing before your subcommittee. Our interest in this legislation is not only for ourselves, but for the many who will follow us.

We do not wish them to experience the degradation, financial stress and futility of legal action such as we have had to face. They should be able to know that they really are an important and meaningful part of the military establishment. Thank you.

Mr. NICHOLS. Thank you, Mrs. Davis.

I only have one question. This survey that you mentioned, how many women were surveyed? Do you remember the number?

Mrs. DAVIS. We had 76 surveys turned in. This is a tabulation of 55 who filled those out.

Mr. NICHOLS. This was in San Antonio?

Mrs. DAVIS. San Antonio, Tex.

Mr. NICHOLS. Mr. Wyatt.

Mr. WYATT. I have no questions, Mr. Chairman.

Mr. NICHOLS. Mrs. Byron.

Mrs. BYRON. No questions.

Mr. NICHOLS. Thank you very much. We appreciate your testimony.

Our next witness is Mr. John Sheffey, executive vice president of the National Association for Uniformed Services.

Do you have a prepared statement?

STATEMENT OF JOHN SHEFFEY, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION FOR UNIFORMED SERVICES

Mr. SHEFFEY. Yes, Mr. Chairman, I have a statement.

Mr. Chairman, Gentleman, I am John P. Sheffey, executive vice president of the National Association for Uniformed Services (NAUS). Our association's membership is drawn from all the seven uniformed services of the United States; active duty, retired, Reserves, veterans, and their spouses or survivors. Our mission is to uphold the security of the United States by supporting activities that preserve and improve the attractiveness of service careers and sustain the morale of the uniformed services. We work on the "people things" such as pay, retirement, survivor benefits, and the traditional entitlements that make a service career a way of life rather than just a job.

NAUS, which has female as well as male members—active duty, retired, wives, and widows—opposes the H.R. 2817 concept of automatic vesting of divorced spouses in rights to the retired pay and survivor benefits earned by members of the uniformed services. We believe that the division of property and income in divorces is not a proper function of the Federal Government. Variations in divorce circumstances are infinite in number, and each case should be treated individually by the State courts—not uniformly by Federal law. Federal agencies should only be required to enforce court decisions.

H.R. 2817 and Rep. Patricia Schroeder's matching bills for the civil service and Foreign Service involve a basic social issue, the property rights of spouses that historically have been determined by the separate States. Her bills, if they were to become law, would create a special category of citizens in every State—the individuals who work for or are retired from Federal agencies. Their spouses in most cases would not be subject to the same law. The inequity is so basic, that it alone is sufficient cause for rejection of these bills. The proper role of the Federal Government in prescribing a divorced spouse's property rights in

a former spouse's retirement and survivor equities is debatable. It surely is not debatable that such rights should be established only for the divorced spouses of Federal employees and members of the uniformed services.

The argument that the divorced spouse earned a share in the service member's retirement and survivor benefits is not a valid one. Under H.R. 2817, no measure of such a contribution is required, nor would such a measure be possible. The spouse could have been a hindrance to the member's career, as some spouses are, but it would make no difference. The marriage could have endured 10 years or more, only to provide a home for very young children of a service man who had not other recourse when overseas, but it would make no difference. The spouse could be wealthy or have a higher earned income than the retired service member, but it would make no difference. The spouse could have terminated the marriage against the wishes of the service member, but it would make no difference. Regardless of the countless different circumstances that create broken marriages, the spouse would always be entitled to a share of the member's annuity and survivor benefits.

H.R. 2817 appears to be designed to relieve hardships for the very limited number of service wives divorced late in life without regard for the far greater number of divorced at ages that allow 20 to 30 years for establishing new lives and new arrangements for financial security. It seems to disregard entirely the damage done to second wives and their children. It will create staggering problems for thousands of people who are innocent of any wrongdoing in marriage for the sake of a tiny handful of aged divorcees who may have been treated unfairly by their service member spouses. It interjects the Federal Government in an area where it does not belong.

There is no question that some men do unfairly discard wives of long marriages. These, however, are a small minority of divorces. The average duration of marriages that end in divorce is 7 years. While I have no statistics, my observation during 27 years in the military was that far more wives of military men seek divorces than do the men. The reason is obvious. The men are separated from their wives by war, sea duty, and assignments in areas where their families cannot go. Most of these situations are not conducive to lasting attachments to other women. The wives, however, remain at home, lonely for male companionship and attractive targets for male attention. It is only normal that many fall in love with the man at hand and abandon the husband far away.

The policy proposed in H.R. 2817 would be demoralizing to a large number of service people. Some of its harmful impacts would be:

Marriages that are in trouble as the 10-year duration approaches wouldn't have a chance. The incentive to get out before the 10-year point would be compelling.

A spouse in a marriage of 18 or 19 years could readily refuse to accompany the service member on an undesirable assignment and obtain a no-fault divorce which is now possible in most States. The automatic entitlement to half the member's retired pay in a few years would provide economic security regardless of the violation of the marriage contract.

A service member who was married to one wife for all 20 years of his active duty only to have her leave him after retirement could leave no military survivor benefit for his second wife although she could be married to him 40 years or more. The first wife would get it all.

The provision for retention of a share of retired pay and survivor benefits by a divorced spouse who remarries after age 60 would create an outrageous situation in which the retired service member is required to help support a former spouse who has a living husband. Even worse, the second wife who becomes a widow has to share her survivor benefits with a former wife who has a living husband.

H.R. 2817 contains no provisions for avoiding great inequities when the divorced spouse is a full time employee in private employment with a pension plan. The service retiree would have to share his retirement and survivor benefits with a former wife who has a retirement of her own that she shares with no one, and the retiree's widow and children from his second marriage would be deprived of adequate income when he dies.

A further complication is the frequent situation in which both husband and wife are career service members. If the proposed equity in retirement and survivor income is established, do they exchange benefits? What happens when one retires and the other does not? H.R. 2817 seems to provide for the divorced spouse still drawing active duty pay to also get part of her former husband's retired pay.

A remarried retired service member whose former spouse left him to marry someone else would not be economically secure. The overhanging threat of termination of the divorced spouse's second marriage and restoration of her right to share in his survivor benefits would make estate planning a shambles for the retired service member.

An award of retired pay and survivor benefit rights to a divorced spouse of a service member with less than 20 years' service would be dividing up a property right that does not exist. Until he actually qualifies for retirement by 20 years' service, the service member has no vested equity in retirement.

Our society has changed drastically from earlier days when divorced spouses were nearly always at great economic disadvantage. Nearly one marriage in two ends in divorce. Most women today can find work at any age. Fully half of married women work—including a large percentage of service wives. We also have a large and growing number of career service women. A survey of female uniformed services career personnel by NAUS found them fully as opposed to sharing their retirement incomes and survivor benefits with divorced spouses as were the males. Second wives and widows who were second wives, of course, oppose the concept.

Divorced spouses of uniformed services retirees are already entitled to social security when the marriage endured 10 years or more. The great majority are quite young. In today's world most of the women who would benefit by the proposed law can readily provide for their own security in old age. Lives change so much and so rapidly after divorce that there can be no overall justice in a proposal that would drastically harm the lives of second wives and children 20 to 30 years after the divorce from the first wife.

H.R. 2817 has been proposed because there are some older service wives, divorced late in life, who do face hardships. But these are a

tiny proportion of the thousands of younger divorced spouses who have no real need. To help a handful, the proposed law would do great injustice to thousands of service members, their second wives, and their children. There are already alternatives available for the handful that may not have been treated fairly. All today are entitled to social security from their husband's military service. When justified, the courts can order property divisions and alimony payments that permit the divorced wife to provide for her own security through insurance annuities. It is not unusual for divorce settlements to require the husband to carry life insurance payable to the divorced wife.

H.R. 2817 is unfair in concept and badly drafted even were the concept a reasonable one. It is a time bomb with unpredictable impacts that won't be known for many years. It will discourage marriage among service people and encourage early divorce. It will rob second wives and their children for the benefit of divorced spouses who have had 20 to 30 years to create new lives for themselves. In sum, the bill is an outrageous imposition on the private affairs of uniformed services members.

The military services already have enough disadvantages that discourage enlistment and retention of the high quality personnel needed. Establishment of the policy proposed in H.R. 2817 would add another.

I would like to place in the record a letter from a NAUS member which vividly illustrates the inequity of the community property approach to retired pay. This is possible now in only eight States, and this letter may involve improper interpretation of law in a community property State. H.R. 2817 would make such injustices possible in every State.

I very much appreciate your sending me a copy of NAUS' testimony on H.R. 2817, H.R. 3677 and H.R. 6270.

We are in complete agreement on H.R. 2817. We have some common ground on H.R. 3677 and H.R. 6270. I am still puzzled by Colonel Sheffey's reference to alimony and child support. Public Law 93-647 passed in January 1975 already allows garnishment of federal law for those two limited purposes. H.R. 4677, H.R. 6270 (and S. 846) would allow garnishment only in a property settlement and would apply only in the eight community property states. My experience and observation convinces me that if these bills pass, they would be very harmful to the armed services. Many Army and all Air Force personnel train in Texas. Since it's also a "no fault" divorce state, these bills would make San Antonio, Texas the divorce center of the world for the Army and Air Force. A spouse of military personnel could go there to file for divorce. Her misconduct could not be discussed and the retirement pay is routinely divided as community property (half and half). This is what happened even when I lived in Illinois. My wife's attorney stalled and avoided my jurisdiction hearing until she completed resident requirements. I was cleaned out and was finally unable to obtain military leave for the court date. My attorney pleaded the Soldier and Sailor Civil Relief Act of 1942 and the judge disallowed it and proceeded while making anti-military remarks. This action was successfully appealed to the Texas Supreme Court. After 3 years it was reversed and remanded to the same court. It was more onerous the second time around.

After five years of agony, I was broke and my home in Illinois was sold at auction. This applied against \$50,000 for my wife and \$25,000 for her attorney in judgments (this money never existed). The property judgments were the means the judge intended to enforce payment of half my retirement pay for life as "community property." Five years and between \$50-\$60,000 legal costs have filled my retirement years. I sometimes forget other people cannot have any intense interest unless they have been there. The basis of my divorce was a

adulterous affair my wife entered into with an AF Colonel while I was in Vietnam.

My experience revealed two other serious problems for service personnel. Jurisdiction for the service member is the first. The spouse can go anywhere and file for divorce. When it's 1,200-1,500 miles from the military base of assignment, there is no way the service member can get enough military leave (and afford the travel) to adequately defend his rights and property. The other concerns Public Law 93-647. This law should be amended to allow alimony only where child support is involved. The sharp divorce lawyers in distant courts use it to clean out service personnel all the time. The service member then must get out of the service as soon as possible or retire to reduce the bite. Everyone loses except the divorce attorneys.

In summary, I believe two Congressional actions are necessary after defeating all these bills. They are:

1. Amend Title 10 United States Codes to make retirement pay separate pay that may be divided as community property. This would be similar to railroad retirement pay in 45 UJC 231d, 231m, as upheld by the U.S. Supreme Court.

2. Amend Public Law 93-647 to exclude alimony without child support or limit it to a reasonable period of transition for the divorced spouse.

Although I remain puzzled over any support of H.R. 6270, H.R. 3677 and S. 846 (all are identical), your providing me your testimony is greatly appreciated. Signed a NAUS member residing in Texas.

Mr. SHEFFEY. Divorces and related property settlements are matters that should be left to the States and their courts. NAUS urges you to oppose H.R. 2817.

NAUS is not opposed to the basic concept in Representative Hance's H.R. 3677 and Representative Fisher's H.R. 6270 that service Secretaries be authorized to pay court ordered alimony and child support from retired pay. The serious fault in these bills is that they would preempt the laws of the majority States that do not consider rights to retired pay as community property. Retired pay is pay and not a pension. It is pay earned by services rendered and for remaining eligible for recall in emergencies. It is not property to be divided, giving a divorced spouse permanent rights to a share of it regardless of remarriage or other changes in circumstances. The retiree could be a resident of a State that does not classify retired pay as community property, yet H.R. 3677 and H.R. 6270 would force on him another State's court ordered division of retired pay as community property. This would be unwarranted interference in the rights of the individual States to establish and enforce divorce laws.

There is a need for a simplified method of enforcement of alimony and child support orders on retired service members. NAUS would have no objection to H.R. 3677 and H.R. 6270 if they were revised to apply to alimony and child support only.

There are 2 million uniformed services members who could be affected by the bills before you today. Not 1 in 10,000 of them would want these bills passed in their present form. These people trust the members of this committee to protect their interests, for they have little voice in such matters as this. I beg of you not to betray this trust.

Mr. WYATT. Mr. Sheffey, how many women do you have in your association?

Mr. SHEFFEY. About 7,000.

Mr. WYATT. 7,000 out of 2 million?

Mr. SHEFFEY. No, no. Our association is about 26,000.

Mr. WYATT. 7,000 out of 26,000?

Mr. SHEFFEY. Yes, sir.

Mr. WYATT. Do you have any women's auxiliary groups?

Mr. SHEFFEY. No.

Mr. WYATT. Do you think that your views reflect those of the women in your organization?

Mr. SHEFFEY. I invited all our membership to comment on these bills and explained the bills in our association, over a course of several months.

We have gotten, of course, a far heavier opposition because of the predominance of male members. But most interesting to me has been the reaction of the active duty service women. Not one wants to be committed to share her retirement pay with a divorced spouse. This is a fact this committee must take into consideration.

We have now, I believe, 50,000 women in the services, and yet I have not heard from one who wants to have this handled this way.

Mr. WYATT. Obviously, you are opposed to mandatory provisions of the Schroeder bill?

Mr. SHEFFEY. Yes, indeed.

Mr. WYATT. Are you also opposed to the nonmandatory requirements of the Hance and Fisher proposals?

Mr. SHEFFEY. Not completely, no, sir. I think there is room for that. But as Mr. Fisher testified, the bills need a lot of cleaning up to be adequate for that purpose.

Mr. WYATT. How about Mr. Hance's bill, would you say there needs to be some cleaning up to be done there, and what specifically?

Mr. SHEFFEY. There is a great complication in the effect of social security on the SBP payment. There is a complication in the treatment of disability pay. We are not opposed to the basic principle of having the Federal Government enforce court ordered division of retired pay and survivor benefits.

Mr. WYATT. In other words, once a court, in whatever State in the Union it would be, has made rulings, the Government would then follow through and you are not opposed to that in principle?

Mr. SHEFFEY. No. That already exists, of course, in eight States, and it will probably exist in more eventually.

Mr. WYATT. I have no other questions.

Thank you very much.

Mr. SHEFFEY. Thank you.

Mr. WYATT. Capt. Henry Palau.

Please proceed.

Capt. HENRY PALAU. Thank you, Mr. Chairman and members of the committee.

STATEMENT OF CAPT. HENRY S. PALAU, UNS (RET.), LEGISLATIVE COUNSEL OF THE RETIRED OFFICERS ASSOCIATION

Mr. Chairman and members of the subcommittee, I am Capt. Henry S. Palau, U.S. Navy, retired, legislative counsel of the Retired Officers Association (TROA), which has its national headquarters at 201 North Washington St., Alexandria, Va. Our association has a membership of over 275,000 retired, former and active duty officers of the seven uniformed services. Included in our membership are 25,000 widows of former members.

We are very grateful for this opportunity to present our views with respect to H.R. 2817, H.R. 3677 and H.R. 6270.

On March 13, 1979 Mrs. Schroeder introduced three bills to amend the Civil Service, Foreign Service, and military retirement systems. H.R. 2817 is:

A Bill to amend chapter 73 of title 10, United States Code, to provide that a former spouse of a member of the Uniformed Services who is married to such member for 10 years or more shall be entitled to a portion of such member's retired pay and to a portion of the annuity of a surviving spouse of such member, and that such member may not elect to provide such an annuity without the consent of the spouse and any former spouse of the member . . .".

It is this bill to which I will address the greater portion of my remarks.

The Retired Officers Association strongly opposes enactment of this type of legislation. Our purpose in appearing before you today is not to address ourselves to the merits of Civil Service of Foreign Service retirement plans but to the military retirement system.

There are many differences between the several Federal retirement systems, and this committee is better aware of those differences than most Members of Congress. While the average military officer is forced into "retirement" by an up or out promotion system at an early age, an age when the demands on his income are likely to be heaviest, there are greater restraints on the postretirement activities of military personnel than there are on other Federal employees. For instance, the Dual Compensation Act of 1964 (5 U.S.C. 5532(b)), provides generally that a retired Regular officer may receive full civilian pay but his retirement pay shall be reduced to an annual rate equal to, as of March 1, 1980, the first \$5,335.74 of retirement pay plus one-half of any remained. This act has been amended by the Civil Service Reform Act of 1978 to provide that the combined military retired pay and civil service compensation of military personnel retiring after January 11, 1979, may not exceed the annual rate of pay being paid to level V of the executive schedule—currently \$50,112.50. This will effectively preclude many senior retired military officers from accepting positions of significant responsibility within the Federal Government, or serving in the Congress. Incidentally, Mrs. Schroeder was also the sponsor of this amendment to the Civil Service Reform Act.

Another restriction is contained in 18 U.S. Code, section 281, the Criminal Code. This precludes any retired regular officer from selling anything to the Government through the department in whose service he holds a retired status. This is a lifetime prohibition the constitutionality of which the Supreme Court of the United States refused to review on May 12, 1980.

A further restraint is found in 37 U.S. Code, section 801(c), which provides that payment may not be made from any appropriation for a period of 3 years after his name is placed on the retired list to an officer of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service who is engaged for himself or others in selling or contracting or negotiating to sell supplies or war materials to an agency of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administration or the Public Health Service. The civil

penalty for a violation of this statute is loss of retired pay while engaged in selling activity during the prohibited period.

The statute is directed only at activity by the retired regular officer which assumes the character of selling and does not prohibit all types of employment by or association with a company which does business with the Government. "Selling" has been defined so broadly by the Comptroller General, however, that it precludes many types of contact which might only remotely be interpreted as selling. Again, the Supreme Court has also refused to review this statute and the Department of the Navy is presently seeking to withhold \$16,341 of the retired pay of a naval officer.

The United States Court of Claims in the case of *Puglisi v. the United States*, decided October 19, 1977, and in which the U.S. Supreme Court denied certiorari, stated that a Regular officer who has retired remains a member of the regular armed services. He continues at all times to hold an office in the military.

In another decision, *Costello and Stevens v. the United States* decided by the U.S. Court of Appeals for the Ninth Circuit on October 26, 1978, again, certiorari denied by the Supreme Court, the plaintiffs were seeking recomputation of retired military pay. The court said, and I quote:

Here as we have held, retirement pay does not differ from active duty pay in its character as pay for continuing military service. Statutory compensation of this sort for military service can * * * be prospectively altered without offending the due process clause.

The Court of Claims in *Lemly v. the United States* decided in 1948 stated:

Retirement pay * * * is a continuation of active pay on a reduced basis. Even though an officer is retired from active duty and is receiving retirement pay, he is still an officer in the service of his country even though on the retired list."

In the case of *Abbott v. the United States* decided in 1973, the Court of Claims specifically rejected a contention that retirement pay is deferred compensation for past services. The Comptroller General in an opinion dated June 11, 1964. (43 Comp. Gen. 787) states:

It has long been held that retired pay is paid to officers of the Regular Army as current compensation or pay for their continued service as officers after retirement and only while they remain in the service. citing a United States Supreme Court decision, *United States v. Tyler*, 105 U.S. 244 (1881).

Article 1, section 9, clause 8 of the Constitution of the United States has been interpreted by the Comptroller General to prohibit employment of all retired military personnel, officer and enlisted, by a foreign government unless congressional consent is first granted. Congress in Public Law 95-105 has consented to the acceptance of civil employment by a foreign government only after the service secretary concerned and the Secretary of State approve that employment.

From all the foregoing it can be seen that military retirement is something apart from other retirement systems or pension funds or annuity programs. Not only is the officer himself restricted in his post retirement pursuits, but so are these limitations on his actual receipt of retired pay.

Public Law 93-647 makes Federal wages and pensions subject to legal process brought for the enforcement of legal obligations to pro-

vide child support or alimony. This is an adequate protection to ensure that military personnel meet their just obligations.

H.R. 2817 would also compel the military retiree to participate in the military survivor benefit program (SBP) unless a former spouse or present spouse consents to his doing otherwise. SBP contains serious inequities which the House of Representatives has seen fit to attempt to amend in two previous Congresses with no action being taken by the Senate. There have been numerous studies of the military survivor benefit plan and it is difficult if not impossible to know which of them are valid. The undisputed fact of the matter is, that since the plan's creation in 1972, \$1 billion more has been withheld from military retired pay than has been paid out in survivor annuities. One DOD study shows that the percentage of cost of enlisted personnel started at 85 percent in 1972, has already grown to 125 percent and by 1987, will reach 236 percent. The same study shows officer cost going to 110 percent. This plan was originally designed to emulate the Civil Service retirement survivor benefit annuity in which the Government pays 40 percent of the cost and the retiree 60 percent of the cost.

I submit that it makes no sense to allow the decision as to whether to participate in such a plan to be subject to veto by a former spouse whose decisions can be based heavily on emotion and perhaps even on vindictiveness. The problems with the military survivor benefit plan arise out of its interface with the Social Security system. At present the military survivor annuity is totally offset by the amount of a survivor's social security benefit attributable to military service performed after 1956.

The Senate Armed Services Committee has just favorably reported a bill, S. 91, in Senate Report 96-748, which would limit the offset to 40 percent of the military survivor annuity. There is no such offset in the case of the Civil Service survivor annuity even though 83 percent of civil service retirees also draw at least minimum social security. This offset occurs even if the survivor has earned a social security benefit in his or her own right. In short, S. 91 will do little to correct the inequities for officer retirees. We would hope to comment more fully on this legislation before the House acts on it.

The military has been covered under the Social Security program since 1957 and as you know, with the recent amendments to the Social Security Act, is taxed very heavily for this benefit. Other Federal employees, civil service and foreign service, do not have this benefit, but neither are they taxed to pay for it. The Social Security program now provides that a spouse of 10 years duration is entitled to an annuity based upon her husband's or former husband's earnings.

We continually hear horror stories about the wife who has been cast aside by a callous husband after a lifetime of dedication, but no one seems to tell the other side. Let me give but one example. I am in correspondence with a retired Army lieutenant colonel who made his first unaccompanied tour to Vietnam in 1964. His wife and two children moved to California while he was away, and upon his return to Fort Huachuca, Ariz., the family was reunited. During his second unaccompanied tour to Vietnam in 1968 the family again moved to California. Upon his return this time he was assigned to Fort Rucker, Ala. This time, however, his wife refused to join him, and in 1970

she instituted divorce proceedings against him in California. She was granted custody of the children and child support which the colonel has paid faithfully. Incidentally, she remarried another military officer before the divorce was even final. The colonel retired in 1973 and has since remarried. This spring his first wife returned to the California courts to seek one third of his retired pay as they were married for 15 of his 22 years of service. Under H.R. 3677 and H.R. 6270, as introduced by Mr. Hance and Mr. Fisher respectively, she and her second husband, now also a military retiree, will receive one and one-third retirements and the colonel will receive two-thirds of a retirement if she is successful. This is now occurring in spite of the fact that the colonel has never been a California resident. This is an actual factual situation, not the product of a demented mind.

Let me refer to one hypothetical that Mrs. Schroeder offered in the Congressional Record of May 20, 1980. Suppose a couple were married for 10 years, 8 of which were during military service. Under H.R. 2817 this spouse would be entitled to eight-twentieths times 50 percent of the service person's retired pay if he or she continued on to qualify for retirement based on 20 years of service. It seems to me that this would be a strong disincentive to continuing on a military career.

To take Mrs. Schroeder's hypothetical one step further, as indeed she did on May 20, if the service person remarried 2 years later and served an additional 20 years on active duty for a total of 30 years, the first spouse would be entitled to eight-thirtieths times 50 percent and the second spouse to twenty-thirtieths times 50 percent of the retired pay. Mr. Chairman, I submit that this is ludicrous. But what is even more ridiculous is the fact that under Mrs. Schroeder's bill, H.R. 2817, the first spouse would have it in her power to compel the military retiree to participate in the survivor benefit program some 22 years after the marriage terminated with no regard at all either to her own or the couple's financial status at the time of retirement. What an opportunity to even an old grudge.

Mr. Chairman, I think that it is clear that military retirement is different from other Federal retirement programs, that the military spouse is entitled to a former spouse's benefit under social security, that adequate protection is available under existing garnishment law, and that legislation such as you are considering today is neither necessary nor desirable. It is equally clear from these few examples that it is probable that legislation such as you are considering today is likely to create far more problems than it will solve. Furthermore, it would constitute an outrageous governmental interference in the personal lives of military personnel. I strongly urge you to reject all of these bills.

I thank you again for providing me this opportunity to appear before you and I will be happy to answer any questions you may have.

Mr. NICHOLS. Thank you, Captain.

Do you have some women members in your organization?

Captain PALAU. Yes, sir.

Mr. NICHOLS. What percent of your organization are women?

Captain PALAU. I am not certain on that. We do have about 23,000 widows out of 275,000 members.

Mr. NICHOLS. Are they auxiliary members or active?

Captain PALAU. They are auxiliary members, Mr. Chairman.

Mr. NICHOLS. Do you feel like your statement reflects the views of your organization?

Captain PALAU. Yes, sir, I do.

Mr. NICHOLS. First, let me say I can't understand the military wife that wouldn't want to go to Fort Rucker, Ala. It is a great place. I have to question her judgment to start with.

But in all seriousness, we appreciate your testimony, and I understand from your testimony you are against all three bills.?

Captain PALAU. Yes, sir.

Mr. NICHOLS. In any shape, form, or fashion, and so forth?

Captain PALAU. Yes, sir.

One point I did not make here, but under Mr. Hance and Mr. Fisher's bills, it is conceivable that a court could award the entire military retirement to the former spouse, and the Government would have to comply. There is no limit on it.

Mr. NICHOLS. All right.

Mr. WYATT. Thank you, Mr. Chairman.

Mr. Palau, I am a little concerned about your opposition to the Hance-Fisher bills.

I will go first to your example. I think you probably pointed out what my great concern about Mrs. Schroeder's bill was. In other words, one and one-third benefit goes to the former wife subsequently married to another person. I think this is my problem with the mandatory requirement; however I still have the following concern:

Let's take this situation and put it in Texas, a State in which you could not order garnishment—unlike California. Although the court had for some reason—and I don't know what the reason is and I don't think it is any business of the Congress to worry about what the reason is—for providing the wife with one-third of that retirement benefit. Let's assume they did.

That order of the court could not be carried out. The Federal Government would say, we can't do anything about it. Don't you see that as a major problem?

Captain PALAU. I can see where there is a problem, apparently. The alternative, though, is not to force the Federal Government to change their rules to meet a situation existing in one State.

Mr. WYATT. They would be changing their rules, but don't you think the Federal Government should follow the rules and regulations of State courts that handle divorce proceedings?

We are not so calloused these days we don't even recognize State courts any more do we? Only the Supreme Court does that.

Captain PALAU. I would say one alternative could be for Texas to create an alimony system, rather than relying solely on the property distribution.

Mr. WYATT. That is the whole garnishment question, of course, in Texas. It is written into the State constitution. It goes back 100 years or longer—200 years of experience. The people of Texas are unalterably opposed to garnishments, for whatever reason, rightfully or wrongfully.

I question whether or not the Congress should get into that. But it does concern me when people who we have employed, who we have set

benefits up for don't abide by Texas law. We provide an "out" in essence. If the courts say you owe one-third, you owe one-third. Why should the Federal Government say that we are not going to attempt to enforce.

How can you justify that kind of a position?

Captain PALAU. Well, first let me give you one example of a case. I think the case is named *Valdez v. Ramirez*, a 1977 court decision, in which the wife married a man who had two children from a previous marriage. They lived together happily for 33 of her 35 years of civil service. She then retired and a few years later her husband died. His children came in and demanded one-half of her retirement as being part of her husband's property rights acquired during the marriage.

This women—when I say children, they were children that had been born before they were married, so they are obviously in their late 30's or 40's, with no connection with Mrs. Alvarez at all. And yet they are getting half of her retirement under Texas law. I question whether that—

Mr. WYATT. Her children are getting half of her retirement which is his benefit?

Captain PALAU. That is right.

Mr. WYATT. You say that is wrong?

Captain PALAU. Yes, sir, I think that is wrong.

Mr. WYATT. Well, but my point is aren't you arguing with a Texas court? That is the only problem I have with all examples. I am not wanting to talk about examples; because that is something that courts do that we shouldn't be doing.

For some reason the court made that decision, based on Texas law. Now, we recognize Texas law—I do, certainly.

Captain PALAU. Yes, sir.

Mr. WYATT. I think it is generally sound. I think the point we should be talking about is whether the Federal Government is going to recognize Texas law. Whatever the circumstances may be—I don't know what they are—I don't like the fact the the colonel's wife can get a third of his retirement under California's law? Don't I have to respect that court?

Captain PALAU. Yes, sir, to answer your question. Yes, sir, I think I have a great respect for law, and I also am a strong believer in the State's rights.

The difficulty I have is in the earlier part of my statement, I went to some extent to point out that the military retirement is not in fact a vested retirement. It is a continuing pay for continuing service.

That is the way it has been interpreted by the Supreme Court, by the Court of Claims, by the Congress. The Congress has changed the retirement rules many times—recomputation; 1 percent add-on in the cost of living; eliminating the 1 percent add-on, going to biennial.

Mr. WYATT. All right, under that theory and let's accept that.

Captain PALAU. Yes.

Mr. WYATT. Then you are saying a person who works for the Government of the United States is still in their employ, has been ordered by a State court to do something and he is not living up to that court order. That being the case, why don't we cut the whole thing off to him?

Do you support that—until he starts complying with State law?

Captain PALAU. There again, I think—

Mr. WYATT. I am just trying to get a remedy.

Captain PALAU. Yes, sir.

Mr. WYATT. As you see, I think people who work for the Federal Government shouldn't be able to welch out on a State court order, and hide behind Federal law. So if they are employees of the Government, I don't think we ought to have folks running around out there that aren't abiding by the laws of the States of this country.

Captain PALAU. I have to join what General Tice said earlier. If you would divide up my retirement, I would say my wife is entitled to more than half of it. I would like to think, God forbid—if we were to ever separate—I would do something like that.

I agree with you totally in equity and morals and so forth. There are going to be a few people that are going to ignore the law. I am unable to address the question of the law of Texas on garnishments.

Mr. WYATT. It is kind of hard for me to argue about garnishment when my people are opposed. I have that problem.

Captain PALAU. Yes, sir, I see. I would respectfully suggest an easier solution might be for Texas to take a second look at garnishment.

Mr. WYATT. You will refer that to my four State senators and 10 representatives, who will tell me to mind my own business.

But really, garnishment is not the problem. The question is a remedy on the Federal level. That, I think, is where we are. What you are saying is you don't think the Federal Government should provide a remedy.

Captain PALAU. I would not want to say the Federal Government should not provide a remedy. I don't think the remedy is in these bills. These bills create the aberration where one gets one-third of the retirement, and the other gets two-thirds of the retirement—Mr. Fisher's and Mr. Hance's bills also.

Mr. WYATT. Thank you, Mr. Chairman.

Mr. NICHOLS. Thank you, Mr. Palau. We appreciate your testimony.

Our next witness is Mr. C. A. (Mack) McKinney, Sgt. Maj., U.S. Marine Corps (retired), vice president for Government Affairs, before the subcommittee.

We are glad to have you come before our committee.

Mr. McKINNEY. Thank you. I am accompanied today by the Association's Assistant Director for Legislation, Richard W. Johnson, Jr.

I am C. A. (Mack) McKinney, a retired Sgt. Maj., U.S. Marine Corps, and the vice president for Government Affairs, NCOA.

I represent more than 150,000 noncommissioned and petty officers of the U.S. Armed Forces. Eighty-six percent are on active duty with the Army, Navy, Marine Corps, Air Force, and Coast Guard. The remainder consist of reservists, national guardsmen, retirees and former members of the Armed Forces.

STATEMENT OF C. A. "MACK" McKINNEY, VICE PRESIDENT, FOR GOVERNMENT AFFAIRS, NONCOMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA

Mr. McKINNEY. Mr. Chairman: NCOA is opposed to the passage of the three proposals before this distinguished panel.

NCOA believes that its prepared statement adequately covers the reasons why military retired pay should not be treated as community

property. In some respects, this is an identical position to the one taken by both the House and Senate when they debated legislation leading to the passage of Public Law 93-647.

Whatever the reason, NCOA refers to the definitions of military retired pay noted in its prepared statement to offer arguments that moneys received by nondisabled military retirees are not a pension or an annuity.

This being the case, retired pay that is to be offered after a divorce cannot be considered community property any more than unearned wages of an employee can be counted as community property at the time of settlement.

We must remember that we are not dealing with a pension or an annuity. A pension is a payment made after fulfilling certain conditions of service—and where the individual no longer works for or serves the company providing the pension. An annuity, of course, is payment for payment made—which is certainly not military retired pay.

Military personnel do not sever their relationship with the Armed Forces. They remain members of their military service, retain their grade and status as officers, noncommissioned officers, et cetera, and are subject to recall to active duty under certain circumstances.

In addition, the military retiree is subject to any number of conditions that most pensioners or annuitants are not. For example:

- (a) Forfeiture of pay.
- (b) Reporting requirements.
- (c) Loss of pay because of questionable conduct.
- (d) No entitlement to pay under certain conditions of employment.

Most important is the lack of vested interest and, in the proposals offered, equal protection under the law:

In the case of enlisted members, particularly, there is no vested interest whatsoever. If separated from the military prior to completing the 20th year of service, there is no severance pay, no readjustment pay, no pay of any kind to assist in resettling into a civilian lifestyle. What is most apparent with enlisted members is their lack of continuity in establishing a retirement eligibility. They are not permitted to enlist for the first time and extend that enlistment to cover the 20th year of service. Instead, they must reach that goal by a series of enlistments—perhaps, some extensions of enlistments—ending with an honorable discharge for each. The discharges, regardless of the actual periods of separation, stop the accrual of all pay, allowances and benefits until the next enlistment is executed.

In fact, the case for no vested interest was decided in a decision rendered May 13, 1966, by the U.S. Court of Claims. It held that military personnel have no vested interest or a contractual right in their retirement system.

None of the bills under discussion protect the interests of the military member. Contrarily, they appear to be vehicles that give almost religious attention toward the plight of former spouses without any thought of guaranteeing the rights of military personnel.

The three bills do their best to have Congress enact statutes that are contrary to most States' laws. Why should the Federal Government get involved in what each State requires to execute a divorce or separation settlement? For example, will Congress tell the State of Colorado that it is in error over its ruling military retired pay

is not community property? Will Congress say to the State of Texas it is "all wet" because it does not have an alimony or garnishment law?

I might remind this subcommittee that it saw fit to turn down the 1972 plea for recomputation of retired pay based somewhat, if not primarily, on the two court decisions rendered in 1966 by the U.S. Court of Claims.

In the first decision, I have referred earlier to the second decision, plaintiffs had argued that a breach of contract occurred when Congress terminated the recomputation provisions in the military retirement system. The Government countered that there is "strong authority" that (military personnel) have no vested or contractual right to any particular amount of retired pay. The court concluded that:

The general rule—has long been that (a) soldier's entitlement to pay is dependent upon statutory right * * * (and not upon) common-law rules governing private contracts * * *.

Unless the military retirement system is changed to a contributory one, Congress should make it clear that military retired pay is a pay and not an annuity or a pension. That it is awarded monthly only under certain conditions. That it is not a vested property. That no community property was or is used in its attainment. That it can be terminated or partially lost pursuant to law, and, last but not least, that as long as Congress can change the system no one has a contractual right to any particular amount.

Mr. Chairman, NCOA urges the subcommittee to reject H.R. 2817, H.R. 3677, H.R. 6270, or any similar bill that even remotely considers military retired pay as a "community" property (in whole or in part).

Thank you, Mr. Chairman, for this opportunity.

We now stand ready for any questions the panel might have at this time.

WRITTEN STATEMENT OF C. A. "MACK" McKINNEY

Mr. CHAIRMAN. As a spokesman for the Non Commissioned Officers Association of the U.S.A. (NCOA) I extend appreciation for the opportunity to comment on the legislative proposals H.R. 2817, sponsored by the Honorable Patricia Schroeder; H.R. 3677, by the Honorable Kent Hance; and H.R. 6270, by the Honorable Joseph L. Fisher.

I am C. A. (Mack) McKinney, a retired Sergeant Major, United States Marine Corps, and the Vice President for Government Affairs, NCOA.

I represent more than 150,000 noncommissioned and petty officers of the United States Armed Forces. Eighty-six percent are on active duty with the Army, Navy, Marine Corps, Air Force and Coast Guard. The remainder consist of reservists, national guardsmen, retirees and former members of the Armed Forces.

PROLOGUE

NCOA, its directors, officers and members are truly concerned with the predicament of the many women who are or have been married to and will marry the men serving in the uniformed services of the United States. Surely, they will need some program or another that will provide an income if they cannot work, or have minor children to care for, or have contributed an appreciable amount of time or money during the marital years.

However, NCOA, et al., is just as concerned for the many uniformed members who are or have been married to and will marry spouses that contribute little if anything to a marriage. Many have a great expectation of the receipt of monetary rewards if the uniformed member is killed or missing in action, or is sent overseas so the spouse does not have to go with him or her.

For the spouses, there is available more ways to insure an income from members of the U.S. armed forces than from almost any other group of employees in the United States. In addition to Social Security benefits, Dependents Indemnity Compensation (DIC) and Public Law 93-647 (that gives the spouse or former spouse the right to garnish the pay or retired pay of a service member), the military departments have a Survivors Benefit Plan (SBP) and regulations directing adequate monetary support of dependents.¹

DIC and SBP provide the spouses an annuity in the event of the demise of the military member. In the SBP, the amount could be as high as 55 percent of the member's total military retired pay. The only ways to opt out are thru divorce or death.

The five programs noted are at least three pluses over those available in the civilian sector and at least two over those available in the Federal Civil Service System. Most civilian employers are not responsible for the material and paternity status of their employees. They become involved only through garnishment procedures.

RETIRED PAY NOT A PENSION

NCOA stands unequivocally opposed to the enactment of either H.R. 2817, H.R. 3677, or H.R. 6270.

The principal objection is based on the simple fact that military retired pay is not, in reality, a retirement annuity or a pension earned as a vested right or as a reward for long and faithful service.

Let's examine the reasons behind the Association's argument:

Webster's New World Dictionary, Second College Edition, defines an annuity as a payment made as a result of an investment. A pension is "a payment, *not wages*, made regularly to a person (or his family) who has fulfilled certain conditions of service, reached a certain age, etc." Neither fits military retired pay.

The Encyclopaedia Britannica, in describing Public Employee Pensions (Vol. 17, 1965; p. 488) reads: "Public-employee plans in the United States were inaugurated before the beginning of the 20th century. The 'retired pay' measures of the armed services had already been in effect, *but not as pension systems in the usual sense; they continued a certain portion of pay*, the recipients were subject to recall to duty and there was no advance funding or thought of employee contributions." (Italic supplied for emphasis.)

The Marine Officer's Guide (Thomas-Heinl-Ageton; U.S. Naval Institute, 1956, p. 232) defines retirement as "removal from active duty after completion of certain service and longevity requirements, after which the retired officer receives retired pay. Although . . . *no longer on active duty, he remains a member of the Marine Corps*, retains his rank (sic) and status as an officer, and may under certain conditions be recalled to active duty." (Italic supplied for emphasis.)

A few years ago it was common practice to have Navy and Marine Corps personnel in receipt of "retainer" pay to report periodically for physical examinations. The practice was discontinued because of costs involved; however, currently they are required to report any changes of address or in health to their respective services.³

Military retirees are, under the law, subject to the applicable provisions of the Uniform Code of Military Justice.⁴ For example, a retired naval officer of the U.S. Navy was still part of the land or naval forces and the exercise of jurisdiction over him by a military tribunal for an offense in violation of the UCMJ was constitutionally valid. (*Hooper v. U.S.*, —CtClS—, 326 F (2d) 982)

A service member who becomes eligible for retirement might lose his or her entitlement to retired pay as a result of a subsequent court-martial, etc.⁵

Retired officers, dependent upon individual service, are not entitled to retired pay for a period of two years or more if engaged in certain businesses dealing with the Department of Defense, etc.⁶

Military retired pay is subject to forfeiture under certain conditions described in Sections 8311, 8312, 8313, 8314 and 8315 of Title 5, United States Code

¹ For example: 32 CFR, chapter VI, subchapter C, parts 733 and 734 (Secnav Inst. 7200.16 of Mar. 16, 1979).

² Sections 6481, 6482 and 6483, title 10, United States Code.

³ Section 6485, (b), title 10, United States Code.

⁴ Section 802, article 2(4) and (6), title 10, United States Code.

⁵ Sections 802, 803, 804, title 37, United States Code.

⁶ Sections 801(b) and (c), title 37, United States Code.

Military retired pay is subject to partial forfeiture if an officer is employed by the federal government or the service member is in receipt of Veterans Administration (VA) compensation.⁷

Other points that might contribute to this argument are:

The definition of military retired pay, as indicated in Title 5, United States Code, is separate from that of an annuity for a government employee or a benefit or compensation provided by the Veterans Administration (i.e.—see section 8311)

The distinguishable difference applied to military retired pay by the Internal Revenue Service in dealing with the reporting of annuity income and pensions,⁸ and the fact that it is a fully taxable income.

Congress can change the law relating to military retirement at any given time; this includes both eligibility and amounts of pay; therefore, there is no vested interest acquired in the military retirement system until the member retires. Even then Congress could change the system and either reduce, increase or terminate payments to retired members

In the case of enlisted members, particularly, there is no vested interest whatsoever. If separated from the military prior to completing the 20th year of service, there is no severance pay, no readjustment pay, no pay of any kind to assist in resettling into a civilian lifestyle. What is more apparent with enlisted members is their lack of continuity in establishing a retirement eligibility. They are not permitted to enlist for the first time and extend that enlistment to cover the 20th year of service. Instead, they must reach that goal by a series of enlistments (perhaps, some extensions of enlistments) ending with an honorable discharge for each. The discharges, regardless of the actual periods of separation, stop the accrual of all pay, allowances and benefits until the next enlistment is executed.

THE PROPOSALS

To carry its opposition further, NCOA presents a brief description of each bill and provides a comment or comments thereto.

H.R. 2817

Provides retirement income to spouses and former spouses of members of the uniformed services and makes SBP mandatory unless the retiree and spouse, and former spouse (if any) elect out of the plan; with divorced spouses, married to uniformed members for 10 years or more, entitled to a pro rata share of benefits.

Comment No. 1.—In introducing her proposal, Mrs. Schroeder remarked that divorced spouses are denied receipt of retirement or survivor benefits even when the marriage lasted 20 or 30 years. In the same remarks, she admitted that Congress amended the Social Security Act to provide benefits for divorced spouses married 10 years or more. Today, spouses of career military personnel are covered by social security.⁹

Comment No. 2.—Mrs. Schroeder also argued that “we are a society which places value on home and family, encouraging women to stay at home and take care of the children.” She went on to say that, “The features of pension portability is essential if spouses are to have a choice whether to work inside or outside the home.”

Obviously, Mrs. Schroeder has not kept pace with the times. In 1970, some 43 percent of women were employed. Today it is a majority, or 51.4 percent. More significant is that of the country's current 58 million families, only 7 percent consists of a father who works and a mother who stays at home to care for the children.¹⁰

Comment No. 3.—H.R. 2817 is based upon the premise that marriage is an “economic partnership” and income earned is joint marital property and the spouse makes a significant contribution toward the employee's ability to earn the wage and consequently receive the pension. Thus, a spouse married during the working years should be entitled to a portion of the retirement benefits payable at retirement.

⁷ Dual Compensation Act of 1964 and section 3105, title 38, United States Code.

⁸ On page 10 of the “1979 Instructions for Preparing Form 1040,” IRS instructs the taxpayer to complete line 17 by reporting pension and annuity income not reported on Schedule E (that to which the taxpayer had made contributions). It lists “Pensions and annuities if you paid no part of their cost,” and “Military retirement pay from Form W2P.”

⁹ Congressional Record, p. E1068; Mar. 13, 1979.

¹⁰ The Washington Post, Dec. 30, 1979; “After 10 Years of Change,” by Nancy L. Ross.

In the case of the military member, retired pay is not earned until after retirement. It is then earned on a month-by-month basis and should the member die before the last day of the month, the final check must be returned to the federal government.

As to the spouse's contribution toward the member's ability to earn the wage, there is sufficient doubt connected with the enlisted promotion system to render this argument null and void. Admittedly, there are consequences if the spouse cannot conduct herself or himself in the proper manner.

Finally, since the military member does not contribute to the military retirement system, neither can the spouse.

Comment No. 4.—The U.S. Civil Service Commission strongly opposed an earlier Schroeder bill encompassing federal employees not only because of the administrative difficulty involved and the costs, but because it involved "the system in problems which are and should remain under the jurisdiction of the courts. Additionally, (it) would penalize the federal employee * * * because a former marriage didn't last (regardless of which party was at fault)."¹¹

NCOA agrees that the same conditions are applicable to the military retirement system.

Comment No. 5.—Mrs. Schroeder's attempt to have Congress determine the status of military retired pay as a community property might be related to her own State's ruling that "retired pay is not subject to division because it is a noncontributory plan." The ruling was upheld in 1976 by the Colorado Supreme Court.¹² NCOA agrees with the ruling. Community property, if any, should be under the jurisdiction of the States and not the federal government.

Comment No. 6.—In marking up an earlier Schroeder bill, H.R. 3591, 95th Congress, the House Post Office and Civil Service Committee substituted instead a new bill, H.R. 8771. The latest proposal did not contain provisions entitling a former spouse to a portion of such employee's retirement annuity.¹³

H.R. 3677

Authorizes Service Secretaries to pay another person all or part of a service member's retired or retainer pay if provided for in a court decree, etc., or "any court-approved property settlement."

Comment No. 1.—Mr. Hance is from Texas. Texas has no garnishment law, no alimony law, but does have a community property law.

As noted in comment No. 5 for Mrs. Schroeder's bill, Mr. Hance also may be attempting to circumvent the laws of his State in order to obtain redress for spouses in Texas who are recipients of community property settlements, or who are not able to obtain part of their military spouse's pay or retired pay through alimony decrees.

The Comptroller General, in decisions B-190985, gave military services legal basis for refusing to follow Texas community property attachments of military retired pay. Again, in another decision B-191592, the CG ruled the government is in error if it garnishes federal wages or pensions based on community property settlements.

To further the argument that Mr. Hance's proposal might be "parochial" in nature, research discovered the following colloquy between Representatives Ullman and Eckhardt on the House floor during debate on the Conference Report on H.R. 17045 (which became Public Law 93-647) regarding court order for garnishment.¹³

"Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?"

"Mr. ULLMAN. I yield to the gentleman from Texas."

"Mr. ECKHARDT. Mr. Speaker, I wish to pursue briefly the question which the gentleman from Texas (Mr. Kazen) raised."

"In Texas, we do not have garnishment of wages, so this would be ingraining the Federal law on existing State law. Under circumstances like that I would think the case would be removable to the Federal court as a matter of right."

"Is that what the gentleman feels would result? Can these cases all be removed to Federal courts?"

"Mr. ULLMAN. No. The garnishment provision places the U.S. Government in the same position as a private employer. Nonsupport cases can be certified to the Federal courts only by the Secretary of HEW who must find that use of the

¹¹ House Report No. 95-713.

¹² Navy Times, Apr. 18, 1977.

¹³ Congressional Record, p. H12586; Dec. 20, 1974.

Federal courts is the only reasonable way to enforce a court order. *In the situation the gentleman cites, there would be no court order on which to base such a finding.*" (Italic supplied for emphasis.)

Comment No. 2.—Public Law 93-647 gives spouses and former spouses adequate access to up to 65 percent of a member's retired pay providing they first obtain a court decree. However, neither Public Law 93-647 nor Mr. Hance's proposal contains the necessary provision protecting the uniformed member pursuant to the Soldiers and Sailors Civil Relief Act. NCOA believe that H.R. 3677 was authored with the intent to protect only the female spouse or former female spouse without equal protection of the military member under the law.

Comment No. 3.—Concerning community property settlements, reference is made to Comments No. 3, No. 4 and No. 5 of H.R. 2817 that equally apply to Mr. Hance's proposal.

H.R. 6270

Provides for payment of retired or retainer pay in compliance with any court decree, order or property settlement, etc.

Comment No. 1.—Mr. Fisher's bill is similar to the proposal offered by Mr. Hance. Both gentlemen might have used Public Law 95-366 as a model for their assault on military retired pay. Again, NCOA refers to previous comments made in reference to H.R. 3677.

NCOA does not believe that military retired pay can be treated as property for the sake of making a settlement between two people.

LEGALITY

The presentation of the facts covered in the preceding chapters make it obvious that the treatment of military retired pay as proposed in H.R. 2817, et al., may not be legally sound.

States' Rights.—In a statement before a House Post Office and Civil Service subcommittee hearing on an earlier Schroeder bill (H.R. 3951, 95th Congress) proposing similar legislation for federal employees,¹⁴ Thomas A. Tinsley, Director, Bureau of Retirement, Insurance and Occupational Health, U.S. Civil Service Commission, said:

"State laws and state courts have always controlled in matters of domestic relations and property rights. These courts are specifically geared to determine such questions as an individual's obligation to a former spouse. Such determinations are made by a court on an individual case basis after considering many factors such as the financial status of both parties, property settlement, children involved, and the reasons for the divorce. Federal law now provides for the garnishment of annuities for former spouses of Federal employees when a court-determined obligation is not fulfilled. Accordingly, it is our opinion that the Civil Service Retirement System should not be used as a substitute for the judicial system in an attempt to obtain equity for former spouses."

Constitutional Right.—In another statement offered by Professor Henry H. Foster, Jr., New York University School of Law, the panel read:

"I am aware of past court decisions which have sustained under the Supremacy Clause the doctrine of federal pre-emption by statutes which were held to supersede inconsistent state law regarding marital or family property. Decisions such as *Wissner v. Wissner*, (338 U.S. 655 (1949)), *Free v. Hand* (369 U.S. 663 (1962)), and *Yiatchos v. Yiatchos* (376 U.S. 306 (1964)), however, involved such significant federal policies as the exemption accorded under the National Service Life Insurance Act, the survivorship provision in the federal law as to United States savings bonds, and the designation of the beneficiary of federal savings bonds. The federal policies involved were held to be legitimate and important."

Finally, in its decision rendered May 13, 1966, the United States Court of Claims held that the plaintiffs (all retired military officers) and "similarly situated plaintiffs" *Have no vested interest or a contractual right in their retirement system.*¹⁵

Therefore, it appears that under the law, as interpreted by the U.S. Court of Claims, spouses and/or former spouses have no vested interest or a contractual right to their military spouses' and/or former spouses' retired pay.

¹⁴ Annuity Provisions For Former Spouses, House Committee on Post Office and Civil Service, Serial No. 95-17.

¹⁵ House Armed Services Committee No. 92-78, p. 16901.

If Congress, in its wisdom, sees fit to enact any of the proposals now before this panel, it will open up a Pandora's Box for claims against the federal government involving, for example, recomputation of retired pay. This item alone could cost the United States billions of dollars.

EPILOGUE

Mr. Chairman. The NCOA does not need to remind this panel of its responsibility to protect the interests of the military member by providing adequate compensation for whatever that member does, is or will be as a member of the armed services.

Of course, it is not enough to furnish adequate compensation without insuring that it is or will not be lost through unlawful means no matter how well-intentioned they might be.

None of the bills under discussion protect the interests of the military member. Contrarily, they appear to be vehicles that give almost religious attention toward the plight of former spouses without any thought of guaranteeing the rights of military personnel. They are biased and aimed at giving the former spouse an "open door" to a member's retired pay without equal availability to the former spouse's retirement annuity or pension (if any).

The three bills do their best to have Congress enact statutes that are contrary to most States' laws. Why should the federal government get involved in what each State requires to execute a divorce or separation settlement? For example, will Congress tell the State of Colorado that it is in error over its ruling military retired pay is not community property? Will Congress say to the State of Texas it is "all wet" because it does not have an alimony or garnishment law?

Why should the federal government step in and tell the States what they must do with military personnel when the States do not want the same for their own citizens?

It was this very subcommittee that saw fit to turn down the 1972 plea for recomputation of retired pay based somewhat, if not primarily, on the two court decisions rendered in 1966 by the U.S. Court of Claims.

In the first decision,¹⁰ plaintiffs had argued that a breach of contract occurred when Congress terminated the recomputation provisions in the military retirement system. The government countered that there is "strong authority" that (military personnel) have no vested or contractual right to any particular amount of retired pay. The court concluded that: "The general rule has long been that '(a) soldier's entitlement to pay is dependent upon statutory right * * * (and not upon) common-law rules governing private contracts * * *'."

Unless the military retirement system is changed to a contributory one, Congress should make it clear that military retired pay is a pay and not an annuity or a pension. That it is awarded monthly only under certain conditions. That it is not a vested property. That no community property was or is used in its attainment. That it can be terminated or partially lost pursuant to law, and, last but not least, that as long as Congress can change the system no one has a contractual right to any particular amount.

In conclusion, NCOA urges the subcommittee to reject H.R. 2817, H.R. 3677, H.R. 6270, or any similar bill that even remotely considers military retired pay as a community property (in whole or in part).

Mr. McKINNEY. Thank you, Mr. Chairman.

We stand ready to answer any questions.

Mr. NICHOLS. Mr. McKinney, do you have any female members in your organization?

Mr. McKINNEY. Yes, sir, we do have a few.

Mr. NICHOLS. A few? Do you feel like you reflected the views of your association?

Mr. McKINNEY. Yes. Most are on active duty.

Mr. NICHOLS. Mr. Wyatt, do you have any questions?

Mr. WYATT. Sergeant McKinney, let me ask you, in your statement, you say some 43 percent of women were employed in 1970. I take it married women. Is that married women or is it 43 percent of women who were employed?

¹⁰ Second decision referenced in chapter on "Legality."

Mr. McKINNEY. That is 43 percent of women were employed. Today it is a majority.

Mr. WYATT. 51.4 percent now. You say:

More significant is that of the country's current 58 million families, only 7 percent consists of a father who works and a mother who stays at home to care for the children.

Do those same statistics hold for military families?

Mr. McKINNEY. No; this is total families overall.

Mr. WYATT. Do you have access to statistics for military families? Do you think there might be some way to get that?

In other words, we heard testimony today that many women do not work because of transfers, et cetera. I can understand that argument. It sounds logical to me. Do military wives have problems with employment?

Mr. McKINNEY. I would say yes.

Mr. WYATT. Creating benefits, et cetera?

Mr. McKINNEY. I would say, yes, in many cases, based on the number of children involved in the family. When transferring from one place to another it is difficult to care for the children, and also to find day care centers.

Today, when pay is as low as it is for many, we find many of the wives working, or the husbands have to moonlight in order to make ends meet. I would say that this is not in relationship—my figures with that of the military service. But neither was that that Mrs. Schroeder offered.

Mrs. BYRON. Would the gentleman yield for a moment?

Mr. WYATT. Yes; I would be happy to.

Mrs. BYRON. Of the 43 percent of the women, is there a breakdown on how many are married or not married? I think that factor would be a very important consideration when you are using percentages loosely like that.

I think you have to take into consideration the portion of the 43 percent that are married.

Mr. JOHNSON. I would like to respond a little bit to Mr. Wyatt's question.

There are certainly limitations on all families, whether a woman can work, depending on the number of children and the additional source of income. But to summarily say dependent wives of military members cannot work or have not been able to work because of that attachment, because of that military attachment, I think is quite unfair. We are in a very transient, very mobile society today in the United States. We have become a nationally oriented society. We have fears nationally. We have unknowns that are national. We have a Federal Government that is national. And I personally know and I know my mother was one, and I know several other people, including my wife, who have worked for nationally based firms. Whenever I was transferred in the military; whenever my father was transferred in the military, my mother requested a voluntary transfer with the company she worked for and she was granted that transfer, time after time after time. She never lost her job because of a military move, even though she had children.

To summarily say this is an excuse that we must use to create new law, I think is substantially unfair to the military member.

Mr. NICHOLS. Will the gentleman yield?

If I may play the devil's advocate just a minute: I think the case represented by your wife working for a national company, moving from Fayetteville to Fort Bragg, and Oklahoma, and Fort Benning or Columbus, might be unusual. The point Mrs. Schroeder made, I think is so oftentimes, I have a feeling this is more often the case: women are here for 2 years, then they move on. There may not be a Montgomery Ward where they move next, or they may have been associated with a "Mom and Pop" grocery store in some other areas. They don't stay there long enough to get the coverage your wife got.

Mr. JOHNSON. That is true. But we are talking about a vested plan. We could provide them another opportunity such as the use of a Keogh account through special exemption so they might establish their own retirement plan, by the virtue of the fact they are military dependents.

Mr. NICHOLS. How many take advantage of that?

Mr. JOHNSON. That is not a provision of law now. So they cannot. But that is something that can be looked into as a solution.

Mr. NICHOLS. That is not the case at the present time?

Mr. JOHNSON. That is not the case, no, sir.

Mr. MCKINNEY. I might read this one short paragraph:

The number of women from the labor force swelled from 31.5 million in 1970 to 44 million this year. Many of the new entrants were middle aged returning to work after raising their children, to find they were prepared only for low paying routine jobs. Their own daughters have learned from their experience and now these women increasingly postpone having children and are returned to work quickly after giving birth.

Then it goes on to say about only 7 percent of the country's 58 million families consist of a father who works and a mother who remains at home to care for her children.

Mr. WYATT. So then your argument would be that there are opportunities there for women who want to work which would allow them the ability to vest retirement benefits, et cetera.

Mr. MCKINNEY. That is one of our arguments.

Mr. WYATT. I realize that is not your main argument. We probably ought not to get off into that; because I can argue with you on that.

Again, you get into Texas law. If you moved into Texas and were a schoolteacher, for instance, before you can be certified as a schoolteacher you have to have a semester of college in Texas history. It seems that people ought to know about the Alamo before they teach our children. This would create a problem. Your retirement wouldn't vest in the school system unless you had that.

I don't think that addresses this. You say you are opposed to the Hance bill also.

Mr. MCKINNEY. Yes.

Mr. WYATT. I do get concerned about that. Because a court, the Federal Government, does not have Federal divorce courts. If we did have Federal divorce courts, the wages could be garnished on the Federal level, for instance, it could be set aside and there wouldn't be a problem. But we don't have that.

We have State divorce courts, and that is where you have to get a divorce. For instance, a big problem as I understand it, is, if you live in Texarkana, Tex., and you get a divorce, all the husband has to do is move over to Arkansas, and that decree cannot be enforced.

I think it might be enforced somehow against a man who worked for the city of Texarkana, in Texas. There is probably a law that permits us to require that he maintain his employment by a city in Texas, has to live up to the divorce decree. But if he lived in Arkansas, there is no way to do that. If he moved to New York, there is no way to do it.

I think we are looking at that one remedy. I really have problems with you not being in favor of something that would provide that remedy to the State, or if not to the State, to an individual.

Mr. McKINNEY. I have a problem, Mr. Wyatt, on the Hance and Fisher bills, because of the community property. You see, I am saying that military pay, retired pay, is not community property. It is wages being earned month after month. And therefore, it is not incumbent upon any State in this Union to declare that military retired pay, unless it is disability retired pay, is community property because that is pay that is to be earned. When a man is disconnected from the service, he can be recalled to active duty, et cetera. I am talking about nondisability pay. That is pay he earns month by month. If he dies, during that month, his wife is not entitled to that retired pay. She must return that check. So there is a matter of entitlement.

And I say that retired pay is not community property which is substantiated by the Colorado State Supreme Court when it indicated that it is not community property.

Texas disagrees. We have eight community property States out of 50. I wouldn't say that is a majority. I used to be a voting representative in the great State of Texas and I was real proud of it. I had to come up here to Virginia, though, and make a living. But I feel it is incumbent upon Texas to change their laws, not for the Federal Government to go down there and tell Texas they are wrong, nor can they go to Colorado and say Colorado you are wrong.

Mr. WYATT. The problem I have with that, Mr. McKinney, is let's say Texas did change their garnishment statutes? How do you enforce the garnishment in New York?

Mr. JOHNSON. Under the existing garnishment law, yes you can. There is an existing garnishment law.

Mr. McKINNEY. Public Law 93-627, authorized it.

Mr. JOHNSON. If a court in Texas issues an order garnishment, it can be enforced by the Federal Government anywhere that serviceman happens to be.

Mr. McKINNEY. That court order goes directly to his finance center and they immediately put it into operation.

Mr. WYATT. Suppose Texas doesn't have a garnishment law?

Mr. McKINNEY. Really—

Mr. NICHOLS. Will the gentleman yield?

Mr. McKINNEY. Yes.

Mr. NICHOLS. Am I correct in saying that is only enforceable for alimony and child support payments though?

Mr. McKINNEY. That was left out deliberately, the community property provision, Mr. Chairman—left out deliberately. Because when we checked it out with the Senate, for example, the Senate spokesman indicated to us the reason it did so was because the community property laws are not in the majority in the States. There is only 8 out of 50. That is the reason they left it out.

Mr. WYATT. Thank you.

Mr. NICHOLS. Mrs. Byron.

Mrs. BYRON. No questions.

Mr. NICHOLS. Just one final question.

Sergeant McKinney, you are "an old rat in the barn," you have been around a long time. How many years do you have in and out of service?

Mr. MCKINNEY. In the service, I ended up with 30.

Mr. NICHOLS. How long have you been in this?

Mr. MCKINNEY. About 9 years.

Mr. NICHOLS. You have about 40 years observing the military. We had a previous witness—I am prepared to give him police escort if he has any trouble getting out of here—that had a statement to make it was his observation wives were divorcing their husbands. What is your analysis of that, just as a horse-back opinion? Do you have any as to which is more prevalent?

Mr. MCKINNEY. I have had a discussion on this, and I often talked with my wife. I was a first sergeant for 4 years, and I don't care to recount them.

Mr. NICHOLS. That is why I asked you that question. You have done a lot of counseling in your time.

Mr. MCKINNEY. We had more problems with wives than I had with the men. There are statutes on the books to take care of the men when they do not contribute to their family. I referenced that in my statement. For example, the reference I gave in my statement—I think it is on the front page here—32 CFR, chapter VI, subchapter C, part 733 and part 734—it tells the commanding officer exactly how much money that individual must contribute to his family. A good commanding officer, or a good first sergeant, will see that that is enforced. And I did enforce it.

Mr. NICHOLS. That is the old Army. Is that prevalent in today's Army? I hope it is, but I wonder.

Mr. MCKINNEY. That I can't answer, Mr. Chairman. I would hope that it is. It should be. If it is not then it should be. I think it is prevalent upon the commanding officer to provide for the family of that trooper. He has the paper to do it with. And there is no reason why he can't do it.

Now there are times when a military member was faced with problems beyond his control, and we might end up trying to protect him. But if he outrightfully left his wife and children without support there were no ifs, buts or hows about it. We told him to come in and bring a certified check or a postal money order each month made out to his wife or the guardian of his children or whatever the case may be. If he refused to do that, which he had a right to do, we could court-martial him.

Mr. NICHOLS. On what grounds?

Mr. MCKINNEY. Disobeying a lawful order, and a legal order, to contribute to his family.

Mr. NICHOLS. Well, that is the way it used to be and that is the old Army. I just wonder with all of the rights that people have how enforceable that is today in the 1980's.

Mr. MCKINNEY. There may be some problems there, but I still say if they violate a lawful order, they can certainly be brought up under article 15 at the least, not to mention a court-martial. But the military

today has five ways, which is two more than the Federal Government has for its employees, and three more ways than a civilian has, to protect spouses and former spouses and surviving spouses.

Perhap they all don't work, but at least there is more there than we give to the rest of the country.

Mr. NICHOLS. Thank you, Sergeant.

Mr. McKINNEY. Thank you, sir.

Mr. NICHOLS. Our next witness is Maj. Gen. Milnor Roberts, U.S. Army retired, executive director of the Reserve Officers' Association.

General, we have your statement, and without objection it will be inserted in the record.

STATEMENT OF MAJ. GEN. J. MILNOR ROBERTS, U.S. ARMY (RETIRED), EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION

General ROBERTS. Thank you very much, Mr. Nichols.

I understand recently you have been presented with our Nathan Hale award. I want to congratulate you for that. Your friends in Alabama think highly of you as we do here.

Mr. Chairman and members of the committee, we appreciate this opportunity to express ROA's opinion on the important legislation under consideration by you.

H.R. 2817, Representative Schroeder would mandate entitlement of a portion of retired pay to an ex-spouse.

H.R. 3677, Representative Hance and H.R. 6270, Representative Fisher, both provide for payments from retired or retainer pay and award property settlements in compliance with a court decree or order in connection with a divorce, annulment or legal separation.

ROA recognizes that many injustices can be cited in connection with divorced wives, especially older wives who contributed substantially as homemakers during the years property was accumulated and retired or retainer pay eligibility was being earned. Many of these wives have very limited marketable skills because they subordinated their careers to their responsibility to their family and support of their military spouse.

For these reasons our sentiment and our initial reaction is to applaud the provisions of H.R. 2817. Upon thoughtful reflection we have, however, concluded that the provision of H.R. 2817 has the effect of placing the military services in the position of arbitrarily dividing earnings in accordance with an established formula without recourse to a court of law.

The growing number of career female service members will affect the traditional viewpoint of the discarded older spouse at whom these bills are aimed. We find that many of the carrer service women also object to the possibility that their retired pay may automatically be shared with a divorced spouse under the Schroeder bill.

Any statement we may make regarding the impact of a law automatically committing a share of retired pay to the spouse of a career member of the military service is purely speculative. But we will venture to predict that such automatic division of retired pay coupled with other reductions in benefits will in the overall effect reduce the attractiveness of military service even further for both male and female members of the armed services. In our opinion, it would add just

one more major objection to military Active or Reserve military service as a career.

We know of no similar plan for workers in the private sector and we are not aware that any such plan has been proposed. H.R. 2817 would place our military servicemen and women in the peculiar position of automatically being forced to pay a portion of earned retirement or retainer pay without regard to his or her ability to pay, and without recourse to the courts for an equitable and individual court ruling. We believe that such legislation is unfair and discriminatory.

In our opinion, H.R. 6270 and H.R. 3677 approach the problem in a far more realistic manner. The Secretary of the Service concerned would be responsive only to the extent expressly provided in terms of any court decree of divorce, annulment, or legal separation, or in terms of any court order or court ordered property settlement agreement incident to any court decree of divorce, annulment or legal separation. It is presumed that under a law as proposed by Representatives Fisher and Hance arguments by both parties would be heard by the court and the order or decree would be influenced by their testimony. This manner of dividing the accumulated property and earnings is a time-established tradition in our system and it should be honored in so far as practicable in dispute or claim between the two parties.

To place the military service and the Federal Government in the position of dividing property or earnings according to an arbitrary division established by law is unthinkable. For the military service and the Federal Government to respond to a court order or decree is, in our opinion, a reasonable approach to a fair distribution of property and earnings attributable to the joint efforts of the parties.

Mr. Chairman, we favor H.R. 6270 or H.R. 3677 over H.R. 2817 for the reasons we have stated and hope that you and your committee will adopt legislation in keeping with the principles stated.

Thanks for your kind attention to our testimony. I now stand ready to answer any questions you are disposed to ask me.

Mr. NICHOLS. Thank you, General Roberts.

Would you care to comment on the question I put to Sergeant McKinney in regard to looking after the troops, including their wives and children?

General ROBERTS. Mr. Nichols, I personally, and our organization in general are distressed at the state of the Army today.

I think our problems extend beyond the Army into the other services to some extent. But, what is going on in the Army today is not good from many points of view. I think there is a general recognition of a deterioration in morale, a deterioration in command responsibility, and responsiveness of the troops to their commanders.

We have seen a departure from all of the services of veteran non-commissioned officers and officers, but particularly in the case of the Navy, highly trained petty officers. In the case of the Army, highly trained NCO's, whose places are being filled by people without that experience, and who have grown up in a different era.

I do not believe circumstances today are what they used to be as described by Master Sergeant McKinney.

Mr. NICHOLS. Thank you.

Mr. Wyatt.

Mr. WYATT. I have no questions.

Thank you, Mr. Chairman.

Mr. NICHOLS. Thank you, General Roberts.

We appreciate your testimony.

Our final witness is Mrs. Edith U. Fierst.

Are you representing any organization or speaking for yourself?

STATEMENT OF EDITH U. FIERST

Mrs. FIERST. I am a member of the staff of the Interdepartmental Task Force on Women, but I am here speaking for myself.

I very much appreciate the opportunity to do so. I know this has been a long session, so rather than read my statement which you have, I will summarize it, and perhaps comment on a few of the items I have heard discussed during the course of the meeting, which I didn't have in the statement.

First of all, I think it is a wonderful thing you are considering the serious situation of many of the divorced wives of servicemen, who badly need financial support. They are facing poverty in old age now. To make the apportionment provision, which is applicable to the civil service, and also to the foreign service, applicable to these women, I think is a very important and appropriate thing to do.

I heard the Defense Department make the point earlier that the President's Commission on Pension Policy is considering the problem of former spouses, and indeed I think it has done some work on this. And I have been working with them on it. But, they are a long way from solving this problem. And in the meantime, it seems to me the fact that the civil service has this kind of protection, and the foreign service has been given it by an Executive order, is an indication we ought not to wait for the President's Commission to act.

The reason why I think action is needed on the apportionment statute promptly is that alimony is not normally paid. Only 4 percent according to the Bureau of Census data—only 4 percent of divorced women are now receiving alimony.

The garnishment law is not adequate either. Not only because there are some States which don't garnish, but also because garnishment is available only when there have been arrearages, to begin with.

Then the former spouse—it applies to the man too, of course—who has not been receiving the payments to which he or she is entitled, must retain an attorney and go through the complicated legal process which is very expensive and we heard earlier in some cases it is even eating up the benefits available to pay for the attorney.

There are all the delays. Many women really just cannot go through all this. And then even when garnishment is finally awarded, it may be only for the arrearages to date. Next month she has to start in all over again. This is one reason why so few women are actually getting alimony or child support. As you know the Congress enacted a law within the last few years—I have it in my testimony—which is designed to help collect child support; because many, many fathers are not paying it.

Social security is not adequate either, by itself, in this case because of the fact it is available only when the former member is retired, or has reached age 72, or has died.

There is a long period, the member may be retired from the military, but still working, and therefore the former spouse couldn't get social security. Then the amount of social security is not sufficient by itself, if they are maintaining two households. Because all she gets is half of his primary insurance amount.

So for all of these reasons, it seems to me it is appropriate for this committee to recommend that the former spouses of uniformed servicemen be given the same protection that is now available to the former spouses of civil servants and foreign servants.

When you come to the question of what happens after the employee dies, we have a really serious problem. Because if there is no survivor benefit there is nothing to split. And that is the case now with respect to the survivor benefit plan. If they are divorced it is not payable to her.

There is the question of whether the women could have worked or should have worked, or would have worked. Probably if she really wanted to, she could have worked, although with many difficulties and with lower earnings. But I think we are at a crossroads now in the changing situation of American society today in which we have to ask ourselves whether we want to say to young mothers, or to young women, don't have children. Or to young mothers, don't stay home and take care of your children. Even to the mothers of some teenagers, you ought not to stay home. And if you do, you run the risk that if you are divorced later you will face serious poverty in old age.

It seems to me—I am a mother, and I think we have to be concerned about what is happening to our children and who is taking care of them. It is not that I would tell mothers they shouldn't work, if they can arrange it, but it seems to me the flexibility to make a choice ought to be available to women. We ought not to say to those who are divorced later on, you made a mistake, and you are going to pay for it now. Your mistake was you should have gone to work when your children were small and not relied upon the possibility that you would be supported by a husband who has now changed his mind.

I think the point that you made earlier about a woman following her husband around and changing jobs is important. The fact is she will not vest if she stays only 2 or 3 years in a job. Most pension plans today provide 10 year vesting. I doubt very much many people in the military stay in the same locale for 10 years. If she is employed by a national company, that is very nice. But I seriously doubt that happens very often.

I think the proposal in H.R. 2817 for proportionate allocation of the survivor benefit is a good one. As you will see, however, I don't say to you now, my recommendation would be to report it out immediately; because I am concerned about the proliferation of plans, and the splintering of cures.

It seems to me the problems of the divorced spouse of a Federal employee is a large one, and I would hope that there would be some coherent solution to this problem with respect to all of these former spouses.

I am also concerned about protection for the current spouse. She may be the spouse before he retires, but cease to be at some time in the future. I am also concerned about those widows who divorced in the past and have no courage now.

It seems to me the whole problem should be solved at once, and that we can't for example, allow those women who were divorced 10 years ago to be left without protection. I believe this bill would.

I would be glad to answer any questions.

WRITTEN STATEMENT OF EDITH U. FIERST

I am Edith U. Fierst. Although I am on the staff of the Interdepartmental Task Force on Women established by Executive Order 12050, I am appearing in my capacity as an individual rather than as a representative of the Task Force.

I appreciate this opportunity to present my views on H.R. 2817, H.R. 3677, and H.R. 6270, all of which are designed to help the former or separated spouses of members of the uniformed services during the years when the former members are retired.

There are significant differences among the bills. H.R. 3677 and H.R. 6270 would authorize the Secretary concerned to comply with a court order issued in connection with a divorce, legal separation or annulment if it authorized payment of a portion of a former member's retirement pay to the member's spouse or former spouse. This would have the effect of extending to members of the uniformed services coverage of Public Law 95-366 which now permits apportionment of the retirement pay of civil service annuitants.

H.R. 2817 would apportion part of a retired member's pay to a former spouse of such member commensurate with the length of the marriage during the member's service. It would also mandate a survivor annuity for the former spouse computed similarly. In both cases the former spouse would be entitled to an annuity only if the marriage had lasted at least 10 years. The survivor annuity could be waived by the former spouse.

That the separated or former wives¹ of members of the uniformed services need help is beyond question. Those that do not have pension entitlement as a result of their own work are without pensions other than Social Security because the uniformed services retirement plan does not permit members to direct payments to be made to divorced wives. Those without other pensions likely include a substantial proportion of the divorced wives of the military who are now in or approaching retirement years, as their generation of married women in America typically did not work.

Many people think that most divorced women receive alimony, but they rarely do. Out of the 4.5 million divorced or separated women, only 4 percent reported receiving alimony in 1975. While the percentage of older women receiving alimony was slightly higher than of younger women, even the oldest group received alimony in less than 5 percent of the cases. The Bureau of the Census, from which these figures come, does not know how many of the women not receiving payments were awarded alimony by divorce courts, but are unable to enforce their right. The supposition is that this number is substantial. In the area of child support, where compliance is ordinarily higher than is the case with alimony payments but still only about a quarter of the mothers caring for children, Congress became so concerned with the widespread failure to pay that it established the Office of Child Support Enforcement in HEW in 1975 to help collect such payments.

In a comparable move for former wives of civil servants, Congress provided in 1978 for apportionment of civil service pensions to divorced and separated spouses through public law 95-366. Similar apportionment was made available to the divorced and separated wives of foreign service personnel by Executive Order 12145, dated July 18, 1979. As noted above, two of the bills before the Committee would make it applicable to the uniformed services retirement system.

Even at the time that the public law 95-366 was under consideration, many people thought it should be given wider coverage. For example, the Deputy Comptroller General of the United States wrote in a letter of comment to Senator Ribicoff, Chairman of the Senate Committee on Governmental Affairs, that the proposal would create another inconsistency among the Federal retirement systems, and suggested that if the Committee gave favorable consideration to the bill, it "may wish to consider expanding its application to cover all Federal employees." The program covering uniformed servicemen is probably the second

¹ All of the bills would apply to husbands as well as to wives, but in this paper we occasionally speak of "wives" because that is the usual case where the former spouse is without income.

biggest Federal program ; therefore, extending coverage to that program would be a logical next step.

Congress has already enacted one measure that is of help to many divorced wives, public law 95-30, which permits the services to honor any garnishment order obtained by the divorced wife of government employee, including a retired member. There are, however, several reasons why this law does not provide adequate protection to divorced wives of uniformed servicemen. The first is that garnishment is available only when the State court has ordered alimony, and in the community property states, courts may not order alimony but may provide instead for a division of the community property.

A second reason is that state courts will not order garnishment unless the ex-husband is demonstrably in arrears in his alimony payments. This means that the wife must wait until payment is past due before taking action. She must then retain an attorney and go through a court proceeding, with delays and expenses at every step while further arrearages accumulate. Sometimes payment is made just before the moment of trial, thereby preventing garnishment, so that the whole process has to be started once again. The divorced wife's efforts can be frustrated if the ex-husband moves out of the State, in which case she may have to locate him and sue again in the State of his new residence. Finally, in about half the states even if the entire process is successfully maneuvered, the court may order garnishment to cover current arrearages only, so that if future payments are not voluntarily made, the divorced wife must start a new lawsuit.

The argument is sometimes made that the wives of uniformed servicemen do not need the apportionment protection available to the wives of civil servants because the former (and not the latter) are covered by Social Security through marriage. There is no doubt that the wife of a uniformed serviceman is better off as a result of her entitlement to Social Security, but by itself Social Security may not provide adequate protection for several reasons. First, members of the military may retire after 20 years of service regardless of their age, but Social Security is not payable to the divorced wife unless she has young children, is disabled and age 50 or is at least 60. Thus there could be a long period when access to his retired pay would be her only source for support. A second reason is that even when she reaches retirement age she may be unable to collect Social Security because he is still working, even though retired from the military. Until such time as he retires from work of any kind, reaches age 72 (70 beginning in 1982) or dies, the earnings offset may make her ineligible for a spouse benefit. Finally, if he is retired, the amount of the Social Security benefit payable to her is likely to be too small. A spouse benefit is half of the primary insurance amount (PIA) payable to the retired worker. If husband and wife are living together, an additional half PIA might be sufficient, but when they are living apart and she must maintain a separate household, it is not enough. Only after his death when her spouse benefit will equal the full PIA can she expect a reasonable Social Security income.

For all of these reasons I favor a legislative remedy for the predicament of divorced and separated spouses of uniformed servicemen. As an immediate first step, and to provide equal treatment to this group of former spouses, I believe the apportionment provided in Public Law 95-366 should be made applicable to the divorced and separated spouses of uniformed servicemen through enactment of either Public Law 3677 or H.R. 6270. Apportionment costs the Federal Government nothing, other than administrative costs.

As a second step I favor serious consideration of H.R. 2817. Clearly some legislation is needed to assure retirement security for surviving former spouses, and this proposal seems fair to us as far as it goes. It would provide each former spouse with a benefit commensurate with the period of marriage during service when such former spouse may be assumed to have contributed to the member's ability to earn the retirement annuity. It would implement the principle that when a married couple decides that the wife will stay home to care for children (or for any other reason), the husband's earnings must pay for her support during that period and also for a commensurate share of her retirement income.

H.R. 2817 would be without significant cost to the Federal Treasury. Its major cost would be borne by current wives who may now get the employee's entire benefit. There would be little financial impact on the national budget because members pay for the benefits to their survivors. Indeed they have been overpaying.

My endorsement of this bill is, however, less than full because H.R. 2817 does not go far enough. I believe the problems of former spouses of Federal employees

should be solved in a way that benefits all of them, not merely the former wives of members of the uniformed services.

Second, the bill makes no provision for current wives, some of whom may be left without survivor benefits so long as their payment is not mandatory. This group includes women who may become former wives after the member retires. In my opinion, therefore, enactment of H.R. 2817 should be delayed until further consideration has been given to these and other related problems.

Mr. NICHOLS. I only have one question, I believe. It relates to you mentioning out of 4.5 million divorced, separated women, only 4 percent received alimony in 1975. Are you referring to military women?

Mrs. FIERST. I beg your pardon?

Mr. NICHOLS. You are referring to military women?

Mrs. FIERST. No.

Mr. NICHOLS. This is a random sample?

Mrs. FIERST. This is a Bureau of the Census data, I believe it is "all."

You are suggesting there are more than 4.5? That is a good point. I will have to look at that again.

I copied it out of a report of the Bureau of the Census.

Mr. NICHOLS. At any rate, that is a rather low figure, the 4 percent, whether it is a random sample or whatever it is.

Mrs. FIERST. Yes.

Mr. NICHOLS. I have no further questions.

Mr. Wyatt.

Mr. WYATT. I would have I guess, one question to attempt to clarify what you said a moment ago.

You said it would be unfair to penalize a wife who did not work after the children were born. You make the point there. How is that unfair?

Mrs. FIERST. Well, penalized with poverty in old age. If she is not going to get anything from the pension that her husband was earning in the period when they were together. There could be many different circumstances—but in the normal case he knows she is staying home and taking care of the children and he is supporting her then. It seems to me by accepting this situation at that time he is also accepting the obligation to pay proportionately toward her retirement for those years that she stays home.

Mr. WYATT. This justified her obtaining some retirement benefits, or even a survivors' benefit.

Mrs. FIERST. I am speaking of the survivor benefit now, particularly, yes, but a retirement benefit too.

Mr. WYATT. If they are now divorced, she does not obtain any benefit.

Mrs. FIERST. That is correct.

Mr. WYATT. Unless it has been decreed by a court. And then in some instances she has no ability to get the benefit.

Mrs. FIERST. I agree with that, yes. I think these bills would remedy that, and therefore, I think they are on the right track.

Mr. WYATT. One bill goes much further than that—and would require her to receive a benefit.

Mrs. FIERST. I don't think it goes much further than that. I think it is the same thing. The chances are she won't get a benefit unless it is required. At the time of divorce or after a divorce, very few spouses want to pay benefits. And of course, today if the person was an employee of the Federal Government or a member of the uniformed serv-

ices, the survivor benefits are not available to the spouse. But even if they were available, it is not likely without a court ordering it, the payment would be made voluntarily.

Mr. WYATT. Is it your understanding that retirement benefits are now generally discussed in a settlement?

Mrs. FIERST. I just don't know well enough.

Mr. WYATT. For instance, if you are 35, you are going to retire at 40, 43, or 44, and obtain a divorce. Are benefits generally discussed or not?

Mrs. FIERST. I would be surprised if they are at that early an age. One of the problems is that not many retirement plans are indexed. If you are talking about private pension, it almost doesn't pay; because by the time these people reach retirement age the benefit will have ceased to be very valuable. If you are talking about social security, it is payable anyway, without regard to what is decided between the parties.

If you are talking about a civil servant, or a member of the uniformed services, the survivorship benefit is what is very important.

I would guess what happens as far as retirement benefits are concerned, is that the employee or the uniformed member is required to pay alimony. The money is expected to come from retirement pay or earnings, depending on the stage of life they are in. But if there are survivor benefits involved, the Federal Government will not make survivor benefits available to a divorced spouse. There is no point in trying to discuss them.

The only possibility would be to try to make up for it with some other property settlement. But that is not very easy to do, because other property is not indexed. You get back into the same dilemma. If the spouse were awarded a security, let's say in the market, even if the employee has that money—which it is unlikely that an employee would have in sufficient amount to provide for a spouse's retirement—the award wouldn't amount to very much by the time inflation had sapped its value.

That is why it is really essential that survivor benefits be awarded to the spouses of civil servants—and uniformed services.

Mr. WYATT. Survivor benefits?

Mrs. FIERST. Survivor benefits.

Mr. WYATT. Not necessarily retirement benefits?

Mrs. FIERST. Both. I specifically support H.R. 3677 and 6270, which would permit the splitting by a divorce court. I think there is no question in my mind about those. That is the right thing to do.

The problem about survivorship means that there has to be an opening up of the U.S. Treasury to permit survivor benefits to be paid where they are not now paid. It seems to me allocating the benefits that are presently available is a way of doing this which would be of the least cost to the Federal Treasurv. Not necessarily adequate, I am bothered by that, as a generality. It is a problem of the spouses of other types of Federal employees also and they should not be neglected.

Mr. WYATT. OK. Thank you.

Thank you, Mr. Chairman.

Mrs. NICHOLS. Thank you, Mrs. Fierst.

Mrs. FIERST. Thank you.

Mr. NICHOLS. We have statements that have been submitted by Congressman Harris and by various associates. Such statements are made a part of the record.

[The following information was received for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 4, 1980.

Hon. BILL NICHOLS,
Chairman, Subcommittee on Military Compensation, House Committee on Armed Services, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN NICHOLS: I am writing in support of H.R. 6270, legislation which would make possible the division of military retired pay to fulfill a court order in connection with a divorce, separation, or annulment.

We ask a great deal of our men and women in uniform. We ask of them a career commitment to our nation's defense, which means forgoing much of the independence and the financial security that their counterparts in the private sector enjoy.

We ask these same sacrifices of the families of military personnel, and in a very real sense, the willingness of a military wife (or husband) to give up a personal career, and the earnings it can bring, make possible the career commitment of the spouse that ensures our nation's security.

Because of the sacrifices made by the member of the armed services, our government provides a retirement annuity, 100 percent financed by the federal government. The member of the armed services is not required to make a contribution to his or her retirement fund. The annuity earned over a long career is intended to serve as a base for a comfortable and secure retirement and as appropriate recompense for dedicated service.

Yet in the event that the marriage does not work out, which is the unfortunate case in all too many instances, we make no provision for the former spouse in spite of the fact that her sacrifice is as great—and as costly—as the sacrifice of the military spouse.

The Members of this Committee are well aware of the circumstances that often befall a former spouse of a member of the military. I am sure that every Member of this Congress has received letters describing the shock of divorce after a long marriage, a shock that is compounded by the brutal realization that there is no provision to provide retirement pay to former spouses of military personnel.

Having had no opportunity to further an education, or to build the kind of career base that could provide retirement income, the former spouse faces a bleak future.

When the spouse was moving every two or three years from duty station to duty station, and doing her best to preserve the family life for her husband, she was a valued member of the military team.

There is a basic unfairness in this situation, an unfairness we must end. By treating retired pay as joint property which can be divided by the court in a property settlement, there is an avenue for relief. A monthly income can be assured by granting an appropriate proportion of the retired pay of the military member, reflecting length of the marriage, the number of remaining dependents, the income potential of the individual, and the other factors that go into decisions affecting property division.

H.R. 6270 would implement for former military spouses those provisions of law that now assure former civil service spouses an avenue of relief following a divorce. It would correct the basic unfairness of the current system that rewards career military personnel, but ignores the sacrifices of the spouse.

Mr. Chairman, in addition to cosponsoring H.R. 6270, I am also a cosponsor of H.R. 2472, which would provide medical benefits to former military spouses provided they were married ten years or more during creditable service. In my conversations with former military spouses, they frequently cite the loss of medical benefits as one of the most frightening aspects of their new economic circumstances. We simply must act to remove this fear.

I strongly urge you to report H.R. 6270 so that the Congress can act to provide for those who helped provide for America. I ask that this letter be made a part of the official hearing record.

Sincerely,

HERBERT E. HARRIS II,
Member of Congress.

WRITTEN STATEMENT OF ROBERT W. NOLAN, NATIONAL EXECUTIVE SECRETARY,
FLEET RESERVE ASSOCIATION

INTRODUCTION

Mr. Chairman and members of this distinguished committee, I am Robert W. Nolan, National Executive Secretary of the Fleet Reserve Association. It is my privilege to appear before you today as the representative of 148,655 enlisted personnel and commissioned officers with prior enlisted service of the U.S. Navy, Marine Corps and Coast Guard. Approximately one-third of my Shipmates are serving on active duty in one of the three Sea Services. The remainder are either serving in the Fleet Reserve components or are fully retired from one of the Sea Services. As you can appreciate, they have not been hesitant in conveying their views regarding the legislative proposal you are considering today, H.R. 2817 proposed by your colleague, U.S. Representative Patricia Schroeder. Therefore, I have no hesitation in stating that we believe the vast majority of active duty personnel and military retirees completely concur in the Fleet Reserve Association's adamant opposition to H.R. 2817.

PRESENTATION

The Fleet Reserve Association is of the opinion that the division and assignment of property and income in the case of divorce between two adults is not the prerogative or function of the United States Government. The settlement of a divorce issue is the proper responsibility of the judicial system. This is because of the many factors, conditions and variable circumstances involved in a divorce issue. Only a proper court can weigh these characteristics of the many facets of a divorce issue and make an equitable and reasoned settlement. The role of the U.S. Government, through its agencies and in compliance with current Federal law should be to enforce court decisions relative to a specific divorce issue.

The circumstances involved in any specific divorce issue can be so varied that in deference to the Committee we will not repeat them as they have been clearly identified by the previous witnesses who also oppose H.R. 2817's enactment. We believe the legal precepts these variables raise clearly demonstrate H.R. 2817's enactment will open Pandora's box and create a legal quagmire which will be almost impossible to administer.

In view of this, the Fleet Reserve Association's position must be aligned with that of the National Association for Uniformed Services and the Non-Commissioned Officers Association in full opposition to the provisions of H.R. 2817.

Mr. Chairman, the 148,655 Shipmates of the Fleet Reserve Association implore you and the other members of the Committee on Armed Services to carefully and seriously consider all the implications of this proposed legislation's enactment. We are confident that when this is done, you will agree with the vast majority of Uniformed Services personnel that the enactment of H.R. 2817, although well intentioned from one point of view, would prove to be discriminating and result in adverse personnel legislation.

I thank you and the Committee for allowing us to present our views.

WRITTEN STATEMENT OF THE ASSOCIATION OF THE UNITED STATES ARMY

AUSA appreciates deeply your request for our views on H.R. 3677, introduced by Mr. Hance; H.R. 6270 introduced by Mr. Fisher; H.R. 2472 introduced by Mr. Whitehurst, and H.R. 2817, introduced by Mrs. Schroeder.

As you recognize, AUSA's mission is to support the Army and its soldiers, male or female, married or unmarried. Certainly part of that support entails our effort to assure a satisfactory quality of life for the soldier and his or her family. This encompasses, among other things, assurance that they be adequately compensated for the performance of their sworn duty, and that the retirement benefits promised, including access to medical care, commissary and exchange privileged and other expectations be available. The laws upon which these benefits are based assume the continuation of the family unit into retirement. To attempt to transfer eligibility for those benefits to individual members of a dissolved marriage opens doors to many complications, perhaps the chief of which is the question of how long a marriage must last to make the benefits irrevocable. While a case may be made for making them irrevocable at the retirement eligibility point, wives or

husbands married for 10 or 15 years could also argue strongly for a vested interest.

Second, and most important, in our view, is the fact that the circumstances under which any marriage ends are highly personal and vary greatly on a case-by-case basis. This is why, in most states, divorces are handled in a domestic relations court where the judge has been specially trained to deal with these personal problems. The entitlements to residual benefits from a marriage, military or otherwise, should be worked out at that time and place, based on the conditions that exist for the dissolution. If the spouse who will lose military-related benefits is judged to be entitled to support, the divorce settlement should include an allowance for the loss of low-cost medical care and commissary shopping.

Primarily for this latter reason we are strongly opposed to H.R. 2472, pertaining to former spouses eligibility for medical and dental care, and to H.R. 2817 which makes mandatory the entitlement of a former spouse to a portion of a member's retired military pay and survivor annuity. Should the Subcommittee favor H.R. 2817, as a matter of simple equity, the bill should be amended to apply to all Federal employees whether they be of the Executive, Judicial or Legislative branches.

While not covering the precise subjects of H.R. 2472 and H.R. 2817, the bills introduced by Mr. Hance, H.R. 3677, and Mr. Fisher, H.R. 6270, do not provide for mandatory benefits to the service person's divorced spouse. Rather, they merely require the Service Secretaries to distribute pay of retired military in compliance with the terms of court decrees in connection with divorce, annulment or legal separation. This, coupled with Social Security entitlements of the unmarried divorced spouse, places all families—military and civilian—under similar laws. In our view, this is the correct approach to the problem, in no way interfering with the authority or responsibility of our judicial system.

In the settlement of a dispute between individuals, a discretionary law provides the courts with the necessary flexibility in finalizing the case. An arbitrary law could be detrimental toward a fair and impartial decision of the court.

Of the two bills, H.R. 3677 and H.R. 6270, AUSA favors the latter as it more clearly delineates the responsibilities of the Service Secretaries.

Thank you for the opportunity to present our views.

WRITTEN STATEMENT OF DONALD L. HARLOW, DEPUTY EXECUTIVE DIRECTOR FOR
GOVERNMENT RELATIONS, AIR FORCE SERGEANTS ASSOCIATION

Mr. Chairman, distinguished members of the subcommittee, I am Donald L. Harlow, Deputy Executive Director for Government Relations for the 148,000 members of our association and their dependents. Thank you for the opportunity of presenting our position on legislation being considered during this hearing.

Having already published articles in our monthly magazine, Sergeants, on H.R. 2817, introduced by Rep. Patricia Schroeder (D-CO), and H.R. 6270, introduced by Rep. Joseph L. Fisher (D-VA), I will confine my statement to these two measures.

It is deemed unnecessary to provide all of the ramifications associated with the problems encountered between two people when divorce or separation is determined by one or both parties to be manifest.

Our association strongly opposes the provisions of Rep. Schroeder's bill that would automatically provide a pro-rata share of an individual's retired/retainer pay to the exspouse in a divorce or separation action. Such an arbitrary law impinges upon the authority and responsibility of the Judicial Branch of our Government, as spelled out in the Constitution.

The courts are responsible to adjudicate disputes between two parties, married or otherwise. Therefore, every effort should be exerted to oppose passage of such a discriminatory measure.

There are already too many laws that infringe upon the private lives of American Citizens. If there is disagreement between husband and wife, no matter how long they have been married, divorce action and the allocation of responsibilities, financial and otherwise, should be decided by the courts—not be an arbitrary and ambiguous public law.

If there is a need for legislation to protect the vested interest of a former spouse after certain years of marriage, then we can support the provisions contained in the bill, H.R. 6270, as introduced by your distinguished colleague, Rep. Fisher. His bill is a more reasonable approach to the problem and in no way shackles the judgment of the courts.

Mr. Chairman, during my visits to various military installations throughout the country, the enlisted members of our association always query me on the status of the Schroeder bill and strongly state their opposition to such a measure. My response to them has always been exactly as contained in this statement. While we may all agree that life is becoming more complex every day, the basic structure of our constitution must be preserved if we are to remain a free and democratic society.

The wisdom of those who framed our constitution established three branches of government—the executive, legislative and judicial. Each branch is charged with specific responsibilities and possesses the necessary authority to carry out those responsibilities.

As long as we, the citizens of the United States of America, continue to resolve our problems within the framework of the Constitution, America will remain a free and open society. Once we depart from this basic document, precedents will be established that will further complicate our lives.

Thank you, Mr. Chairman, in providing our association with this opportunity and I now stand ready and willing to respond to any questions you and your distinguished colleagues may wish to pose.

WRITTEN STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, thank you for the privilege of presenting to this distinguished Subcommittee the views of the Veterans of Foreign Wars of the United States with respect to pending legislation.

My name is Donald H. Schwab and it is my privilege to represent the 1.85 million men and women of the Veterans of Foreign Wars as their National Legislative Director.

Among the legislation pending before this Subcommittee today is H.R. 2817, introduced by the Honorable Patricia Schroeder, Chairwoman of the Subcommittee on Civil Service of the House Post Office and Civil Service Committee. The stated purpose of this proposed legislation is to apportion the retired pay and annuities of Armed Forces retirees and those of the National Oceanic and Atmospheric Administration and the Public Health Service between existing and former spouses of the retiree unless the former spouse remarries before reaching age 60.

It is incumbent upon me at the outset, Mr. Chairman, to call attention to the fact that this bill, H.R. 2817, does not stand alone. No, it is a companion bill to H.R. 2857, now incorporated in H.R. 6790, the "Foreign Service Act of 1980", which was referred jointly to the Committees on Foreign Affairs and Post Office and Civil Service and is now on the Union Calendar, and H.R. 2818 referred to the Committee on Post Office and Civil Service. H.R. 2857, H.R. 2817 and H.R. 2818 were all introduced by the Honorable Mrs. Schroeder. So much of H.R. 6790, containing provisions of H.R. 2857 (opposed in testimony by the V.F.W.) would apportion the retired pay and annuities of foreign services officers and H.R. 2818 that of Federal civilian retirees.

In view of the foregoing, the voting delegates to the 80th National Convention of the V.F.W., held in New Orleans, Louisiana, August 17 through 24, 1979, overwhelmingly passed the following resolution which is herein quoted in toto:

"RESOLUTION NO. 303—APPORTIONMENT OF ARMED FORCES AND CIVIL SERVICE RETIRED PAY AND SURVIVORS ANNUITIES

"Whereas, there has been introduced in the Congress of the United States proposed legislation that would take away up to 50 percentum of the annuity earned by an individual who gains retirement eligibility through Federal military service, Civil Service or foreign service; and

"Whereas, such legislation would allow apportionment of said retirement annuity, under certain conditions, to the former spouse of the retiree without regard to the circumstances and/or personal fault actions which caused the dissolution of the marriage; and

"Whereas, such legislation would permit a grossly errant former spouse to receive up to one half of the annuity earned by the military, Civil Service or foreign service officer retiree; and

"Whereas, such onerous provisions would be applicable only to these Federal retirees, not to individuals entitled to an annuity under Congressional, state or

private retirement systems, and as such, are patently discriminatory against military, Civil Service or foreign service officer retirees; now, therefore be it

"Resolved by the 80th National Convention, Veterans of Foreign Wars of the United States, That we oppose in the strongest possible terms the passage of any such legislation apportioning Armed Service, Civil Service and foreign service retired pay, and survivors annuities."

The thrust of the instant legislation, H.R. 2817 and its companion bills, in our view, is an attempt to place in the category of vested property rights for former spouses the earned retired pay and elective survivor annuities of the retirees in question. Germane to this issue, in our opinion, is the Supreme Court of the United States case, *Hisquierdo v. Hisquierdo*, Docket No. 77-5333, argued November 1, 1978, and decided January 22, 1979. In this case, the Supreme Court overruled the California Supreme Court and held that Railroad Retirement Act benefits may not be divided under the Community Property Law. To do so, the Court said, would deprive Mr. Hisquierdo of a portion of the benefit Congress indicated was designed for the employee alone. The court also held that an offsetting award of a portion of the expected value of Mr. Hisquierdo's retirement was also barred. In view thereof, it would appear the precedent has already been established to support the position that earned retired pay and elective survivor annuities should not be considered community property.

Domestic relations, and that is, indeed, the real issue at hand, have historically fallen within the purview of the judicial system in our democracy. It is inconceivable that the Legislative Branch would presume to substitute its collective wisdom for that of judges in the several states who decide divorce cases and awards based upon the merits thereof. The fact that this legislation would apply only to those who become former spouses after the date of enactment of the bill makes it no more palatable.

In view of the foregoing, we request in the strongest possible terms that this subcommittee summarily reject the instant legislation and be not a party to advancing patently discriminatory legislation.

Thank you.

WRITTEN STATEMENT OF JUDGE I. SYLVAN BROWN, CHAIRPERSON, COMMITTEE ON FEDERAL LEGISLATION AND THE FAMILY SECTION OF FAMILY LAW ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and members of the subcommittee, I am I. Sylvan Brown, a Judge of the Superior Court of Maricopa County, Arizona, and Chairman of the Committee on Federal Legislation and the Family of the Family Law Section of the American Bar Association. We appreciate this opportunity to offer our support for the enactment of legislation to require the Secretaries of the Armed Forces to recognize state court decrees of divorce, annulment or legal separation which recognize spousal interest in and divide retired or retainer pay.

Under current law, many states recognize and award spousal interests in military retirement pay as community property and/or marital property of the parties. As a result of this, orders may be entered by state courts in divorce and like cases awarding to the non-military spouse a portion of military retired pay.

Although a spouse is able to reach military retired pay in order to collect past-due alimony and child support payments by way of garnishment under current federal law, there is no procedure by which the spouse can reach such pay to enforce payment of a portion of such pay ordered by a court to be that spouse's share of community or marital property.

In August, 1979, the House of Delegates of the American Bar Association adopted the following resolution:

Resolved, That the American Bar Association supports the enactment of legislation which basically requires the Secretaries of the Armed Forces to recognize state court decrees of divorce, annulment or legal separation which recognize spousal interest and divide retired or retainer pay.

Two of the bills before your Subcommittee, H.R. 3677 and H.R. 6270, would provide for payment of retired and retainer pay as provided in a state court decree of divorce, annulment or separation or in a court order in connection with such actions. They are, thus, consistent with the position of the ABA and we would urge the enactment of this type of legislation.

For some time, the Association has been interested in the enactment of legislation to provide for methods of enforcement of valid state court judgments granting such rights. Without such legislation, a spouse can have a valid order

awarding a substantial right in community or marital property which may for all practical purposes be unenforceable and virtually uncollectable.

In the 95th Congress, legislation (H.R. 8771) was introduced providing that the Civil Service Commission should comply with the terms of state court decrees or orders in connection with divorce, annulment or legal separation proceedings which divide the retirement pay of a federal employee who is under the Civil Service retirement system. The American Bar Association adopted a resolution in support of H.R. 8771 in December, 1977. H.R. 8771 was enacted into law as Public Law 95-366 (now 5 U.S.C. § 8345).

We commend the Congress for enacting that legislation. We urge the Congress to go one step further and give the Secretaries of the various Armed Forces the same power and duty as the Civil Service Commission was recently given to comply with such valid state court orders.

H.R. 3677 and H.R. 6270, which amend Title 10 of the United States Code, basically provide that the payment of retired pay which would otherwise be made to a member or former member of the Armed Forces shall be paid by the Secretaries concerned, to another person, for and to the extent expressly provided for in the terms of any valid state court decree or order of court approving property settlement agreements in an action for divorce, annulment or legal separation.

The bills are procedural bills only and do not deal with the substantive legal issue of whether or not the spouse should have an interest in military retired pay. The issue of entitlement is one which has been decided by the courts in various states. The courts in virtually all of the community property states and in many of the marital property states have held that military retirement pay is a community or marital asset and is subject to division between the spouses. Some states have held to the contrary. That is the issue of substantive law and these bills do not deal with that substantive legal issue.

The bills do not require any division of retired pay by a state court or even sanction such division, nor do they prohibit it. The bills merely require that to the extent there is a valid state court decree which divides such pay, such decree will be recognized and honored and the pay distributed in accordance therewith. H.R. 3677 is almost a verbatim copy of Public Law 95-366 (5 U.S.C. § 8345) which requires the Civil Service Commission to distribute Civil Service retirement pay between spouses in accordance with valid state court judgments. There can and should be no distinction between the honoring of such decrees in the cases of a retired civil servant or a military retiree.

In conclusion, legislation of this nature is urgently needed to avoid the situation of a party having a substantial right without a concomitant remedy. A spouse who has a decree awarding a portion of military retired pay should be able to receive those payments without loss of time or additional expenses or further court proceedings and certainly should not run the risk of being totally frustrated in the collection of such sums.

The Association has not taken a position on H.R. 2817.

We thank the Chairman and the Subcommittee for permitting us to present these views.

Mr. NICHOLS. Before we close the record here, let me ask of the audience, is there anyone present that would like to make a statement?

I thought you did. You may sit down.

Mrs. WINNIFRED COWAN. I am a Texan, Mr. Wyatt.

I would like to clarify Mr. Wyatt's questions in regard to whether the benefits are considered in divorce cases.

I happened to have read recently of an Alaska Supreme Court judge's opinion in regard to a military divorce, and he said that to deny or to give to the husband his military pension and retirement benefits as though they didn't exist, and divide everything else 50-50, was certainly not a true picture of his financial standing. It was grossly unfair to the wife.

So this indicates they weren't considering the value of his retired pay and benefits.

The next point is that in many States even if alimony is awarded, that alimony stops when the husband dies. And the States will not require the man to secure that alimony with insurance.

So the wife is completely—the ex-wife is completely out. So that the new wife gets all of the benefits.

And then this wife——

Mr. WYATT. What benefits are there if he dies?

Mrs. COWAN. The survivors' benefits, the medical, commissary exchange—all those benefits. The new wife of the military man retains these, while the ex-wife loses that.

Mr. WYATT. Does she retain that after the divorce anyway?

Mrs. COWAN. No; the divorced wife does not. She is completely wiped out of the picture. But, if the husband marries again and dies, then the new wife retains these benefits for life. This is a particular injustice to the wife in a lengthy military marriage and especially so when the new wife did not contribute 1 day's effort to the military environment.

Mr. NICHOLS. Thank you, Mrs. Cowan.

Would you come to the microphones, please?

Would you give us your name, please?

STATEMENT OF DOROTHY NORRIS PAIR

Mrs. DOROTHY NORRIS PAIR. All right. My name is Mrs. Dorothy Norris Pair. I only heard about this hearing 2 days ago so I didn't have enough time to be on the list but I would like to read the statement I have prepared.

By way of introduction my name is Mrs. Dorothy Norris Pair and I flew up from Atlanta today for this hearing. I live with my mother who generously opened her home to me when I found myself without a home of my own.

I was married in the Baptist Church to a young man in 1941 who wanted to be a pilot. When World War II started 3 weeks later he got his wish and proceeded to make the Air Force his life for 24 years.

We were married 32 years when he unexpectedly filed for divorce in California where we were living. A no-fault community property State. Six days after finalizing the divorce he married a lovely Chinese lady from Taiwan, who managed to get out of that country through marriage to an American sergeant, whom she subsequently divorced to marry an Air Force major. This gentleman later divorced her and she eventually found my colonel. I believe it's called coming up through the ranks.

I have two adult children. I have lived in 12 States and one foreign country—Italy. I am 61 years old and have an 82-year-old dependent mother. She does own her home.

The California judge ordered alimony and considered the retirement pay of my spouse as an asset earned during our marriage and awarded 50 percent of that to me as community property. However, Colonel Pair, USAF retired, sends me nothing. In fact, he cashed in the National life insurance policy the courts awarded me and visited Taiwan. I have been in court 13 times since and including 1974. I am reduced to writs of garnish—and due to time elements and work loads in the agencies involved, only two of 90 days duration each, are possible a year. My income from this is about \$6,000 per year.

The generosity and good will of the American people is known the world over. We not only forgive our enemies, but actually endow them with money to begin a new life. We have granted benefits—for example: the Marshall plan following World War II, whereby we poured billions of dollars into Germany. We rescued the Cambodian boat people. Our tax dollars support Cuban refugees, but are we as generous—or even fair, to people who have given 15–20, or even 30 years of their lives in the service of their country?

As a rule, yes. Government employees and military personnel retire with pensions as rewards for service to their country. Military personnel have also earned the right to * * * free medical treatment, commissary and PX privileges, and to remain members of military groups and organizations for life.

The partners of these people, however, if dependents, even after spending the same 15–20, or 30 years in the military end up being the poorest, most isolated segment of the population. Due to frequent moves, isolated bases, and the necessity of being both mother and father of dependent children, when fathers are absent-on-duty, has left these wives with no skills, no experience, and no retirement for themselves.

Divorce settlements are dependent on the discretion of civilian judges who have no idea of the sacrifices the military life entails. Alimony, when granted, is no payment for years of work * * * but is used to buy off an unwanted spouse. Collections become a struggle and a lesson in humiliation. The discarded wife is left with little if any money, no health insurance, no retirement, and at more than 40 years of age (or older) little chance of acquiring even a low-paying menial job.

The husband, on the other hand, has a retirement for life, free dental and medical care, 20 to 30 years experience in his profession, and the social contacts of many years. The wife, meanwhile, has not only been deprived of the above mentioned benefits, but also her social contacts in the military clubs and organizations—such as U.S. Automobile Association. She is a stranger in her own land. She has lived years away from her own family and must now try to survive alone, unwanted—a nobody, robbed of her life and her identification.

The parallel between these women and those of native tribes who are sent out to die when no longer wanted is much too painful and obvious to be borne. Please, I beg you, extend to these women the recognition of their contribution to their country and give them the dignity they deserve of being able to live with pride and a degree of security by recommending that these bills benefiting ex-military wives of substantially long marriage duration be passed.

I appreciate you hearing me. I didn't think I would get a chance to speak. I appreciate you men that are here, and wonder where all the rest are. But I will be interested in the legislation, look for it, and if there is any way I can contribute in any manner I will be glad to leave my name and address.

Mr. NICHOLS. Thank you, Mrs. Pair. We appreciate your coming and appearing before the committee.

Let me say we have several other sessions going on here. The Investigations Panel is in a discussion of Korea, and we have some delegates here from China who have taken part of the committee today, plus the action on the floor.

There is another lady that wants to speak.

Will you come up, please. State your name, please?

Ms. ROSEMARY LOCKE. I am Rosemary Locke, president of the National Military Wives' Association. And I feel a bit overwhelmed coming up after that last beautiful statement. This is in response to a question that came up in the testimony. I testified at the White House Conference on Families, and as a result I have been collecting various DOD studies which concern military family life.

I have several 1980 studies, which indicate that military wives consistently earn less than their civilian sister counterparts, and more military wives work to supplement their husband's income.

My organization would like to present a supplemental statement within the allowed 2 weeks.

Thank you.

Mr. NICHOLS. You will be permitted to do that, along with any of the studies that you made. If you care to submit those, they will be made a part of the record without any objection.

[The following information was received for the record:]

SUPPLEMENTAL STATEMENT FROM ROSEMARY A. LOCKE, PRESIDENT, NATIONAL
MILITARY WIVES ASSOCIATION

The National Military Wives Association (NMWA) is a volunteer and non-profit association of wives whose husbands have served or are serving in the seven uniformed services. Our purpose is to assist military families through an educational program which informs them of their rights and benefits. Our members numbering 1,700 are kept informed through a quarterly newsletter.

We wish to thank you, Mr. Chairman, for your generosity in allowing additional informal statements to be made at hearings on Wednesday, 28 May 1980, concerning legislation for divorced military spouses. NMWA's supplemental statement will expand on those areas addressed at the hearings.

The United States military community has long recognized the military wife, her role and her commitment to a unique life style which often calls for personal sacrifice. Official speeches, DOD publications and service conducted studies confirm the importance of a wife to the military mission.

In addressing the Air Force Officer's Wives Club on 18 October 1979, General Lew Allen, Jr., Chief of Staff, USAF, said that there is an "increasing awareness in all the services that the role and attitude of the spouse—and by extension, the family—has a major influence of the well-being, performance and retention of the military service member. He concluded "by thanking you again . . . for the sacrifices you make every day in supporting your husbands, the Air Force and the nation."¹

These sentiments are borne out by numerous service research papers analyzing the attitudes of military wives toward service life and the implications of those attitudes to the military mission. Space does not permit a detailed analysis of the many studies, but it is important to cite a few conclusions:

When we examine the factors that contribute to the job morale and retention decisions of AF married men, we found that the support their spouse gave to

¹ General Lew Allen, Jr., Chief of Staff, USAF, AFOWC Remarks, 18 October 1979.

their AF life was the second most important predictor of married men's AF job commitments. The attitudes of these married women count heavily in the career ambitions and work performance of AF men. This makes them more than just partners in the marriage, but also partners in their need for support from the AF community.²

A Navy study concluded that the wife is a critical factor in retention.³ The term "dependent" is frequently used in DOD publications to describe the relationship of a serviceman's wife and children to that serviceman. Admiral James Watkins, Vice Chief of Naval Operations, in addressing the Naval Officer's Wives Club in February of 1980 stated that he did not even like to use the term "dependent" because he viewed the wife and family as partners in the Navy team. Still the term is appropriate since military services and benefits depend upon that relationship, one acknowledged by a government issued "Dependents Identification Card".

In recent years, there has been a trend toward married women working outside the home for pay in addition to her traditional roles of homemaker and community volunteer. While it has been recognized that military wives contribute significantly to the military way of life as well as being homemaker and volunteer, she too, has gone to work thereby taking on yet another job. However, in the market place, the military wife has not kept pace with her civilian counterpart. The Bureau of Labor Statistics reported that in 1977 only 43 percent of the 800,000 dependent wives living with military husbands in CONUS were in the labor force as compared with 52 percent for civilian wives. Additionally, the unemployment rate (16 percent) for military wives was more than double that of civilian wives.⁴ (However, these figures did not include military wives living with their husbands overseas where it is more difficult to find employment. If it had, the percentage of working military wives would have been much smaller.)

The reasons for wives working are varied, but certainly include the desire to maintain or improve the family standard of living during an inflationary era. Studies show that the military has lost 20 percent buying power since 1972; that housing costs far exceed the amount allotted for housing and that military families must pay 1.2 billion dollars out of pocket each year for authorized military moves. One hundred thousand military families now qualify for food stamps. Many wives must work at any job they can find. With the frequency of moves disrupting careers and with the competition for jobs in areas where there are concentrated numbers of military, finding any job is most difficult. A comparative study in 1975 of mean earnings for working military wives shows that for wives of E-3 through O-6 wages were \$2,699 to a high of \$5,649 per year. Comparable civilian wives earned \$4,117 to \$6,610.⁵—a significant difference. How terrible is the plight of these women if they must suddenly become their own sole support—a real possibility with the present inadequacy of enforcement procedures for court orders.

"It has always been recognized within the military community that retention and general morale are distinctly related to the domestic satisfaction of wives and families."⁶ There must be real incentives for the military wife if she is to continue to support the military community and the nation.

² Dennis K. Orthner, Ph.D. "Quality of Air Force Support Systems: Perspectives From Air Force Women," 15 April 1980. Family Research and Analysis, Inc. C. Brooklyn Deer, "Marriage/Family Issues and Wife Styles Across Naval Officer Career Stages: Their Implications for Career Success," July 1979. Department of Management, University of Utah.

³ Patricia J. Thomas and Kathleen P. Dunning, "Role Affiliation and Attitudes of Navy Wives," January 1980. Navy Personnel Research and Development Center.

⁴ Howard Hayghe, "Special Labor Force Reports—Summaries," Monthly Labor Review, February 1980.

⁵ Department of Defense, "Report of the Pay Adequacy Study," October 1979, table I.

⁶ David Chambers, Chairman: Presbyterian Council for Chaplains, "Conference of Ecclesiastical Endorsing Agents for the Armed Forces: Study Committee Report," Mar. 11, 1980.

TABLE 1.—EARNINGS OF WIVES IN MILITARY AND CIVILIAN FAMILIES IN 1975

[Husband/wife families stratified by total earnings of husband]¹

Military husband's pay grade	Families with total earnings of husband in same range				
	Mean earnings of wife in—		Statistically significant ⁴	Mean earnings of wife in civilian families (universe B) ³	Statistically significant ⁴
	Military families	Civilian families (universe A) ²	between military and civilian families (universe A)		between military and civilian families (universe B)
O-6.....	3,776	5,647	Yes.....	6,610	Yes.
O-5.....	5,203	5,647	Yes.....	4,862	Yes.
O-4.....	4,851	5,446	Yes.....	4,922	No.
O-3.....	5,649	5,518	Yes.....	5,243	Yes.
O-2.....	5,292	5,518	Yes.....	5,243	No.
O-1.....	4,364	4,983	Yes.....	5,141	Yes.
E-9.....	5,417	5,518	No.....	5,243	No.
E-8.....	4,086	5,518	Yes.....	5,243	Yes.
E-7.....	4,589	5,283	Yes.....	5,234	Yes.
E-6.....	4,233	5,283	Yes.....	5,234	Yes.
E-5.....	4,059	4,983	Yes.....	5,141	Yes.
E-4.....	3,679	4,843	Yes.....	4,086	Yes.
E-3.....	2,699	4,727	Yes.....	4,117	Yes.

¹ Table 4 depicts mean earnings data only for those families in which the wife had some earnings in 1975. It excludes families in which the wife had no 1975 earnings.

² See table 3 for definition of those civilian families categorized as universe A.

³ See table 3 for definition of those civilian families categorized as universe B.

⁴ Calculations were made to determine whether or not the differences in mean earnings between the respective groupings of military and civilian families are statistically significant, at the 95 percent confidence level, by use of the formula:

$$Z = \frac{\bar{X}_1 - \bar{X}_2}{\sqrt{\frac{S_1^2}{N_1} + \frac{S_2^2}{N_2}}}$$

Sources: Stratification of total earnings of husband in civilian families into the same respective income ranges as total earnings of the husband in military families to which compared is from table 1. Mean earnings of wife in military families is derived from 1976 DOD Personnel Survey (which asks about spouse earnings in 1975). Mean earnings of wife in civilian families is from Bureau of the Census "Current Population Report: Consumer Income" for 1975.

Mr. NICHOLS. Thank you so much.

I thank each and every one of you for coming. It has been a long afternoon, and I appreciate your testimony.

Do you have something?

Ms. FILEMYR. I would like to submit these for the committee to read over. They are from my organization, from actual military wives.

It explains everything in the papers.

Mr. NICHOLS. Are these in a form of letters from individuals?

Ms. FILEMYR. Yes, sir.

Mr. NICHOLS. They will be made a part of the official files. I appreciate it.

Ms. FILEMYR. Thank you so kindly.

Mr. NICHOLS. Thank you.

The subcommittee will stand adjourned on the call of the Chair.

[Whereupon, the subcommittee was adjourned at 5:23 p.m. on the call of the Chair.]