

**LEGISLATIVE HEARING ON H.R. 952,
THE “COMPENSATION OWED FOR MENTAL
HEALTH BASED ON ACTIVITIES IN THEATER
POST-TRAUMATIC STRESS DISORDER ACT”**

HEARING
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS
OF THE
COMMITTEE ON VETERANS’ AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
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**LEGISLATIVE HEARING ON H.R. 952, THE
“COMPENSATION OWED FOR MENTAL
HEALTH BASED ON ACTIVITIES IN THEATER
POST-TRAUMATIC STRESS
DISORDER ACT”**

THURSDAY, APRIL 23, 2009

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:06 a.m., in Room 334, Cannon House Office Building, Hon. John Hall [Chairman of the Subcommittee] presiding.

Present: Representatives Hall, Halvorson, Donnelly, Rodriguez, Kirkpatrick, Lamborn, and Bilbray.

OPENING STATEMENT OF CHAIRMAN HALL

Mr. HALL. Good morning, ladies and gentlemen. Would you please join me in the Pledge of Allegiance.

[Pledge of Allegiance.]

Mr. HALL. It is especially poignant to say the Pledge for me having just come back from Afghanistan and Iraq.

I will have you know that the latest report from the front when asked in Kandahar what their greatest needs were—I had lunch with members of our Armed Forces from New York and I wanted to know what their top priorities were so I could come back here and represent them. They said bandwidth so that web sites and e-mail would download faster. I said, okay, I got that. And showers so the water stays hot longer and the pressure is stronger. So, I am back here with a mission.

But, at any rate, today we are here to consider legislation, “The Compensation Owed for Mental Health Based on Activities in Theater Post-Traumatic Stress Disorder Act” or the acronym, “The COMBAT PTSD Act,” H.R. 952.

During the 110th Congress and most recently during an oversight hearing held on March 24th, 2009, the Subcommittee on Disability Assistance and Memorial Affairs revisited Congress’ intent in establishing presumptive provisions to provide compensation to combat veterans under section 1154(b) of title 38.

We have heard testimony on how Congress in 1941, when it adopted the original provisions under section 1154 seemed to ex-

plicitly express its desire to overcome the adverse effects of not having an official record.

Moreover, they wanted it to be liberal, and by that, I mean more inclusive, in its service pension law by extending full cooperation to the veteran when it enacted this position.

I ask permission to insert the following reports and public law of Congress from 1941 into the record. Without objection, so ordered.

[The public law and reports appear on p. 53.]

Mr. HALL. Based on this Subcommittee's review, however, it seems that the U.S. Department of Veterans Affairs (VA) has acted to thwart the Congressional intent of section 1154(b) with its internal procedures for adjudication, primarily those contained in its M21-1s and General Counsel opinions.

This results in VA being more restrictive in its application of section 1154(b) by placing an unnecessary burden on veterans diagnosed with post-traumatic stress disorder, PTSD, and other conditions to prove their combat stressors.

Instead of helping these veterans reach an optimal point of social and emotional homeostasis as described in the RAND Report, "Invisible Wounds of War," VA's procedures are an obstacle to this end, inflicting upon the most noble of our citizens a process that feels accusatory and doubtful of their service.

We also know from the RAND Report that one out of every five servicemembers who served in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF) suffers from symptoms of PTSD. A large portion of these claims unnecessarily comprise VA's claims backlog as VBA personnel labor to corroborate the stressors of our Nation's combat veterans.

As the Institute of Medicine stated in 2007 in its seminal report on PTSD, the process to adjudicate disability claims is complex, legalistic, and protracted, and particularly difficult for veterans because of the stresses and uncertainties involved while facing skeptical and cynical attitudes of the VA staff.

As I think most will agree, this statement goes double for veterans filing PTSD claims, which require additional evidence of exposure to a stressful event while serving in combat.

Given these facts, the other well-known challenges facing its current system and the seriousness of the rising level of suicide among our servicemembers and veterans, I think it is disingenuous and short-sighted for VA to refer in its testimony that H.R. 952 would detract from the overall efficiency and integrity of the claims adjudication process.

Nonetheless, I am glad that VA is being responsive to this bill and now seems aware of the need to examine its own processes in this area to the benefit of veterans.

I look forward to hearing more about its regulatory amendment that would relax the requirement for corroborating evidence in some situations that a claimed in-service stressor occurred, particularly about the "some situations" portion.

I also want to hear more from the Department's witness on how the provisions of H.R. 952 could be better tailored to meet its evidentiary needs to properly adjudicate claims while alleviating the

often overwhelming evidence burdens that stymie so many of our combat veterans through no fault of their own.

I reintroduced my bill, "The COMBAT PTSD Act," H.R. 952, to try to rectify this injustice that has gone on six decades too long.

We have had case work in our office in New York's 19th, for instance, a World War II veteran who was misdiagnosed and 60 years later, fortunately, was still alive to see his claim granted.

So this is not just about OIF/OEF. It is a problem that has persisted through many conflicts and the aftermaths thereof.

This bill would clarify and expand the definition of "combat with the enemy" found in section 1154(b) of title 38, United States Code, to include a theater of combat operations during a period of war or in combat against a hostile force during a period of hostilities.

This language is consistent with other provisions of title 38 and with those contained within the "National Defense Authorization Act."

I also firmly believe that this bill is consistent with the original intent of Congress in 1941 and should not be viewed as adding a new entitlement.

I am grateful to my 42 colleagues who are already cosponsors of H.R. 952 and to the numerous groups who have endorsed it.

I ask unanimous consent to enter the letters of support into the record from Iraq and Afghanistan Veterans of America (IAVA); Veterans of Foreign Wars (VFW); The American Legion; Veterans for Common Sense; the National Veterans Legal Services Program; Disabled American Veterans (DAV); and the Fleet Reserve Association. Without objection, so ordered.

[The letters of support appear on p. 57.]

Mr. HALL. I am glad to welcome to this hearing the veterans service organization and the veterans legal service organizations who can shed more light on the difficulties the current interpretation of section 1154(b) by the Department of Veterans Affairs creates for so many of our men and women whose service in combat theaters goes unrecognized and the impact the denials of their claims have had on their lives.

I am particularly honored to have a constituent of mine and famed author Norman Bussel join us today. Norman is an ex-POW from World War II, and a volunteer service officer for the American Ex-Prisoners of War, who has firsthand knowledge of the hardships that many of his fellow veterans face when filing PTSD and other claims for disability benefits.

The 111th Congress shares the same responsibility to disabled veterans as did its colleagues of the 77th Congress. The vision then was to ease the bureaucratic burdens placed on returning war veterans so that they would receive the benefits they deserve. My hope is that we will enact H.R. 952 to restore this noble end.

I now would yield to Ranking Member Lamborn for his opening statement.

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

OPENING STATEMENT OF HON. DOUG LAMBORN

Mr. LAMBORN. Thank you, Chairman Hall, for yielding.

Chairman Hall, as I have stated before, I commend you for your compassion toward our veterans. Your bill is based on the best of

intentions. But as I have stated previously, I believe it would result in unintended consequences that could harm the integrity of the VA claim system.

I also want to clarify for those who may not be familiar with this issue that I am completely supportive of veterans, any veteran receiving treatment for PTSD. However, healthcare benefits are not the issue. Veterans who have or believe they have PTSD can receive treatment and counseling today without establishing service-connection. But to draw disability compensation, a veteran must meet this threshold requirement.

Also, any veteran does have the opportunity to establish service-connection for PTSD with a physician's diagnosis that links it to a verifiable stressor that occurred during service.

The standard of evidence for combat veterans and victims of sexual assault has been lowered to give the benefit of the doubt to such veterans.

Mr. Hall's bill would provide this liberalization to any veteran who was in a theater of operations. The theater of operations is an immense global area that might encompass areas most people would feel safe traveling to.

I believe such a loose standard diminishes the bravery and service of those who faced the fire up close. And even if I agreed with Mr. Hall's bill, it would not go anywhere unless PAYGO standards were waived.

Our Subcommittee passed Mr. Hall's bill last session, but it floundered because there was nowhere to offset the spending or a waiver of the rules Congress established.

In previous hearings, I pointed out that I am not in favor of offsetting the cost in some other area of veterans' benefits which would be required by PAYGO, and not just the cost factor to which I am opposed. I believe that any veteran should have access to healthcare and treatment for PTSD. And I have full support for the funding of such treatment.

Mr. Chairman, I extend my thanks to you for holding this hearing and I look forward to hearing the testimony of the witnesses on our panel today. And I yield back.

[The prepared statement of Congressman Lamborn appears on p. 36.]

Mr. HALL. Thank you, Congressman Lamborn.

I would like to welcome all witnesses testifying before the Subcommittee today and remind you that your complete written statements have been made a part of the hearing record.

Please limit your remarks so that we may have sufficient time to follow-up with the questions once everyone has had the opportunity to provide their testimony. There is a clock as usual, with the red, yellow, and green markers. So each witness will have 5 minutes to testify.

On our first panel, I would like to invite up to the witness table Mr. John Wilson, Associate National Legislative Director for Disabled American Veterans; Mr. Bart Stichman, Joint Executive Director for the National Veterans Legal Service Program; Mr. Norman Bussel, National Service Officer for the American Ex-Prisoners of War; and Mr. Richard Paul Cohen, Executive Director for the National Organization of Veterans' Advocates, Inc.

Welcome to all of our witnesses. You are familiar with this, I am sure, but you probably have a green button to push to turn your microphone on and then we can all hear you and you will be recorded for posterity.

Mr. Wilson, you are now recognized for 5 minutes.

STATEMENTS OF JOHN WILSON, ASSOCIATE NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; BARTON F. STICHMAN, JOINT EXECUTIVE DIRECTOR, NATIONAL VETERANS LEGAL SERVICES PROGRAM; NORMAN BUSSEL, NATIONAL SERVICE OFFICER, AMERICAN EX-PRISONERS OF WAR; AND RICHARD PAUL COHEN, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.

STATEMENT OF JOHN WILSON

Mr. WILSON. Thank you. Good morning, Mr. Chairman.

Mr. Chairman and Members of the Subcommittee, on behalf of the DAV, I am pleased to address H.R. 952, "Compensation Owed for Mental Health Based on Activities in Theater Post-Traumatic Stress Disorder Act," or "The COMBAT PTSD Act," under consideration today.

The Act provides a clarification of the definition of combat with the enemy. We agree that such clarity is essential provided it does not compromise the integrity of VA's benefits delivery system.

The definition of what constitutes combat with the enemy is critical to all veterans injured in a combat theater of operations whether the issue is service-connection for PTSD or other kinds of conditions resulting from combat.

The current high standards required by the Department of Veterans Affairs' internal operating procedures for verifying veterans who engaged in combat with the enemy are impossible for many veterans to satisfy whether from current or past wars.

A practical example of the problems associated with the current burden of proof required to determine who "is engaged in combat with the enemy" can be found with the U.S. Army's Lioness Program in Iraq.

Despite a U.S. Department of Defense (DoD) policy banning women from direct ground combat, U.S. military commanders have been using women as an essential part of their ground operations in Iraq since 2003.

The female soldiers who accompany male troops on patrols to conduct house-to-house searches are known as Team Lioness and have proved to be invaluable. Their presence not only helps calm women and children, but Team Lioness troops are also able to conduct searches of the women without violating cultural strictures.

Against official policy and at times without the training given to their male counterparts and with the firm commitment to serve as needed, these dedicated young women have been drawn on to the front lines to some of the most violent counter insurgency battles in Iraq.

Independent Lens, an AME award winning independent film series on PBS, documented their work in a film titled, "Lioness," which profiled five women who saw action in Iraqi's Sunni Triangle

during 2003 and 2004. I will discuss the experiences of Rebecca Nava.

Then Specialist Nava was a supply clerk for the 1st Engineering Battalion in Iraq. Not trained for combat duty, she unexpectedly became involved with fighting in the streets of Ramadi on a particular mission. In my conversations with her, she recounts several incidents. This is one.

Specialist Nava was temporarily attached to a Marine unit to provide Lioness support as a patrol of the streets of Ramadi. Before she knew it, the situation erupted into chaos and they came under enemy fire. She had no choice but to fight alongside her male counterparts to suppress the enemy. No one cared that she was a female nor did they care that she was a supply troop. Their lives were all on the line and they opened fire. The enemy was taken out. This and other missions resonate with her to this day.

When she filed a claim with the VA for hearing loss and tinnitus, she was confronted with disbelief about her combat role in Iraq. Specialist Nava was told that she did not qualify for a service-connection for her hearing loss and tinnitus. The logistic career field was deemed one without inherent noise exposure issues.

She also indicated she was not awarded service-connection for PTSD because she had no documented combat stressor. Since she does not have a combat action badge, she cannot easily prove her participation in combat missions which impacted her loss of hearing and tinnitus and her psychological health.

The combat action badge or CAB was approved by the U.S. Army on May 2nd, 2005, to provide special recognition to soldiers who personally engaged or are engaged by the enemy and may be awarded by a commander regardless of the branch and military occupational specialty.

Specialist Nava was not awarded the CAB despite her combat role. This lack of recognition for her combat role can be multiplied countless times for other veterans also caught in the fog of war.

The VA's current internal instruction requires proof by official military records that can be viewed as exceeding the law since the law does not require this level of documentation.

To provide better assistance to veterans of this and other conflicts, the VA could rely on the proper application of the current legislation. If VA applied Section 1154 properly, the problems this Act targets would effectively be resolved.

As we move carefully toward liberalizing the law concerning service-connection for disabilities arising from combat with the enemy, perhaps the best course is to designate the theater of operations as the combat zone. Using Iraq as an example, that country would be so designated and personnel assigned there who transit through as part of their duties are considered to have engaged in combat for VA benefits' purposes.

Logistical staging and resupply points such as those found in Kuwait and Qatar, although tax-free zones, have not been the scene of combat operations and thus personnel assigned to these areas would not be considered to have engaged in combat for benefits' purposes.

With such a designation, veterans must still provide satisfactory lay events, however, consistent with their service. This is a complex

issue that is worthy of the time and careful consideration that this Committee has invested.

The last area that I would like to briefly address has to do with the title of the bill itself. I would request the Committee's consideration for renaming of this legislation, one with a broader context that reflects the impressive intent of clarifying the very definition of combat with the enemy. The current title, "Combat PTSD Act," does focus on this important condition, yet the legislation language addresses the relationship between combat with the enemy and all service-connected disabilities.

That concludes my testimony. I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Wilson appears on p. 37.]

Mr. HALL. Thank you, Mr. Wilson.

Mr. Stichman, you are now recognized for 5 minutes.

STATEMENT OF BARTON F. STICHMAN

Mr. STICHMAN. Thank you, Mr. Chairman and the rest of the Subcommittee. I am pleased to have this opportunity to present the views of the National Veterans Legal Services Program.

You are dealing today with one of the most vexing problems in the VA benefit system, how to properly adjudicate claims for service-connected disability benefits for post-traumatic stress disorder.

It is the type of claim that takes a long time and a lot of labor for the VA to decide and it is the type of claim that veterans have been having a hard time winning for many years.

And the main culprit is the VA requirement of a corroboration of the stressful event. That requirement exists regardless of the lay testimony of the veteran and perhaps others that the incident occurred and despite the fact that a physician has determined that the veteran is suffering from post-traumatic stress disorder and the post-traumatic stress disorder according to the mental health professional is due to a stressful event that occurred during service.

Despite all that, in most cases, the VA has imposed a requirement for independent corroboration of the stressor, usually by military records.

Section 1154, as the Chairman mentioned, was meant to help alleviate that problem, but it is clear that that current legislation as interpreted by the VA does not go far enough.

The General Counsel opinion, one of them that I am sure the Chairman was referring to in his opening remarks, in order to get the benefit of not having to have corroborating evidence, the veteran has to have participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality.

Now, this is especially problematic in our current war in Iraq and Afghanistan where the battle is not—there are no clear areas of combat. People see dead bodies and are exposed to improvised explosive devices (IEDs) when they are not in combat with the enemy. And they have experienced all these stressful events in a way that does not qualify under the VA's rules for elimination of the corroboration requirement.

H.R. 952 is a reasonable step to deal with that problem. I would like to spend a few moments discussing whether it would be incon-

sistent with the integrity of the VA disability system as some have said.

We have a system here. We are trying to deal with hundreds of thousands of claims. You cannot have a trial on each claim and spend a lot of resources. We do not have enough money to pay for that. And so it is consistent with the disability system to have general rules that work to the benefit of veterans to ensure that people with worthy claims are not left behind.

A couple examples. Nobody believes that everybody who served in the Republic of Vietnam was exposed to Agent Orange. Yet, we have a statute and regulations that requires the VA to presume that everybody who served in Vietnam was exposed to Agent Orange.

Why do we have such a liberal rule? We have such a liberal rule because if you had a trial to determine who was exposed and who was not exposed, it would be an administrative nightmare. And so it makes practical sense to assume that everybody who served in Vietnam was exposed to Agent Orange.

Another example. Pension benefits for wartime veterans. There is a requirement that the disability be permanent and total in order to qualify for pension. If you are 65 years or older, the VA now presumes that you are permanently and totally disabled.

Now, everybody knows that all veterans over 65 years old are not permanently and totally disabled. But for pension purposes, we assume that so you do not have to go through a long administrative process of gathering evidence, et cetera, to prove it.

This is another example of that, H.R. 952. It makes a presumption that if you looked at every case and you had a camera as to what went on, some people might get benefits who would not deserve it.

But what the system currently now is it works to deny claims of deserving veterans because they do not have corroborative evidence because the military records do not exist to corroborate it. There is not good medical records kept in Iraq and Afghanistan and that is what this bill addresses.

It has protections in it. The statute has protections in it against wrongful grants of benefits. First of all, the statute retains the requirement or the part of the statute that clear and convincing evidence to the contrary will override the presumption that the event occurred.

Secondly, if you look at the VA's clinicians guide, they say that post-traumatic stress disorder is very hard to fake, that mental health professionals who are trained in this area can tell whether a person is faking the symptoms or really has it.

So you have a number of protections against wrongful grants, against violations of the integrity of the disability system already in place.

I note finally that in the VA testimony, the VA argues give us the discretion to and promulgate regulations to deal with this problem rather than legislate the answer to the problem. That is a road we have gone down before, not just with Section 1154, but many other examples where the VA interprets Congressional legislation too restrictively.

Here is an opportunity to lay down the law precisely in a way that the VA cannot misinterpret it. And H.R. 952 would do that. [The prepared statement of Mr. Stichman appears on p. 39.]
 Mr. HALL. Thank you, Mr. Stichman.
 Mr. Bussel, you are now recognized for 5 minutes.

STATEMENT OF NORMAN BUSSEL

Mr. BUSSEL. Thank you, Chairman Hall and Members of the Subcommittee, for the opportunity to testify before you today in support of H.R. 952, a bill designed to conclusively define compensation owed for mental health based on activities in theater post-traumatic stress disorder.

As a volunteer National Service Officer accredited by the VA to file benefit claims for veterans, I find it so unfair when clients I represent, clients who served in combat zones, clients who fought and endured enemy attacks, clients diagnosed with PTSD by VA psychologists have their claims denied by the VA because their job titles did not reflect their combat experience.

A cook, a Seabee, a supply sergeant are no more immune from injury or death than anyone else in the combat zone.

I would like to present two classic examples of Vietnam veterans, both of whom are my clients, whose claims were unfairly turned down by the VA because of their specific training which did not suggest a role in combat.

The first example is about a Seabee named Bob. Bob served two tours in Vietnam, the first tour on board a ship and the second on land in a combat zone. Following is a diagnosis from his psychologist, a nationally recognized specialist, who has served in a VA medical center for more than 32 years.

He talked of events that he was able to describe vividly that reinforce the feeling that he could never feel safe and that he could have been dead many times. These intrusive thoughts have become worse over the past year and that is the main reason he entered treatment.

He had tried to bury most of his PTSD problems over the years by working hard and by drinking alcohol heavily. His increasing symptoms are also associated with the increase in coverage of soldiers' deaths in Iraq. This brings him right back to Vietnam."

As further proof of Bob's combat role, I submit as evidence, the following excerpts from a letter, one of many that Bob wrote to his wife while serving in Vietnam in 1968. The letters are still in their original postmarked envelopes.

"September 1968, it started at two o'clock in the morning with a blast that almost threw me out of the rack and then all hell broke loose. They were not Vietcong this time. They were North Vietnamese regulars. They blew up a medical warehouse, two buildings across the street, one building in the next compound, and about ten rounds in the street in front of our compound. Again, no one was hurt here. We must have some kind of good luck charm.

"There is still an NV body in the street out front. He has two homemade bombs on his body, but I left him alone. I wonder how long he will lay there before someone moves the body. I found an NV hand grenade across the street near the body. I did not disarm it.

“I would say at least 200 rounds came into the city last night, most of them on this side of town. I do not mind telling you that I about messed in my pants last night. I do not mind telling you that the small arms, if they were near enough to hit you, you can hit them. The big stuff cannot be stopped and there is no protection from it.”

Hear in Bob’s own words, is his reprise of his life since Vietnam: “My long battle with PTSD has led to divorce, strained relations with my children, estrangement from my family, and loneliness that resulted from my antisocial behavior. No one could understand my pain and I prefer to be alone.

“The fact that my claim for compensation was denied by the VA even after a psychologist at the VA mental health facility diagnosed me with PTSD weighs heavily on my mind. If I had been killed in Vietnam, and every day I spent there I was in danger of that happening, would my sacrifice have been less because I was in a construction battalion? I hope that this injustice will soon be rectified.”

The second example is from Joe who was trained as a cook in the Marines and served in Vietnam from June 1967 until June 1968. When he arrived at his assignment in Vietnam, he was told that there was no mess hall, so he was handed a weapon and became a combat Marine.

Here are some excerpts from his statement in support of claim: “We were overrun in Happy Valley. We were in bunkers and guys were being killed all around us. I was checking the perimeter a little later when we came under fire and were pinned down for about 8 hours. It took medevac helicopters to evacuate us.

“I lost a couple of real good buddies from snipers and incoming rocket fire. I had nightmares after that. You can never relax, particularly at night, since we were always subject to incoming fire. It led to a situation when I was always on edge.

“Of course, when I returned, it was impossible to leave my feelings behind. I still cannot go to the Vietnam Memorial in Washington. I am on medications for seizures, mood swings, anxiety, and to help me sleep. I still suffer from night sweats, nightmares, and flashbacks. I have to sit facing a door in any room or restaurant since I must always have a means of escape. My hypervigilance never goes away.”

Although treatment reports from a VA hospital show a diagnosis of PTSD, Joe was denied compensation. Here is a portion of the VA report.

“Post-traumatic stress disorder questionnaire dated August 31st, 2006, showed two incidents, both of which involved combat patrols, which would be unlikely for a cook. A search of unit records show your units were not involved in combat.

“Treatment reports, VA medical center, Hudson Valley Healthcare System from August 24, 2005, through April 18th, 2008, show a diagnosis of post-traumatic stress disorder.”

Additionally, the VA acknowledges that on October 6, 2007, a letter was received from a buddy who served with Joe in Vietnam and he did observe his fellow Marine with his combat-ready equipment, vest, helmet, and weapons, and he could see him on a six-by-six truck with his unit below on the road to Happy Valley.

Decisions such as this are deplorable and I know how they affect veterans.

Sixty-five years ago this month, my B-17 bomber exploded over Berlin and I lost four of my crew who were as close to me as my brother. I have struggled with PTSD ever since and survivor guilt is one of my strongest stressors.

There is no cure for PTSD, but the VA offers counseling and medications that make improvement almost a given and vast improvement is commonplace.

To refuse PTSD compensation to veterans because their job titles are not synonymous with combat is unconscionable. There is more than money involved. Even more important is the colossal insult in telling a combat veteran he did not fight for his country. That is an unnecessary stressor to his or her already overflowing load of emotional baggage.

Pass H.R. 952. Eliminate the practice of forcing combat veterans diagnosed with PTSD by one branch of the VA, and the task of battling another branch in order to obtain their rights.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Bussel appears on p. 41.]

Mr. HALL. Thank you, Mr. Bussel.

Welcome, Mr. Cohen. You are now recognized for 5 minutes.

STATEMENT OF RICHARD PAUL COHEN

Mr. COHEN. Thank you, Mr. Chairman.

Thank you, Members of the Subcommittee, for the opportunity to testify here today. I am here representing the National Organization of Veterans' Advocates, a membership association of almost 300 attorneys and nonattorney practitioners who are accredited to represent veterans. We know what it is like to be in the trenches fighting for veterans' rights.

My testimony today will do four things. One, to show our support for H.R. 952 because it will clarify the original intent of 1154(b). Second, to show the need and justification for this clarification. Number three, to show the cost of not passing this legislation and the last, to show the need to expand the presumption of 1154(b) to include not only the incurrence but actual service-connection.

First off, it is clear that 1154(b) was written at a time in 1941 where the rules of war were considerably different than they are today. Today someone can be involved in combat without being in the front lines. Legislation to change 1154(b) to include presence in the theater of operations is consistent with the original intent and should be passed.

I would like to remind those who are concerned about the justification for a change in 1154(b) that in the area of criminal law, we have a presumption of innocence. The reason why we have that presumption is because we consider it to be intolerable to have an innocent person convicted. We would prefer to have some guilty people go free.

Yet, in VA law, we do not want to have an expanded presumption to make sure that everyone who is entitled to benefits should get those benefits. Rather we fear that maybe one or two people who are not entitled to benefits will get them. That is wrong.

The costs of not amending 1154(b) are huge. There are hidden costs to the VA and hidden human costs. When you take someone, such as one like Mr. Bussel was talking about in his testimony, someone who has been exposed to combat and has been told he has not been exposed to combat, the VA is essentially calling that veteran a liar. They are doubting the veteran. They deny the claim. When that happens, the VA then begins the campaign to develop the claim and adjudicate the claim.

Development and adjudication result in tremendous costs in manpower, paper, and backlog. A presumption decreases those costs. If there is any doubt that a change in 1154(b) would reduce costs, I would call your attention to the March 2009 amendment to 3.304(f) which eliminates the need for corroboration of stressors in the case of a diagnosis of PTSD in service.

According to the VA, that liberalization of the rule reduced costs. Similarly, I think the Congressional Budget Office did not consider all the hidden costs and did not indicate what reduction of costs would result from the lack of further adjudication if 1154(b) were expanded.

The cost to the veteran and the country is huge every time a meritorious claim is denied. You have heard justice delayed is justice denied. Well, justice denied increases frustration among our combat veterans, increases their anxiety, increases their depression, increases their anger, and increases their sense of betrayal from the VA and by extension from the whole country.

If the VA disbelieves the diagnosis, and disbelieves the stressor, then the veteran may not get the treatment for PTSD because the veteran may be diagnosed with anxiety or depression not related to combat, and therefore be ineligible for the PTSD Program.

The veteran, him or herself, may give up, refuse treatment, and then stop being a productive member of society. The veteran may tell friends and family "do not join," "do not engage in combat because if you do, your country and the VA will turn their back on you." In this way, the country loses support, and loses productive citizens. We cannot win the war without the support of the country.

I would suggest, however, that 1154(b) be expanded to create a rebuttable presumption that a combat veteran is entitled to service-connected benefits for any injury or disease incurred in or aggravated during combat.

The following is a real life example: During World War II, a veteran got hit in the left temple with shrapnel. His treating doctor said he got a resulting brain tumor. VA doctor said, no, it was congenital. VA denied the claim. Although the VA admitted that the combat related shrapnel injury occurred, it denied the claim for failure of medical nexus saying that the preponderance of the evidence was against the claim.

If 1154(b) were to be amended, a claim like that would result in benefits for the veteran because the VA could not prove by clear and convincing evidence that the tumor was not the result of the shrapnel.

The following is a similar situation: An ambush and a firefight result in a PTSD diagnosis, but the VA says it is anxiety and depression, not combat related, and denies the claim based on preponderance of the evidence.

If the 1154(b) presumption were expanded, the VA would have to show clear and convincing evidence to defeat that claim based on PTSD.

A final example is what you are going to be seeing a lot of these days, an IED explosion, resulting in symptoms of irritability, frustration, and anger. Treating doctor may diagnose traumatic brain injury (TBI), and suggest treatment for TBI. The VA examiner may conclude, however, that it is situational anxiety and depression, not TBI. In that situation, the veteran does not get TBI treatment, never becomes a productive citizen, and never gets the benefits he is entitled to.

The changes which I suggest can really make a difference in the lives of veterans and can make a difference in the VA's operational system, can save them money and cut their backlog, even though they oppose it.

Thank you.

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

Mr. HALL. Thank you, Mr. Cohen.

Thank you to all of our witnesses.

I am going to wait for my question. Although Mrs. Kirkpatrick was our early bird today, I wanted to ask your permission to allow Mrs. Halvorson to speak first for a reason that you will see.

Mrs. KIRKPATRICK. Absolutely.

Mr. HALL. Mrs. Halvorson.

Thank you.

OPENING STATEMENT OF HON. DEBORAH L. HALVORSON

Mrs. HALVORSON. Thank you, everybody on the Committee, for your indulgence.

And thank you, panel, for everything.

I just want to tell you a little story. I just returned this weekend from Afghanistan, Kuwait, and Germany. Our mission was to talk to the soldiers basically about PTSD and to talk about their healthcare and everything.

And, I have to tell you I am a tough cookie. There is not anything that scares me. But I spent a night on Bagram Air Base in the barracks with the rest of—there were five of us from the Congress. And I slept fully clothed with my shoes on because of everything that was going on. And I was a little on edge. We had a knock at the door, and, were informed that there was a soldier who was killed by an IED. They had to bring that soldier in.

Bagram Air Base also was where the level three health center is. Those medics are absolutely tremendous. They are not in combat, but they see the worst of the worst every day and they get people ready to go to Landstuhl.

You know, it is especially emotional because we see our young people who are serving our country. They may not be in combat, but they are right there in it and they are strong and their morale is high and they want to be there for everybody.

But, you know what? They go home and they want to say they are perfectly fine, but they are suffering. And, we need to do whatever it takes to be there for them.

But, I found out I was not so tough because that was rough being there and not being in combat, but knowing that a soldier had been

killed. And coming back to the air base, that is not an easy thing to do. And the soldiers are there every day.

So, I believe that everybody serving there needs to be taken care of and H.R. 952 has got to pass. I am so glad that you all are here to talk about it. I will do whatever it takes to help make sure that that happens.

And I again want to thank all of you on the Committee for your indulgence. I appreciate that.

And, again, if you have not been there in Afghanistan on the bases, take it from me, it is tough on them. You do not have to be in combat to feel the pain.

Thank you.

Mr. HALL. Congresswoman, would you like to use your last 2 minutes and a half or come back later to ask questions?

Mrs. HALVORSON. If I can, thank you. I yield back, or I reserve the balance of my time for later.

Mr. HALL. Very good.

Mr. Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

You know, I have to say coming from not only a military family and born and raised, actually literally born on a naval air station and raised in the family, this is one of those things that we talk a lot about.

It also kind of brings back the fact that when I was a young Mayor in my twenties, we had this big issue of presumption with public safety officers, issues of firefighters being presumed that any respiratory problem was specifically tied to their profession, stress related, anyone involved in, you know, firefights with criminals and stuff in law enforcement.

I have seen where good intentions have backfired and that is my concern here. It is not enough just, you know, to care and want to do something right. It is not enough to mean well when we do these implementations. What really matters is what is the outcome.

And I will give you an example with presumption respiratory problems with firefighters. Even if they were chain smokers where we ended up rather than confronting them with the fact that they needed to avoid risk, we sort of ignored the reality and did what felt good at the time.

And I will just tell you something. One of those firefighters was a little league coach of mine back then. And later, we had a conversation about how we wished we would have been a little more hard-nosed about getting our firefighters into a safety thing and long term rather than just pandering to the fact that we want to take care of them.

And I guess, Mr. Stichman, you brought up the point. I am an author on changing the regulations on an issue called mark to market that has created crisis in this country. And we have got legislation on this. And you brought up this issue of the fact that the VA has not addressed this regulatorily and that is why we need to look at legislation.

Even those of us that are authors of this bill are hoping, and actually using, the bill as a way to try to stimulate the Administration to go back and do what has been ignored by two Administra-

tions now and that is redefining this thing and doing it regulatorily.

Would you not agree that if things worked the way they should, our incentive here should be in stimulating the Veterans Department to go back and restructure the rules on this issue in a perfect world or do you think that legislation is the best option in the long run?

Mr. STICHMAN. Yes, I do. I have been in veterans' affairs for 30 years and I see time and again, even when Congress, I think the legislation is clear, the VA interprets it very restrictively. And so the successful legislation is legislation that is clear and specific and is difficult to misinterpret.

If you just give them a blanket direction to just look at the issue without telling them how to come out, you may spend a couple years getting new regulations that do not change anything.

I remember when, just take the Agent Orange issue, the Congress passed precisely the type of legislation you are talking about in 1985. For the first time, Congress mandated the VA to study the science and legislate as to what conditions are related to Agent Orange.

Prior to that, the VA's position was only chloracne, a skin condition, is related to Agent Orange. They did a rule-making proceeding, had an advisory group of scientists, and guess what the regulation said in 1986 that they promulgated after that legislation? Only chloracne, a skin condition, is connected with exposure to Agent Orange, the exact same unpublished rule they had been operating under for 7 years. That legislation did nothing. It did not change anything.

So if you just give them general instructions, you are not going to get change. This has been a complaint that has been on the books for many, many years. Just giving them general instructions, taking past history as a lesson, is not going to do the job.

Mr. BILBRAY. Well, you know, I spent 18 years trying to administer Federal regs and one of the things I ran into so often, though, was the fact that the problem in Washington is not that we try new things or that we mean well, but that when we make mistakes, this town never can go back and try to correct it.

What, it took us 30 years to try to go back and correct welfare. I mean, when a term welfare can be a negative just shows you how bad it got before we were willing to address it.

My question is, when we get into that problem of trying to correct it, is the Veterans Department so full of people that have animosity against those who have served? Is this a bureaucracy that is anti-military? I mean, because the way it comes across is like there is an adversarial relationship here and almost, you know, an anti-service mentality coming out of the Department.

Mr. STICHMAN. Read the decisions. Read the decisions of the Board of Veterans Appeals. All these witnesses can give you decisions of the Board on these cases and you can view for yourself whether you think it is adversarial or not. I think you will come to the conclusion if you read those decisions that it is adversarial, that the decision makers have the mind set we are here to protect the public fisc. We do not want anybody to get benefits who does not deserve it and we are going to err on the side of denial.

Mr. BILBRAY. Maybe we can hire these guys who run our welfare system and get our welfare workers to work on the veterans and maybe things would balance out a lot better.

Thank you very much, Mr. Chairman.

Mr. HALL. Mr. Bilbray, thank you.

If you do not mind, I will ask Mr. Wilson if he would like to answer that same question.

Mr. WILSON. Yes. Thank you. I appreciate an opportunity to respond.

It is an interesting circumstance we find ourselves placed in. When I look on the one hand at the statistics that the VA provides, I note that they have had a substantial increase in the number of post-traumatic stress disorder diagnoses than they have had over the past several years and in times past.

Yet, I can also point to those particular cases, Specialist Nava, for example, who had a team following her about in her duties in Iraq, Independent Lens there doing this documentary. She has these incidents she talks about on camera, and they showed the four other people who she was also deployed with who saw that and other violence. Yet, she was denied.

In my conversations with her, she indicates she was denied her claim for post-traumatic stress disorder. She has experienced the impact of these particular issues: instability in her home life, difficulty maintaining relationships now, other kinds of stressors, financial difficulties, all these things.

But I think looking at it from an objective perspective, these issues would be an indication of post-traumatic stress disorder. But she has no combat action badge. So we have a troop. We have a camera following her around in Iraq. She is not given a combat action badge which can be granted to her by her commander, but she is, again, outside of that combat specialty.

So if that is the case in modern day with a team of videographers following her about, how much more is this a problem for other veterans who do not have the level of visibility that she had? So it is a concern.

So, yes, I think the VA has worked very diligently to try and improve its outreach programs. The healthcare they provide is next to none when it comes to that particular area. The compensation issues have been enhanced substantially by better diagnostic techniques, but more could be done. Even one error is not acceptable, I believe, in granting service-connected benefits for veterans.

Mr. HALL. Thank you, Mr. Wilson.

Mrs. Kirkpatrick.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman. And I thank you for bringing forward this legislation.

I just spent 2 weeks in my district meeting with veterans and there is so much anger about how they are being treated by the Administration.

And specifically with regard to PTSD, you know, I have met with veterans who said how difficult it was to show the service-connection.

One veteran in particular was a Vietnam veteran and he told me how painful it was to try to track down his patrol, finding out that so many of them had died since their days in the service. I finally

was able to locate someone across the country who could validate the service-connection.

The other problem is also the lack of trained mental health professionals specific to PTSD in some of these communities. And, again, they said please take back to your Committee our request that we have trained mental health counselors in PTSD in the Department of Veterans Affairs how specific that is to their treatment, even those who qualify.

My concern, my question, I guess, is for you, Mr. Wilson. For a veteran who has PTSD or thinks they may have it and cannot show the service-connection, where do they go for treatment? What services are there for them?

Mr. WILSON. That is a good question. While I was in the field, I also had veterans come through with the same issues, Vietnam era in particular, some World War II, their entire team wiped out. So where do they go to for the particular support for their claim?

No letters from the front as we were talking about here. And this gentleman provided letters, postmarked, from someone overseas at the time. Excellent evidence typically. Why that claim was denied, I am unsure. It would have, I think, normally, I would hope it would be granted.

It is a difficult circumstance, as I said, and I have encouraged such individuals to find their reunion web sites or people who may be a part of that unit to provide perhaps some sort of corroborating statement of, yes, I saw Johnny there on that truck going to that combat zone all geared up. Those kinds of things may all be a benefit, but it is nonetheless very difficult.

In the fog of war, how is it that you are going to appoint a stenographer or a court reporter, a videographer to accompany each person on that combat? You cannot. It is a very difficult circumstance.

I would contend that the VA does have the means before it in order to grant those benefits by looking at the lay evidence that a veteran submits and looking for the times, places, and circumstances of that particular event. They should, in fact, be able to grant the service-connection, but it nonetheless is a problematic condition.

Mrs. KIRKPATRICK. And for those people who cannot show the connection, are there other places they can go for help?

Mr. WILSON. Ma'am, I wish I could find those. None that I am aware of.

Mrs. KIRKPATRICK. Mr. Chairman, let me just make one other comment. I asked the veterans I was meeting with if they were concerned about people applying for PTSD treatment who may not really qualify. And they said no, no.

The risk really is that those who need treatment are not going to seek it out because of the current system. And they emphasized over and over again that they were promised medical treatment for life when they enlisted and that that promise has been broken.

So thank you. I yield back the balance of my time.

Mr. HALL. Thank you, Congresswoman.

Mr. Rodriguez, you are now recognized.

OPENING STATEMENT OF HON. CIRO D. RODRIGUEZ

Mr. RODRIGUEZ. Thank you, Mr. Chairman.

Let me first of all ask permission to submit my statement for the record.

Mr. HALL. So granted.

Mr. RODRIGUEZ. And let me also just add that the same people that might suffer from post-traumatic stress disorders initially are the same ones that might not even be aware of the fact that they are suffering it. And a lot of time, that is not acknowledged until much later and after a lot of difficulties.

It is like getting burned out at work and you are not sure why. An example in my experience working with the mentally ill, staying there until seven, eight o'clock at night, taking the work back home with me, and then all of a sudden telling them, no, I cannot see you, it is after five. There is something wrong and it does not dawn on you until very much later in terms of what is happening to you.

The same thing applies with post-traumatic stress disorder and the system is not equipped to handle or to even reach out to those individuals that are not even aware that they are suffering from that and being able to be aggressive, and to be able to reach out and work with some of the individuals.

Your testimony, one of you mentioned the fact that a lot of them deal with it indirectly by going to prescription drugs and going to alcohol and perhaps illegal drugs in terms of coping with it. Somehow we have got to get the system to be more responsive.

H.R. 952 directly addresses the stereotypes by, helping to relax the evidentiary standards to deployment to a combat area. The first two soldiers that were caught, I think it was in Afghanistan, a young lady who was a cook, and the other one, who was a mechanic, and they were the ones who were captured.

It is hard when you get into those situations, especially what we have in Afghanistan and Iraq that at any given time, you will be asked to do other things besides your so-called duties while there. Some of those duties might not be transcribed so that you will not be able to justify them in the future.

So, we need to give them the benefit of the doubt under those circumstances. I know a colleague just talked about going to Afghanistan, and I have been there also. In just the setting itself, and the fact that we had to do certain maneuvers in order to be secure and a couple of other things, but just witnessing some of the atrocities there, that in itself can be sufficient. Even within the same group of people, certain things occur and happen that certain people witness and others don't; some are engaged while others are not.

I could go further, and I am not sure how PTSD is directly defined, I stopped doing mental health work some time ago, although it has worked for being in the U.S. House, but let me just say that there could be a combination of incidents that have occurred and not just one direct incident that could be factors.

So, I am hoping that we have become a little more open about it, but our society as a whole, and my colleague was making those comments, our society as a whole has not been that receptive to mental illness and mental health problems because it is not as visi-

ble and people look like they are normal. And in most cases, they are, but they do suffer from post-traumatic stress disorder.

Anyone that goes through any kind of, and I would apply that to policeman, a fireman, anyone that goes through some serious situations, you have got to be impacted by what you witness and what you encounter and it has a direct impact on you. In some cases, for the rest of your life. So, we need to be a little more responsive. Thank you.

[The prepared statement of Congressman Rodriguez appears on p. 36.]

Mr. STICHMAN. Mr. Chairman, could I just add a comment?

Mr. HALL. You may, Mr. Stichman.

Mr. STICHMAN. Thank you.

The point you made about people not recognizing they have post-traumatic stress disorder or being in denial about it, I think, relates to this legislation. A lot of people do not realize they have it for a long time and then they get treatment and then they apply for benefits. So it may be years, many years after they finish their military service.

And so in order to win benefits for post-traumatic stress disorder in a situation where the VA does not believe that they served in combat with the enemy at that point in time, they are going to have to go out and get corroborative evidence which is very difficult. The length of time affects their ability to do that.

Mr. RODRIGUEZ. Mr. Chairman, I know I have gone over my time, but—

Mr. HALL. Do you have another question?

Mr. RODRIGUEZ. Just comment. What you have indicated is so true and that is one of the things that the system has to be responsive to in terms of meeting those needs.

As a person goes through denial, you go through a process where you don't even acknowledge certain things that might have occurred that other people there will tell you, no, this and this transpired, because you might be going through guilt and other things, or that you might have not responded as appropriately as you should have and those kind of things. And, sometimes that is not cleared up until you have had a chance to go through those memories and be able to think about what actually occurred.

So thank you.

Mr. HALL. Thank you, Congressman.

I will now recognize myself for 5 minutes.

Mr. Wilson, DAV previously testified that VA had circumvented the law by conducting improper rule making through its Office of General Counsel and the adjudication procedures outlined in the M21-1MR by requiring proof of combat in official military records.

Can you explain this contention further and whether you have asked VA to respond to the DAV's position?

Mr. WILSON. I can briefly. I would like to respond more officially after this hearing, if I could. But briefly for now the rule-making issue gets to when VA promulgates its rules regarding, say, section 1154, in M21 in this particular case. What do they do to open it up for public comment?

To my understanding and having talked with my peers at work, there has not been that opportunity for public comment.

So there was no opportunity for Disabled American Veterans, NOVA, other organizations represented here today in this room to have an opportunity to comment and, therefore, get a response back as to the structure of that particular regulation and how they want to apply that.

That is our concern. We think by not doing so, it goes against what the legislation is seeking. We think if the Veterans Administration would provide for a proper rule-making forum to occur for this and other areas of its M-21 regulations, these particular issues could be resolved more readily.

Mr. HALL. Thank you, sir.

Mr. Stichman, would you please elaborate on your concerns that VA may interpret the presumption created by H.R. 952 to apply only to veterans who both served in a combat zone and alleged that the event in question occurred during combat with the enemy? How do you suggest we avoid this pitfall?

Mr. STICHMAN. Well, the possibility is raised by the General Counsel opinions and VA regulations dealing with the current 1154(b). They require two hoops for the veteran to jump through to get the benefit of the current 1154. One, it has to be a combat veteran and we have talked here about the problems with that. But even if you are a combat veteran, you have to allege that the event occurred during combat with the enemy.

So if you were a combat veteran but the event did not occur during combat with the enemy, then it has the same corroboration requirement as any other veteran would have.

So it is possible, although I do not think it would be a proper interpretation of your legislation as written, that the VA could take the position that, yes, you served in a combat zone, but since we are interpreting the language combat with the enemy, if you do not even allege that the event took place during hostile, an actual fight or encounter with a military foe or hostile unit, you still do not win the benefit of the no corroboration requirement.

And so maybe it is excess caution that makes me suggest that you make it even clearer that the allegation of the event does not have to be during what the VA would say today is combat with the enemy.

Mr. HALL. Thank you, sir.

One of the purposes of this hearing is to take any suggestions, clarifications, or amendments to the proposed legislation.

Mr. Cohen, for instance, in your testimony, you talked about clarifying the title of the bill. Could you elaborate on that, please?

Mr. COHEN. Yes. What we are suggesting is that this should not only be restricted to PTSD but should be allowed to encompass traumatic brain injury, getting hit by shrapnel.

And what we are suggesting is indicating that there would be a presumption of actual service-connected benefits if an incident happened while you were in a war zone or in the theater of combat.

And in response to what was questioned before of whether we could wait for the VA to propose regulations, there are two reasons not to do that. First of all, this is Congressional legislation, 1154(b), which is now obsolete. And so it should be Congress' role to make it current.

Second thing is we cannot count upon the VA to make regulations that would solve this problem. We have a burning issue now and Congress needs to deal with it now.

Mr. HALL. And in your opinion, would clarifying title 38, section 1154 damage the integrity of the VA claims adjudication system in any way?

Mr. COHEN. No. To the contrary, it would add integrity to the system because there is no integrity in a system where someone who was, in fact, involved in combat and did get injured whether by PTSD or by an IED is denied benefits because they cannot prove it.

When we question the integrity of our veterans and their credibility, there is no integrity in the system.

Mr. HALL. Mr. Stichman, again, if I may ask you about this. There is some concern that there are over 100,000 more veterans in treatment for PTSD than service-connected for it. Granted that there are many causes of PTSD and we do not know how many have or have not applied for compensation. We do not know, for instance, who might have applied or enlisted for service having already been traumatized by some earlier event in their life and it was not picked up during their entry examination.

Does DAV have a sense of how many veterans are being denied out of this 100,000 who are in treatment, but not being compensated? How many are being denied because of legal hurdles and not because they were not exposed to wartime trauma?

Mr. STICHMAN. I do not have enough knowledge of all of those cases to tell you the answer to that question. I think the 100,000, that figure, you are referring to are people in treatment by the VA now?

Mr. HALL. People who are in treatment, have the diagnosis, but have not been service-connected.

Mr. STICHMAN. All right. And I know that the VA says there are about 54,000 who are receiving service-connection for post-traumatic stress disorder which would leave——

Mr. HALL. That is from OEF and OIF?

Mr. STICHMAN. Yes. About 44,000 who are not currently service connected. And I cannot speak to that issue about why they are not.

Mr. HALL. Well, if you have any further information, perhaps you could get it to us later.

Mr. Bussel, your testimony, like the DAV's, provides us with some real cases of veterans who have fallen through the cracks. Of course, that is what we are concerned about and it is in the tens of thousands if not the hundreds of thousands apparently.

What happens to these veterans when they are denied and what effects have you seen on their lives from being left without that service-connection?

Mr. BUSSEL. Let me say first that no one comes through a combat experience without some emotional baggage. You are going to bring that home and the degree depends on the individual and the experience. It could be 10 percent. It could be 50 percent. It could be 90 percent.

But the American veteran does not come in for treatment because he feels there is a stigma and he is ashamed of the way he

feels. And the ones who are coming in for treatment in our hospital, which is a mental health facility, are really in horrendous shape before they finally come in.

So, there is not going to be a great influx of people coming in who are imposters. It is just not going to happen because American veterans are not that way.

With regard to what happens with the people who are refused, they are affected very adversely. They feel like, as someone mentioned, they are being called liars. Their combat experience is denied.

I know myself from World War II, my records did not catch up with me and they were never completed as a POW until many months afterward. So you are not going to find records that prove that you were in combat, because those kinds of records are just not kept in Iraq and Afghanistan and especially when you go back farther to Vietnam or Korea.

But they are very badly affected, the ones who are denied. And some of them even stop coming in for treatment and that is very sad because there is a collateral damage that affects their families and their relationships. And it is sad and it really needs to be remedied.

Mr. HALL. Thank you, sir.

I just would like to say for the record, in response to comments that my friend, the Ranking Member, made that I do not intend by this legislation nor do those who support it to mean, is to minimize or cast aspersions somehow on the value and the bravery of those who have fought in direct combat in intense firefights who signed up for and served as Special Forces. Those who have seen combat of the most intense type obviously are deserving. Any kind of injury that results, is deserving of compensation and treatment.

My concern has more to do with either incidents that are traumatic, but are not recorded on that individual's record because they were not attached to the unit officially, because they were classified as females as not being officially in combat roles. As we have heard today, a cook, a clerk, a supply sergeant, a Seabee or someone who unofficially has a role that is not supposed to put them in combat, but finds themselves either in combat, or witnessing the aftermath of it. They then suffer a human reaction to seeing and experiencing immediate danger and human events unfolding before their eyes, traumatic and dehumanizing events, and are expected to come back here and rejoin their families if they have families, rejoin the workforce and adjust. We need to do more than have a parade or two and send you on your way; have a nice life. So, I just want you to know that is the intention we have in bringing this bill forth.

I would ask you each if you would like to summarize maybe in 1 minute each starting with Mr. Wilson if you have any last words for this panel.

Mr. WILSON. Yes. Thank you, Mr. Chairman.

I would just like to say that in my time doing field work and seeing the impact of PTSD turning veterans' lives on its head, spousal abuse, alcohol abuse, drug abuse, suicide attempts, divorce, isolation, standing on patrol of their homes at night with weapons, anticipating someone is coming to attack their particular dwelling, those particular behaviors I have seen on some occasions with some

of the most severely wounded veterans seeking compensation for the disabilities that they have.

And then, somehow, once again acting in the bravest of ways, bringing that very vulnerability forward to a care provider to then try and get assistance. Then, once again having to recount and re-live those particular issues, issues when they file a claim for service-connection is difficult, sometimes impossible for some of our most fragile veterans to come to terms with. And these are the veterans I think you are seeking to assist today as well.

And I thank you for this legislation.

Mr. HALL. Thank you, sir.

Mr. Stichman.

Mr. STICHMAN. H.R. 952 is very needed, long overdue. I encourage you to resist the efforts of those who argue let us just allow the VA to conduct rule-making proceedings because that will just delay the end result that is necessary which is legislation mandating a change in 1154(b)'s interpretation. The interpretation has been on the books for a long time and I think it is long overdue that Congress step in.

Mr. HALL. Thank you, sir.

Mr. Bussel.

Mr. BUSSEL. Over the years, POWs have gotten presumptives which are for illnesses that they are unable to prove the stressor from. It was just too long ago and the Germans and Japanese and the Vietnamese did not provide medical records, of course.

So we have the good fortune to have presumptives declared so that these conditions are accepted as presented and that is why H.R. 952 should be accepted also as a presumptive. If you were in the combat zone and you come back with PTSD or you claim that you do and the VA psychologists agree that you do have it, there should be no question that you should be granted your claim.

Mr. HALL. Thank you, sir.

Mr. Cohen.

Mr. COHEN. Thank you, Chairman Hall.

I will urge you to think about those veterans who are, in fact, getting treatment but are not getting benefits. And one veteran I would like you to think about when you are considering passing this bill, which should be passed, is a combat engineer from Vietnam who is presently receiving treatment at Vet Centers every week but cannot receive any treatment at the VA med center because the VA med center has decided as has the VA that he has noncombat depression and anxiety, not PTSD.

So here is somebody who is very frustrated. He is getting his treatment at the Vet Center, but he cannot go to the VA because they do not recognize it. This is an abomination that should be corrected and can be corrected.

Mr. HALL. Thank you, Mr. Cohen.

Thank you to all of our first panel for your most helpful testimony. You are now free to enjoy the rest of your day with our gratitude.

We will have the changing of the guard and welcome our second panel consisting of Mr. Bradley G. Mayes, the Director of Compensation and Pension Service for the Veterans Benefits Administration, U.S. Department of Veterans Affairs; accompanied by Rich-

ard Hipolit, Assistant General Counsel, the U.S. Department of Veterans Affairs.

Gentlemen, make yourselves comfortable. As usual, your full statements are entered into the record.

Welcome again, Mr. Mayes. Thank you for coming before this Subcommittee again. You have the floor for 5 minutes. It is all yours.

STATEMENT OF BRADLEY G. MAYES, DIRECTOR, COMPENSATION AND PENSION SERVICE, VETERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RICHARD HIPOLIT, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. MAYES. Mr. Chairman, thank you for the opportunity to testify today on H.R. 952, "The COMBAT PTSD Act." I also would like to acknowledge your leadership in helping our veterans with post-traumatic stress disorder.

Mr. HALL. Thank you.

Mr. MAYES. The short title of the legislation we are discussing today indicates that the intent behind it is principally to ease the burden on veterans in proving their service-connection claims based on PTSD, which is a goal that the Department shares. However, we are concerned about the scope of the bill and also believe it would unduly complicate the adjudication process.

In furtherance of our mutual objective of simplifying the adjudication of wartime veterans' PTSD claims, the Department currently has under development an amendment to our regulations to liberalize in certain cases the evidentiary standards for establishing an in-service stressor for purposes of service-connecting PTSD.

This amendment would relax in some situations the requirement for corroborating evidence that a claimed in-service stressor occurred. We also recently completed a rule making that eliminated the requirement for evidence corroborating the occurrence of a claimed in-service stressor if PTSD is diagnosed in service.

I would like to point out that we did that along with a couple of other amendments on our own accord to relax the evidentiary burden for veterans.

Because the scope of H.R. 952 is so broad and its implications so far reaching, VA strongly prefers regulation rather than any legislation at this time. This more focused approach enables VA to target the unique challenges associated with post-traumatic stress disorder without detracting from the overall efficiency and integrity of the claims adjudication process.

Current law at section 1154(b) of title 38, the United States Code provides a relaxed evidentiary standard that facilitates a combat veteran's establishment of service-connection for disease or injury alleged to have been incurred in or aggravated by certain active service.

Specifically, section 1154(b) provides that in the case of any veteran who engaged in combat with the enemy in active service during a period of war, campaign, or expedition, VA shall accept as sufficient proof of service-connection of any claimed disease or in-

jury satisfactory lay or other evidence of service incurrence or aggravation if consistent with the circumstances, conditions, or hardships of such service notwithstanding the absence of an official record of such incurrence or aggravation.

In short, this provision allows a combat veteran to establish the incurrence or aggravation of a disease or injury in combat service by lay evidence alone. However, to be afforded this relaxed evidentiary standard, the veteran must have engaged in combat with the enemy. I want to point out that is the exact language in the statute.

Furthermore, the relaxed evidentiary standard does not apply to the predicate fact of engagement in combat. The reason for relaxing the evidentiary requirements for combat veterans was that official documentation of the incurrence or aggravation of disease or injury was unlikely during the heat of combat. Combat veterans should not be disadvantaged by the circumstances of combat service in proving their benefit claim.

H.R. 952 would extend the relaxed evidentiary standard to certain veterans who did not engage in combat with the enemy during a period of war. It would require that a veteran who served on active duty in a theater of combat operations during a period of war be treated as having engaged in combat with the enemy for purposes of establishing service-connection for disease or injury alleged to have been incurred in or aggravated by such service. This bill would also require that VA, in consultation with the Department of Defense, define what constitutes a combat theater of operations.

Service in a theater of combat operations does not necessarily equate to engaging in combat with the enemy and does not in many cases present the same difficulties encountered by combat veterans when later pursuing compensation claims.

So while we share the goals of this legislation to improve the processing of PTSD claims, we are concerned that it would extend the relaxed evidentiary standard to veterans regardless of whether the circumstances of their service were the kind that would inhibit official documentation of incurrence or aggravation of injury or disease.

We are also uncertain of the scope of H.R. 952 which is broader than just PTSD claims and would provide a relaxed evidentiary standard for all types of physical and psychological diseases and injuries allegedly incurred in or aggravated by service in a theater of combat operations.

Finally, H.R. 952 may unduly complicate the adjudication process by requiring separate determinations of whether a veteran served on active duty in a theater of combat operations during a period of war or served on active duty in combat against a hostile force during a period of hostilities, questions that VA typically does not address in the current process.

The need to make such determinations may, in fact, delay claims processing for all veterans.

For these reasons, we prefer our regulatory approach and look forward to working with this Committee and this Subcommittee in particular as we develop these initiatives and improve treatment for our veterans with PTSD.

We did not have sufficient time before this hearing to prepare an estimate of the cost and with your permission, we would provide that estimate to the Subcommittee in writing for the record.

And that concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Mayes appears on p. 46.]

Mr. HALL. Thank you, Mr. Mayes.

While you are at it, in providing a cost estimate, would you be willing to also provide a preliminary draft of the regulations of which you speak or the changes in the regulations of which you speak? That would help us with our decisions.

[The information was provided in the response to Question #2 in the post-hearing questions and responses for the record, which appears on p. 62.]

Mr. MAYES. Dick, do you want to respond to that?

Mr. HIPOLIT. Mr. Chairman, we had hoped to be able to say more about the regulation at this point because it is a positive thing for veterans and for VA, but we are not at the stage of the executive clearance process where we are able to share details of the regulation.

We hope to be able to do that in the not too distant future and we would be pleased to work with the Committee to brief you on what is happening with the regulation. We are not at that stage yet where we are able to share the details, unfortunately.

Mr. HALL. Well, perhaps you or Mr. Mayes would answer this question. What is the expected timeline for completion of these new changes?

Mr. HIPOLIT. Okay. At this point, we are fairly far along in our internal VA processes. We have something on paper that has been agreed to between my office and the Veterans Benefits Administration. It is out for internal concurrence, and internal concurrence is pretty far along. We will be able to get it to the Office of Management and Budget in the very near future. Then there will be some time required for executive branch concurrence through that process as well.

Mr. HALL. Who are the principals at VA who are involved with this effort?

Mr. MAYES. Well, the Secretary has asked us to look at, you know, alleviating the burden on veterans who are serving overseas today for proving the stressor related to a PTSD claim. So at the very highest levels, we are interested in helping to streamline the process for assigning service-connection in PTSD claims.

Mr. HALL. Can you tell me if they would apply to just OIF/OEF or retroactively to all conflicts?

Mr. MAYES. At this point in time, generally we are looking at reducing the evidentiary burden for all veterans. It would not just be OEF/OIF veterans.

And I would like to point out, Mr. Chairman, and I know Mr. Cohen and Mr. Stichman pointed out that left to our own devices, we would not promulgate regulations making the process easier. I would like to point out for the record that we have actually done that in a number of instances.

We did that when we discovered that veterans were being diagnosed while still on active duty. And we understood that that presented a dilemma in our regional offices. So we modified the regu-

lations at 3.304(f) to accept a diagnosis as prima facie evidence of the disease incurring in service barring any evidence to the contrary.

We modified the regulations at 3.304(f) when we discovered that we had personal trauma situations in the military. So we relaxed the evidentiary burden for veterans who suffered from personal trauma. We did that on our own.

And, finally, for American ex-POWs, we made changes to those regulations on our own at 3.304(f) to accept on its face a PTSD claim where the stressor from an American ex-POW is being incarcerated. We do not verify those stressors with the exception of verifying that an individual was interned by the enemy.

So we have made changes to the regulations to relax the evidentiary burden and we are in the process of doing that again because this is a disease that we know is a signature injury of this conflict and that many veterans suffer from.

Mr. HIPOLIT. If I might add to that, the direction we are going on this, and we recognize that there are veterans that have an increased risk of PTSD due to the circumstances of their service and may have trouble corroborating that, is that we are looking to maybe expand the situations where we can accept the veteran's testimony as establishing what happened in service, possibly looking at noncombat situations that are not currently considered combat situations, and seeing if we can do something for those veterans. That is the direction we are going.

Mr. HALL. Well, I commend you for that and thank you for your efforts in the rule-making side of things. I spoke with both President Obama and Secretary Shinseki who both expressed a desire to work with us on this bill and achieve the same goals.

However we achieve them, my concern has to do with rule-making which in many departments of the Executive Branch can be changed in a future Administration under a future Secretary.

Do you think that is something that should be a consideration as to whether this change is made in law or by regulatory means?

Mr. MAYES. I do not believe and I have not observed administrations rolling back rights that have been granted veterans through regulation. For example, the relaxed evidentiary burdens that we have published in 3.304(f), I have not heard any discussion about rolling back those rights for, for example, veterans suffering from personal trauma or American ex-POWs. I just cannot envision that. If we regulate this and relax the standard, I cannot imagine rolling that back on the backs of veterans.

Mr. HALL. That is good. Thank you.

I would guess the same thing, but if you see what goes on in EPA or other agencies, like Interior, it seems like a change in Executive Branch can result in rule-making changes that do not involve Congress.

So whatever we do here, I want to make sure that it is something that can be counted on by our veterans in the future.

On page 3 of your testimony, Mr. Mayes, you cite in order to be afforded this relaxed evidentiary standard, the veteran must have "engaged in combat with the enemy," which is the reason for this bill, to provide a definition of combat that allows for those cir-

cumstances that seem now to allow veterans to fall through the cracks.

The clause about being engaged in hostilities or in an area of hostilities is there to cover, for instance, Cambodia where we officially were not, but we all know now that we were. In fact, at the time, especially those who were serving in Cambodia knew that even though the official policy of the United States was that we were not there that they were there and they were involved in combat.

Today, we may have been in Kazakhstan or occasional cross-border incidents into Pakistan, I do not know. We probably will not know for some time all of the efforts that have been undertaken to try to help our mission succeed and the effect it had on those in uniform who carried them out. So we are trying to make this broad enough to include them and include those clerks, nurses, truckdrivers, and women who were in combat situations de facto, when they were officially not supposed to be and other folks who have been denied service-connection because of that word combat.

So do you have any suggestions? We heard a suggestion about the title being amended. But in terms of that phraseology in particular, putting aside your preference for rule making as a solution, if we were to go ahead with a bill like this, do you have any suggestions to improve that language?

Mr. MAYES. Well, first of all, if we were to go forward and if you were to go forward with this bill, I would offer our assistance. But you raise an excellent point and it is one that I want to make sure is not lost on the Committee, the Subcommittee, and that is that if this bill goes forward, the Secretary will be in the position of having to define a theater of combat operations.

Well, what is a theater of combat operations? Is it Iraq and Afghanistan proper? Is it Kuwait? Is it naval service offshore? Is it in Vietnam, those places that you described?

I will tell you the President signed an Executive Order defining the combat zone for the first Gulf War and it includes the Persian Gulf, the Red Sea, the Gulf of Oman, the Gulf of Aden, a portion of the Arabian Sea, and the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. And that is used as a definition in the IRS Tax Code.

But my point here is this. We would have to define a theater of combat operations and then we would have a two-pronged adjudication process. We would have to determine did the veteran engage in combat. If the answer is no, did they serve in a theater of combat operations, which is complicated, in order to apply the relaxed evidentiary burden.

By engaging in rule making directed at PTSD, we can just reduce the evidentiary burden for proving the stressor without the process being overly complicated by unintended consequences resulting from what I believe is a very genuine desire to make it easier for veterans.

Mr. HALL. That is correct. I appreciate your acknowledging that our objective is to simplify it rather than to complicate it.

How many of our current or what percentage of our current backlog of claims, of disability claims are for or include a claim for PTSD roughly?

Mr. MAYES. I would have to get that for you, Mr. Chairman. I can provide that in writing following the hearing.

[The information was provided in the response to Question #1 in the post-hearing questions and responses for the record, which appears on p. 62.]

I would like to correct some numbers though. In my testimony, it is slightly more than 50,000. That is OEF/OIF servicemembers who have been granted service-connection. There are somewhere in the neighborhood of 350,000 American veterans on the rolls receiving compensation for post-traumatic stress disorder.

And I mentioned this at our last hearing on this subject. At the end of 1999, there were 120,000 on the rolls. That is a 188-percent increase in a 10-year period of veterans on the rolls for PTSD.

So we are granting service-connection for PTSD. And that increase is much greater than the total number of veterans on the rolls for all disabilities which is about 10 percent.

Mr. HALL. I appreciate that is a step forward. It may be compared to those who are actually suffering.

I will take another disease, for instance, Lyme disease. It is estimated by medical professionals that only 10 percent of those infected have been diagnosed and had their cases reported to CDC or to local health authorities.

Given what we hear and figures that are developed or published by other sources somewhere around a third of the claims at least that are pending, the backlog, if you will, involve a claim for PTSD.

Does that sound like—and it may be higher. I doubt if it is lower from what I have heard. I am wondering if that seems consistent with what you know.

Mr. MAYES. I would be hesitant to offer an estimate on the record without really taking a look at it.

I will tell you that post-traumatic stress disorder is one of the top ten disabilities that we grant service-connection for in the OEF/OIF cohort of veterans.

Mr. HALL. Okay. Well, once again going back to the size of the backlog on page 3 of your testimony, you are concerned about this legislation detracting from the overall efficiency and integrity of the claims process. We have been working very hard to try to improve the efficiency.

Mr. MAYES. Yes, sir.

Mr. HALL. You know, the integrity is generally something that I think we acknowledge, certainly your efforts, if not the results. But, efficiency is something that with a backlog of more than 6 months for claims and depending on how you count, 800,000, 900,000 and still climbing at last that I heard of, it would seem to me this would make it more efficient, not less, and that the area of hostilities with the enemy is something that would not take a whole lot of time for—in fact, I do not think should even rise to the level of the Secretary himself having to make those decisions. That should be something that should be established at a lower level.

But to move to another topic, would you elaborate on what you mean in your testimony that service in a theater of combat operations does not necessarily equate to engaging in combat with the enemy and does not in many cases present the same difficulties en-

countered by combat veterans when pursuing compensation claims? What are the implications of this statement to the bill in question?

Mr. MAYES. I am going to go ahead and defer that to Mr. Hipolit who has been involved in trying to define the words in the statute engaged in combat with the enemy.

Mr. HIPOLIT. The term theater of combat operations is a fairly broad one. It is one that is not currently well-defined. The Defense Department does define theater of operations, and that is something that is fairly broad in scope and includes not just people who are directly engaged where there might be enemy encounters but also support personnel as well, some of whom may be in locations that may be distant from where there is actual engagement with the enemy.

So theater of operations is a broad term. Even if we limit it to theater of combat operations, that still would encompass a lot of people who were not closely engaged with the enemy. There would be some who are, some who are not, some who may not have been in danger, and some who were. So I think it is a very broad term that encompasses a lot of people who may or may not have been in dangerous situations.

Mr. HALL. I just want to point out what I think is true is that any of the prospective servicemen or women who would apply under this law or under the existing law or under the new regulations that you are describing have to have the diagnosis first. Without a psychiatrist's or psychologist's diagnosis, they are not under consideration to begin with.

I understand your concern that theater of operations could be interpreted to mean one-third of the surface of the Earth. It can be very big.

So last year, I believe the original language was war zone as defined by the Secretary of Defense or maybe should have been and/or an area of hostilities with the enemy to provide for those cases I just talked about where we are not supposed to be, or also to cover those who are not in a combat role.

At a Subcommittee hearing on March 24th, we had two witnesses from DoD who testified that the Department of Defense follows the medical community's standards for diagnosing and assessing PTSD. DoD does not require further documentation of a stressor the way that VA does to prove combat-related PTSD.

Besides the different mission of these organizations, please explain why VA follows a different proof protocol than DoD does for PTSD claims.

Mr. MAYES. Well, Mr. Chairman, I cannot speak to what DoD does. I can tell you what we do with respect to the legal determination regarding service-connection for post-traumatic stress disorder. And we do not question the diagnosis made by the examining psychiatrist or psychologist.

When we get a claim for post-traumatic stress disorder, we really need three elements and we need a diagnosis. And that typically will come from a VA psychiatrist or psychologist on exam, on a compensation and pension exam. We need credible supporting evidence of the stressor.

And that evidence, the evidentiary threshold is lower for combat veterans. That is the provisions of 1154(b). It is lower for American

ex-POWs. It is lower in claims where personal trauma is a stressor. And it is lower for cases where the diagnosis is in service.

But we need credible supporting evidence of the stressor and then we need a medical link between the two. And that is really made by the examiner.

So from a legal point of view, that is what we need to make a link because, remember, the whole foundation of the disability compensation program is that the disability or the disease is somehow related to military service. Either it is related to an injury while on active duty or it is related to the manifestation of disease while on active duty. That is why we are looking for the credible supporting evidence of the stressor in service. That provides the link.

PTSD is unique in that it is typically diagnosed many years after. And, in fact, when the regs were first created, we had to do it that way because PTSD did not exist until DSM-III in 1980 and we were seeing Vietnam veterans having the disease many years after the end of the Vietnam War. That is why we wrote those regulations.

There was no way they could have been diagnosed in service. And in many cases today they are not diagnosed in service.

Mr. HALL. You heard the first panel, one of the witnesses on the first panel talk about Agent Orange and the presumption of service-connection for Agent Orange, the presumed stressor for prostate cancer, among other things.

Was he accurate in saying that it was simpler and, if I recall correctly, cheaper for the Department to grant claims for Agent Orange than to try to go back and have the normal adjudication process and develop the case evidence and so on for Vietnam veterans?

Mr. MAYES. There is no question that extending the—there are two presumptions really with Agent Orange claims. There is the presumption of exposure for veterans who stepped foot in Vietnam. And the reason for that presumption is because the records are not adequate for us to put a veteran in a spot, in a coordinate in Vietnam where Agent Orange was used. So we have extended that presumption of exposure to any veteran who served in Vietnam.

The second element to that presumptive process is that as we become aware of diseases related to exposure to Agent Orange, then we have added those to the list of presumptive diseases at 3.309.

So, yes, because of the recordkeeping and the difficulty in establishing that a veteran was in a specific spot where Agent Orange was used, it has facilitated the adjudication of those claims.

Mr. HALL. Would I be correct then in assuming that it has saved VA personnel time and saved money as well to grant those claims for Agent Orange simply because the service man or woman served in Vietnam during that period of time?

Mr. MAYES. I believe, yes, that your assertion is correct that it facilitates the expedient processing of claims for veterans who served in Vietnam as we have defined service in Vietnam in our regulations.

Mr. HALL. So would I also be correct in assuming that it would speed the time for processing a claim and get the veteran compensation sooner, cost the Department less person hours of work involved and possibly save money as well to do the same thing for PTSD in, say, Iraq and Afghanistan?

Mr. MAYES. I think for me the difficulty in extending a presumption of service-connection for post-traumatic stress disorder is because the disease with Agent Orange in Vietnam, we know Agent Orange was sprayed in the Republic of Vietnam and actually there was some limited use in the demilitarized zone in Korea, which is also covered in our regulations.

But with PTSD, the difficulty in trying to define what parts of the world at different times in our history where veterans have served defining those locations that then we would extend the presumption of service-connection to. And that is really why we are more interested in attacking this in a different manner by focusing strictly on PTSD and not just—

Mr. HALL. The definition.

Mr. MAYES [continuing]. You know, the provision at 1154, which, by the way, would reduce the evidentiary burden for claims of all disabilities, whether they be physical, mental, or PTSD. It would relax that evidentiary burden such that a veteran's lay statement alone would be sufficient to establish that a disease or an injury occurred. There would be no requirement for records in the service treatment records, review of the service treatment records.

Mr. HALL. Mrs. Halvorson spoke about the trauma center in Balad, which I also visited the week before last.

Are you aware of any medical service specialists who file for and are granted claims for PTSD having served in a hospital like Balad?

Mr. MAYES. Yes. If I may, I would like to read just a portion of our procedures manual, and this is available for public review.

We state in our procedures manual that corroboration of every detail including the claimant's personal participation in a claimed stressful event is not required. The evidence may be sufficient if it implies a veteran's personal exposure to the event.

Further, we list potential noncombat-related stressors. We say potential noncombat-related stressors include, but are not limited to, plane crash, ship sinking, explosion, rape or assault, duty on a burn ward, in a grave's registration unit, or involving liberation of internment camps, witnessing the death, injury, or threat to the physical being of another person not caused by the enemy, actual or threatened death or serious injury or other threat to one's physical being not caused by the enemy.

That is in there today and we grant service-connection for veterans who were involved in the combat area of operations providing treatment to veterans who have been injured as a result of combat.

Mr. HALL. So they were not engaged in "combat with the enemy" but they are covered under the regulations?

Mr. MAYES. That is correct. And that is an important point because PTSD is not just a combat disorder. We can grant service-connection for PTSD for many reasons, many of them unrelated to combat. It is only engaged in combat with the enemy that reduces the evidentiary burden for proving a stressor.

Mr. HALL. I just wanted to remark on a case, *Suozzi v. Brown*, regarding the degree of stressor corroboration required in which it appears that corroboration of every detail including the claimant's personal participation in the claimed stressful event is not re-

quired, the evidence may be sufficient if it implies personal exposure.

The quote from the decision is when considered as a whole, evidence consisting of a morning report, radio log, and nomination for a Bronze Star may be sufficient to corroborate a veteran's account for an event even if it does not specifically include mention of the veteran's name.

Mr. MAYES. And, Mr. Chairman, that is exactly what I just read to you out of our procedures manual. We cite *Suozzi v. Brown* in our procedures manual, as well as *Pentecost v. Principi* where we had a veteran who was in a unit that was subjected to mortar attacks in Vietnam. We account for those types of stressors in our procedures manual.

Mr. HALL. I guess the problem arises when the records of those mortar attacks do not exist.

I just have two more questions for you, if you would be so kind.

As the Congress 1941 stated in its report on this issue, much of the interest in more liberal service pension laws is believed to be stimulated because of the inability of veterans to establish service-connection of a disability which they have sound reason to believe was incurred in "combat with an enemy of the United States."

At the March hearing, you agreed that the nature of combat has changed greatly since the 1941 statute was written. Why would it not follow that if circumstances that we are addressing have changed that the statute should not need to change to mirror those circumstances?

Mr. MAYES. I think that I did agree at the hearing and I firmly believe the nature of combat has changed. And that is what we are trying to do is take into account—the way the statute reads is it says that we must take into account the time, place, and circumstances in promulgating our regulations. And that is why we want to change the regulations dealing with PTSD, because we do believe that the nature of combat has changed.

Mr. HALL. Well, I thank you both for being here again, yet again, and for the work that you are doing and request that you will at the soonest time that you can send us the proposed revisions to the regulations. And, I think you were going to provide us an estimate of a couple of things—

Mr. MAYES. Yes, Mr. Chairman.

Mr. HALL [continuing]. Involving cost of the bill itself if it were to pass and also the number of those under treatment who have filed a claim and of those, how many have been granted. And I am talking about—

Mr. MAYES. I think it was the number of claims pending you had asked for, Mr. Chairman?

Mr. HALL. Right. Well, our information is, I believe, roughly 100,000 soldiers currently being treated or currently having been diagnosed with PTSD, but something less than half of that, I believe, actually have been granted service-connection.

So, the question is, if you could tell us what those figures actually are and what conclusion you draw from that, whether there is a pattern of exclusion or reasons for exclusion that might be related to the topic that this bill addresses.

I have a hard time believing that 50,000 or 100,000 or 200,000 or however many men and women from this country enlisted in the Armed Forces are already suffering from PTSD. It may be possible, but I doubt that it is actually the case. I suspect that those who are coming back—and, once again, I think it is under-reported. I do not think it is over-reported. We have heard other witnesses say the same thing from the mental health professions. They believe that this is seen as a stigma and that most of our servicemen especially, but also women, but men in particular are inclined—as you yourself said, it may not manifest itself for many years just as Agent Orange did not manifest itself as a 30-year latency for most prostate cancers.

So, this may be another case, although it is not a chemical involved. It is an experience involved, but it may be that it needs to be treated in the same way and that it would be actually more efficient to provide this presumed stressor.

Would the Minority Counsel like to ask any questions on behalf of the Ranking Member?

Mr. LAWRENCE. I have no questions.

Mr. HALL. Okay. Well, with that, thank you again for being here and thanks for the work you are doing for our Nation's veterans. You are now excused.

This hearing is adjourned.

Mr. MAYES. Thank you, Mr. Chairman.

[Whereupon, at 12:05 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. John J. Hall, Chairman, Subcommittee on Disability Assistance and Memorial Affairs

Good Morning Ladies and Gentleman:

Would you please rise for the Pledge of Allegiance? Flags are located in the front and back of the room.

Today we are here to consider legislation, the “Compensation Owed for Mental Health Based on Activities in Theater Post-Traumatic Stress Disorder Act,” or the COMBAT PTSD Act, H.R. 952. During the 110th Congress and most recently during an oversight hearing held on March 24, 2009, the Subcommittee on Disability Assistance and Memorial Affairs revisited Congress’ intent in establishing presumptive provisions to provide compensation to combat veterans under Section 1154(b) of title 38.

We have heard testimony on how Congress in 1941, when it adopted the original provisions under section 1154, seemed to explicitly express its desire to overcome the adverse effects of not having an official record. Moreover, that it wanted to be more liberal in its service pension law by extending full cooperation to the veteran when it enacted this provision.

However, based on this Subcommittee’s review, it seems that VA has acted to thwart the congressional intent of section 1154(b) with its internal procedures for adjudication, primarily those contained in its M-21-1s and General Counsel opinions. This has resulted in VA being more restrictive in its application of section 1154(b) by placing an unnecessary burden on veterans diagnosed with Post-traumatic stress disorder—PTSD and other conditions—to prove their combat stressors. Instead of helping these veterans reach an optimal point of social and emotional homeostasis, as described in the RAND Report, *Invisible Wounds of War*, VA’s procedures are an obstacle to this end—inflicting upon the most noble of our citizens a process that feels accusatory and doubtful of their service.

We also know from the RAND report that one out every five servicemembers who served in OEF or OIF suffers from symptoms of PTSD. A large portion of these claims unnecessarily comprise VA’s claims backlog as VBA personnel labors to corroborate the stressors of combat veterans. As the Institute of Medicine stated in 2007 in its seminal report on PTSD: the process to adjudicate disability claims is complex, legalistic and protracted, and particularly difficult for veterans because of the stresses and uncertainties involved while facing skeptical and cynical attitudes of VA staff. As I think most will agree, this statement goes double for veterans filing PTSD claims, which require additional evidence of exposure to a stressful event while serving in combat.

This is an injustice that has gone on six decades too long. The hoops and hassles veterans must endure today appear to be far beyond Congress’ imagination when it authorized the 1933 and 1945 Rating Schedules, which simply required the notation of an expedition or occupation for a combat presumption to have existed.

That is why I reintroduced my bill the COMBAT PTSD Act, H.R. 952 to try to rectify this wrong. My bill would do so by clarifying and expanding the definition of “combat with the enemy” found in section 1154(b) to include a theater of combat operations during a period of war or in combat against a hostile force during a period of hostilities. This language is consistent with other provisions of title 38 and those contained within the National Defense Authorization Act. I also firmly believe that this bill is consistent with the original intent of Congress in 1941 and should not be viewed as adding a new entitlement. I am grateful to my 42 colleagues who are already cosponsors of H.R. 952.

I am glad to welcome to this hearing the veteran service organizations and legal representatives who can shed more light on the difficulties the current statute interpretation creates for so many of our men and women whose service in combat theaters goes unrecognized and the impact denials have had on their lives. I am particularly honored to have famed author and my constituent Norman Bussel join us today. Norman is an ex-POW from World War II and a volunteer service officer for

the American Ex-Prisoners of War who has first-hand knowledge of the hardships that many of his fellow veterans face when filing PTSD and other claims for disability benefits.

I also look forward to hearing more from the Department's witness on how this provision could be better tailored to meet its evidentiary needs to properly adjudicate claims while alleviating the often overwhelming evidence burdens that stymie many of our combat veterans through no fault of their own.

The 111th Congress shares the same responsibility to disabled veterans as its colleagues of the 77th Congress. The vision then was to ease the bureaucratic burdens placed on returning war veterans, so that they would receive the benefits they deserve. My hope is that we will enact H.R. 952 to restore this noble end.

I now yield to Ranking Member Lamborn for his Opening Statement.

**Prepared Statement of Hon. Doug Lamborn, Ranking Republican Member,
Subcommittee on Disability Assistance and Memorial Affairs**

Thank you, Chairman Hall for yielding.

Chairman Hall, as I have stated before, I commend you for your compassion toward our veterans.

Your bill is based on the best of intentions, but as I have stated previously, I believe it would result in unintended consequences that could harm the integrity of the VA claims system.

I also want to clarify for those who may not be familiar with this issue that I am completely supportive of veterans, any veteran, receiving treatment for PTSD.

However, health care benefits are not the issue.

Veterans who have, or believe they have, PTSD can receive treatment and counseling today without establishing service connection, but to draw disability compensation, a veteran must meet this threshold requirement.

Also, any veteran has the opportunity to establish service connection for PTSD with a physician's diagnosis that links it to a verifiable stressor that occurred during service.

The standard of evidence for combat veterans and victims of sexual assault has been lowered to give the benefit of the doubt to such veterans.

Mr. Hall's bill would provide this liberalization to any veteran who was in a theatre of operations.

The theatre of operations is an immense global area that might encompass areas most people would feel safe travelling to.

I believe such a loose standard diminishes the bravery and service of those who faced the fire up close.

Even if I agreed with Mr. Hall's bill, it would not go anywhere unless PAYGO standards were waived.

Our Subcommittee passed Mr. Hall's bill last session but it foundered because there was nowhere to offset the spending or a waiver of the rules Congress established.

In previous hearings, I pointed out that I am not in favor of offsetting the cost in some other area of veterans' benefits (as required by PAYGO) and not just the cost factor to which I am opposed.

I believe that any veteran should have access to health care and treatment for PTSD, and I have in full support of funding for such treatment.

Mr. Chairman, I extend my thanks to you for holding this hearing and I look forward to hearing the testimony of the witnesses on our panel today. I yield back.

Prepared Statement of Hon. Ciro D. Rodriguez

The current system used for determination has resulted in a large number of veterans to be denied their rightful claims. Claims are often denied based on the supposed "improbability" of a member having served in the capacity they claimed, either because they were female, they were not in a combat specific career field, they weren't permanently assigned to the right type of unit, they didn't receive a specific award for their actions, or they weren't listed properly in rosters.

These are the very reasons the law allows for "lay or other evidence" provided by the member. It has always been the case, in every war, that non-combat unit troops somehow end up in combat. Troops are constantly pulled into a convoy or patrol at the last minute, with no documentation of attachment to the patrol, due to necessity and immediate need at the moment. Troops do their duty regardless of whether or

not it's documented. Likewise it has always been the case that women somehow end up in combat. Under the current system the many women who fought alongside their artillerymen husbands in the Revolutionary War would have been denied claims because they were female, not assigned to the right unit, or it was just unlikely that they really were there. We must eliminate the prejudice that only certain troops will end up in combat. It is a very real possibility for any serviceman or woman to have to fight in combat.

We also must ensure that the invisible wounds of our servicemen and women are recognized and believed. One doesn't have to be in a physical fight or pulling a trigger to have wounds from service. Many of our troops see the aftermath of a fight, or the resulting carnage, and develop PTSD without ever having been in combat. The results of war seen by our medical profession in the forward hospitals has no doubt caused many medical professionals to have PTSD, even they only saw this carnage in an operating room rather than on the battlefield.

One doesn't even have to be in a combat zone to develop PTSD. Military Sexual Trauma, war simulation training exercises, vehicle accidents on convoy training while in the United States, or any other traumatic event can result in PTSD. And all of these situations may very well be directly connected to service. We must be very careful not to disregard someone's claim simply because it doesn't meet our preconceived notions of what proof is needed or what demographic stereotypically is or is not in certain situations.

H.R. 952 directly addresses these stereotypes by relaxing the evidentiary standard to deployment to a combat theater in order to presume service-connection of a claim injury or illness. I am open to hearing suggestions about how this bill may be improved upon, but this bill is the right direction in ensuring all of our servicemen and women, and the veterans who have served before them, are finally assumed to be telling the truth when they make a claim about an injury or illness. They are honest people. That should be our starting assumption.

**Prepared Statement of John Wilson, Associate National Legislative
Director, Disabled American Veterans**

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV) to address H.R. 952, "Compensation Owed for Mental Health Based on Activities in Theater Post-traumatic Stress Disorder Act" or the "Combat PTSD Act" (the Act) under consideration today. In accordance with our congressional charter, the DAV's mission is to "advance the interests, and work for the betterment, of all wounded, injured, and disabled American veterans." We are therefore pleased to support this measure insofar as it falls within that scope.

The definition of what constitutes combat with the enemy is critical to all veterans injured in a combat theatre of operations, whether the issue is service connection of posttraumatic stress disorder (PTSD) or other conditions resulting from combat. The current high standards required by the Department of Veterans Affairs' (VA) internal operating procedures for verifying veterans who "engaged in combat with the enemy" are impossible for many veterans to satisfy, whether from current or past wars.

The reasons for this are many. Possible scenarios include: Unrecorded traumatic events taking place on the battlefield as operations expand and contract; unrecorded temporary detachments of servicemembers from one unit to another while in a combat theater of operations; field treatment for injuries that become problematic later but not in the circumstances and conditions of combat when servicemembers are compelled to return to duty by commitment to fellow servicemembers and country; and other occasions when it simply may come down to poor recordkeeping.

A practical example of the problems associated with the current burden of proof required to determine who "engaged in combat with the enemy" can be found with the U.S. Army's Lioness Program in Iraq. Despite a Department of Defense policy banning women from direct ground combat, U.S. military commanders have been using women as an essential part of their ground operations in Iraq since 2003. The female soldiers who accompany male troops on patrols to conduct house-to-house searches are known as Team Lioness, and have proved to be invaluable. Their presence not only helps calm women and children, but Team Lioness troops are also able to conduct searches of the women, without violating cultural strictures. Against official policy, and at that time without the training given to their male counterparts, and with a firm commitment to serve as needed, these dedicated young women have

been drawn onto the frontlines in some of the most violent counterinsurgency battles in Iraq.

“Independent Lens,” an Emmy award-winning independent film series on PBS, documented their work in a film titled “LIONESSE” which profiled five women who saw action in Iraq’s Sunni Triangle during 2003 and 2004. As members of the U.S. Army’s 1st Engineer Battalion, Shannon Morgan, Rebecca Nava, Kate Pendry Guttormsen, Anastasia Breslow and Ranie Ruthig were sent to Iraq to provide supplies and logistical support to their male colleagues. Not trained for combat today, the women unexpectedly became involved with fighting in the streets of Ramadi. These women were part of a unit, made up of approximately 20 women, who went out on combat missions in Iraq. Female soldiers in the Army and Marines continue to perform Lioness work in Iraq and Afghanistan.

I would like to highlight the issues faced by Rebecca Nava as she seeks recognition of her combat experience and subsequent benefits for resulting disabilities. Then U.S. Army Specialist Nava was the Supply Clerk for the 1st Engineering Battalion in Iraq. In conversations with her and as seen in the film “Lioness” she recounts several incidents. Two of those incidents are noted in my testimony today.

The first is the rollover accident of a 5-ton truck that was part of a convoy to Baghdad. In this accident, the driver was attempting to catch up with the rest of the convoy but in doing so lost control of the vehicle. The 5-ton truck swerved off the road and rolled over, killing a Sergeant who was sitting next to her, and severely injuring several others. Specialist Nava was caught in the wreckage. She had to be pulled through the fractured windshield of the vehicle. While not severely injured in the accident, she did suffer a permanent spinal injury.

Another incident occurred wherein she was temporarily attached to a Marine unit and her job for this mission was to provide “Lioness” support for any Iraqi women and children the unit contacted. It was a routine mission patrolling the streets of Ramadi. Before she knew it, the situation erupted into chaos as they came under enemy fire. She had no choice but to fight alongside her male counterparts to suppress the enemy. No one cared that she was a female—nor did they care that she had a Supply MOS—their lives were all on the line—she opened fire. The enemy was taken out. During this firefight she also made use of her combat lifesaver skills and provided medical aid to several injured personnel.

This and other missions resonate with her to this day. When she filed a claim with the VA, she was confronted with disbelief about her combat role in Iraq as part of Team Lioness. Specialist Nava filed a claim for service connection for hearing loss and tinnitus but was told that she did not qualify because of her logistics career field. Since she does not have a Combat Action Badge, she cannot easily prove that the combat missions occurred which impacted her hearing.

The Combat Action Badge (CAB) was approved, according to the U.S. Army’s website (<http://www.army.mil/symbols/combatbadges>) on May 2, 2005, by the U.S. Army Chief of Staff to provide special recognition to soldiers who personally engage, or are engaged by the enemy. The CAB may be awarded by a commander regardless of the branch and Military Occupational Specialty (MOS). Assignment to a Combat Arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations is not required to qualify for the CAB. However, it is not intended to award all soldiers who serve in a combat zone or imminent danger area. It may be awarded to any soldier performing assigned duties in an area where hostile fire pay or imminent danger pay is authorized. The soldier must be personally present and actively engaging or being engaged by the enemy, and performing satisfactorily in accordance with the prescribed rules of engagement.

Specialist Nava was not awarded the CAB despite her combat role. This lack of recognition for her combat role can be multiplied countless times for other veterans also caught in the fog of war. The VA’s current internal instruction (M21 Manual) requires proof by official military records that can be viewed as exceeding the law since the law does not require this level of documentation. To provide better assistance to veterans of this and other conflicts, the VA could rely on the proper application of current legislation. If VA applied section 1154 properly, the problems this Act targets would effectively be resolved.

However, we must proceed with consideration given the complexity of defining what is combat related in face of the morphing lines of battle inherent in any conflict, whether it be major campaigns along supposedly clear lines of battle or urban warfare where enemy combatants do not wear uniforms and the battle lines move from street to rooftop in quick succession.

As we move carefully toward liberalizing the law concerning service connection for disabilities arising from “combat with the enemy” perhaps the best course is to designate the “theatre of operations” as the combat zone. Using Iraq as an example, that country would be so designated and personnel assigned there, or who transit

through as part of their duties, are considered to have engaged in combat for VA benefits purposes. Logistical staging and resupply points such as those found in Kuwait and Qatar, although tax free zones, have not been the scene of combat operations and thus personnel assigned to these areas would not be considered to have engaged in combat for benefits purposes. With such a designation, veterans must still provide satisfactory lay evidence consistent with their service.

This is a complex issue that is worthy of the time and careful consideration that this Committee has invested. An incorrect definition lends itself to too broad an interpretation that may bestow hard won benefits to a small number who have significant injuries but not of a combat related nature. Too narrow a definition may prevent those who have truly borne the battle to not be properly compensated.

The last area that I would like to briefly address has to do with the title of the bill itself. I would request the Committee's consideration for the renaming of this legislation for one with a broader context that reflects the impressive intent of clarifying the very definition of combat with the enemy. The current title "Combat PTSD Act" does focus on this important condition, yet the legislative language addresses the relationship between combat with the enemy and service-connected disabilities.

Mr. Chairman, this concludes my testimony. I will answer any questions you or the Subcommittee may have.

**Prepared Statement of Barton F. Stichman, Joint Executive Director,
National Veterans Legal Services Program**

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to submit this testimony on behalf of the National Veterans Legal Services Program (NVLSP). NVLSP is a nonprofit veterans service organization founded in 1980 that has been assisting veterans and their advocates for 29 years. Since its founding, NVLSP has represented thousands of claimants before VA regional offices, the Board of Veterans' Appeals and the Court of Appeals for Veterans Claims (CAVC). NVLSP has trained thousands of service officers and lawyers in veterans benefits law, and has written educational advocacy publications that thousands of veterans advocates regularly use to assist them in their representation of VA claimants. On behalf of The American Legion, NVLSP conducts quality reviews of VA regional office decisionmaking. Finally, NVLSP is one of the four veterans service organizations that comprise the Veterans Consortium Pro Bono Program, which recruits and trains volunteer lawyers to represent veterans who have appealed a Board of Veterans' Appeals decision to the CAVC without a representative.

Background

As this Subcommittee knows, there is a high incidence of Post Traumatic Stress Disorder (PTSD) among those who have served in our Nation's wars. Last year, the Rand Corporation conducted a study of military personnel who had served in Operation Iraqi Freedom or Operation Enduring Freedom and found that one out of every five servicemembers who served in OIF or OEF—over 300,000 people—suffers from symptoms of PTSD.

The VA is currently receiving more disability benefit claims than it has ever received, and there is a huge backlog of cases pending for decision. A significant percentage of these claims involve disability claims for PTSD.

Under current law, VA has to expend more time and resources to decide PTSD claims than almost every other type of claim. A major reason that these claims are so labor intensive is that in most cases, VA believes that the law requires it to conduct an extensive search for evidence that may corroborate the veteran's testimony that he experienced a stressful event during military service. According to the VA, an extensive search for corroborating evidence is necessary even when the medical evidence shows that the veteran currently suffers from PTSD, and mental health professionals attribute the PTSD to stressful events that occurred during military service.

Often there is no corroborative evidence that can be found—not because the in-service stressful event did not occur—but because the military did not and does not keep detailed records of every event that occurred during periods of war in combat zones. Based on our review of thousands of VA regional office and BVA decisions, discussions with service officers and senior officials from several veterans service organizations, and discussions with VA regional office and VA Central Office officials, NVLSP believes that the end result is that (1) VA expends a relatively great deal of time attempting to obtain corroborative evidence in PTSD cases, and (2) after

these extensive efforts, VA ends up denying many claims that are truly meritorious simply because no evidence exists to corroborate the stressful events.

The Scope of Past Congressional Efforts to Remedy This Problem

In order to address the problem discussed above, Congress enacted 38 U.S.C. § 1154(b). As VA interprets that statute, the VA may grant service connection for PTSD without corroborative evidence that the veteran experienced a stressful event during the period of service if (1) the veteran is a combat veteran, and (2) the stressful event took place during combat with the enemy.

The VA regulations implementing 38 U.S.C. § 1154(b) appear in 38 C.F.R. § 3.304. Section 3.304(d) states:

(d) Combat. Satisfactory lay or other evidence that an injury or disease was incurred or aggravated *in combat* will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such occurrence or aggravation. [Emphasis added].

Thus, VA interprets the statute to mean that not only must the veteran prove that he engaged in combat, the veteran must further allege that the stressful event took place during combat. This reading is corroborated by 38 C.F.R. § 3.304(f)(1), which states, in relevant part that service connected will be awarded “[i]f the evidence establishes that the veteran engaged in combat with the enemy” and the claimed stressor “is related to that combat . . .”

Thus, if the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran’s service, the veteran’s lay testimony alone may establish the occurrence of the claimed in-service stressor.

These rules help veterans seeking service connection for PTSD if they were awarded a Purple Heart or received a specific combat decoration or badge (such as the Combat Infantryman Badge). But it leaves other veterans with meritorious claims unable to secure service connection for PTSD. In other words, as currently worded, 38 U.S.C. § 1154(b) does not go far enough in eliminating the need for corroboration of a stressful event.

The problem with the limited reach of scope of 38 U.S.C. § 1154(b) is most pronounced with regard to those who served in OIF and OEF. Because there are no set battlefield areas in Iraq and Afghanistan, and because of the tactics of the insurgents, there is no defined area of combat. Quite often, servicemembers in non-combat occupations and support roles are subjected to enemy attacks and otherwise exposed to traumatic events. These incidents are rarely documented in military records, which makes them extremely difficult to verify. For example, under the current statute, a soldier traveling in a convoy who witnesses an IED attack and is traumatized by dead bodies and the sight of body parts, would have to have corroborative evidence that the event happened. His sworn testimony and medical diagnoses of PTSD would not be enough.

H.R. 952

Because NVLSP knows how difficult it is for deserving veterans to prove that these events happened, NVLSP supports a legislative change to the entitlement criteria for PTSD. NVLSP supports legislation creating a presumption that a veteran suffered from a stressful event during service if the veteran served in a combat zone and submits a sworn statement that he or she suffered from a stressful event while in that combat zone.

H.R. 952 expands the definition of *combat with the enemy* to include service on active duty in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war. H.R. 952 would therefore permit OIF and OEF veterans to benefit from the favorable presumption of 38 U.S.C. § 1154(b) in support of PTSD and other disability claims. For example, a veteran who claims he had an accident in Iraq and now suffers from a knee disability as a result would not have to prove he suffered trauma to his or her knee in Iraq. Also, an OEF veteran who alleged he saw a dead civilian while on patrol (not being shot at or shooting at the enemy) could also take advantage of the favorable presumption. NVLSP supports H.R. 952.

NVLSP is concerned, however, that VA may interpret the presumption created by H.R. 952 to apply only to a veteran who both served in such a combat zone and alleges that the event in question occurred during combat with the enemy. In our

view, this would not be a proper interpretation of H.R. 952. Nonetheless, it is possible that VA will not see it this way since VA currently interprets the statute that H.R. 952 would amend to require an allegation that the event in question took place during combat with the enemy. In order to avoid the possibility of wrongful benefit denials and needless litigation, NVLSP recommends that H.R. 952 be amended to make even more clear that the presumption of service connection applies when the event in question occurred in a combat zone, and regardless whether it occurred during formal combat with the enemy.

Thank you. I would be pleased to answer any questions the Subcommittee may have.

**Prepared Statement of Norman Bussel, National Service Officer,
American Ex-Prisoners of War**

Thank you, Chairman Hall and Members of the Subcommittee, for the opportunity to testify before you today in support of H.R. 952, a bill designed to conclusively define "Compensation Owed for Mental Health, Based on Activities in Theater Post Traumatic Stress Disorder."

As a volunteer National Service Officer, accredited by the VA to file benefit claims for veterans, I find it so unfair when clients I represent: clients who served in combat zones, clients who fought and endured enemy attacks, clients diagnosed with PTSD by VA psychologists, have their claims denied by the VA because their job titles did not reflect their combat experience. A cook, a Seabee, a supply Sgt. are no more immune from injury or death than anyone else in a combat zone.

I would like to present two classic examples of Vietnam veterans, both of whom are my clients, whose claims were unfairly turned down by the VA because their specific training did not suggest a role in combat.

The first example is about a Seabee named Bob. Bob served two tours in Vietnam, the first tour on board a ship and the second on land in a combat zone. Following is the diagnosis from his psychologist, a nationally recognized specialist who has served in a VA Medical Center for more than 32 years:

"He talked of events that he was able to describe vividly, that reinforced the feeling that he could never feel safe and that he could have been dead many times. These intrusive thoughts have become worse over the past year and that is the main reason he entered treatment. He had tried to bury most of his PTSD problems over the years by working hard and by drinking alcohol heavily. His increase in symptoms are also associated with the increase in coverage of soldiers' deaths in Iraq. This brings him right back to Vietnam."

As further proof of Bob's combat role, I submit as evidence the following excerpts from a letter, one of many that Bob wrote to his wife while serving in Vietnam in 1968. The letters are still in the original, postmarked envelopes.

September 1968

"It started at two o'clock in the morning with a blast that almost threw me out of the rack; then all hell broke loose. They were not Viet Cong this time; they were North Vietnamese Regulars. They blew up a medical warehouse, two buildings across the street, one building in the next compound and about ten rounds in the street in front of our compound. Again, no one was hurt here; we must have some kind of good luck charm. There is still an N.V. body in the street out front. He has two home made bombs on his body, but I left them alone. I wonder how long he will lay there before someone moves the body. I found a N.V. hand grenade across the street near the body. I didn't disarm it. I would say at least two hundred rounds came into the city last night, most of them on this side of town, I don't mind telling you I about messed in my pants last night. I don't mind the small arms; if they are near enough to hit you, you can hit them. The big stuff can't be stopped and there is no protection from it."

Here, in Bob's own words is his reprise of his life since Vietnam:

"My long battle with PTSD has led to divorce; strained relations with my children; estrangement from my family and the loneliness that resulted from my anti-social behavior. No one could understand my pain and I preferred to be alone. The fact that my claim for compensation was denied by the V.A., even after a psychologist at a V.A. Mental Health Facility diagnosed me with PTSD weighs heavily on my mind. If I had been killed in Vietnam, and every day I spent there I was in danger of that happening, would my sacrifice have been

any less because I was in a Construction Battalion? I hope that this injustice will soon be rectified.”

The second example is from Joe, who was trained as a cook in the Marines and served in Vietnam from June 1967 until June 1968. When he arrived at his assignment in Vietnam, he was told there was no mess hall, so he was handed a weapon and became a combat Marine. Here are some excerpts from his Statement in Support of Claim:

“We were overrun in Happy Valley. We were in the bunkers and guys were being killed all around us. I was checking the perimeter a little later, when we came under fire and were pinned down for about 8 hours. It took Medivac helicopters to evacuate us.

I lost a couple of really good buddies from snipers and incoming rocket fire. I had nightmares after that. You could never relax, particularly at night since we were always subject to incoming fire. It led to a situation when I was always on edge. Of course, when I returned, it was impossible to leave the feelings behind. I still can't go to the Vietnam Memorial in Washington.

I'm on medication for seizures, mood swings, anxiety and to help me sleep. I still suffer from night sweats, nightmares and flashbacks. I have to sit facing a door in any room or restaurant, since I must always have a means of escape. My hypervigilance never goes away.”

Although treatment reports from a VA hospital show a diagnosis of PTSD, Joe was denied compensation. Here is a portion of the VA report:

“Post traumatic stress disorder questionnaire dated August 31, 2006 showed 2 incidents both of which involved combat patrols which would be unlikely for a cook. A search of unit records show your units were not involved in combat. Treatment reports, VA Medical Center Hudson Valley Health Care System, from August 24, 2005 through April 18, 2008 show a diagnosis of post traumatic stress disorder.”

Additionally, the VA acknowledges that on October 6, 2007, a letter was received from a buddy who served with Joe in Vietnam and: He did observe his fellow Marine with his combat ready equipment (vest, helmet and weapons.) He could see him on a six by six truck with his unit below on the road to Happy Valley.

Decisions such as this are deplorable and I know how they affect veterans. Sixty-five years ago this month, my B-17 Bomber exploded over Berlin and I lost four of my crew who were as close to me as my brother. I've struggled with PTSD ever since and survivor guilt is one of my strongest stressors. There is no cure for PTSD, but the VA offers counseling and medications that make improvement almost a given and vast improvement is commonplace.

To refuse PTSD compensation to veterans because their job titles are not synonymous with combat is unconscionable. There's more than the money involved. Even more important is the colossal insult of telling a combat veteran that he didn't fight for his country. That is an unnecessary stressor to stuff into his or her already overflowing load of emotional baggage.

Pass H.R. 952. Eliminate the practice of forcing combat veterans diagnosed with PTSD by one branch of the VA, from the task of battling another branch in order to obtain their rights.

Thank you very much, Mr. Chairman.

**Prepared Statement of Richard Paul Cohen, Executive Director,
National Organization of Veterans' Advocates, Inc.**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the views of the National Organization of Veterans' Advocates, Inc. (“NOVA”) concerning the provisions of H.R. 952, which is also known as “The COMBAT PTSD Act” and which would amend 38 U.S.C. § 1154(b).

NOVA is a not-for-profit § 501(c)(6) educational and membership organization incorporated in 1993. NOVA is dedicated to training and assisting attorneys and non-attorney practitioners who are accredited by the Department of Veterans Affairs (“VA”) to represent veterans, surviving spouses, and dependents before the VA and who are admitted to practice before the United States Court of Appeals for Veterans Claims (“CAVC”) and the United States Court of Appeals for the Federal Circuit.

The positions stated in this testimony have been approved by NOVA's Board of Directors and represent the shared experiences of NOVA's members, as well as my own experience in representing veterans for the past 16 years.

§ 1154(b) NEEDS TO BE AMENDED

1. The “combat presumption” does not presently provide the intended assistance in establishing combat stressors.

38 U.S.C. § 1154(b) provides as follows:

In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

Although section 1154(b) was intended to ease the burden of proof imposed upon veterans seeking compensation for injuries, illnesses or diseases resulting from combat, not all veterans who were involved in combat benefit from this legislation. This is because the VA typically bases its determination of whether a veteran engaged in combat by the information provided on his or her DD Form 214 (the veteran’s discharge paper). As a result, a veteran’s combat experience is oftentimes overlooked because his military occupational specialty (“MOS”) listed on his DD Form 214 is not recognized by the VA as a “combat” MOS. Similarly, a veteran’s combat experiences may be overlooked if the veteran’s DD Form 214 fails to list badges, medals, or decorations awarded to the veteran, such as the Combat Infantryman Badge, Combat Action Badge or Purple Heart, which the VA readily recognizes as signifying combat service.¹

A servicemember’s MOS and medals do not always convey a veteran’s entire military experience, including incidents involving combat exposure. Indeed, engineers, mechanics, clerks and quartermasters frequently followed their units into battle to provide support, underwent deadly mortar or rocket attacks at their bases, or carried out non-MOS duties, such as convoy and security details, all which exposed them to hostile fire. After a battle, servicemembers, regardless of their MOS, handled shattered and lifeless bodies of their comrades. In reviewing U.S. presence in Vietnam, observers noted that, “it appeared that the whole country was hostile to American forces. The enemy was rarely uniformed, and American troops were often forced to kill women and children combatants. There were no real lines of demarcation, and just about any area was subject to attack.”² The same is true in the combat theaters of Iraq and Afghanistan in that there are virtually no non-combat assignments and almost all servicemembers deployed are attacked, shot at with small arms, and receive incoming artillery, rocket or mortar fire.³

As Chairman Hall aptly observed, “The nature of wartime service has changed” since the 1945 Rating Schedule required a wartime service injury to have been received “in actual combat in an expedition or occupation . . . (now) no place is safe.”⁴

Ignoring the changing nature of wartime service and the remedial intent of 1154(b), the VA continues to consider evidence of participation in a particular “operation” or “campaign” to be insufficient to “establish that a veteran engaged in combat.”⁵ Additionally, the VA views the absence from a veteran’s service records of any “ordinary indicators of combat service” as sufficient to “support a reasonable inference that the veteran did not engage in combat.”⁶

2. There is ample justification for clarifying the definition of “combat with the enemy” in section 1154(b).

NOVA supports H.R. 952, which proposes to amend section 1154(b) so that the “combat presumption” would apply to all servicemembers who have been deployed

¹ See, VA Adjudication Procedures Manual M21–1 Manual Rewrite, (Manual M21–1MR), Part IV, Subpart ii, 1.D.13 (d); *West v Brown*, 7 Vet. App. 70,76 (1994).

² Williams, Tom, Psy. D., Editor, *Post-Traumatic Stress Disorders: a handbook for clinicians, Disabled American Veterans*, 1987.

³ Hodge, Charles W., et al, *Combat Duty in Iraq and Afghanistan, Mental Health Problems, and Barriers to Care*, *New England Journal of Medicine*, Vol. 351, No.1, July 2004, Table 2, p.18

⁴ Opening statement, March 24, 2009.

⁵ See, VAOPGCPREC 12–99, October 18, 1999.

⁶ See, VAOPGCPREC 12–99, October 18, 1999, discussion point 19.

to a combat zone. For example, the VA denied the “combat presumption” to a veteran, with a MOS of Field Wireman, who claimed to have come under fire while part of a Forward Observer Team assigned to the 159th Field Artillery Battalion in Korea, during the Korean war. Under the proposed legislation, the veteran would receive the combat presumption because he served within the combat zone during the Korean war. The amendment is long overdue because the current version of 1154(b) does not define “theater of combat operations”, nor does the traditional concept of “theater of combat” apply to the current wars in Iraq and Afghanistan.

When Ivan De Planque testified on behalf of the American Legion, he graphically described a situation for which this amendment is desperately needed.⁷ A soldier stationed in the Green Zone in Iraq, without a combat MOS, may permanently disable her knee running for cover during a mortar attack, but lack sufficient service records to document the injury. Under the current statute, this servicemember would be denied the combat presumption and, thus, benefits for her knee injury. Furthermore, scientific studies show many servicemembers suffer from PTSD due to their service in a combat zone, regardless of whether or not they served in the traditional roles accepted by the VA as indicative of combat service.⁸

3. H.R. 952 should also amend section 1154(b) to create a statutory presumption of service connection by eliminating the need for proof of medical nexus.

Amending section 1154(b), as proposed by H.R. 952, is one large step in the right direction. As discussed above, the amendment will broaden the traditional definition of “combat” to include “theater of combat operations,” thereby easing the burden of proof for servicemembers who incur or aggravate an injury or illness while on active duty in a theater of combat operations. But to genuinely aid servicemembers, section 1154(b) must undergo additional amendments to eliminate other key impediments to veterans.

For example, as it currently exists or with the changes H.R. 952 would bring, section 1154(b) does not provide a presumption of service connection for any combat-related injuries, illness, or diseases. For the VA to grant direct service-connected compensation for a veteran’s claimed disabilities, three elements must be established: (1) the veteran has a current disability; (2) there was an in-service incident or injury; and (3) there is a medical link between the current disability and the in-service event.

Unfortunately, Congress is understood to have stated, with respect to the enactment of Section 1154(b), that “a statutory presumption of service-connection is not intended.”⁹ In accordance with that declaration, section 1154(b) has been interpreted as relieving the veteran’s evidentiary burden only as to the second element—in-service incurrence of an incident or injury and not to the third requirement for a medical nexus. *Collette v. Brown*, 82 F.3d. 389,392 (Fed. Cir. 1996); *Dalton v. Nicholson*, 21 Vet. App. 23 (2006). In short, 1154(b) creates a presumption of service incurrence, but no presumption of service connection. As a result, many veterans’ meritorious claims are denied.

To this day, the reality is that the VA routinely denies claims for benefits based on PTSD filed by veterans who, during a time of war, served in a theater of combat and were repeatedly ambushed and subjected to repeated mortar attacks because there is no medical opinion using specific “buzz words” and linking his present diagnosis and treatment for PTSD to in-service combat-related stressors that are not clearly documented in his military record. Similarly, a veteran, who opted to defer his discharge exam and who is unable to persuade a doctor to provide a medical nexus opinion, will receive from the VA initial and repeated denials of his claim for benefits based on a permanent orthopedic disability. His claim is not improved by evidence that he injured his ankle while engaging in combat during an ambush in Vietnam, and that he was patched up by an un-named medic in the field because he lacks medical nexus evidence.

To avoid these injustices, NOVA suggests that section 1154(b) be amended to read as follows:

- (1) In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of the incurrence or aggravation of such injury or disease, if consistent

⁷ Testimony, March 24, 2009, House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs.

⁸ Institute of Medicine of the National Academies, *Gulf War and Health*, Volume 6, *Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress*, 2008, page 319

⁹ H.R. Rep. No. 1157, 77 Cong., 1st Sess2 (1941)

with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran.

(2)(A) Service-connection of any present injury or disease alleged to be incurred or aggravated during combat with the enemy shall be presumed without the necessity of further proof of medical nexus or proof of connection to injury or disease incurred or aggravated during combat with the enemy. (B) Such service connection may be rebutted by clear and convincing evidence to the contrary. (C) The reasons for granting or denying service-connection in each case shall be recorded in full.

(3) For the purposes of this subsection, the term 'combat with the enemy' includes service on active duty—(A) in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) during a period of war; or (B) in combat against a hostile force during a period of hostilities.

4. The proposed amendments to section 1154(b) should result in a cost savings to the VA, rather than in additional costs, and would not damage the integrity of the system.

Ranking Republican Member, Doug Lamborn has raised concerns about damage to the integrity of the system and the CBO's 2008 estimate that the legislative amendment to section 1154(b) would cost over four billion dollars.¹⁰

In March 2009, the VA announced amendments to 38 C.F.R. § 3.304(f) which, effective October 29, 2008, eliminated the requirement that a veteran submit evidence corroborating the occurrence of a claimed in-service stressor in connection with those situations in which PTSD had been diagnosed in service.¹¹ In the announcement of the final rule, the VA observed that this would allow the agency to "more quickly adjudicate claims for service connection for PTSD for those veterans." This final rule was also reported as a non-significant regulatory action under Executive Order 12866.

The VA should be able to realize even greater cost savings by implementing the suggested amendments to section 1154(b). The amendments will increase efficiency in the adjudication of claims, eliminate administrative costs associated with appeals of wrongly denied claims, eliminate the need for many VA medical examinations, and eliminate the costs and time involved in obtaining records to confirm that veterans were indeed involved in combat with the enemy while they served, for example, in the jungles of Vietnam or in the Green Zone in Iraq.¹²

Additionally, our veterans who served in a theater of combat operations deserve a benefits system that adjudicates their claims promptly. They answered the call to duty; now so must we. If the VA were to promptly grant a combat veteran's service-connection claim for their combat-related disabilities, the resulting appropriate treatment and financial compensation for that veteran will lower his frustration and anxiety levels, will lessen his need to self-medicate with alcohol and drugs, will improve his willingness to receive VA medical treatment, and might even lessen the likelihood of suicide.¹³

Allegations that amendments will result in fraudulent claims are unfounded. The data suggest just the opposite. There is evidence that receiving benefits for service-connected PTSD actually encourages veterans to seek mental health treatment; there is little direct evidence that receipt of compensation has secondary gain effects on PTSD treatment outcomes; and there is no evidence of significant misreporting or exaggeration of PTSD symptoms by veterans.¹⁴

¹⁰ Opening Statement on March 24, 2009.

¹¹ Federal Register, Vol. 74, No. 60, Tuesday, March 31, 2009, p.14491

¹² See, requirements set forth in Statement of Dean G. Kilpatrick, Ph.D., Committee on Veterans' Compensation for Post Traumatic Stress Disorder, IOM, testimony on March 24, 2009.

¹³ Kang, Han K., Dr. P.H., et al, The Risk of Suicide and Other Traumatic Deaths among U.S. Veterans of Operations Iraqi Freedom and Enduring Freedom, 2007; Alvarez, Lizette, After the Battle, Fighting the Bottle at Home, July 8, 2008, New York Times.

¹⁴ Veterans' Disability Benefits Commission, Honoring the Call to Duty: Veterans' Disability Benefits in the 21st Century, October 2007, pages 149,151.

**Prepared Statement of Bradley G. Mayes, Director,
Compensation and Pension Service, Veterans Benefits Administration,
U.S. Department of Veterans**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on H.R. 952, the "COMBAT PTSD Act." I also would like to acknowledge the Chairman and his leadership in helping our veterans with posttraumatic stress disorder (PTSD).

VA continues to develop and enhance its nationally recognized PTSD treatment and research programs, and to improve the quality of VA health care. VA's National Center for PTSD works to advance the clinical care and social welfare of veterans through research, education and training on PTSD. Those advances are used to guide clinical program development in collaboration with the Office of Mental Health Services. VA recently launched a new website at www.oefoif.va.gov/familysupport.asp to provide consolidated information for returning combat veterans and their families. VA also offers treatment for veterans with PTSD in VA medical centers, clinics, inpatient settings, and residential rehabilitation programs. Vet Centers offer a variety of programs to help veterans cope with issues related to their military experiences in war, which include specialized counseling, outreach and referral services.

All initial disability claims filed by returning combat veterans are given priority handling by our regional offices. PTSD is the third most frequently service-connected disability for these veterans. As of the end of February of this year, 53,079 veterans of the current conflicts are service connected for PTSD.

The short title of the legislation we are discussing today indicates that the intent behind it is principally to ease the burden on veterans in proving their service-connection claims based on PTSD, which is a goal that the Department shares. However, we are concerned about the scope of the bill and also believe it would unduly complicate the adjudication process.

In furtherance of our mutual objective of simplifying the adjudication of wartime veterans' PTSD claims, the Department currently has under development an amendment to our regulations to liberalize in certain cases the evidentiary standards for establishing an in-service stressor for purposes of service connecting PTSD. This amendment would relax in some situations the requirement for corroborating evidence that a claimed in-service stressor occurred. We also recently completed a rulemaking that eliminated the requirement for evidence corroborating the occurrence of a claimed in-service stressor if PTSD is diagnosed in service.

Because the scope of H.R. 952 is so broad and its implications so far reaching, VA strongly prefers regulation rather than any legislation at this time. This more focused approach enables VA to target the unique challenges of conditions such as PTSD without detracting from the overall efficiency and integrity of the claims adjudication process. Moreover, regulation allows greater efficiency and flexibility as we gain further insight into how best to respond to the conditions and circumstances experienced by our returning veterans.

Current law, section 1154(b) of title 38, United States Code, provides a relaxed evidentiary standard that facilitates a combat veteran's establishment of service connection for disease or injury alleged to have been incurred in or aggravated by certain active service. Specifically, section 1154(b) provides that, in the case of any veteran who engaged in combat with the enemy in active service during a period of war, campaign, or expedition, VA shall accept as sufficient proof of service connection of any claimed disease or injury satisfactory lay or other evidence of service in-currence or aggravation, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the absence of an official record of such in-currence or aggravation. In short, section 1154(b) allows a combat veteran to establish the in-currence or aggravation of a disease or injury in combat service by lay evidence alone. However, to be afforded this relaxed evidentiary standard, the veteran must have "engaged in combat with the enemy." Furthermore, the relaxed evidentiary standard does not apply to the predicate fact of engagement in combat with the enemy.

Historically, evidence of combat engagement with the enemy required evidence of personal participation in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality. Presence in a combat zone or participation in a campaign alone did not constitute engagement in combat with the enemy for purposes of the relaxed evidentiary standard.

The reason for relaxing the evidentiary requirements for combat veterans was that official documentation of the in-currence or aggravation of disease or injury was unlikely during the heat of combat. Combat veterans should not be disadvantaged by the circumstances of combat service in proving their benefit claims. Under the

relaxed requirements, satisfactory lay or other evidence, if consistent with the circumstances, conditions, or hardships of the veteran's service, is sufficient to establish that a disease or injury was incurred in or aggravated by combat service.

H.R. 952 would extend the relaxed evidentiary standard to certain veterans who did not engage in combat with the enemy during a period of war. It would require that a veteran who served on active duty in a theater of combat operations during a period of war or in combat against a hostile force during a period of hostilities be treated as having "engaged in combat with the enemy" for purposes of establishing service connection for disease or injury alleged to have been incurred in or aggravated by such service. H.R. 952 would also require that VA, in consultation with the Department of Defense (DoD), determine what constitutes a theater of combat operations. DoD defines theater of operations broadly to encompass geographic operational areas of significant size defined for the conduct or support of specific military operations. An area designated as a theater of combat operations in consultation with DoD would encompass all veterans who served on active duty in that theater during a period of war, whether or not they were actually involved in combat.

Service in a theater of combat operations does not necessarily equate to engaging in combat with the enemy and does not in many cases present the same difficulties encountered by combat veterans when later pursuing compensation claims. So while we share the goals of this legislation to improve the processing of PTSD claims, we are concerned that it would extend the relaxed evidentiary standard to veterans who served in a theater of combat operations regardless of whether their service involved combat or was even near actual combat and regardless of whether the circumstances of their service were of the kind that would inhibit official documentation of incurrence or aggravation of injury or disease.

We also are uncertain of the scope of H.R. 952, which is broader than PTSD claims and provides a relaxed evidentiary standard for all types of physical and psychological diseases and injuries allegedly incurred in or aggravated by service in a theater of combat operations. In this regard, the subjective psychiatric symptoms associated with a traumatic experience are not always immediately manifested or apparent and thus are not subject to ready documentation. For example, a veteran who witnesses a traumatic event may show no immediate observable signs of the mental trauma resulting from the in-service incident. On the other hand, a physical injury is more readily observable to lay witnesses and more likely to have been documented even in a combat theater.

Finally, H.R. 952 may unduly complicate the adjudication process by requiring separate determinations of whether a veteran served on active duty in a theater of combat operations during a period of war or served on active duty in combat against a hostile force during a period of hostilities, questions that VA typically does not address. The need to make such determinations may delay claim processing for all veterans.

For these reasons, we prefer our regulatory approach and look forward to working with this Committee, and this Subcommittee in particular, as we develop these initiatives and improve treatment for our veterans with PTSD.

We did not have sufficient time before this hearing to prepare an estimate of the cost of enactment of H.R. 952. With your permission, we will provide our estimate to the Subcommittee in writing for the record.

Statement of Robert Kavana, Croton-on-Hudson, NY

Chairman Hall and Members of the Subcommittee, I want to thank you for giving me the privilege of speaking to you today about an issue that affects many combat veterans, myself included. The Department of Veterans Affairs has been denying compensation for post traumatic stress disorder, PTSD, to veterans who served in combat zones, fought and endured enemy attacks, yet had their claims turned down because their jobs did not classify them as fighting troops.

For example, I was in a U.S. Naval Mobile Construction Battalion in Vietnam and although I came under attack frequently, the VA disallows my claim of being in combat. This flies in the face of the statement by my psychologist, Dr. Kenneth Reinhard, who has more than 32 years of service with the VA, and is Chief of Anxiety Disorders at the Montrose, NY VA Medical Center. I would like to quote briefly from Dr. Reinhard's notes on my condition:

"Focus of session is a cognitive/behavioral approach to reduce acute PTSD symptoms and increase patient's quality of life. He talked of events that he was able to describe vividly that reinforced the feeling that he could never feel safe

and that he could have been dead many times. These intrusive thoughts have become worse over the past year and that is the main reason he entered treatment. He had tried to bury most of his PTSD problems over the years by working hard and by drinking alcohol heavily. His increase in symptoms are also associated with the increase in coverage of soldiers deaths in Iraq. This brings him right back to Vietnam.”

In its most recent denial of my claim requesting service connection for my PTSD, the explanation given was, “The available evidence is insufficient to confirm that the veteran was actually engaged in combat or was a prisoner of war. The service department was not able to corroborate the stressors.” Also “the service medical records were negative as to any chronic nervous condition.” Active service personnel almost never report anxiety disorders while serving, particularly in a combat zone. The stress is constant and universal. There is no point in reporting it. This bill would help those of us who were exposed to combat conditions no longer have our legitimate medical and psychological claims summarily rejected.

Now, I would like to read a note from the National Service Officer who filed my claim with the VA, Norman Bussel, who was a POW in Germany during World War II and has battled PTSD for 65 years. He also includes three excerpts he selected from letters I sent home to my wife from Vietnam in 1968:

“In filing PTSD claims for combat veterans, National Service Officers are obligated to elicit information from the veteran that details how the stressors that he experienced in combat led to the PTSD symptoms he suffers from today.

“In filing the Statement of Claim, we must ask the veteran to revisit the combat situations that triggered the psychological trauma which resulted in his PTSD diagnosis by V.A. mental health professionals at Montrose VAMC. This is a forced walk through the valley of hell for the veteran and many simply cannot endure the pain of revisiting these horrible scenes. That is why some statements are more lengthy than others.

“In Mr. Kavana’s case, we have a very modest individual who refused to portray himself as hero and gave us an unadorned reprise of the stressors he experienced. Fortunately, he was able to locate letters written to his wife more than forty years ago and they are far more graphic in describing his time in combat in the earthy language of a member of the U.S. Navy.

“I submit as evidence the following excerpts from letters Robert Kavana wrote to his wife while serving in Vietnam in 1968.”

November 19, 1968

“Last night the Viet Cong decided they could not pass up another Saturday night in town. Not one round hit within fifty yards of us and they left the hospital along for a change. I was awake when it started about two forty-five, they kept it up until sunup. The whole area was pretty hard hit . . . I would have a couple of drinks to see if it would help me sleep, but Charlie may be back tonight. I am sure he didn’t use all his new supplies last night. Last night I had everyone up in about 2 minutes. There is rifle fire every night, but when the VC come in force, you can tell even before the rockets come, but the increased small arms fire.”

September 1968

“Boy, when they say we are going to get it, they mean it. I almost got my VC, but I could not tell the good guys from the bad until the sun came up and then they were too far away. They just now flushed a VC out from across the street. The firing is still going on. I think the hospital took a couple of rounds, rocket or mortar. . . They blew an ambulance and killed a guard at the hospital. An Army Medic came running out and told us to stay away because there were two plastic charges under two other trucks. I went to disarm them.”

September 1968

“It started at two o’clock in the morning with a blast that almost threw me out of the rack; then all hell broke loose. They were not Viet Cong this time; they were North Vietnamese Regulars. They blew up a medical warehouse, two buildings across the street, one building in the next compound and about ten rounds in the street in front of our compound. Again, no-one was hurt here, we must have some kind of good luck charm. There is still a N. VA body in the street out front. He has two home made bombs on his body, but I left them alone. I wonder how long he will lay there before someone moves the body. I found a N.V.A. hand grenade across the street near the body. I didn’t disarm

it. I would say at least two hundred rounds came into the city last night, most of them on this side of town, I don't mind telling you I about shit in my pants last night. I don't mind the small arms; if they are near enough to hit you, you can hit them. The big stuff can't be stopped and there is no protection from it."

My long struggle with PTSD has led to divorce; strained relations with my children; estrangement from my family and the loneliness that resulted from my anti-social behavior. No one could understand my pain and I preferred to be alone. The fact that my claim for compensation was denied by the V.A., even after a psychologist at a VA Mental Health Facility diagnosed me with PTSD weighs heavily on my mind. If I had been killed in Vietnam, and every day I spent there I was in danger of that happening, would my sacrifice have been any less because I was in a Construction Battalion? I hope that this injustice will soon be rectified. Time is growing short. I thank you for hearing me.

Statement of Rebecca I. Nava Kileen, TX

My name is Rebecca I. Nava, and I am an Army veteran who was part of Team Lioness in Ramadi, Iraq in 2003–2004. I served with the 1st Engineer Battalion, 1st Infantry Division out of Fort Riley, Kansas. I was in the Army for 8 years as a 92Y, a Unit Supply Specialist.

I joined the Army for college money because my parents couldn't afford to send two kids to college at the same time. I also wanted to do something different than everybody else. I was born and raised in New York City, and my parents are from Puerto Rico. I have a daughter who just turned three.

My Military Occupational Specialty (MOS) consisted of ordering supplies, and maintaining accountability and serviceability of sensitive military equipment. During my career I only went to a couple of places, unlike others. I have been to Ft. Irwin at the National Training Center and to Camp Carol, Korea, Ramadi, Iraq, and back to Fort Riley, Kansas.

During my tour in Iraq, we did the jobs that we were trained to do. We also did convoys to pick up supplies for our unit or to transport soldiers, conducted raids with our male counterparts and we did the Lioness missions. We were there from September 2003 through September 2004. When we would go out on Lioness missions, we would go out in teams of two with about 6–12 guys each, sometimes more. We would try not to get too overwhelmed over these missions, but sometimes I was deeply touched by the living standards of the Iraqi people and how they are dressed, asking for food and water. But we would go out on these missions to help the guys out as far as looking for the insurgents. We would help calm the women and children. We would search them because American men couldn't search them due to Islamic culture. We would give the children candy, toys, school supplies and other things to calm them down so that the women would calm down and we could search them. At times they would fight us. I guess they still weren't sure if we were females due to the uniforms and gear we were wearing. We would take our Kevlar off and they would be surprised. Then they would try to talk to us or just be so surprised with our skin, hair, and everything else, because as American women we looked so different from them.

On December 31st, 2003, New Years Eve, we went out on a Lioness Mission, in which we did a Traffic Control Point (TCP) on a road in the middle of Ramadi, and after that we did a short "knock and greet." I came back to our billet so I could get a couple of hours of sleep before I had to get back up and go on a convoy to Baghdad International Airport (BIOP) to take and pick up soldiers from leave. But I didn't make it to the airport because my vehicle, a 6x6, 5 ton, M923 cargo truck, ended up flipping over. My driver, who was my supervisor, was driving and lost control of the vehicle because we had a slinky motion going on within the convoy. She was trying to catch up to the convoy but the road wasn't one of the best. It was full of pot holes.

There were three in the cab of the vehicle; myself, my supervisor, Sgt. Patricia Moreno, and Sgt. Dennis Corral. There were about 13 people in the back of the truck, with gear and weapons getting ready to go on R&R leave. When Sgt. Moreno started to lose control of the vehicle, we went off into the desert and started to do a couple of 360's donuts in the desert. She fell out of the vehicle and sustained some minor injuries; however, Sgt. Corral and I, along with the people in the back, were still inside the vehicle. We started to flip, and I can remember that Sgt. Corral started to scream "ROLL OVER!" "ROLL OVER!" I could hear the people in the back screaming and equipment flying around. I remember seeing my life flash before my eyes, and hearing Sgt. Corral screaming "Please help me, Please help!"

Then I felt him squirming, trying to see if he could get out, but he kept hurting me during that process. Then it got quiet in the cab. Later, I felt the truck being lifted up to help the people in the back to get out and to let a female out who was pinned down by the side rails of the 5-ton cargo truck. The personnel helping us out of the vehicle had to cut my seatbelt off to be able to get me out of the cab. My weapon was damaged during this, as were most of the others. I had the imprint of the sappi plates on my back. My legs were over my shoulders; literally my feet were on the back of my head as I was told. I had busted my eyebrow, for which I had to receive some stitches. I had no feeling in my legs for a couple of days. I believe it was the day after the accident, I was trying to call my husband, who was in my unit, in the 1st Engineer Battalion, same base camp (Camp Junction City) just a different company, to let him know that I was still alive and ok and to call my mom. Anyway, since I couldn't get in touch with my husband, I decided to call my unit and talk to my chain of command and let them know where I was and that I was still alive. That's when they told me that Sgt. Corral had passed away shortly after the accident. I had noticed that his body was blue already when they pulled him out of the vehicle. During the time I was in the hospital in Baghdad, I saw a Commander, a 1st Sgt., the operations Sgt., and one of the mechanics from our Bravo Co. being wheeled in after a Vehicle Borne Improvised Explosive Device (VBIED). It was traumatizing for me, on top of the accident, because I knew these people pretty well.

I was with that unit for about a month before I went back to my unit due to my vehicle breaking down at a check point. They told me to get my vehicle fixed and catch the next convoy. The next convoy was with our Bravo Co., and that's where those people that died during the VBIED were from.

During my stay at the hospital, I told them that I had lots of back pain, leg pain, that I had no feeling in my legs; they felt numb. My right hip had pain also, and they kept me pretty well medicated to relieve the pain. Shortly after my discharge from the hospital back to my unit, I got off the medication so that I wouldn't become dependent on it and kept taking it easy until I recovered. The stress of combat I saw and my accident made it impossible for me to go back to work in my supply room, or to deal with my Supply Sgt., due to the nightmares I was having about the roll over.

To this day, a little over 5 years now, I still have nightmares about the accident and I have Sgt. Corral's last words playing in my mind. When I do, I wake my husband up and we talk about it, unless he is not home since he is still active duty. If he isn't there, I turn on the television since I can't sleep afterward.

About a month after the rollover accident, I was in a logistical Convoy to Camp Anaconda, a Theater Distribution Center in Balad, Iraq. We never got to make it up there due to our convoy being ambushed by the enemy. Because my vehicle was the first vehicle after the gun trucks, we got hit. The enemy threw grenades at our convoy and hit our vehicle with AK-47 rounds and various other weapons. When one of the rounds hit the vehicle, a piece of metal came off and ended up hitting my driver, Sgt. Osvaldo Nuin, a fellow Supply Sgt., in the hand. He received a couple of pieces of shrapnel in his left hand and, once we got out of the kill zone, I patched him up and tried to control the bleeding until we could get a medic to come and help him. I was only trained as a Combat Life Saver (CLS), to render basic aid until an official medic could take care of the servicemember.

While we were receiving all the shooting, the gunner and the driver for the gun truck in front of my vehicle also received some shrapnel and had some bleeding, and I patched them up until they could get some better aid from the actual medic. Once I finished doing that, I started to hear some more gun shots moving closer and closer to where we were separated from the rest of the convoy. Then we saw the enemy pop up and start shooting at us and we started to shoot back at him. We were shooting back at this person, seeking cover and doing everything possible to protect ourselves and the others with us. Shortly after we started shooting at the enemy, he fell. We don't know who actually killed him due to multiple people shooting. We were just glad that we were all alive after that! After all that we did, we regrouped with the rest of the convoy and called for a medivac for the people who needed it. We went back to the base camp to turn in our vehicles to maintenance due to all the bullet holes and everything, complete our sworn statements, and do round count.

I kept on doing Lioness missions after that. We would go out with the Infantry Battalion or the Field Artillery battalion. During these missions, we would see all types of things: women being treated so horrible, kids living in horrible conditions. Toward the end, we went to one house and we, as females, were at the end of the stack of military personnel going into the house. Well, we knew this house was occupied and, shortly after we busted down the door, we saw this guy having sex with

his daughters. He had a few daughters and they were lined up against the wall, I guess waiting for their turn. We made him stop and get off the young girl and told her to get dressed. We searched the house and asked questions. I don't remember if we took him in or not.

April 2004 was one of the worst months of our deployment. That's when we had the most injuries and deaths. Our battalion had the most deaths in the entire Brigade. We had a total of 10 deaths. We would get ready for missions as back support and would sit listening to the radio to find out what was going on out in the battle field. We would go out on Lioness missions during this time and do patrols with the guys for hours through the town in which we handed out flyers in Arabic.

I have nightmares and trouble sleeping due to what I saw and heard and went through during this deployment. I would talk to my husband, my family and other people in my unit and we would try to console each other and try to help each other out during rough moments. We did the best we could.

After I got out of the military in March 2008, I applied for VA disability and I am currently on my third appeal. When I received the paperwork back from VA, it stated that they are still only giving me a 20 percent total disability rating; 10 percent for my feet and 10 percent for my back. VA indicated that most of the stuff I put down on my claim is not service related. They told me that they can't give me anything for my hearing problems because I was a logistician, or for Post Traumatic Stress Disorder because I never received a Combat Action Badge (CAB) due to the fact that the person who was collecting them for one of my incidents shafted me and took my statements and used them for himself.

I was talking to my husband about the response I received from VA on my appeal. I was wondering how they could tell me that I don't have this or suffer from that. I was thinking to myself that they didn't deploy with us, they didn't go through the same thing that I went through in Iraq, and they didn't see the same things that I saw. Some of them never were in the military!

I am currently still appealing my claim and working to be compensated for my disabilities. I am also working on getting an MOS identifier to be added to female's MOS's for participating in the Lioness program.

This concludes my testimony. Thank you for this opportunity to tell some of my story.

**Statement of Paul J. Tobin, President and Chief Executive Officer,
United Spinal Association, Jackson Heights, NY**

United Spinal Association
Jackson Heights, NY
April 27, 2009

Expanding Opportunities for Veterans and All Paralyzed Americans

The Honorable Bob Filner
Chairman
U.S. House Committee on Veterans Affairs
335 Cannon House Office Building
Washington, DC 20515

By Facsimile and Regular Mail

Re: Support for H.R. 952, The COMBAT PTSD Act of 2009

Dear Chairman Filner:

As a national veterans service organization, United Spinal Association and its veterans service program, VetsFirst, we wish to express our strong support for the Compensation Owed for Mental Health Based on Activities in Theater Post-traumatic Stress Disorder Act of 2009 (the COMBAT PTSD Act, H.R. 952). The passage and implementation of this legislation will dramatically improve the lives of in-country veterans of all eras who suffer from mental disabilities incurred as the result of their military service, as well as those of their loved ones.

Currently, VA regulations make it unduly burdensome for veterans without documentary evidence of combat service to prevail in claims for service connection for PTSD. Even with a confirmed diagnosis of PTSD and medical nexus evidence that such PTSD is the result of a stressor during military service, if there is no official documentation to corroborate a veteran's assertion that he or she was involved in a combat situation, service connection will be denied. Without an award of service

connection, veterans with PTSD remain ineligible for VA mental health care, as well as disability compensation and ancillary VA benefits.

The Act would amend 38 U.S.C. § 1154(b), which currently provides that in the case of a veteran “who engaged in combat with the enemy” the VA must accept as proof of service connection the veteran’s assertion of the incident(s) that resulted in the incurrence or aggravation of any disease or injury, provided that the asserted stressor is consistent with the “circumstances, conditions, or hardships of such service”. In such cases, the absence of official records to corroborate the incident(s) will not preclude an award of service connection. The problem has been the VA’s narrow construction of “engaged in combat with the enemy”. Under this construction, the VA requires that in order for a veteran to receive the benefit of the application of § 1154(b), there must be documentary evidence that the veteran was involved in a confrontation with hostile forces. Such evidence is generally in the form of a military occupational specialty or other designation that necessarily implies combat (*e.g.*, infantryman), an award or decoration that signifies combat service (*e.g.*, Combat Infantryman Badge, Combat Action Ribbon, Purple Heart or Bronze/Silver Star), or the statement of a buddy who served alongside the veteran in direct combat. Where a veteran who alleges a combat-related stressor cannot produce this kind of evidence, the VA invariably denies the application of § 1154(b) and, ultimately, the veteran’s claim for service connection for PTSD.

H.R. 952 would expand the definition of “combat with the enemy” to include active duty service in a theater of combat operations during a period of war. This legislation will help to break down often insurmountable barriers facing veterans who experienced combat circumstances, but who do not have a combat designation, decoration or corroboration from a buddy. Nevertheless, we believe that the expansion envisioned by H.R. 952 will not necessarily eliminate these barriers. The legislation needs to go further.

Section 1154(b) does not provide a presumption that a veteran is entitled to service connection for a disease or injury (including PTSD), even if the VA is required to concede that he or she had engaged in combat with the enemy. Rather, the U.S. Court of Appeals for Veterans Claims has interpreted § 1154(b) as providing a presumption of service incurrence. This means that the veteran must still provide medical evidence that his or her PTSD is etiologically related to his or her military service. See, *e.g.*, *Dalton v. Nicholson*, 21 Vet.App. 23 (2006). Given the delay that may occur between the occurrence of a stressor and the onset of PTSD and the subjective nature of a person’s response to an event, it is often difficult to provide such medical nexus evidence. We therefore recommend the following in addition to the expansion of the term “combat with the enemy” contemplated by section 2(a)(2) of the COMBAT PTSD Act:

(3) In the case of a veteran who has been diagnosed with PTSD subsequent to active military service and who has engaged in combat with the enemy as defined in sub-section (2) above, a connection between PTSD and the veteran’s active military service shall be presumed and may be rebutted only by clear and convincing evidence to the contrary.

A presumption of service connection for PTSD in these situations will clearly benefit both veterans and the VA. According to a recent study by the RAND Corporation, the Nation’s largest independent health policy research program, nearly 20 percent of military servicemembers who have returned from Iraq and Afghanistan report symptoms of PTSD and related disorders. Claims for disability compensation and health care have already begun to flood the VA. Historically, the extensive delays associated with the adjudication of PTSD claims have been caused by the VA’s stringent evidence requirements. A presumption of service connection of PTSD for veterans who have a confirmed diagnosis and who served in combat zones would eliminate the need for tortuous searches on the part of both the VA and the veteran for stressor and medical nexus evidence. The VA would be freed from its statutory duty to assist veterans by scheduling Compensation and Pension Service examinations for nexus opinions as well. Consequently, PTSD claims would be adjudicated much more quickly and backlogs of these claims would dramatically decrease.

We thank you for your outstanding leadership on behalf of our Nation’s veterans. United Spinal Association and VetsFirst stand ready to assist the Committee and Congress in any way in furtherance of our shared mission.

Sincerely,

Paul J. Tobin
President and CEO

MATERIAL SUBMITTED FOR THE RECORD

**77TH CONGRESS, 1ST SESSION
PUBLIC LAW 361
Signed December 20, 1941
[H.R. 4905]**

AN ACT

To facilitate standardization and uniformity of procedure relating to determination of service connection in injuries or diseases alleged to have been incurred in or aggravated by active service in a war, campaign, or expedition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Administrator of Veterans' Affairs is hereby authorized and directed to include in the regulations pertaining to service connection of disabilities additional provisions in effect requiring that in each case where a veteran is seeking service connection for any disability due consideration shall be given to the places, types, and circumstances of his service as shown by his service record, the official history of each organization in which he served, his medical records, and all pertinent medical and lay evidence.

In the case of any veteran who engaged in combat with the enemy in active service with a military or naval organization of the United States during some war, campaign, or expedition, the Administrator of Veterans' Affairs is authorized and directed to accept as sufficient proof of service connection of any disease or injury alleged to have been incurred in or aggravated by service in such war, campaign, or expedition, satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of such veteran: *Provided,* That service connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service connection in each such case shall be recorded in full.

Approved, December 20, 1941.

**77TH CONGRESS, 1ST SESSION
HOUSE OF REPRESENTATIVES
Report No. 1157**

FACILITATING STANDARDIZATION AND UNIFORMITY OF PROCEDURE RELATING TO DETERMINATION OF SERVICE CONNECTION OF INJURIES OR DISEASES ALLEGED TO HAVE BEEN INCURRED IN OR AGGRAVATED BY ACTIVE SERVICE IN A WAR, CAMPAIGN, OR EXPEDITION

August 12, 1941.—Committee to the Whole House on the state of the Union and ordered to be printed.

Mr. Rankin of Mississippi, from the Committee on World War Veterans' Legislation, submitted the following

REPORT

[To accompany H. R. 4905]

The Committee on World War Veterans' Legislation, to whom was referred the bill (H. R. 4905) to facilitate standardization and uniformity of procedure relating to determination of service connection of injuries or diseases claimed to have been incurred in or aggravated by active service in a war, campaign, or expedition, having considered the same, report favorably thereon with the recommendation that the bill be passed without amendment.

ENDORSEMENT OF BILL

The report of the Veterans' Administration states that the bill as drafted is not considered to be objectionable from an administrative standpoint, and would give legislative sanction to the policy of resolving every reasonable doubt in favor of the

veteran. It is further stated that in view of the extended consideration given this matter and the desire of your Committee to have provisions included in the law such as those incorporated in the bill, the Veterans' Administration would offer no objection to the enactment of H. R. 4905 in its present form. Advice was received by the Veterans' Administration from the Bureau of the Budget that there would be no objection by that office to the submission of the report to your Committee.

PURPOSE OF THE BILL

The bill would authorize and direct the Administrator of Veterans' Affairs to include in the regulations pertaining to service connection of disabilities additional provisions in effect requiring due consideration to places, types, and circumstances of the veterans' service as shown by official records, official history of the organization with which he served, medical records, and pertinent medical and lay evidence. As to veterans who engaged in combat with the enemy in Federal active service during some war, campaign, or expedition the Administrator is authorized and directed to accept as sufficient proof of service connection of a disease or injury claimed to have been incurred in or aggravated by service in such war, campaign, or expedition, satisfactory lay or other evidence of service incurrence or aggravation if consistent with the circumstances, conditions, or hardships of such service notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of such veteran. Service connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service connection in each such case are to be recorded in full.

It is the purpose of the bill to place in brief legislative form the service policy of the Veterans' Administration governing determination of service connection, with particular reference to determinations of fact pertaining to those persons who engaged in combat with the enemy in active service with a military or naval organization of the United States during some war, campaign, expedition. The language of presumption in connection with determination of service connection is not intended. The question as to whether any disability was or was not incurred in active military service is recognized as a question of fact to be determined upon the evidence in each individual case. It is desired to overcome the adverse effect of a lack of official record of incurrence or aggravation of a disease or injury and treatment thereof.

The Committee has conducted hearings on various bills during the past few years pertaining to the subject of service connection. During the Seventy-sixth Congress, H. R. 6450 was favorably reported by your Committee (Rept. No. 2982, to accompany H. R. 6450) and passed the House of Representatives September 30, 1940, but that bill failed of enactment during the Seventy-sixth Congress. H. R. 156, Seventy-seventh Congress, which is identical with H. R. 6450, Seventy-sixth Congress, was introduced January 3, 1941, and referred to our Committee. During the hearings conducted by your Committee May 7, 8, 9, 13, 15, 16, and 22, 1941, consideration was given to H. R. 156, and also H. R. 1587, H. R. 2652, and H. R. 4737. The principles contained in these various bills were thoroughly discussed from the Administrator of Veterans' Affairs, and representatives of the American Legion, Veterans of Foreign Wars, Disabled American Veterans of the World War, and World War Combat Veterans Association.

As revealed by the printed hearings and information discussions it was difficult, if not impracticable, to reconcile the stated policy of the Veterans' Administration as contained in regulations and instructions with the disallowances of service connection in individual cases particularly those of veterans who served in combat. Your Committee is impressed with the fact that the absence of an official record of care or treatment in many of such cases is readily explained by that conditions surrounding the service of combat veterans. It was emphasized in the hearings that the establishment of records of care or treatment of veterans in other than combat areas, and particularly in the States, was a comparatively simple matter as compared with the veteran who served in combat. Either the veteran attempted to carry on despite his disability to avoid having a record made lest he might be separated from his organization or, as in many cases, the record made lest he might be separated from his organization or, as in many cases, the records themselves were lost.

The difficulties which were encountered in assembling records of combat veterans have been repeatedly placed before your Committee and are a matter of record in the hearings. In many cases it is the Committee's belief that this has been a major obstacle to the veteran obtaining a service-connected rating.

It is the opinion of this Committee that the enactment of this bill into law will have a salutary effect. The Committee realizes that the Administration has made pronouncements and set forth policies which are substantially the same as the pro-

cedures made mandatory by this bill; but believes that considerable difficulty has been encountered in securing uniform application of such policies and procedures. The bill is intended to insure a more nearly uniform application of the principles involved.

It is the intention of this Committee that this legislation should make a matter of law the pronounced policies of the Veterans' Administration and make clear the obligation of employees engaged upon duties pertaining to determination of service connection the necessity for the fullest consideration of all evidence and formulation of decisions in line with the policies to which this bill, if enacted, will give legislative sanction. Such policies will be for application in any cases reviewed as well as in new claims.

This Committee also has had under consideration numerous bills which would grant service pensions on a scale as liberal as that provided in the disability allowance law of July 2, 1930, which was repealed by the act of March 20, 1933, Public, No. 2, Seventy-third Congress, and in some instances such bills, would provide more liberal service pension than that provided by the disability allowance law.

Much of the interest in more liberal service-pension laws is believed to be stimulated because of the inability of many veterans to establish service connection of a disability which they have sound reason to believe was incurred in combat with an enemy of the United States. It is believed that by more direct action to insure the granting of service connection in any case where that action can be taken upon the evidence submitted, or which may be submitted, and by extending full cooperation to the veteran, compensation will be awarded to those who meritoriously should be on the rolls under existing law, and there will result a more general understanding that the policy as set forth in this bill has been administered as effectively as possible. This does not mean that the granting of service connection in meritorious cases will remove the necessity for possible legislation granting service pensions, as for example, H. R. 4845, which was reported by this Committee and passed the House of Representatives, but it is believed that the Committee should not be required to consider in connection with service-pension legislation those cases wherein service-connected benefits should or could be granted.

Calendar No. 938

**77TH CONGRESS, 1ST SESSION
SENATE
Report No. 902**

STANDARDIZATION AND UNIFORMITY OF PROCEDURE RELATING TO DETERMINATION OF SERVICE CONNECTION OF INJURIES OR DISEASES ALLEGED TO HAVE BEEN INCURRED IN OR AGGRAVATED BY ACTIVE SERVICE IN A WAR, CAMPAIGN, OR EXPEDITION

December 12, 1941.—Ordered to be printed

Mr. Clark of Missouri, from the Committee on Finance, submitted to the following

REPORT

[To accompany H. R. 4905]

The Committee on Finance, having considered the bill (H. R. 4905) to facilitate standardization and uniformity of procedure relating to determination of service connection of injuries or diseases claimed to have been incurred in or aggravated by active service in a war, campaign, or expedition, report back to the Senate and recommend that the bill do pass.

The purpose of the bill is set out in the report of the Committee on World War Veterans' Legislation (H. Rept. No. 1157), August 12, 1941, which reads as follows:

[H. Rept. No. 1157, 77th Cong. 1st sess.]

The Committee on World War Veterans' Legislation, to whom was referred the bill (H. R. 4905) to facilitate standardization and uniformity of procedure relating to determination of service connection of injuries or diseases claimed to have been incurred in or aggravated by active service in a war, campaign, or expedition, having considered the same, report favorably thereon with the recommendation that the bill be passed without amendment.

ENDORSEMENT OF BILL

The report of the Veterans' Administration states that the bill as drafted is not considered to be objectionable from an administrative standpoint, and would give legislative sanction to the policy of resolving every reasonable doubt in favor of the veteran. It is further stated that in view of the extended consideration given this matter and the desire of your Committee to have provisions included in the law such as those incorporated in the bill, the Veterans' Administration would offer no objection to the enactment of H.R. 4905 in its present form. Advice was received by the Veterans' Administration from the Bureau of the Budget that there would be no objection by that office to the submission of the report to your Committee.

PURPOSE OF THE BILL

The bill would authorize and direct the Administrator of Veterans' Affairs to include in the regulations pertaining to service connection of disabilities additional provisions in effect requiring due consideration to places, types, and circumstances of the veteran's service as shown by official records, official history of the organization with which he served, medical records, and pertinent medical and lay evidence. As to veterans who engaged in combat with the enemy in Federal active service during some war, campaign, or expedition the Administrator is authorized and directed to accept as sufficient proof of service of a disease or injury claimed to have been incurred in or aggravated by service in such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and to that end, shall resolve every reasonable doubt in favor of such veteran. Service connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service connection in each such case are to be recorded in full.

It is the purpose of the bill to place in brief legislative form the policy of the Veterans' Administration governing determination of service connection, with particular reference to determinations of fact pertaining to those persons who engaged in combat with the enemy in active service with a military or naval organization of the United States during some war, campaign, or expedition. The language of the bill has been carefully selected to make clear that a statutory presumption in connection with determination of service connection is not intended. The question as to whether any disability was or was not incurred in active military service is recognized as a question of fact to be determined upon the evidence in each individual case. It is desired to overcome the adverse effect of a lack of official record of incurrence or aggravation of a disease or injury and treatment thereof.

The Committee has conducted hearings on various bills during the past few years pertaining to the subject of service connection. During the Seventy-sixth Congress, H.R. 6450 was favorably reported by your Committee (Rept. No. 2982, to accompany H.R. 6450) and passed the House of Representatives September 30, 1940, that that bill failed of enactment during the Seventy-sixth Congress, H.R. 156, Seventy-seventh Congress, which is identical with H.R. 6450, Seventy-sixth Congress, was introduced January 3, 1941, and referred to your Committee. During the hearing conducted by your Committee May 7, 8, 9, 13, 15, 16, and 22, 1941, consideration was given to H.R. 156, and also H.R. 1578, H.R. 2652, and H.R. 4737. The principles contained in these various bills were thoroughly discussed in the hearings and testimony in connection therewith was received from the Administrator of Veterans' Affairs, and representatives of the American Legion, Veterans of Foreign War, Disabled American Veterans of the World War, and World War Combat Veterans' Association.

As revealed by the printed hearings and informal discussions, it was difficult if not impracticable, to reconcile the stated policy of the Veterans' Administration as contained in regulations and instructions with the disallowances of service connection in individual cases, particularly those of veterans who served in combat. Your Committee is impressed with the fact that the absence of an official record of care or treatment in many of such cases is readily explained by the conditions surrounding the service of combat veterans. It was emphasized in the hearings that the establishment of records of care or treatment of veterans in other than combat areas, and particularly in the States, was a comparatively simple matter as compared with the veteran who served in combat. Either the veteran attempted to carry on despite his disability to avoid having a record made lest he might be separated from his organization or, as in many cases, the records themselves were lost.

The difficulties which were encountered in assembling records of combat veterans have been repeatedly placed before your Committee and are a matter of record in the hearings. In many cases it is the Committee's belief that this has been a major obstacle to the veteran obtaining a service-connected rating.

It is the opinion of this Committee that the enactment of this bill into law will have a salutary effect. The Committee that the Administration has made pronouncements and set forth policies which are substantially the same as the procedures and set forth policies which are substantially the same as procedures made mandatory by this bill, but believes that considerable difficulty has been encountered in securing uniform application of such policies and procedures. The bill is intended to insure a more nearly uniform application of the principles involved.

It is the intention of this Committee that this legislation should make a matter of law the pronounced policies of the Veterans' Administration and make clear the obligation of employees engaged upon duties pertaining to determination of service connection the necessity for the fullest consideration of all evidence and formulation of decisions in line with the policies to which this bill, if enacted, will give legislative sanction. Such policies will be for application in any cases reviewed as well as in new claims.

This Committee also has had under consideration numerous bills which would grant service pensions on a scale as liberal as that provided in the disability allowance law of July 2, 1930, which was repealed by the act of March 20, 1933, Public, No. 2, Seventy-third Congress, and in some instances such bills would provide more liberal service pension than that provided by the disability allowance law.

Much of the interest in more liberal service-pension laws is believed to be stimulated because of the inability of many veterans to establish service connection of a disability which they have sound reason to believe was incurred in combat with an enemy of the United States. It is believed that by more direct action to insure the granting of service connection in any case where that action can be taken upon the evidence submitted, or which may be submitted, and by extending full cooperation to the veteran, compensation will be awarded to those who meritoriously should be on the rolls under existing law, and there will result a more general understanding that the policy as set forth in this bill has been administered as effectively as possible. This does not mean that the granting of service connecting in meritorious cases will remove the necessity for possible legislation granting service pensions, as for example, H.R. 4845, which was reported by this Committee and passed for House of Representatives, but it is believed that the Committee should not be required to consider in connection with service-pension legislation those cases wherein service-connected benefits should or could be granted.

The American Legion
Washington, DC.
February 4, 2009

Honorable John Hall, Chair
Subcommittee on Disability Assistance & Memorial Affairs
Committee on Veterans' Affairs
United States House of Representatives
335 Cannon House Office Building
Washington, DC 20515-6335

Dear Mr. Chair:

The American Legion fully supports your draft legislation, which would amend title 38, United States Code, to clarify the meaning of "combat with the enemy" for the purposes of service-connection of disabilities.

The American Legion applauds your efforts to provide this much needed clarification. This crucial change recognizes the nature of combat and enemy action on the modern battlefield and, in doing so, limits the Department of Veterans Affairs' ability to be overly restrictive in applying the combat presumptions afforded under the current law.

Once again, The American Legion fully supports this draft legislation and we appreciate your continued leadership in addressing the issues that are important to America's veterans—Active Duty, Guard and Reserve—and their families.

Sincerely,

Steve Robertson, Director
National Legislative Commission

Disabled American Veterans
Washington, DC.
February 10, 2009

The Honorable John Hall
United States House of Representatives
1217 Longworth House Office Building
Washington, DC 20515

Dear Chairman Hall:

I am writing on behalf of the Disabled American Veterans (DAV), a congressionally chartered national veterans' service organization with 1.3 million members, all of whom were disabled while serving on active duty in the United States armed forces. The DAV works to rebuild the lives of disabled veterans and their families.

Chairman Hall, we have once again discussed your groundbreaking legislation that, if enacted would clarify certain standards to determine combat-veteran status. We continue to support this important legislation during this new session of Congress as we did during the last session.

Service connection for PTSD still requires a veteran to show combat exposure via official military records, except in certain circumstances, such as a diagnosis during service. For many veterans, providing such documentation remains a virtual impossibility because of poor military recordkeeping, poor VA claims' development procedures, or both.

As VBA updates its rating criteria to incorporate a 21st century understanding of PTSD, it too must update its ability, whether through application or through presumption, to determine who is, or is not, considered a combat veteran. Your legislation brings attention to the reality of having to deny compensation to a veteran suffering from PTSD because his/her government refuses to accept that he/she actually saw combat with the enemy. Nothing could be more demoralizing to a combat veteran.

The DAV looks forward to working with this session of Congress on this important legislation. Chairman Hall, with careful stewardship, this legislation will improve the lives of disabled veterans for years to come.

Sincerely,

KERRY L. BAKER
Assistant National Legislative Director

Fleet Reserve Association
Alexandria, VA.
March 16, 2009

The Honorable John J. Hall
U.S. House of Representatives
1217 Longworth Office Building
Washington, DC 20515
Fax: 202-225-3289

Dear Representative Hall:

The Fleet Reserve Association (FRA) supports "The Combat PTSD Act" (H.R. 952) that would make it easier for veterans with Post Traumatic Stress Disorder (PTSD) to receive disability benefits and treatment. Specifically the bill will remove the burden from the veteran diagnosed with PTSD to prove that a specific incident during combat caused his or her PTSD, and make it possible for any veteran diagnosed with PTSD who served in combat to automatically have the ability to get treatment.

The Association appreciates your attention to this important issue and stands ready to assist you in passing this legislation in the 111th Congress. The FRA point of contact is John Davis, FRA's Director of Legislative Programs at the above numbers or (john@fra.org).

Sincerely,

JOSEPH L. BARNES
National Executive Director

Iraq and Afghanistan Veterans of America
New York, NY.
February 20, 2009

The Honorable John Hall
1217 Longworth House Office Building
Washington DC, 20515

Dear Congressman Hall,

Iraq and Afghanistan Veterans of America (IAVA) is proud to offer our support for H.R. 952, the "Combat PTSD Act"; clarifying the meaning of "combat with the enemy" for the purposes of establishing a service-connected disability with the Department of Veterans Affairs.

H.R. 952 clearly defines "combat with the enemy" as service in a combat theater, ensuring that servicemembers receive the benefits that they deserve. By ensuring that service in a combat zone is enough to establish service connection, servicemembers returning with Post Traumatic Stress Disorder will be spared the unnecessary stress of justifying their service to the VA and will be instead moved directly to treatment.

Ensuring that returning servicemembers are able to receive the treatment they need is critical to the readjustment process. We are proud to offer our assistance and thank you for this meaningful legislation. If we can be of help, please contact Tom Tarantino, at (202) 544-7692 or tom@iava.org.

Sincerely,

Paul Rieckhoff
Executive Director

National Veterans Legal Services Program
Washington, DC.
February 6, 2009

The Honorable John J. Hall
Chairman
Subcommittee on Disability Assistance and Memorial Affairs
U.S. House of Representatives
Committee on Veterans' Affairs
337 Cannon House Office Building
Washington, DC 20515

Dear Chairman Hall:

The National Veterans Legal Service Program (NVLSP) commends you and your Subcommittee for drafting H.R. 6732, a bill that would clarify the meaning of "combat with the enemy" for purposes of service-connection of disabilities. This bill is long overdue and will provide many disabled American veterans and their families with the justice that they have been lacking.

Title I, section 101 provides a definition of the term "combat with the enemy" (used in section 1154(b)), that would help many veterans establish credible evidence of a stressor for PTSD purposes as well as provide evidence that could support claims for service connection for other disabilities. NVLSP suggests, however, that the phrase "campaign, or expedition" be inserted after "war" on line 19 to make certain that non-declared wars are covered.

Please feel free to contact us if we can be of any further assistance.

Sincerely,

Barton F. Stichman
Joint Executive Director

Ronald B. Abrams
Joint Executive Director

Veterans for Common Sense
Washington, DC.
February 10, 2009

The Honorable John Hall
Chairman
Subcommittee on Disability Assistance and Memorial Affairs
Veterans' Affairs Committee
U.S. House of Representatives
1217 Longworth House Office Building
Washington, DC 20515

Dear Chairman Hall:

Veterans for Common Sense (VCS) strongly endorses your legislation designed to clarify the definition of combat, and thereby make it easier for veterans to receive disability compensation benefits from the Department of Veterans Affairs (VA) for post traumatic stress disorder (PTSD).

Under the current VA claims system, nearly every veteran must individually prove their combat service and specific incidents known as "stressors" before receiving VA disability benefits for PTSD. The burdensome and adversarial VA regulations consistently cause delays of months, and often years, needlessly increases the economic distress suffered by veterans already trying to cope with PTSD.

In 2008, the Institute of Medicine concluded that deployment to a war zone is linked to the development of PTSD. This type of strong and overwhelming scientific evidence has been accepted by the government in connection with illnesses associated with Agent Orange poisoning among Vietnam War veterans.

Your superb bill seeks to cut the red tape and allow valid disability claims to be more easily processed by VA. This is exceptionally important because of our current economic recession. Your legislation should have a profound impact on Iraq and Afghanistan war veterans. Of the 105,000 recent war veterans diagnosed by VA with PTSD, only 42,000 received disability benefits from VA for PTSD. That means up to 63,000 Iraq and Afghanistan war veterans may see prompt relief with the passage of your landmark legislation. Tens of thousands of veterans from prior wars also await answers from VA for their PTSD claims. In this time of recession and high unemployment among veterans, our veterans should not be forced to fight an adversarial VA system for assistance for debilitating war-related psychological injuries.

Based on scientific evidence, a prompt move by Congress to properly define combat and thereby cut the red tape on PTSD claims will also serve as a strong message to reduce stigma. An official recognition of PTSD evidences public support for our veterans and families trying to readjust after fighting in combat. We have already contacted VA Secretary Eric Shinseki in support of streamlining PTSD claims.

On behalf of our 14,400 members, we offer our heartfelt thanks and appreciation for your new bill. We also thank you for your leadership last year passing landmark legislation to streamline the overall VA disability claims process.

Sincerely,

Thomas Bandzul
Associate Counsel

Veterans of Foreign Wars of the United States
Washington, DC.
February 11, 2009

The Honorable John Hall
United States House of Representatives
1217 Longworth House Office Building
Washington, DC 20515

Dear Congressman Hall:

On behalf of the 2.3 million members of the Veterans of Foreign Wars of the United States and its Auxiliaries, I would like to offer our support for your bill, *the Compensation Owed for Mental Health Based on Activities in Theater Act* to grant a presumptive service connection to veterans who suffer from Post Traumatic Stress Disorder (PTSD) and have actively served in a designated theater of combat. This

will relieve the burden faced by many veterans who are forced to prove the events they faced while serving our Nation are the direct cause of their PTSD.

This important legislation will make it possible and much easier for many veterans to start the important treatment necessary for their successful reintegration into civilian life. Too many veterans face additional obstacles in recovery when forced to prove their PTSD is indeed related to combat events experienced during their service, thus further delaying the healing process. Your legislation will establish a presumptive service connection for PTSD and guarantee that veterans receive the necessary medical attention promptly and with as little additional stress as possible.

Congressman Hall, this legislation is a great opportunity to honor and give back to those who have so honorably served this country. Thank you for concentrating on changes that can make a difference in the lives of our veterans. The VFW commends you, and we look forward to working with you and your staff to ensure the passage of this important legislation.

Thank you for your continued support for America's veterans.

Very truly yours,

Robert E. Wallace
Executive Director



POST-HEARING QUESTIONS AND RESPONSES FOR THE RECORD

Committee on Veterans' Affairs
 Subcommittee on Disability Assistance and Memorial Affairs
 Washington, DC.
 May 7, 2009

Bradley Mayes
 Director, Compensation and Pension Service
 Veterans Benefits Administration
 U.S. Department of Veterans Affairs
 810 Vermont Ave., NW
 Washington, DC 20420

Dear Mr. Mayes:

Thank you for testifying at the House Committee on Veterans' Affairs' Subcommittee on Disability Assistance and Memorial Affairs legislative hearing on: "Compensation Owed for Mental Health Based on Activities in Theater Post-Traumatic Stress Disorder", H.R. 952, held on April 23, 2009. I would greatly appreciate if you would provide answers to the enclosed follow-up hearing questions by Monday, June 8, 2009.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your responses to Ms. Megan Williams by fax at (202) 225-2034. If you have any questions, please call (202) 225-3608.

Sincerely,

John J. Hall
 Chairman

Questions for the Record
Hon. John J. Hall, Chairman
Subcommittee on Disability Assistance and Memorial Affairs
House Committee on Veterans' Affairs
Compensation Owed for Mental Health Based on Activities in Theater Post-Traumatic Stress Disorder, H.R. 952
April 23, 2009

Question 1: In your testimony and at the hearing, VA informed the Committee that it currently is developing an amendment to its regulations to liberalize the evidentiary burdens for establishing a combat stressor for the purposes of PTSD service connection. Can you provide an update on this regulation?

Response: Veterans Benefit Administration (VBA) worked closely with the Office of General Counsel (OGC) and the Board of Veterans' Appeals (BVA) to modify the regulations at 38 CFR § 3.304(f) governing the evidentiary requirements for establishing service connection for post traumatic stress disorder (PTSD). The draft proposed rule, currently in the Department of Veterans Affairs' (VA) concurrence process, more closely reflects Diagnostic and Statistical Manual-IV (DSM-IV) criteria for the diagnosis of PTSD and is consistent with findings in the recently published *Gulf War and Health: Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-related Stress* (2008) by the National Academies' Institute of Medicine. VA is working to get internal and external concurrences on the proposed rule. Once concurrences are received, VA will publish the proposed rule in the Federal Register.

Question 2: At the hearing, there was also a request for data regarding the number of veterans service-connected for PTSD versus treatment, the number of veterans who are denied, and the percentage of PTSD claims that are part of the current inventory. There was also a request for a cost estimate for H.R. 952. Please provide that data. What conclusions does VA draw from this information?

Response: The number of Veterans treated for PTSD is larger than the number of Veterans who file a claim for PTSD because the treatment numbers include all Veterans for whom a diagnosis of PTSD was recorded at a clinical encounter, includ-

ing those receiving counseling services in the informal settings of a Vet Center. These encounter-recorded diagnoses do not represent confirmed diagnoses among Veterans who use the Veterans Health Administration (VHA) services. Many seeking help in adjusting to the stresses of combat do not develop chronic PTSD—and therefore do not file a claim for disability compensation for the condition.

At the end of fiscal 2008, there were 344,533 Veterans who were service connected for PTSD, and 233,265 Veterans who had been denied service connection for PTSD. As of June 16, 2009, VA has 410,909 claims pending. Of those, approximately 66,000 have PTSD as an issue.

The purpose of H.R. 952 is to clarify the meaning of ‘combat with the enemy’ for service connection of disabilities. This bill would amend title 38 USC section 1154(b) by providing that the term ‘combat with the enemy’ includes active duty in a theater of combat operations as defined by VA in consultation with the Department of Defense (DoD), or active duty in combat against a hostile force during a period of hostilities. We are unable to provide a cost estimate for this bill, as we are not able to estimate the number of Veterans who would apply for compensation as a result of the relaxed evidentiary burden, which would apply to Veterans filing claims for any disability, or the number of Veterans previously denied service connection for PTSD who would re-apply.

Question 3: PTSD has been a diagnosis in the Diagnostic and Statistical Manual (DSM) of Mental Disorders since 1980 and the DoD has followed protocols since that time to make that diagnosis. Please inform why it took VA almost 30 years to recognize a need for a new regulation to allow in-service diagnoses to be rated without further development?

Response: VA initially promulgated regulations that contemplated service connection for PTSD where the diagnosis was rendered years after military service. This was necessary given the fact that PTSD was not included as a mental disorder until the publishing of DSM–III in 1980, 5 years following the end of the Vietnam War. The regulation provided a means to establish a medical link between a current disability and a stressor that occurred many years earlier during military service. The prevalence of a diagnosis while on active duty did not increase until the recent conflicts along with an increased awareness of PTSD. The new regulation was in response to these developments and intended to make it easier for Veterans to prove their claim of service connection for PTSD.

Question 4: During the hearing, you testified that it would be too cumbersome for the DVA Secretary in consultation with the DoD Secretary to define a theater of combat operations. Please inform why this standard would be more problematic than adjudicating each case separately?

Response: It is likely that a definition of “theater of combat operations” arrived at by VA in consultation with DoD would be unsatisfactory to many of our stakeholders. Some would be dissatisfied with limits provided in the definition, while others would consider any limits to be too expansive. A broad approach that included all geographical areas of military support activity adjacent to the location of actual combat operations, such as the Middle East nations and bodies of water where little threat of hostilities exist, could be criticized as losing sight of the original statutory intent of recognizing the hardships of actual combat participation and the difficulties involved with recordkeeping during combat operations. However, definitions limiting the theater of combat operations to a specific nation or geographical location could also be criticized as too restrictive and not taking into account potential hostilities faced by support troops. Therefore, any attempt to define a theater of combat operations and adopt its use as a means to evaluate disability claims would likely generate criticism and would be a cumbersome task. On the other hand, evaluating a Veteran’s combat engagement under the current evidentiary standards on a case-by-case basis has led to fair and equitable results in the vast majority of claims.

Further, VA claims processing personnel would face the prospect of making findings of fact concerning a Veteran’s duty locations throughout his or her military career to determine whether the relaxed evidentiary standard would be for application. This fact finding would, in many cases, be as complex as determining whether a Veteran engaged in combat with the enemy and would add an unnecessary administrative burden.

Question 5: At the March and April 2009 DAMA hearings, VA agreed that the nature of combat has changed and recognized a need for a paradigm shift. However, the VA General Counsel categorized a theater of combat operations as too broad a term. But, it is the same term used in statute by the Veterans Health Administration for determining eligibility for other benefits, such as health care enrollment and Vet Center usage. So, why is it that VA can apply the term for those purposes, but not for compensation?

Response: Under the provisions of 38 USC § 1712A, VHA is required to provide readjustment counseling to a broad range of Veterans who served in a theater of combat operations during and after the Vietnam era, including areas where hostilities occurred after November 11, 1998. Presumably, the Congressional intent was to provide as many Veterans as possible with assistance in readjusting to civilian life. However, providing counseling and related mental health services to an expanded cohort of Veterans does not fall within the statutory requirements for the provision of disability compensation found in title 38, chapter 11. In order for service-connection to be provided, a Veteran must have sustained a disability resulting from injury or disease incurred in or aggravated by active military service. Whereas readjustment counseling under chapter 17 may be provided to a limited number of Veterans who served in a theater of combat operations, compensation under chapter 11 is provided to a Veteran of any period or place of active service for disability incurred in or aggravated by such service.

Question 6: At the hearing, we heard from service officers who represented veterans who served in Vietnam or Iraq and whose claims for PTSD were denied—multiple times—and yet they have been diagnosed and in treatment with the VA for the same disorder and have provided letters and lay statements as evidence in their claims. So, why is VA not accepting their lay statement as evidence of combat, to corroborate their stressor or the medical evidence in the treatment record as outlined under current law in Section 1154(b)?

Response: Section 1154(b) does not require VA to accept lay evidence as establishing that a Veteran engaged in combat with the enemy. The provisions of 38 USC § 1154(b) require that, if the record establishes that a Veteran “engaged in combat with the enemy” during service, VA will accept “satisfactory lay or other evidence of service incurrence or aggravation” of an injury or disease alleged to have been incurred or aggravated in combat service. It is critical that the evidence show the Veteran “engaged in combat” before these provisions apply. VA accepts all forms of evidence, to include lay statements, in every determination made. However, lay statements alone may not be sufficient to establish that a Veteran engaged in combat.

Although a Veteran may receive a diagnosis and undergo treatment for PTSD, if he or she cannot establish that the Veteran engaged in combat to invoke application of these provisions and there is no other credible supporting evidence of an in-service stressor, lay statements alone may not be sufficient to grant service-connection.

Question 7: What is the VA’s response to the veteran service organizations’, most recently the DAV’s contention that VA has circumvented the law by conducting improper rulemaking through its Office of General Counsel and the adjudication procedures in the M-21-1 by requiring proof of combat in field military records?

Response: The law in question is 38 U.S.C. § 1154(b), which provides a lowered evidentiary standard of “satisfactory lay or other evidence” to establish the incurrence or aggravation of a disease or injury in combat service. VA has not circumvented this law or conducted improper rulemaking. The lowered evidentiary standard is intended to establish that a claimed disease or injury was incurred or aggravated while the Veteran was engaged in combat; it is not intended as a way for a Veteran to establish “proof” of combat participation when there is no other evidence of record showing combat participation. In order to trigger this lowered evidentiary standard, there must be some credible evidence of record to establish combat participation. When such evidence exists and the Veteran alleges that a disease or injury was incurred in or aggravated by such service, the Veteran’s statement alone can establish the incurrence or aggravation of the injury or disease for purposes of service-connection. Regarding the use of official military records, it is the incurrence or aggravation of a disease or injury during combat that does not require an official record. This is distinctly different from stating that there is no need for an official record or other credible evidence showing combat participation. Furthermore, the M21-1MR procedural manual does *not* state that proof of combat must come from official military records. Rather, the manual provides:

“There are no limitations as to the type of evidence that may be accepted to confirm engagement in combat. Any evidence that is probative of (serves to establish the fact at issue) combat participation may be used to support a determination that a veteran engaged in combat.”