

VETERANS PREFERENCE

HEARING
BEFORE THE
SUBCOMMITTEE ON
CIVIL SERVICE
OF THE
COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION

APRIL 30, 1996

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VETERANS PREFERENCE

TUESDAY, APRIL 30, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 2247, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Bass, Morella, and Moran.

Staff present: George Nesterzuk, staff director; Garry Ewing, counsel; Caroline Fiel, clerk; and Cedric Hendricks and Mike Kirby, minority professional staff members.

Mr. MICA. I'd like to call to order this meeting of the House Civil Service Subcommittee and welcome you this morning. Sorry we're getting a bit of a late start here, but I do have the concurrence of the minority to begin even without one of their members present at this time. We'll go ahead.

This morning we're going to be discussing the question of veterans preference and its current status. We'll be hearing from a number of witnesses, whom I want to welcome and, again, apologize for the delay in starting this subcommittee hearing. I'll start this morning by giving some opening remarks and then yield to my colleagues on the panel.

I called this hearing because of the numerous complaints I've received from veterans around the country and various veterans' groups. Many of my colleagues have the same complaints—that employment preferences accorded to veterans by law may not be faithfully applied in our Federal Government.

It's important for us to remember that veterans preference is not a gift; it is an earned right and obligation of our country. Congress has a moral obligation to recognize the sacrifices of the men and women of the armed forces who have served their country. Many who have served our Nation believe veterans preference has become somewhat of a hollow promise. Unfortunately, veterans preference is often ignored or too easily evaded, and redress for veterans who are wronged is often inadequate.

We need to examine these questions and to find effective remedies where we find existing problems. There is reason to be concerned about opportunities available to our veterans. As recently as 1984, veterans made up 38 percent of the Federal workforce. By 1994, according to the Office of Personnel Management, that number was down to 28 percent, a figure that really doesn't differ too much from the 23 percent in the overall civilian labor force. In

other words, if we had no veterans preference laws in effect, we would expect to find that veterans comprise 23 percent of the Federal workforce. We really almost have that level today.

OPM's statistics also show that veterans are leaving the Government in disproportionate numbers. These figures show that between September 1992 and September 1994, the number of veterans in the workplace dropped by 42 percent. That's nearly seven times the rate at which the workforce declined. I've said if snail darters or any other species were disappearing at that rate, Congress would probably be jumping up and down and demanding to know why.

I think we owe our veterans no less as far as an inquiry. Veterans in our Federal workplace may be on their way to becoming an endangered species, particularly as it relates to preference.

There may be some explanation for the high rate. We should look at those factors. Forty-seven percent of veterans are concentrated in our three military departments. The Defense Department has been bearing the brunt of recent Government downsizing, and we've outlined in previous hearings some of those statistics and documented that downsizing and its disproportionate impact on our civilian defense employees and military.

Veterans also tend to be older than the average Federal worker, so normal retirement may account for some of this decline. In fact, OPM statistics confirm that over the last 5 years, veterans accounted for more than 50 percent of retirements from the civil service. But OPM's figures also suggest that veterans are under-represented in most Federal agencies.

And these figures back up the claim of many that we need to create additional opportunities for veterans. Frankly, I'm very concerned that recent policies and proposed reforms may even pose a further threat to veterans preference, whether that may be their intended effect or not.

The use of single position competitive levels in reductions in force, RIFs, is, in fact, one good example. In one recent RIF at the U.S. Geological Survey, 97.2 percent of 1,100 positions were placed in unique competitive levels. We should be concerned also that the trend to be more decentralized in hiring decisions will complicate the enforcement of veterans preference.

And we need to be very concerned about indications that some in Government may be trying to evade veterans preference laws all together. For example, a GAO study showed that agencies had returned 71 percent of the hiring certificates—these are lists of qualified applicants—and they've turned them back to OPM. Veterans who were at the top at only 51 percent of the applicants' list were returned when veterans were not at the top. Compounding these concerns is the reduction of Federal hiring opportunities while the Government is downsizing.

I'm committed to improving opportunities for veterans. That's one reason why we're conducting this hearing, and I think many others on this panel share my concern and commitment to our veterans. This is especially important in light of the continuing downsizing that we'll experience across the Government in the future.

Furthermore, we must provide veterans whose rights are violated with some viable redress mechanism. I know my colleagues on this subcommittee will share my objective of guaranteeing that veterans preference will be always alive and well in the Federal Government and that it be properly acted upon.

One of the strengths of veterans preferences is that it has always received bipartisan support, from both sides of the Congress.

I'm pleased this morning to welcome our distinguished witnesses, all who share deep commitment and concern about preserving and strengthening veterans preference. On our first panel we're privileged to hear from the distinguished chairman of the Veterans Committee, Subcommittee on Education, Training, Employment, and Housing, Congressman Stephen E. Buyer and from Congressman Jon D. Fox, a distinguished member of both the Veterans Committee and our own Government Reform and Oversight Committee.

On our second panel, the witnesses will be John Fales, a veteran better known to many as Sergeant Shaft, the columnist for the Washington Times. I'm sure many of you have read his column. We'll then hear from John Davis, a veteran and former Federal employee, and I believe we'll also hear from James Daub, a veteran who served in the military in connection with Desert Shield and Desert Storm.

In our third panel we're fortunate to have representatives of outstanding veterans groups. Each of those panelists are expert on veterans issues. The first panelist is Ronald Drach, who is the national employment director for the Disabled American Veterans. We'll then hear from Emil Naschinski, assistant director of economics for the American Legion. I just received a report that Mr. Kahn's, the vice president of the Veterans Economic Action Coalition, plane has been canceled, so it doesn't look like we'll have him here this morning.

As we again welcome each of you and our distinguished witnesses, we will now hear from other members of the panel who may have opening statements, and I will defer first to Mr. Bass, our vice chairman.

[The prepared statement of Hon. John L. Mica follows:]

**OPENING STATEMENT
CHAIRMAN JOHN L. MICA
VETERANS PREFERENCE: A NEW ENDANGERED SPECIES??**

April 30, 1994
Room 2247 Rayburn HOB

I called this hearing because of the numerous complaints I have received from veterans and veterans groups. Many of my colleagues have heard the same complaints that employment preferences accorded veterans by law may not be faithfully applied in the federal government.

It is important for us to remember that veterans preference is not a gift. It is an earned right. Congress has a moral obligation to recognize the sacrifices of the men and women of the armed forces who have served their country. Many who have served our nation believe veterans preference has become a hollow promise. Unfortunately, veterans preference is often ignored or too easily evaded and redress for veterans who are wronged is inadequate. We need to examine these questions and find effective remedies where problems exist.

There is reason to be concerned about the opportunities available to our veterans. As recently as 1984, veterans made up 38% of the federal workforce. By 1994, according to the Office of Personnel Management, that number was down to 28%, a figure that does not differ markedly from the 23% in the overall civilian labor force.

In other words, if we had no veterans preference laws in effect, we would expect to find that veterans comprised 23% of the federal workforce. We are nearly at that level today.

OPM's statistics also show that veterans are leaving the government in disproportionate numbers. These figures show that between September of 1992 and September of 1994, the number of veterans in the workforce dropped by 42%. That is nearly seven times the rate at which the workforce declined. If snail darters or any other species were disappearing at that rate, Congress would demand to know why. We owe our veterans no less. Veterans in our federal workforce may be on their way to becoming an endangered species!

There may be some explanations for this high rate: 47% of all veterans are concentrated in the three military departments. The defense department has been bearing the brunt of recent government downsizing. Veterans also tend to be older than the average federal worker, so normal retirement may account for some of this decline. In fact, OPM's statistics confirm that over the last five years veterans accounted for more than 50% of all retirements from the civil service.

But OPM's figures also suggest that veterans are under represented in most federal agencies. And these figures back up the claim of many that we need to create additional opportunities for veterans.

Frankly, I'm very concerned that recent policies and proposed reforms threaten veterans preference, whether that is their intended effect or not. The use of single position competitive levels in reductions in force (RIFs) is one good example. In one recent RIF at the U.S. Geological Survey, 97.2% of 1,100 positions were placed in unique competitive levels. We also need to be concerned that the trend to more decentralized hiring decisions will complicate the enforcement of veterans preference.

And we need to be very concerned about indications that some in government may be trying to evade veterans preference laws. For example, a GAO study showed that agencies have returned 71% of hiring certificates -- these are lists of qualified applicants -- to OPM unused when veterans were at the top, but only 51% of applicant lists were returned when veterans were not at the top. Compounding these concerns is the reduction of federal hiring opportunities while the government is downsizing.

I am committed to improving opportunities for veterans. This is especially important in light of the continued downsizing in the future. Furthermore, we must provide veterans whose rights are violated with a viable redress mechanism. I know my colleagues on this subcommittee will share my objective of guaranteeing that veterans preference will always be alive and well in the federal government. One of the strengths of veterans preference is that it has always received bipartisan support.

I am pleased to welcome our distinguished witnesses today, all of whom share a deep commitment to preserving and strengthening veterans preference. On our first panel, we are privileged to hear from the distinguished chairman of the Veterans Committee's Subcommittee on Education, Training, Employment, and Housing, Congressman Stephen E. Buyer, and Congressman Jon D. Fox, a distinguished member of both the Veterans Committee and our own Committee on Government Reform and Oversight.

On our second panel, the first witness will be John Fales, a veteran better known to many as "Sgt. Shaft," the columnist for *The Washington Times*. We will then hear from John Davis, a veteran and former federal employee. Finally, we will also hear from James Daub, a veteran who served in the military in connection with Desert Shield and Desert Storm.

On our third panel we are fortunate to have representatives of outstanding veterans groups, each an acknowledged expert on veterans issues. The first witness will be Ronald Drach, the National Employment Director for the Disabled American Veterans. We will then hear from Emil Naschinski, Assistant Director of Economics for the American Legion. Our final witness will be Gerard C. Kahn, Vice President of the Veterans Economic Action Coalition.

Mr. BASS. Thank you very much, Mr. Chairman. I don't have an opening statement, but I would simply like to commend you for calling this much-needed and timely hearing on veterans preference. Thank you.

Mr. MICA. We also have another distinguished member of our panel, Mrs. Morella from Maryland. Did you have an opening statement?

Mrs. MORELLA. I don't have an opening statement, Mr. Chairman, but I really appreciate your having this hearing to call attention to whether or not veterans preference is working, and giving the significant cases to point where we need to do some changing because of our allegiance to veterans.

Our country is great because there have been veterans who have sacrificed for our liberties and for those things we take for granted. The first panel has our distinguished colleague and another colleague who will probably be joining him.

On the second panel is somebody who is very special to me, and that is John Fales. John, as you may have mentioned, Mr. Chairman, is not only Sergeant Shaft of the Washington Times, but also is a founder of the Blinded American Veterans Foundation. I know him personally as a friend, as an advocate for veterans. In fact, there is nothing that John asks you to do that you don't do, because he makes sure that he follows through.

So I'm honored to be on this subcommittee to hear his testimony on behalf of all veterans. And so I yield back and thank you for the opportunity to make those comments.

Mr. MICA. I thank my colleagues for their opening comments. And now, we will turn to our colleague, the distinguished subcommittee chairman, Mr. Buyer, for his statement. Mr. Buyer, you're recognized for 5 minutes, thank you.

**STATEMENT OF HON. STEPHEN E. BUYER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF INDIANA**

Mr. BUYER. Thank you, Mr. Chairman. I appreciate this opportunity to testify here today. I ask that my entire remarks be accepted in the record.

Mr. MICA. Without objection, so ordered.

Mr. BUYER. Mr. Chairman, there is a very real need today for continuation of veterans preference. It's more than an earned benefit. I believe that the Federal Government has an investment in individuals. These are individuals, men and women, who have a great decisionmaking process, the ability to make sound judgments under great emotional stress. These are very balanced individuals who have a very good sense of duty, honor, country, knowledge of sacrifices and knowledge of what's worth living for and what's worth dying for. And I think that's extremely important to retain those types of individuals in the Government.

It's the implementation of the veterans preference which concerns many of us. The effectiveness of the preference program depends on the comprehensive enforcement of preference laws and its rules. The enforcement is where this committee can be most effective.

I'm sure veterans are very appreciative of the work being done on their behalf. Appreciation is demonstrated by the presence of

representatives here today by the American Legion, the Disabled American Veterans, the VFW, AMVETS, BVA, VVA, the Fleet Reserve, and others who are here today.

I think we must scrutinize how the preference works in the area of hiring, promotion, and retention. To do that we must first examine how veterans are hired into the Federal workforce and the positions they fill. Second, are veterans being promoted? Third, when agencies downsize, do they conform to the laws and regulations regarding veterans preference, the primary principle around which RIF rules were built? And, fourth, we must ask whether veterans have legitimate means of redress should preference status be denied or circumvented.

This represents a full-plate, not only for this subcommittee but also for my subcommittee and the entire Congress. The American people understand the nature of the sacrifices made for them by veterans and support veterans preference, especially those disabled in the performance of their duties for our country.

Mr. Mica, and, I'm sure, the others on the committee, you share with me one of the great joys in serving in the Congress is that of taking care of the veterans who served this Nation. And I agree with the chairman, it is in a bipartisan fashion that we look and examine this issue.

There are concerns that I have right now with the veterans preference and the hiring, promotion, and retention with regard to the present administration. I'll just note some very plain and very cold, stark facts. I'll even start with our own Senate and Congress.

In the Senate, 59 percent with veterans, in the House we have 40 percent who are veterans. In the present White House, in the Executive Office of the President, 4 percent of the men are veterans, with no women veterans in the Executive Office of the President. Of the top cabinet slots averaging 840 to 885 slots, 19 percent of the men are veterans, and there is one woman vet at the VA.

Of the Vietnam generation, I call it the President's own, those born between 1935 to 1955, 5 percent of the men are in fact veterans. I thought that was very interesting because under the Bush administration, 36 percent of the men at the White House were veterans and 30 percent of the top male appointees were in fact veterans.

The political appointments, I think, are indications of what the President determines to be priorities. These are positions of great power and influence, and having 4 percent veterans, I think, shows where the President lies with his priorities.

I lay the problems, though, beyond that. I lay the problems mostly at the feet of a professional bureaucracy. It's perhaps a culture which seems dedicated to rooting out veterans through an avoidance of the proper hiring and downsizing procedures.

The veterans preference must remain the first criterion in hiring, promotion, and retention. I believe that veteran status is blind as to race, gender, age, and religion. We should not allow agency managers the freedom to avoid the primacy of veterans preference. My first point is how we hire veterans. We have a history of helping veterans returning to the workforce and issues of qualifications are in fact complicated.

While daunting, there is no excuse for hiring-managers to be unaware of these authorities or for agencies to develop ways around hiring or retaining veterans. Many would point to the recent numbers being hired into the Federal service, according to OPM are rising, and that is good. We have concerns as to the type of employment veterans are being hired for, and I hope the committee will look into this.

OPM notes that the veterans are prominent in the blue collar positions, the very same positions that are being downsized. While veterans are employed, it's enlightening, the five agencies the chairman had mentioned, the Navy, Army, Air Force, Veterans Affairs, and Treasury employs 56 percent of the Federal civilian workforce and 65 percent of the veterans.

I do find it curious, though, that the Department of Veterans Affairs only has 26.4 percent of the employees who are in fact veterans. But this influx is countered by the large number leaving, due to buy-outs and the retirements. OPM estimates that veterans account for over 50 percent of all retirements from the Federal service in the last 5 years.

There is some anecdotal evidence about the attitudes of some managers toward veterans. Apparently some managers target veterans positions in their downsizing. Some claim that the pursuit of diversity is more important than veterans preference. That is wrong. What I am saying is that veterans preference must remain first among the priorities of Federal managers.

Second is about promotions. Veterans leaving represent the upper and middle managers, the heart and soul of the system. OPM estimates that veterans promotions have remained relatively steady at 22 percent since 1990. This rate may be acceptable to some, but it will not place newly hired veterans into policy and management positions once held by a retiring generation of veterans.

My third point is about the RIF procedures. We must all be concerned about the rapidly increasing use of single position competitive level positions for downsizing purposes. Agencies from the GAO to the Army's Audit Agency to the U.S. Geological Survey are considering, or have effected, narrow definitions of positions that are clearly designed to eliminate preference for veterans in RIF considerations.

This discussion of RIF procedures and hiring authorities leads me to my final point. There is no effective means by which a veteran may air the preference grievance, especially if the veteran is not hired. And that's a point that the chairman made, and I think that's extremely important. How are these managers to be held accountable? This redress issue is a primary concern of my subcommittee and I want to work closely with you, Mr. Chairman, as we move to a reasonable remedy of the redress grievance procedures for all veterans.

I've met many of the representatives of veterans service organizations, and I've also read some of the articles, including those of *Sgt. Shaft* written by John Fales, from whom you're going to hear very soon.

The problem is large and appears to me to be getting much bigger. And Mr. Chairman, we have to recognize that there appears

to be a real culture within the bureaucracy that does not necessarily understand the purpose of veterans preference. It's unfortunate, but it's one for which we have the responsibility to rectify.

I appreciate the committee looking into this serious issue, and I look forward to working with you and for your enthusiasm in our pursuit for veterans preference on behalf of veterans in this country. Thank you, Mr. Chairman.

[The prepared statement of Hon. Stephen E. Buyer follows:]

**Statement of
Rep. Steve Buyer
before the
Civil Service Subcommittee
on Veterans Preference
April 30, 1996**

Thank you Chairman Mica for holding this hearing on this very important issue. The continuing need for veterans preference and the implementation of veterans preference in the federal work force are issues that cause me great concern. The effectiveness of the preference program depends not only on the understanding of, and use by veterans, but on the comprehensive enforcement of preference laws and regulations. It is in the area of enforcement that this committee can be most effective, and that is why I'm sure veterans are appreciative of the work being done on their behalf here today as demonstrated by the presence of representatives from The American Legion, the Disabled American Veterans, the VFW and AMVETS.

As we look at the veterans preference system, we must scrutinize how preference works in the areas of hiring, promotion and retention. First, we must examine how veterans are hired into the federal workforce and the positions they fill. Second, are veterans being promoted? Third, when agencies downsize, do they conform to the laws and regulations regarding veterans preference, which my understanding was the primary principle around which RIF rules were built. And fourth, we must ask whether veterans have legitimate means of redress should their preference status be denied or circumvented in hiring promotion or retention.

We must also consider whether veterans preference goes beyond civil service hiring into other federally-funded employment and training programs. We should develop the criteria to judge how fully the program has achieved its general aims, and how well veterans preference has been integrated. This presents a full-plate for not only this Subcommittee to consider, but for the entire Congress. The American people understand the nature of the sacrifices made for them by their veterans, and support veterans preference in federal employment—especially those disabled in the performance of their duties.

Mr. Mica, as you know, I am Chairman of the Veterans Affairs Subcommittee with jurisdiction over veterans preference. One of the great joys of my work here in Congress is the work we do on the Veterans Affairs Committee. Our work is bipartisan and I come here in the same spirit. Veterans employment in general and preference in particular should not be a partisan issue, and I am not here to criticize the Administration. There are problems with veterans preference, and I lay them mostly at the feet of the professional bureaucracy which in some agencies seems dedicated to rooting out veterans through an avoidance of proper hiring and downsizing procedures.

The advent of affirmative action has created competition with veterans preference, despite specific legislative language prohibiting such prerogatives. In short, veterans preference must remain the first criteria in hiring, promotion and retention. Veterans status is blind as to race, gender, age, religion and other differences that make this nation a melting pot. We should not allow agency managers the freedom to avoid the primacy of veterans preference, if for no other reason than it offers yet another way for women and minorities to gain federal employment.

The history of government's affirmative policies toward veterans employment dates back to at least post-Revolutionary War era when land grants were given in return for military service. Land gave you a job - you were a farmer. Land gave you status and the advantages in some states that came with owning property.

Later, civil service employment preference for veterans dates back to the period immediately following the Civil War when the earliest law providing for such preference was enacted in 1865. More recently, federal involvement in the Public Employment Service began during World War I and the first programs specifically for veterans were established in 1917. These programs provided for services for guardsmen returning from the Mexican border.

When World War I ended, Congress expanded the Department of Labor to handle the concerns of returning servicemen. In this country, the employment service set up offices in various camps to assist men seeking jobs. Nearly 70 percent of the 1.5 million soldiers registered for employment were placed.

Currently, we handle veterans preference in the federal government primarily by adding points to the examinations taken by qualified veterans. For example, five hiring preference points are added to the passing scores of veterans who have served during the period December 7, 1941 to July 1, 1955; or for those who served for 180 consecutive days any part of which occurred after January 31, 1955 and before 15, 1976. Additionally, veterans in campaigns or expeditions for which a campaign medal

has been authorized receive preference points. That list includes veterans of Lebanon, Grenada, Panama and Southwest Asia (Persian Gulf).

Ten points are added to the passing examination scores of veterans who served at any time and who have a service-connected disability. Others such as holders of the Purple Heart, for example, qualify as disabled veterans. Additionally, unmarried spouses of certain deceased veterans, spouses of a veteran unable to work because of a service-connected disability and mothers of a veteran who died in service or who is permanently and totally disabled, are also eligible for ten-point preferences.

So we have a history of helping veterans returning to the work force and working successfully to place them in jobs. But, as you can see, the issue of qualifications is a complicated one, made further complex by issues of retention preferences in downsizing, and special consideration of veterans with a 30 percent or more disability rating. While they may seem daunting, there is no excuse for hiring managers to be unaware of these authorities, or for agency administrators to develop ways around the hiring or retention of veterans in their employ.

Many would point to the fact that the recent numbers of veterans being hired into the federal service are rising and according to Office of Personnel Management (OPM) figures they seem to be. That's good. We have concerns, however, as to the type of employment veterans are being hired for, and I hope this committee will look into that. For example, 73.6 percent of the employees of the National Cemetery System – a part of the VA – are veterans. These are by and large Blue-Collar jobs—the very jobs which are in danger of being eliminated by the downsizing. And, OPM notes that veterans are prominent in Blue-Collar positions occupying 29.5 percent of all federal jobs.

Where veterans are employed is also enlightening. Just five agencies, the Navy, Army, Air Force, Veterans Affairs and Treasury employ 56 percent of the federal civilian workforce and 65 percent of the veterans. I find it curious that the Department of Veterans Affairs only has 26.4 percent of its employees as veterans.

But this relatively large influx of new veteran hires is countered by the large number of veterans leaving due to buyouts and the en masse retirements of many World War II and Korean War veterans. OPM estimates that veterans accounted for over 50 percent of all retirements from federal service in the last five years. In Fiscal Year 1993, 32,305 veterans retired, while in FY1994, 32,365 veterans left the federal civil service.

There is some anecdotal evidence about the attitude of some managers towards veterans relative to who is being offered early-outs and buy-outs. Apparently, some managers target veterans positions in downsizing. In the pursuit of diversity, other positions are not slated for elimination even when the individual holding the position wants to take advantage of a buy-out or early retirement. I am not arguing against diversity. What I am saying is that veterans preference must remain first among the priorities of federal managers.

Those leaving also represented the upper and middle-mangers who are the heart and soul of the system, and is the basis of my second point of veteran promotion within the system. OPM estimates that veterans' percentage of Full-Time Permanent (FTP) promotions has remained relatively steady at 22 percent since 1990. This steady rate may be acceptable to some, but it will not place newly hired veterans into the policy and management positions once held by the retiring generation of veterans.

Federal downsizing leads all of us who advocate for veterans to common ground. According to OPM, veterans in the executive branch agencies declined from 37.7 percent of the federal civilian workforce in 1984 to 29.8 in 1990, though it has remained relatively steady recently with a drop from 28.9 percent from FY1993 to 28 percent in FY1994.

We must all be concerned about the rapidly increasing use of single-position competitive level positions for down-sizing purposes. This allows managers the ability to effectively dictate who will retain employment. This is the area that has drawn perhaps the most scrutiny over the past 12-18 months as non-defense related government jobs are eliminated. Various agencies from the GAO to the Army's Audit Agency to the U.S. Geological Survey are considering or have effected narrow definitions of positions that are clearly designed to eliminate preference for veterans in RIF considerations.

This discussion of RIF procedures and hiring authorities leads me to my final point. There is simply no effective means by which a veteran may air a preference grievance, especially if the veteran is not hired. How then, are we to hold managers accountable for the provisions of law giving preference to qualified veterans? What are the mechanisms veterans can use when "creative" measures are used to avoid the retention preferences given veterans during RIFs? This redress issue is a primary concern of my Subcommittee and I want to work closely with you and the veterans service organizations to provide a reasonable remedy for veterans.

Because of the seriousness of this issue, I have met with many of the representatives of veteran service organizations, and I have read numerous articles—including those from Sgt. Shaft—about veterans having problems in various areas of veterans preference. The problem is large, and it seems to be getting bigger.

Mr. Chairman, after much discussion and deliberation, we have to recognize that there may be a culture within the federal bureaucracy that does not necessarily understand the purpose of veterans preference. This is unfortunate, and may not be deliberate. But we must rectify the situation. For their part, the veterans groups have reiterated their willingness to help educate both the federal government, as well as the veteran, of the hiring laws.

The issue of veterans preference is complex, and we have yet to touch upon related issues such as veterans reemployment rights, and the responsibilities of the Office of Federal Contractor Compliance just to name a couple. This Committee's look into the issue is a tremendous step forward and I appreciate your enthusiasm and interest in pursuing what is best for our veterans. As long as we continue to have conscientious lawmakers willing to address veterans preference, I remain confident that we can take the corrective actions necessary to ensure its future health as a viable program for veterans who have faithfully served. I look forward to working with you and your committee members, and wish to also compliment your staff for the work it has done on behalf of veterans. Thank you for the opportunity to address this body.

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Mr. MICA. I thank you for your testimony and would now like to recognize the distinguished gentleman from Pennsylvania, Mr. Fox. You're recognized for 5 minutes.

**STATEMENT OF HON. JON D. FOX, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. Fox. Thank you, Mr. Chairman, and thank you for your leadership in holding this hearing. I'm grateful for your strong support for honoring our commitment to our Nation's veterans in Federal employment policies.

I would also like to recognize the outstanding efforts of my constituents, Paul Barron, James Daub, Al Evangelista, Stephan Leshner, Robert Marsden, George Martin, John Maltato, and Joseph Tomasetti, in addressing the need for veterans preference for reservists and National Guard members who served in connection with Operation Desert Shield and Desert Storm.

At their request, I introduced H.R. 2510, which would provide veterans preference points for those reservists and Guard members who were called to active duty and deployed outside the Gulf theater of operations.

Mr. Chairman, as you know, many loyal and dedicated members of our reserve and National Guard units were ordered to active duty to support our successful operations during the Persian Gulf war. Those who were sent to the Gulf received veterans preference points. However, those patriotic reservists and Guard members who were deployed elsewhere received no such preference. Those affected include men and women from across the country in many of our districts, who left their homes, families, and jobs to answer the call to arms.

In my own district in Montgomery County, PA, I am privileged to represent the members of the 913th Air Wing based at Willow Grove Air Reserve Station. As Mr. Daub will testify, this unit was activated for Desert Shield and Desert Storm in December 1990.

Some of the unit's members were deployed to the desert, while others were ordered to Rhein Mein Air Force Base in Germany. Their contributions were essential to the ultimate success of the U.S. forces.

These loyal citizens who sacrificed for our great country deserve veterans preference in Federal employment. As a member of the House Veterans Affairs Committee and a former U.S. Air Force Reservist, I was proud to join my committee colleague Chris Smith in introducing H.R. 2510 to grant reservists and Guard members this rightful recognition, which has no impact on the Federal budget.

I would like to thank the American Legion, as well as the many members who have already expressed their support for this important measure.

Mr. Chairman, I urge the subcommittee to approve the bill which demonstrates our commitment to the Reserve forces and the National Guard. Thank you very much.

Mr. MICA. I thank you for your testimony and also for your commitment to the matter of veterans preference and veterans legislation.

I know Mr. Buyer has a tight schedule, but I wanted to ask a couple of questions, if I may. I think you cited, and I want to make

sure these statistics are correct, did you say on the White House staff only 4 percent of the men are vets and there are no women vets? And in the Senate confirmed slots, 21 percent of the men are veterans and only one woman is a veteran?

Mr. BUYER. What I have from my committee staff was Executive Office of the President, 4 percent of men are veterans, no women veterans in the Executive Office of the President. Of the top cabinet slots, averaging 840 to 885 of the political appointments, 19 percent are men and one woman. So if the Senate got 21, I can check that.

Mr. MICA. Well, one of the things that has concerned me is that the White House doesn't live under some of the rules of the rest of the Federal Government. We've changed some of the regulations relating to the Congress and the compliance by the Congress.

Do you believe that we should extend certain requirements to the White House and Executive Office of the President?

Mr. BUYER. I'm not so certain we should send mandates to the Executive Office of the President. The President has made the statement that he wants the White House, the executive office branch, to be a mirror image of America. Well, if in fact that's true, then he's going to have to hire a lot more veterans.

And Mr. Mica, what I'm more concerned about is that veterans have a lot to offer in a very important decisionmaking process. It concerns me sometimes when the President can make decisions in foreign policy and matters relating to the military when he has not surrounded himself with individuals who have a good decisionmaking process.

Mr. MICA. So I think you're saying that we should mandate?

Mr. BUYER. I'm not going to say that you can make those kinds of decisions. I would not require a mandate. I think if the President is going to make a statement that his Executive Office should mirror that of America, and it does not, I think he's caught himself right now in what could be a hypocritical statement.

Mr. MICA. If we were to enact any specific legislative changes requiring adherence to certain preferences, for example, veterans preferences, what would be your recommendation? What action should we take? What would you recommend this committee take to not only comply with intent but also to try to get these numbers into some proper order?

Mr. BUYER. I'd be more than happy to work with you, Mr. Mica. I'm very concerned, though, about a Congress placing hiring quotas or specific requirements on the administration for political appointments. I think the President needs the latitude with regard to who he hires. I think what's extremely important, though, is if in fact the President is only hiring 4 percent of veterans within the Executive Office, he is, in fact, saying that he does not hold in high priority veterans with regard to powers of influence in this decisionmaking process.

I think that is very, very clear. But I'm very uncomfortable about us making the mandate. Where I think is really important, though, is addressing the redress of grievance process. When you have someone who is highly qualified for a particular position and has been wronged, what is their redress?

And that's where I look forward to working with you, to address that, Mr. Mica.

Mr. MICA. Thank you. Mr. Fox, you mentioned that you have many Members who support your bill. Do you have bipartisan support for your measure, and, also, do members of the Veterans Committee support your bill?

Mr. FOX. We do have bipartisan sponsors. And as well, the Veterans Committee does support this legislation, as well as the veterans service organizations. We have a letter of endorsement from the American Legion in addition thereto.

Mr. MICA. Well, that was my next question, whether you have veterans organizations in support. Are there any opposed to your bill?

Mr. FOX. None, no. The American Legion did say that they support the bill. It was passed the 76th national convention in Minneapolis in September. Many of the reserve forces, I could just quote, if I may, are a significant part of our national security establishment in the Reserves, and they feel this legislation is a positive step, signed by John Summer, the executive director of the American Legion.

Mr. MICA. Now, your bill would extend veterans preference to anyone who served, and I quote language from your legislation, "In connection with," you use that terminology, "Desert Storm or Desert Shield." Who would make the determination that someone served in connection with these operations?

Mr. FOX. That's a good question. The orders from the service branches will show that it was connected with and that they were called up for that purpose. So the orders take care of that from the different branches of the service.

Mr. MICA. And your testimony emphasized the benefits H.R. 2510 would have for Reservists and members of the National Guard. Would it also extend veterans preferences to members of the regular armed forces who were deployed in connection with, as you term, these operations?

Mr. FOX. Would also cover those on active duty, yes.

Mr. MICA. I don't have any further questions. Mrs. Morella, did you have any questions?

Mrs. MORELLA. I want to thank both of you for testifying and leading us off at this important hearing.

I'm wondering if one of our problems may be lack of education. Lack of education in terms of letting our veterans know that there is this preference that they may be eligible for, letting the managers, the personnel departments of our agencies be cognizant of it so that they employ it, and kind of doing an outreach, sort of a recruitment.

We don't think about recruiting people who may be eligible for some of those positions, I guess that's my first prong in my question.

Mr. FOX. Congresswoman Morella, I think you hit the nail on the head. It's two-pronged. One, we don't always have employers who are aware of asking, and we don't always have those who have earned the veterans points speaking up. So I think it's a public education program which through your leadership efforts and that of the members of the committee and Chairman Mica might do well

in our following your lead on how we can collaboratively and collectively work better toward that public education program.

We do a lot about thanking the employers for supporting the Guard and the reserves, but we don't always do a good job of informing those who could receive the benefits, both the companies who have veterans and the veterans themselves who have served so honorably to our country.

Mr. BUYER. I think you have hit it right on the head. Before my own subcommittee, one of the Assistant Secretaries of the Department of Labor, Preston Taylor, who was a two-star general himself, it came out at that subcommittee hearing whereby the Department of Labor placed funding for veterans programs at the very bottom.

And we talked about that for a while, and what concerned us is in fact the education. When the military is putting out \$250,000, \$275,000 a year, that education isn't not only just for them but it's also for the culture. And that's what you're talking about the managers. It's going to be very difficult for us to rectify, but a challenge we should take on.

Mrs. MORELLA. I think having this hearing is the first step, or one of the steps, that could be taken. Maybe the communication with our managers and agency personnel heads, too, to just reinforce the fact that we had this hearing and this is what we discerned.

And, again, I think there may be a number of eligible who don't even realize they are or just don't bother, because they're afraid of, or have heard rumors about, the bureaucracy.

Just one final point. As you give percentages of those who are leaving Federal employment by virtue of downsizing, could it not also have a connection with the fact that many of those veterans who are eligible for the preference are older, and therefore are ready or almost ready for retirement, who then say, "Hey, I think this might be my chance to leave." I mean, should that be factored into this statistical dimension?

Mr. BUYER. It should be noted.

Mrs. MORELLA. Be noted, OK. Do you agree, Mr. Fox?

Mr. FOX. Yes. I would agree.

Mrs. MORELLA. It is something we should look at as we look at that, but certainly I'm rather shocked at the statistics you pointed out in terms of how few veterans there are, looking at Veterans Administration as one example and the cabinet as others. Thank you. Thank you both for being here.

Mr. FOX. Thank you very much.

Mr. MICA. I thank the gentlelady and our witnesses. Mr. Moran, do you have any questions? Our ranking member has joined us.

Mr. MORAN. No. I'm sure that my two colleagues have all the answers. So I won't trouble you with a question.

But let me suggest some things that I think need to be said, and it's just possible they weren't emphasized in the testimony. In the first place, in 1990, we had about 17 percent veterans as new hires in the Federal workforce, and today we have about 33 percent. It's been approximately doubling, as I understand. One of the things mitigating against increasing the proportion of veterans in the Federal workforce is that we don't have as large a work pool available.

After World War II, obviously, we had the largest proportion of veterans in the workforce, coming out of World War II. Then we had the Korean war, which was smaller than World War II. We had the Vietnam war, and a lot of veterans went into the Federal workforce from the Vietnam war. But you know, obviously, Grenada and Panama and the Persian Gulf war did not yield anywhere near as many veterans who would be eligible.

Most of the veterans we're talking about right now are between 55 and 64. They're the ones taking buy-outs and they're the ones ready for retirement. So some of this is demographic. And I don't think that showing chronological progression of statistics necessarily tells the whole story.

The other thing that needs to be emphasized is that we have 30 percent more veterans in the Federal workforce than we do in the private sector. Clearly, veterans preference is working and it's a very important—I should say disabled veterans, there are 30 percent or more disabled veterans. I'm sorry, I should have—excuse me. That's my fault. There are 30 percent or more disabled veterans in the Federal workforce than the private workforce.

So I guess when you look at veterans preference, that's one that would be a first priority among veterans. It's not as high as it was in 1984, but I do think that the reason for the decline is not so much a negative attitude on the part of this administration or really the Reagan or Bush administrations, it's a function of the demographics.

When we look at the specifics that were used in the references on the committee report, for the Geological Survey, of the 176 non-voluntary separations, only 7 were veterans. Of the 124 permanent employees reduced in grade, 33 were veterans. Of the 115 reassigned to other positions, 22 are veterans. Those are not unacceptable statistics. Those are relatively proportional, in fact, less so. It would indicate that there seems to be a preference, a veterans preference being sustained within personnel policies.

And under the new USDA flexible hiring program, 16 percent of the new hires were veterans. This is in comparison to 11 percent they would have had, if not for flexibility. And I think the administration is using that flexibility. We're always going to have employees that are not happy with their individual situation. I think it's important, though, that we look beyond anecdotal examples, as important as they are to the individual, and look at some of the governmentwide statistics.

And I don't think the governmentwide statistics bear out an assertion that this administration has been any less committed to veterans preference than prior administrations. And I think if I wanted to get partisan about it, I could make a pretty good case that they have had a stronger commitment, given the available pool of veterans for the Federal workforce.

I just hope we have a balanced hearing and what comes out of it are really good suggestions for improving veterans' access to the Federal workforce and their ability to increase the retention statistics within the Federal workforce of veterans and not try to make any partisan charges, because I don't think they can be very well substantiated. So that's my opening statement.

Mr. MICA. Is that a question or an opening statement?

Mr. MORAN. No. As I said, I think my two colleagues probably have all the answers to any question I might have. But I would certainly welcome any response that they might want to share with us.

Mr. MICA. Mr. Buyer, do you want to respond?

Mr. BUYER. I think, Mr. Moran, had you been here earlier, what I discussed was the culture within the bureaucracy, and the culture is there and will persist, and that's a very strong challenge to us.

The real issues are in the recruiting which goes with the education question. So we've got the recruiting, we've got the issues of hiring, the retention, promotion. All those are very strong issues.

And you've got some witnesses who are going to come before you here today with some specific examples that I'm sure have persisted through the years. And I have some very strong concerns when there are those today within that culture somehow equate veterans preference with this pursuit of diversity. And they are two completely different issues. And that's one that concerns me on my committee, where veterans preference is, in fact, blind with regard to race, color, national origin, and religion. And it's a completely different issue. And that's what I wanted to make sure.

Mr. MORAN. I wholly agree with you on that, Mr. Buyer. I think that is a very good point that you raise, and it ought not be one of our diversity goals. It's an entirely different issue.

Mr. BUYER. Right.

Mr. MORAN. If I could just get a little dialog. Isn't it true that in 1990, 17 percent of new hires came in through veterans preference, and in 1993 it was doubled, actually in 1994 it was 33 percent? So, you know, that doesn't seem to bear out any negative attitude.

Mr. BUYER. It appears I do not have all the answers. No, I don't know the answer to that. We're going to look into this issue on my subcommittee also. And the one that bothers me is how does a veteran redress his grievance?

And, there doesn't appear to be real teeth in the law when you have a Federal manager who has a bias and says, "I've got two people here of equal caliber, yet I'm supposed to give my preference to the veteran, but I really don't want to." And the manager finds the excuse, shoves them aside, hires this one.

How does he redress his grievance when he says I'm supposed to have this preference and there really isn't teeth there? And that's one that really concerns me.

Mr. MORAN. Thank you, Mr. Buyer.

Mr. MICA. Mr. Fox.

Mr. FOX. All I would say is that my legislation which I spoke of earlier, Ranking Member Moran, is that as a matter of fairness Desert Storm veterans should be getting the same preference points that others who didn't go to the theater, but yet were called up and they were working hard in Germany and ready to go and so they should get the 5 points that has no fiscal impact whatsoever. It's just a matter of fairness.

Mr. MORAN. Thank you.

Mr. MICA. Well, I want to thank both our panelists for their cooperation, Mr. Buyer for your leadership on veterans issues, and

also Mr. Fox for your leadership and interest, and active legislative participation. We look forward to working with you.

The purpose of the hearing today is to find out the status of veterans preference, where we have some problems, and how we can correct them. So we thank you.

Mr. FOX. We appreciate your leadership.

Mr. MICA. We'll excuse you at this time, and call our second panel.

Mr. MORAN. Mr. Chairman, could I submit my statement for the record?

Mr. MICA. Without objection, so ordered.

[The prepared statement of Hon. James P. Moran follows:]

Statement of Representative James P. Moran
On Veterans Preference
April 30, 1996

Mr. Chairman:

I appreciate your having this hearing today. Veterans preference is a complicated and important aspect of federal personnel policies. It is appropriate for us to review this program as part of a comprehensive evaluation of the civil service and to review the system of preferences in light of the current federal downsizing.

I understand that part of your focus, or at least the focus of the witnesses, will be to evaluate the Administration's handling of veterans preference. I understand the original working title of this hearing, at least in what I saw, was "Opportunity to Beat Up on Administration" and you anticipated a number of hostile panels. The Clinton Administration should welcome this focus because they have an excellent record on veterans preference. They have certainly done a much better job, and respected veterans more, than the Bush or Reagan Administrations. It is a shame that your staff did not invite the Administration to discuss its record and answer any allegations or charges directly. I imagine they would have welcomed the opportunity.

I am disappointed with the selection of witnesses for today's hearing. You have chosen three veterans who will complain about how the Administration is handling veterans preference. Originally, there were to be four, but one had to drop out because his problem was resolved by OPM. These are only three anecdotes. The federal government employs a large number of veterans. There are more than 570,000 veterans in the federal workforce. There are probably more than a million who have applied for federal jobs. But rather than look at the fact, the raw numbers, independent research, reports from the GAO or MSPB, we are using three anecdotes, three disgruntled veterans, to discredit the Administration.

The truth is, as a percentage of the workforce, there are more veterans in the federal workforce than the private workforce. There is also a higher representation of disabled and 30 percent disabled veterans in the federal workforce than the private workforce. While this representation is not as high as in 1984, the real decline in representation of veterans occurred

in the Reagan and Bush Administrations. The percentage of veterans in the federal workforce has stabilized since Bill Clinton was elected President. In fact, the percentages of veterans as new hires is increasing. Since 1992, the percentage of veterans hired has gone from 23.6% of hires to 33.3%.

It is inaccurate and disingenuous to create the appearance of an Administration-wide hostility to veterans where one simply does not exist. I particularly do not agree with your characterization that veterans are bearing a disproportionate share of federal downsizing. Rather than look at raw numbers and try to discern a trend that confirms its bias, this committee would be better served to look at which agencies have been downsized and which agencies have a larger than average share of veterans. The largest reductions, according to this subcommittee's hearings, have come from the Department of Defense. This is particularly true for the period up to 1994. You would expect a larger than average number of veterans leaving under this downsizing because the numbers of veterans serving in the Defense agencies is larger than average.

In addition, it would be useful for the subcommittee to examine the age distribution of veterans in the federal workforce before making assertions that the federal downsizing has unfairly impacted veterans. More than 59% of all veterans in this country are between 55 and 64. The World War II veterans either have retired or are retiring. The Korean War Veterans are retiring. As these veterans move out of the workforce, the pool of potential veterans to replace them is diminishing. The Vietnam War was not as large a mobilization as World War II. Grenada and Panama were not as large as the Korean War. It is wrong for this subcommittee to present a statistically justifiable fact as evidence of the Administration's hostility to veterans. It is wrong for this subcommittee to claim that veterans are bearing the brunt of federal downsizing.

I am also amazed at the subcommittee's characterization of the threats to veterans preference. From the subcommittee's background memo, it appears as if there are two. One is the use of greater flexibility in hiring, the other is targeted reductions in force. When the subcommittee speaks of these policies in general, it must refer to the two specific. The example of the targeted RIF was the U.S. Geological Survey. The example of the hiring flexibility was the USDA project. In both of these cases, veterans have come out better than they would have otherwise. Even though the Geological Survey RIF was targeted to individual positions, it is obvious that the agency did not target veterans. Of the 176 non-voluntary separations, only 7 were veterans. Of the 124 permanent employees reduced in grade, 33 were veterans. Of the 115 reassigned to other positions, 22 were veterans. The assertions also don't pan out in the USDA example. Under the USDA flexible hiring program, 16% of the new hires were veterans. This is in comparison to an estimated 11% had USDA not had the flexibility.

There is a reason why veterans preference has always been a bi-partisan issue. It is because both parties have been committed to working together to ensure the success of the program. This commitment extends from both parties to both sides of Pennsylvania Avenue. There may have been some minor problems, in a workforce of more than 2 million, you will have some disgruntled employees, but the commitment has always been strong. Let's not ruin this issue and turn this issue into a partisan game. We will not serve anybody by grandstanding and finger pointing. If there is work to be done in extending veterans preference to those called up during the Gulf War or to those applying for promotions, let's focus our efforts on doing that work. If there is a need for greater enforcement procedures, let's work on those. We should not waste time and bother our witnesses with a hearing aimed only to level charges back and forth.

Thank you, Mr. Chairman.

Mr. MORAN. As well as the statistics from OPM on the record of new hires.

Mr. MICA. Without objection, so ordered.

Mr. MORAN. Thank you, Mr. Chairman.
[The information referred to follows:]

Veterans
in the
Federal Government
- A Statistical Profile -

Prepared by:
Office of Diversity
Employment Service
U.S. Office of Personnel Management
Washington, DC 20416
202-606-1059

December 1996

PROFILE HIGHLIGHTS

The Federal Government places a high priority on the recruitment, hiring, and advancement of veterans, especially Vietnam-era and disabled veterans.

Veterans Preference -- The executive branch applies the veterans preference laws in competitive examinations and retention. Generally, veterans are entitled to preference in competitive examinations and retention if, when honorably discharged, they have received a campaign medal for serving in a combat situation or if they had suffered a service-connected disability. In addition, there are two special appointing authorities for veterans which may lead to conversion to permanent Civil Service appointments. Veterans preference is a lifetime entitlement.

Nation's Leader in Hiring -- Veterans and Vietnam-Era veterans have higher representation in the Federal civilian workforce (28.0 and 16.5 percent, respectively) than in the civilian labor force (23.0 and 10.4 percent, respectively). Disabled and 30 percent or more disabled veterans are also better represented in the Federal civilian workforce (5.8 and 1.7 percent, respectively) than in the civilian labor force (3.2 and 1.1 percent, respectively).

No Reductions for Veterans In Downsizing -- Despite Governmentwide downsizing and a decline in the overall veteran population (as Pre-Vietnam War veterans leave the civilian labor force), veterans have maintained their overall participation in the Federal workforce. The representation of veterans in Federal executive branch agencies changed slightly from 28.9 to 28.0 percent of the workforce, despite a decline of 6.1 percent in Federal civilian employment between September 1992 and September 1994.

Grade Distributions -- The predominant white-collar pay plan in the Federal Government is the General Schedule (GS). The average General Schedule grade of a Federal employee is 9.2, while veterans have an average grade of 10.

Occupational Distributions -- Approximately 30 percent of veterans in the Federal workforce are employed in Blue-Collar positions, as compared to 15 percent for the overall Federal civilian workforce.

Age/Tenure -- Veterans are older (49 versus 44) and have more years of service (18.4 versus 15.2) than the average Federal employee.

PREFACE

The U.S. Office of Personnel Management (OPM) administers the Veterans' Preference Act of 1944 (Codified in title 5, United States Code) and issues an annual Congressional report on the employment of disabled veterans (as required by 38 U.S.C. 4214). We also provide agencies with up-to-date data so they may track the hiring and promotion of veterans and conduct workforce analyses. This profile presents information on all veterans in the Federal civilian workforce and contains these statistics on veterans (both with and without preference):

- VETERANS IN THE NATION
- VETERANS IN THE FEDERAL WORKFORCE
- HIRING, CONVERSION, PROMOTION AND LOSS TRENDS FOR VETERANS
- HIRING IN SELECTED PROGRAMS
- DISTRIBUTION OF VETERANS AMONG FEDERAL AGENCIES
- DISTRIBUTION OF VETERANS BY OCCUPATION AND GRADE
- PARTICIPATION IN SELECTED OCCUPATIONS

This profile is a part of a series of issuances which shows how veterans, minorities and women are represented in the Federal Government. We welcome your comments.

A glossary of terms appears at the end of this profile. All material in this profile may be copied.

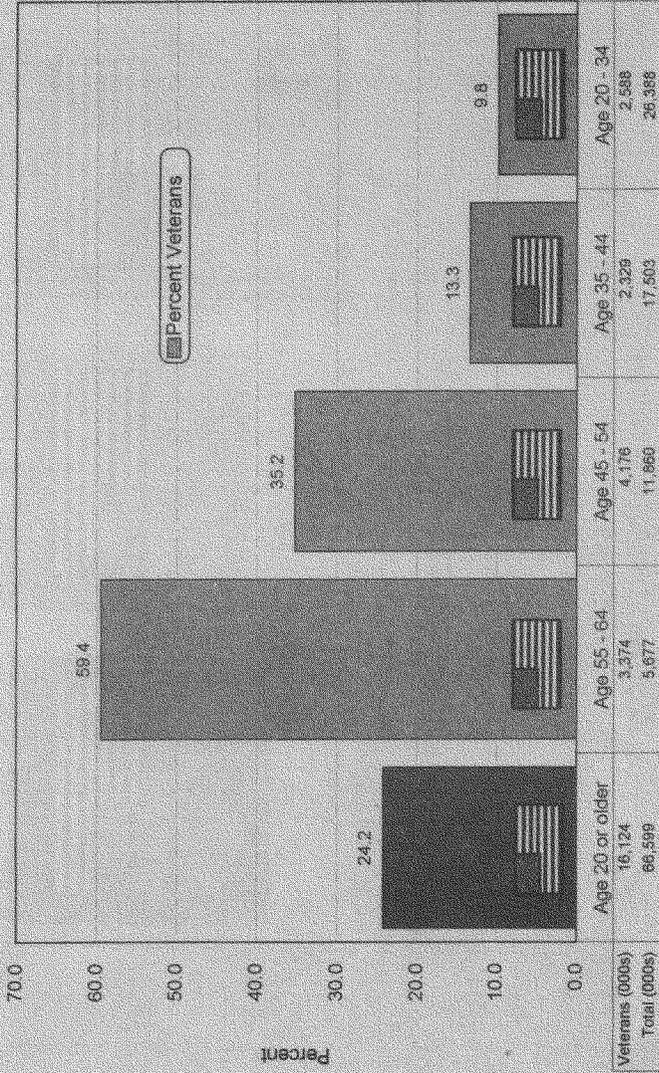
VETERANS
IN
THE NATION

VETERANS IN THE NATION

- ◆ According to Census Bureau 1990 data, there were 27.2 million Veterans (age 20 years or more*) in the United States of America. They formed 15.3 percent of the nation's 177 million population of men and women in the same age group.
- ◆ The 1990 Census showed that 96 percent of the veteran population are men. The median age for a male veteran was 55 years compared to 36 years for civilian non-veteran males in the same age group (age 20 years or more*).
- ◆ Among full-time workers, average income of male veterans (age 20 years or more*) in 1994 was \$34,541 compared to \$27,896 for non-veteran workers (Department of Labor/BLS, March 1995 Current Population Survey).
- ◆ The representation of veterans in the Civilian Labor Force is declining for younger age groups.

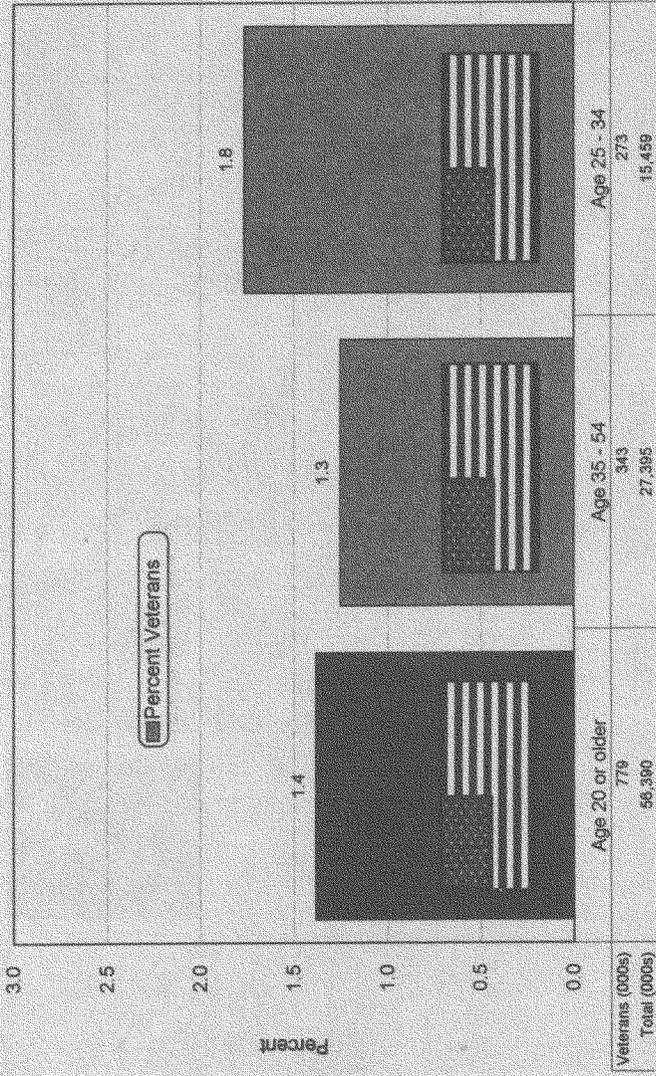
* Veterans aged less than 20 years are too few in number (no more than 1,000) to be statistically significant.
Source: U.S. Department of Veterans Affairs, Annual Report of the Secretary of Veterans Affairs, FY 1994.

Percentage of Veterans in Labor Force (Men by Age Group) FY 1994



NOTE: Female veterans comprise 4.5 percent of all veterans.
Source: Department of Veterans Affairs - Annual Report (FY 1994)

Percentage of Veterans in Labor Force (Women by Age Group) FY 1994



NOTE: Female veterans constitute 4.5 percent of all veterans.
Source: Department of Veterans Affairs - Annual Report (FY 1994)

VETERANS
IN THE
FEDERAL
WORKFORCE

VETERANS IN THE FEDERAL WORKFORCE

1994

- ◆ The representation of Veterans in Federal executive branch agencies changed slightly from 28.9 to 28.0 percent of the workforce, despite a decline of 6.1 percent in Federal civilian employment. There were 2,176,000 Federal employees in September 1992 and 2,043,000 in September 1994; a difference of 133,000.
- ◆ Veterans declined from 37.7 percent of the Federal civilian workforce in 1984 to 29.8 percent in 1990. Their representation since 1992 has stabilized at around 28 percent.
- ◆ Vietnam Era Veterans have increased from 41 percent of all Veterans in the Federal executive branch workforce in 1984 to 61 percent in 1994.
- ◆ In September 1994, 15.5 percent (87,000) of all Veterans employed in Federal executive branch agencies were Disabled Veterans compared to 14.8 percent (91,000) in September 1992.

VETERANS IN THE FEDERAL WORKFORCE (Continued)

1994

- ◆ Veterans and Vietnam-Era veterans have higher representation in the Federal civilian workforce (28.0 and 16.5 percent, respectively) than in the Civilian labor force (23.0 and 10.4 percent, respectively).
- ◆ Disabled and 30 percent or more disabled veterans are also better represented in the Federal civilian workforce (4.2 and 1.5 percent, respectively) than in the Civilian labor force (3.2 and 1.1 percent, respectively).
- ◆ Minorities represent over 25 percent of all veterans employed in the Federal workforce.

PROFILE OF VETERANS IN THE FEDERAL WORKFORCE

1994

Demographic Indicator	All Federal Civilian Employees	Federal Veteran Employees	Federal Vietnam Era Veteran Employees	Federal Disabled Veteran Employees	Federal 30% Disabled Veteran Employees
Average Age (Years)	44.1	48.7	48.2	48.4	48.6
Average years of Service	15.2	18.4	17.3	15.3	13.9
Education (percent Bachelor's Degree or higher)	38	31	27	27	26
Gender (percent)					
- Men	56	93	95	94	94
- Women	44	7	5	6	6
Veteran's Preference (percent)	28.7	87	98	100	100
Vietnam Era Veterans (percent)	16.7	61	100	71	74
Race & National Origin (percent)					
- White	71.5	74.2	73.5	71	71
- Black	16.7	14.7	15.1	18	19.1
- Hispanic	5.7	6.3	6.5	6.4	6
- Asian/Pac. Islander	4.1	3.1	3.5	3	2.7
- Native American	2	1.7	1.4	1.6	1.6

Source: U.S. OPM's Central Personnel Data File

December 1995 - 6

PROFILE OF VETERANS IN THE FEDERAL WORKFORCE
(Continued)
1994

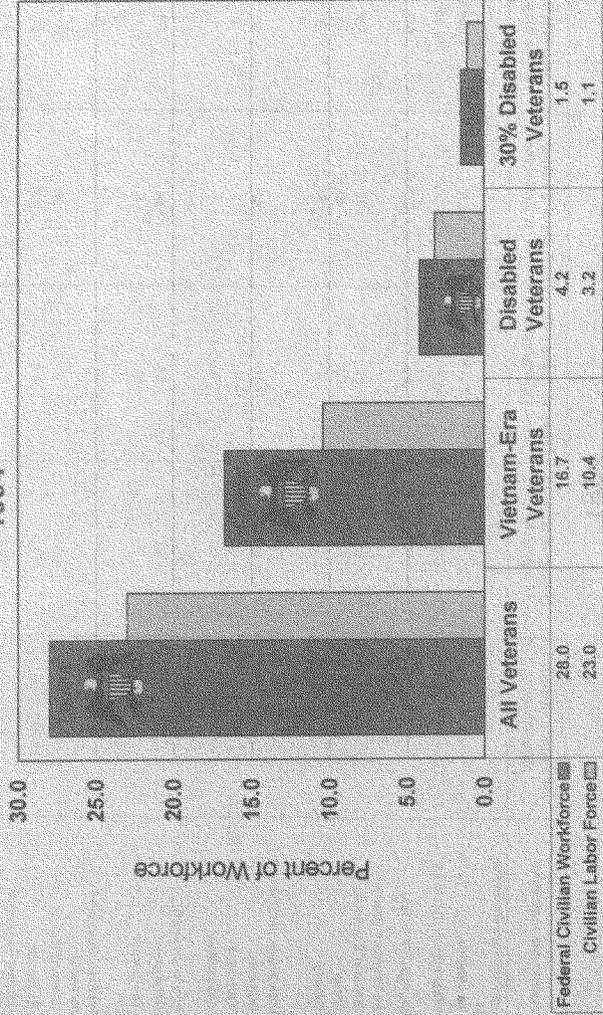
Employment Indicators	All Federal Civilian Employees	Federal Veteran Employees	Federal Vietnam Era Veteran Employees	Federal Disabled Veteran Employees	Federal 50% Disabled Veteran Employees
Avg Adjusted Basic Pay (\$)					
- Worldwide	38,501	40,324	39,316	35,780	33,885
- Washington, DC MSA	48,809	56,875	54,411	51,200	48,484
Average GS Grade	9.2	10	9.8	9.2	8.7
Pay Systems (percent)					
- General Schedule	74	65	62	67	68
- Wage	15	28	34	30	26
- Others	11	5	4	3	3
Work Schedule (percent)					
- Full-time	92	97	98	97	97
- Part-time	4	2	1	2	2
- Intermittent	4	1	1	1	1
Tenure (percent)					
- Permanent	90	93	95	94	93
- Temporary	10	7	5	6	7
Position Occupied (percent)					
- Competitive	79.9	88.5	91	90	90.2
- Excepted	19.7	11.2	8.8	9.9	9.7
- Senior Executive Service	0.4	0.4	0.2	0.1	0.1
Supervisory Status (percent)	12.2	16.4	15.9	13.7	12.2

Source: U.S. OPM's Central Personnel Data File

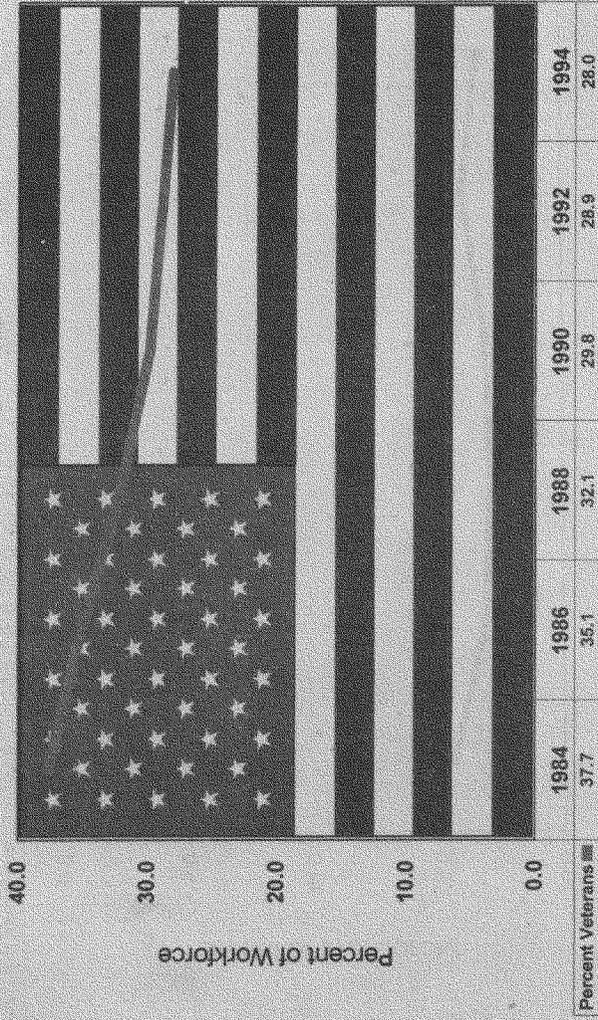
December 1995 - 9

Veterans Representation in the Federal Executive Branch Workforce is Higher Than in the Civilian Labor Force

1994



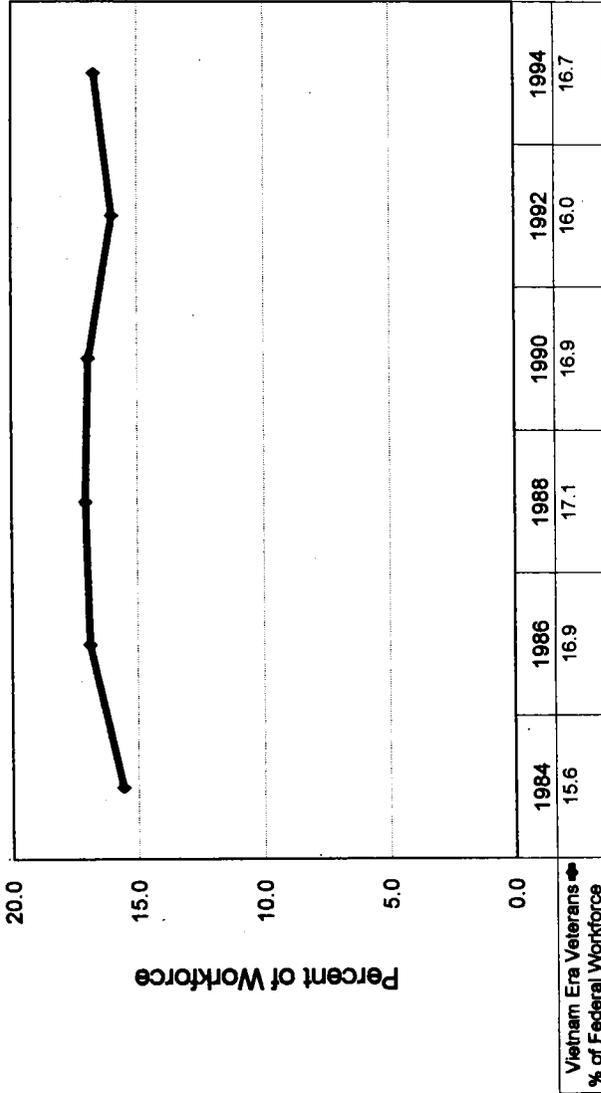
Veterans as a Percent of the Federal Civilian Workforce Stabilizes



Source: U.S. OPM's Central Personnel Data File

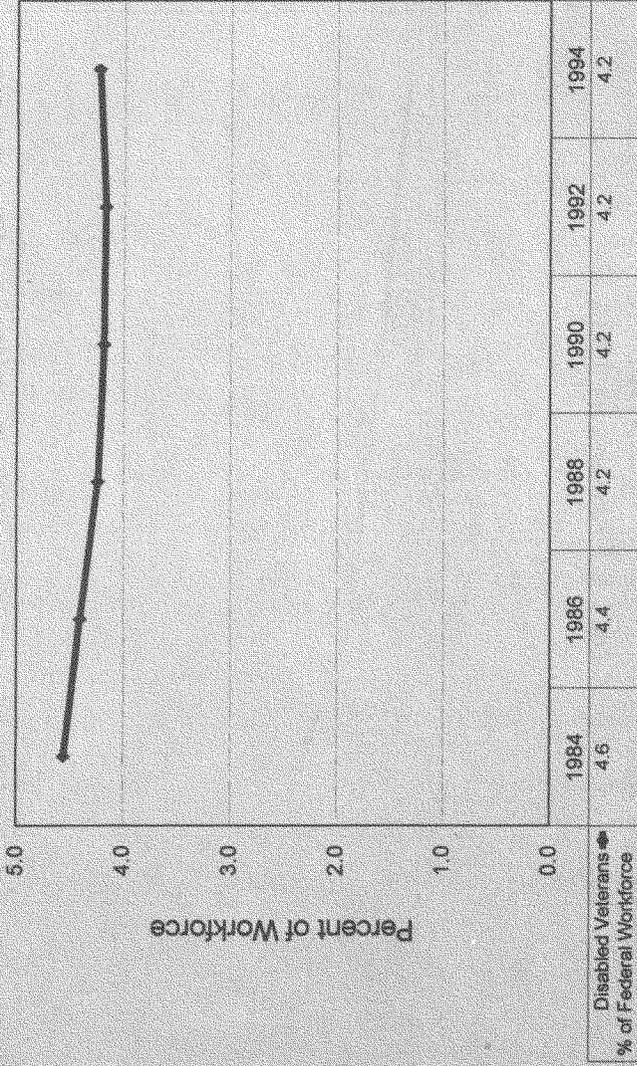
December 1995 - 11

The Percentage of Vietnam Era Veterans in the Federal Civilian Workforce Increased from 15.6 Percent in 1984 to 16.7 Percent in 1994



Source: U.S. OPM's Central Personnel Data File

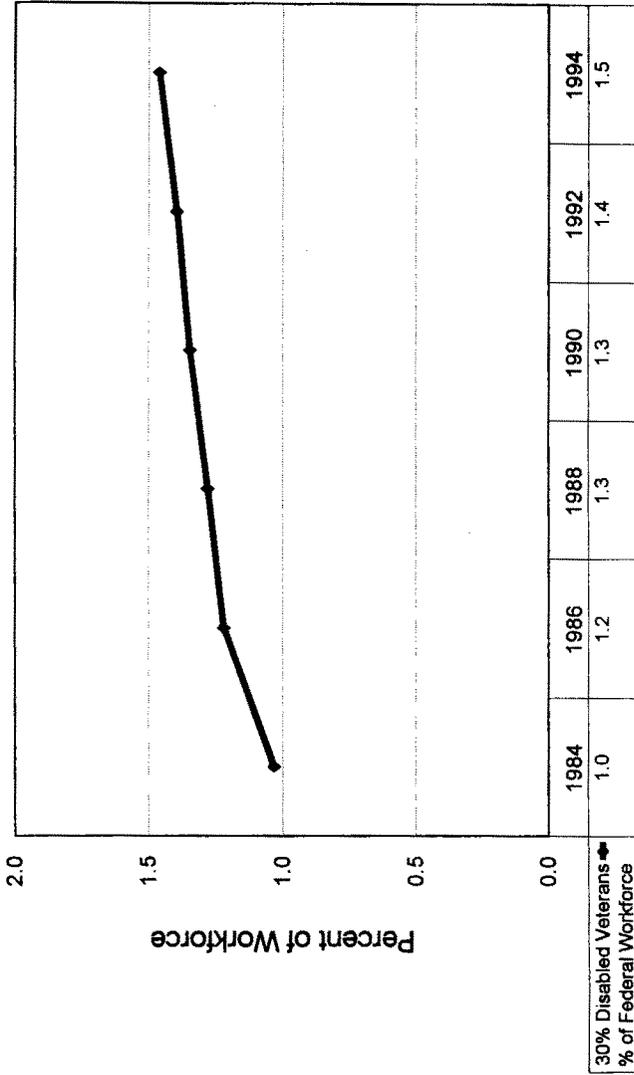
The Percentage of Disabled Veterans in the Federal Civilian Workforce Has Remained at 4.2 Percent Since 1988



Source: U.S. OPM's Central Personnel Data File

December 1995, 19

The Percentage of 30 Percent Disabled Veterans in the Federal Civilian Workforce Increased from 1.0 Percent in 1984 to 1.5 Percent in 1994.

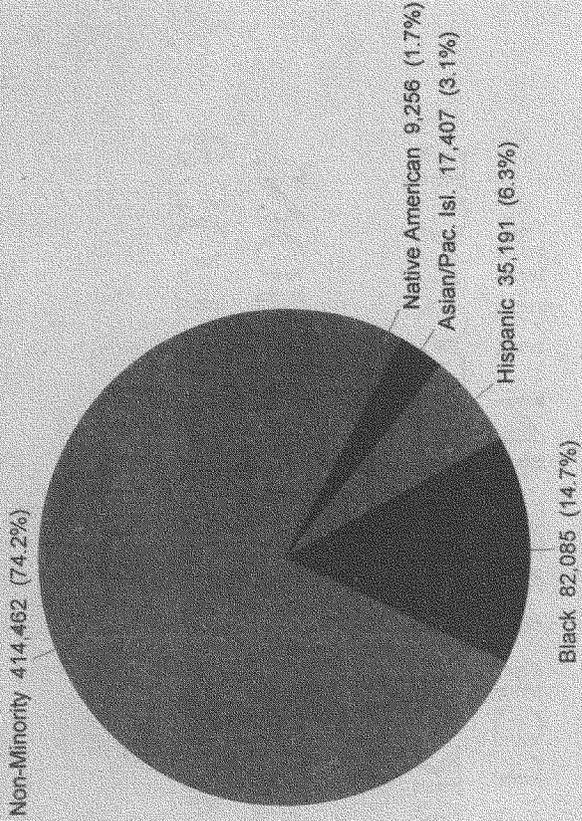


Source: U.S. OPM's Central Personnel Data File

December 1995 - 14

Minorities Represent Over 25 Percent of All Veterans Employed in the Federal Workforce

September 30, 1994



Source: U.S. OPM's Central Personnel Data File

December 1996, 15

VETERANS IN THE
FEDERAL WORKFORCE



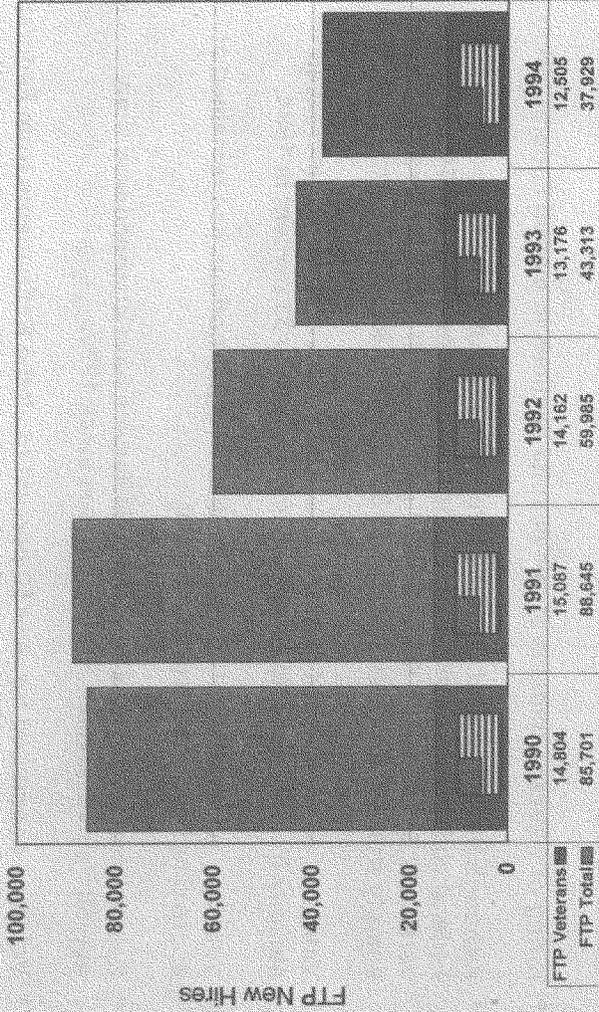
HIRING, CONVERSION,
PROMOTION, AND LOSS
TRENDS

Hiring, Conversion, Promotion, and Loss Trends of Veterans in the Federal Civilian Workforce

- Hiring of veterans remains stable despite declines in overall Federal hiring.
- Although the number of veterans hired into the Full-Time Permanent (FTP) Federal civilian workforce has declined with downsizing (14,804 in 1990 versus 12,505 in 1994), the veterans' percent of all FTP new hires has risen sharply from 17.3 percent in 1990 to 33.3 percent in 1994.
- Veterans' percentage of Federal civilian FTP conversions has increased steadily from approximately 28 percent in 1990 to 33 percent in 1994.
- Veterans' percentage of Federal civilian FTP promotions has remained at approximately 22 percent since 1990.
- Separations of veterans from Federal service have changed less than overall Federal civilian FTP employees since 1990.
- Veterans accounted for over 50 percent of all the Retirements from Federal Service in the last 5 Years.

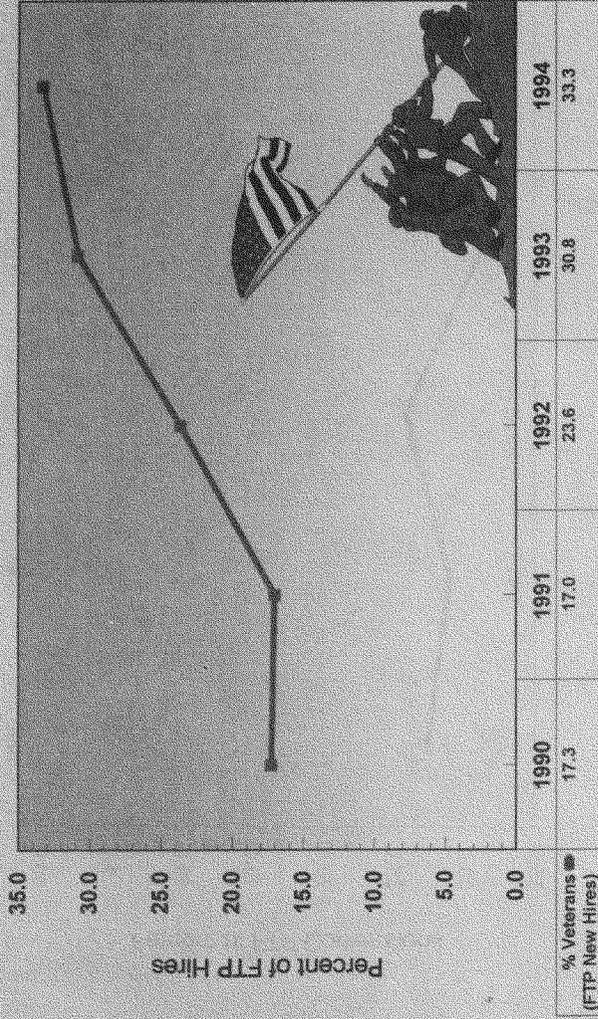
FTP Hiring of Veterans Remains Stable Despite Overall Hiring Declines

1990 - 1994



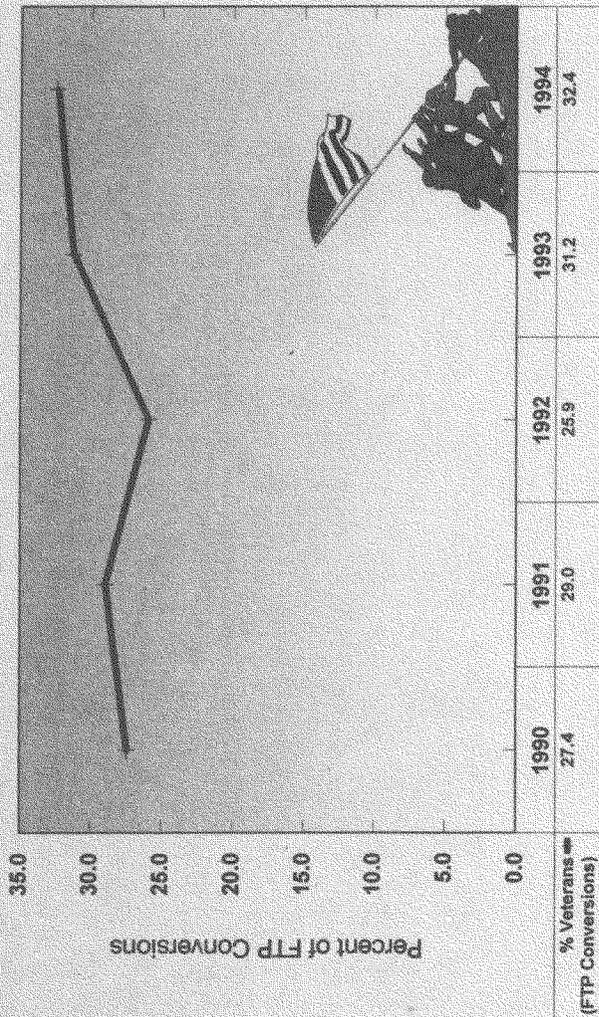
Full-Time Permanent (FTP) employees are those working full-time work schedules and serving under career or career-conditional appointments.
 Source: U.S. OPM's Central Personnel Data File.
 December 1995 - 16

Veterans' Percentage of Federal Civilian FTP New Hires Has Increased Steadily Since 1990



Full-Time Permanent (FTP) employees are those working full-time work schedules and serving under career or career-conditional appointments.
Source: U.S. OPM's Central Personnel Data File

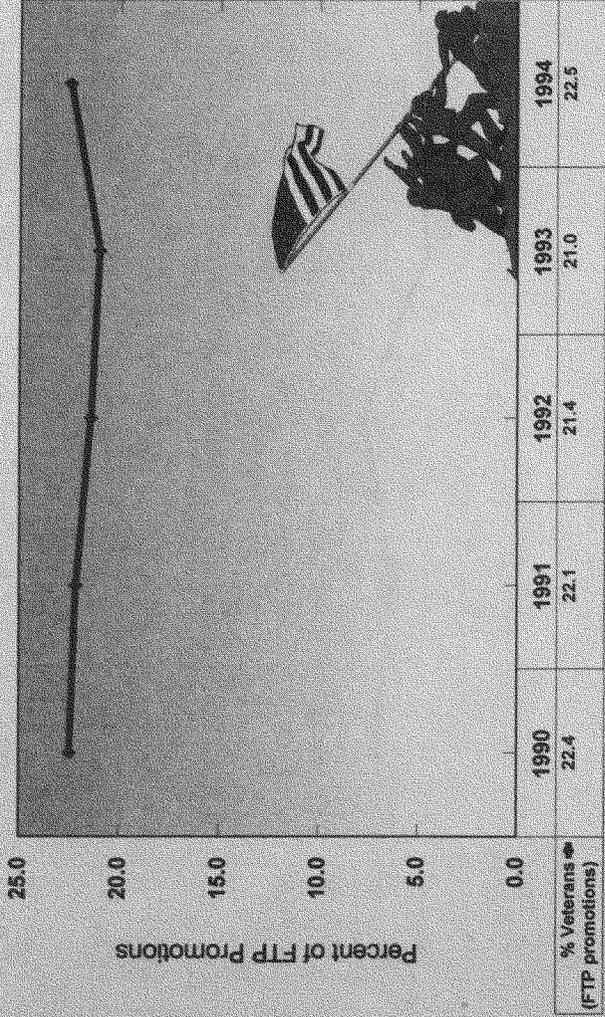
Veterans' Percentage of Federal Civilian FTP Conversions Has Increased Since 1990



Source: U.S. OPM's Central Personnel Data File

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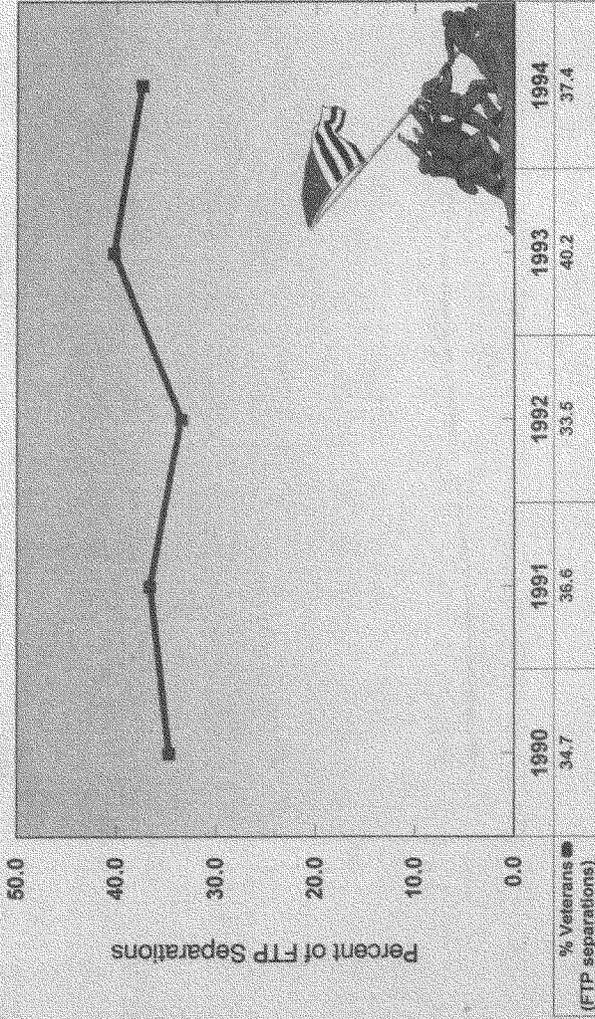
Veterans' Percentage of Federal Civilian FTP Promotions Has Remained Steady Since 1990



Source: U.S. OPM's Central Personnel Data File

December 1995 - 21

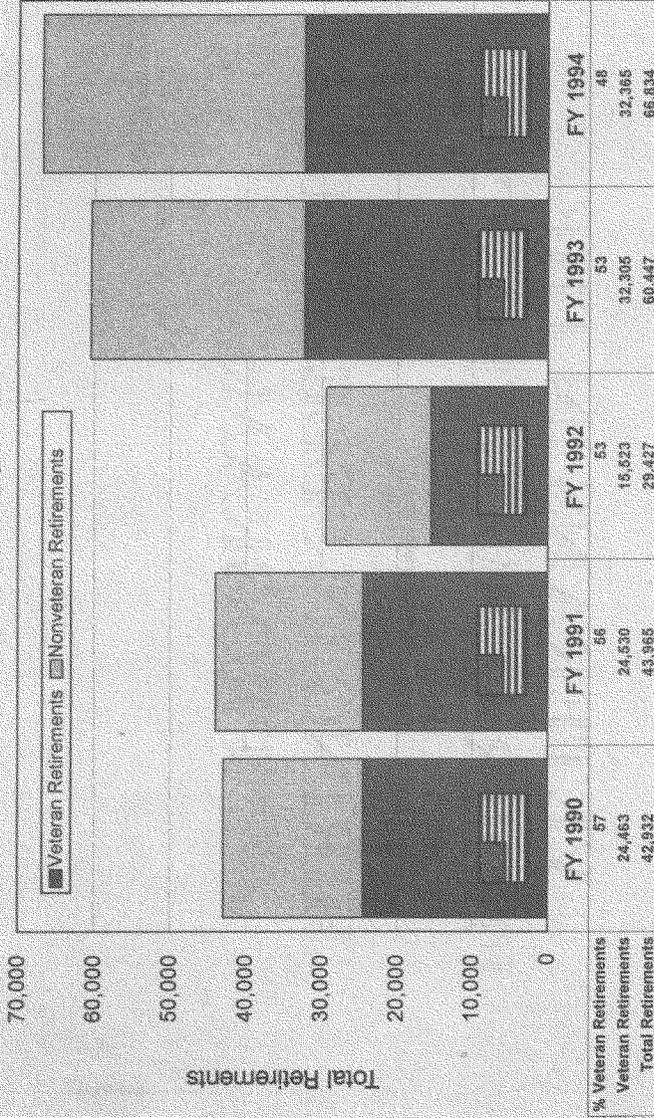
Separations of Veterans Have Remained Stable Since 1990



Source: U.S. OPM's Central Personnel Data File

December 1995 - 22

Veterans Accounted for Over Half the Retirements from Federal Service in the Last 5 Years FY 1990 - 1994



Source: U.S. OPM's Central Personnel Data File

December 1995, 23

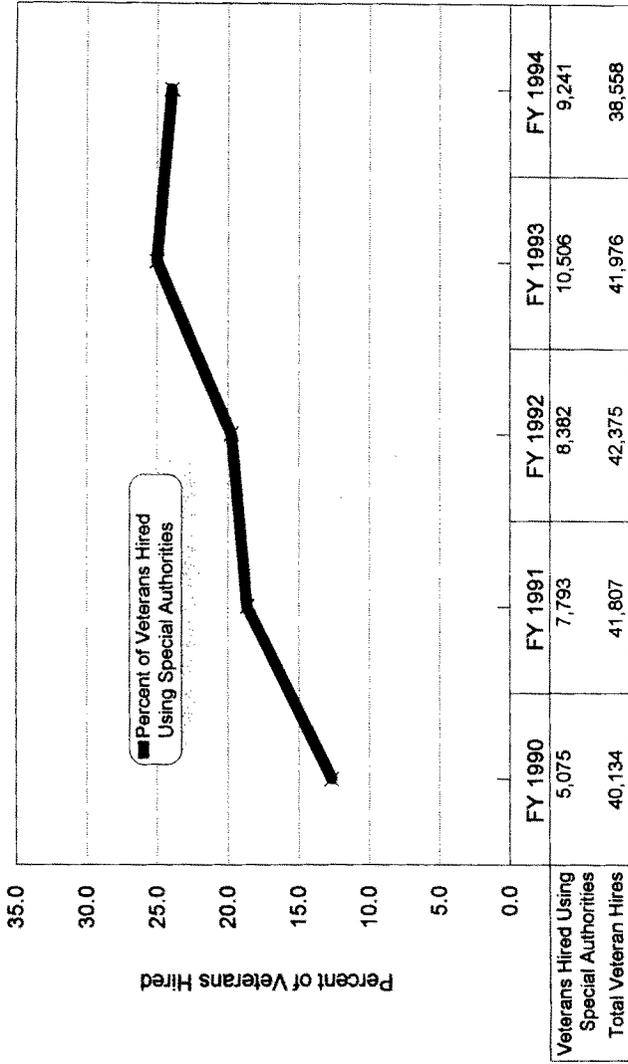
VETERANS IN THE
FEDERAL WORKFORCE

HIRING IN SELECTED
PROGRAMS

APPOINTING AUTHORITIES APPLICABLE TO VETERANS

- ◆ **There are two appointing authorities in law which permit the non-competitive appointment of eligible veterans to Federal civilian positions:**
 - 1. The Veterans' Readjustment Appointment Authority (38 U.S.C. 4214) is open to all veterans who meet the basic eligibility requirements provided by law.**
 - 2. The special authority for 30 percent or more Disabled Veterans (5 U.S.C. 3112) permits these veterans to be hired directly by agencies without competition.**

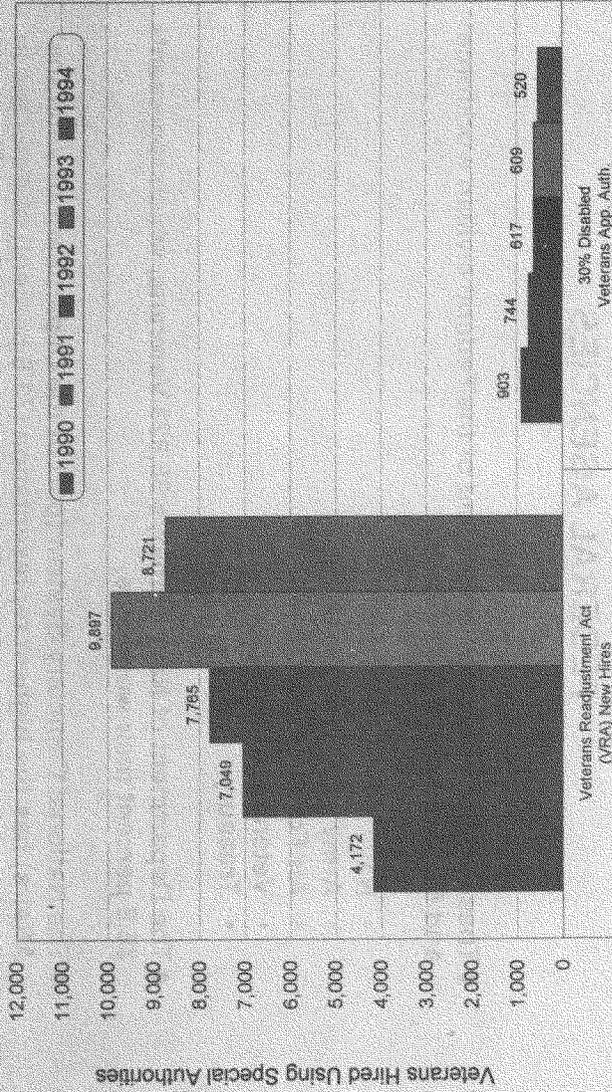
Use of Special Appointing Authorities for Hiring Veterans Has Increased from 13 to 24 Percent since FY 1990



Source: U.S. OPM's Central Personnel Data File

New Hires Under the Veterans' Readjustment Act (VRA) Accounted for 92 Percent of Employees Hired Using the Two Special Appointing Authorities for Veterans

FY 1990 - FY 1994



Source: U.S. OPM's Central Personnel Data File

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DISTRIBUTION OF VETERANS AMONG FEDERAL AGENCIES

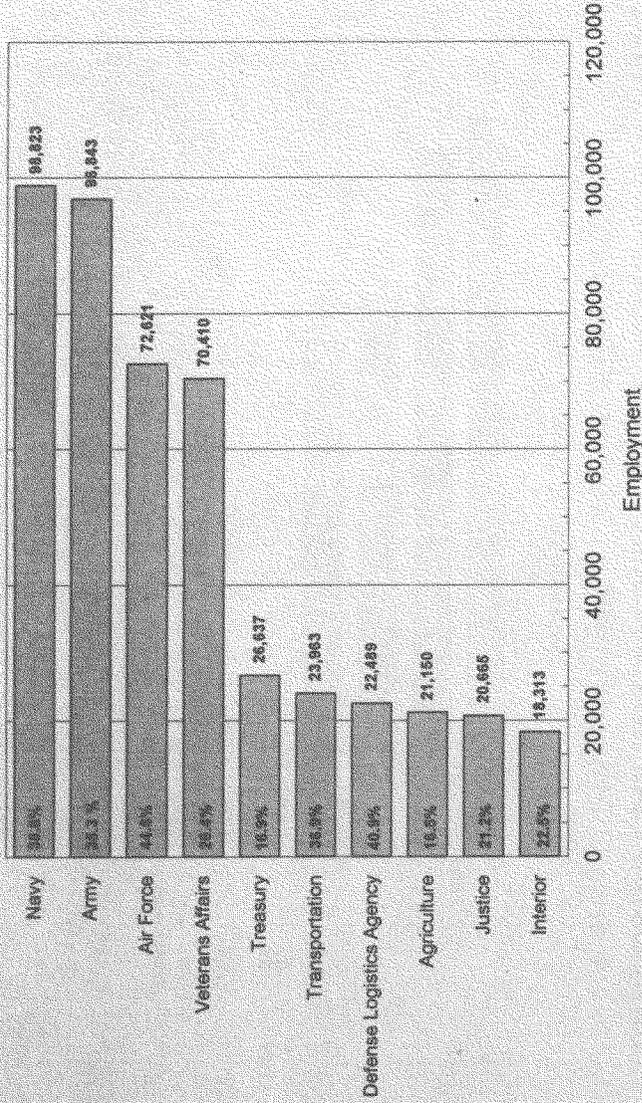
◆ These agencies employ 56 percent of the Federal civilian workforce and 65 percent of the Veterans:

- Navy
- Army
- Air Force
- Veterans Affairs
- Treasury

◆ The Department of Navy employs 98,823 Veterans, which represents 38.8 percent their workforce.

◆ The National Cemetery System (part of the Department of Veterans' Affairs) has the highest representation (73.6 percent) of Veterans in their workforce.

Non-Postal Federal Executive Branch Agencies with the Largest Employment of Veterans September 30, 1994

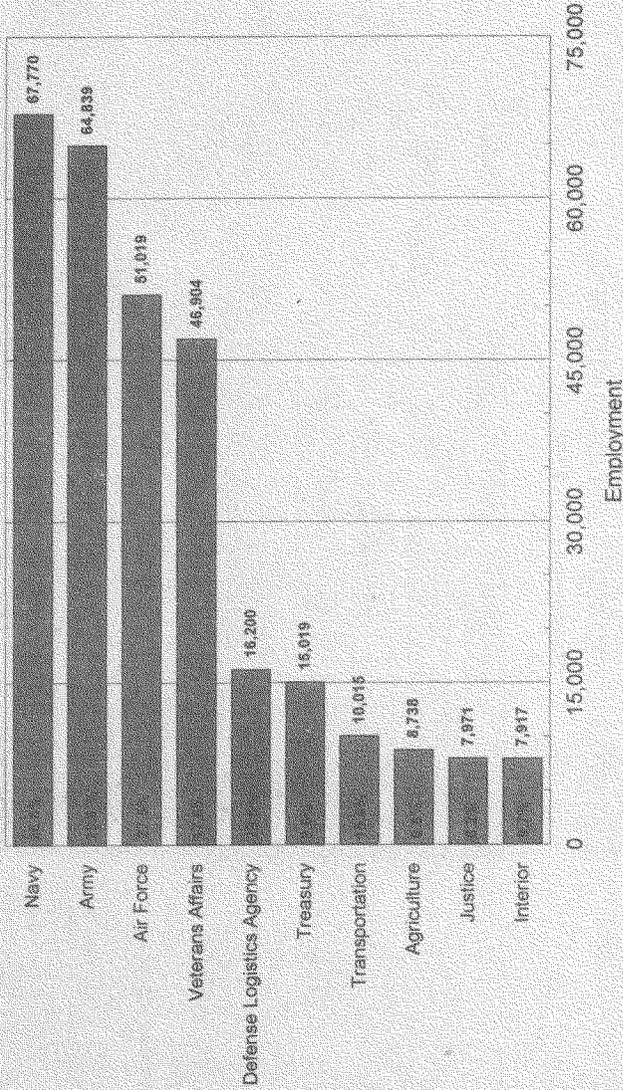


Source: U.S. OPM's Central Personnel Data File

December 1995 - 29

Non-Postal Federal Executive Branch Agencies with the Largest Employment of Vietnam Era Veterans

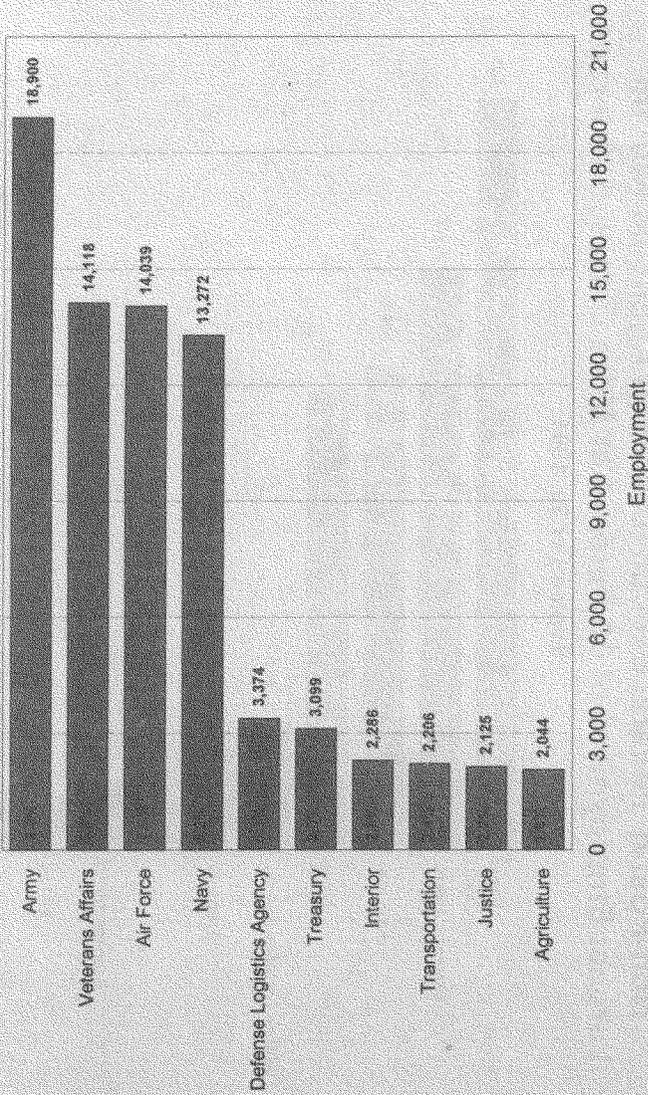
September 30, 1994



Source: U.S. OPM's Central Personnel Data File

Non-Postal Federal Executive Branch Agencies with the Largest Employment of Disabled Veterans

September 30, 1994

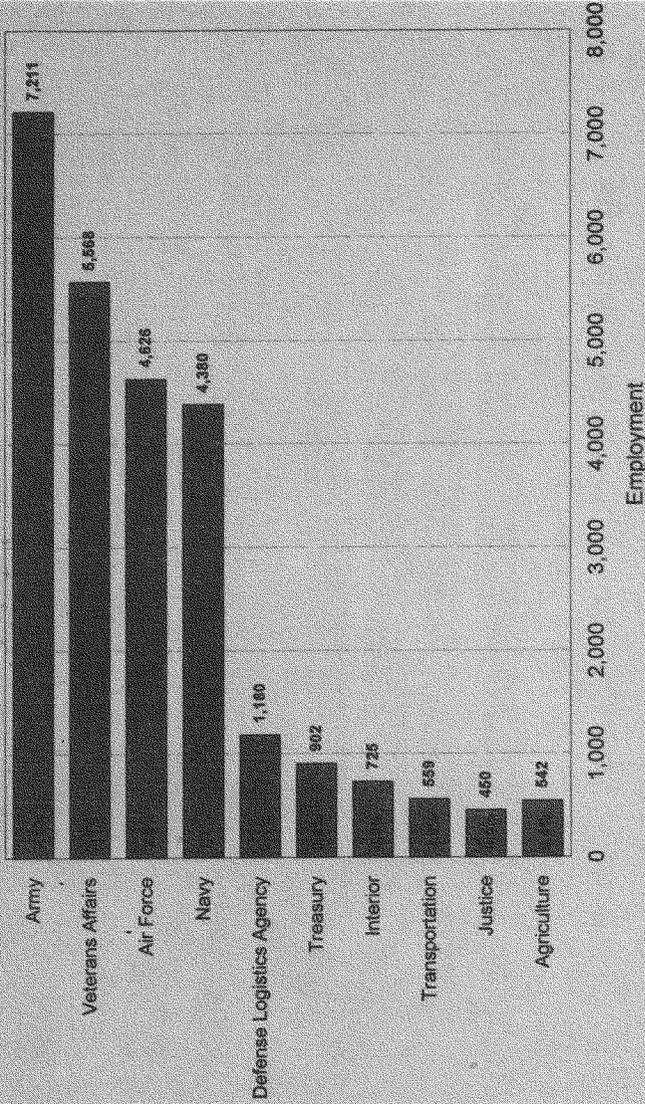


Source: U.S. OPM's Central Personnel Data File

December 1995, 31

Non-Postal Federal Executive Branch Agencies with the Largest Employment of 30 Percent or More Disabled Veterans

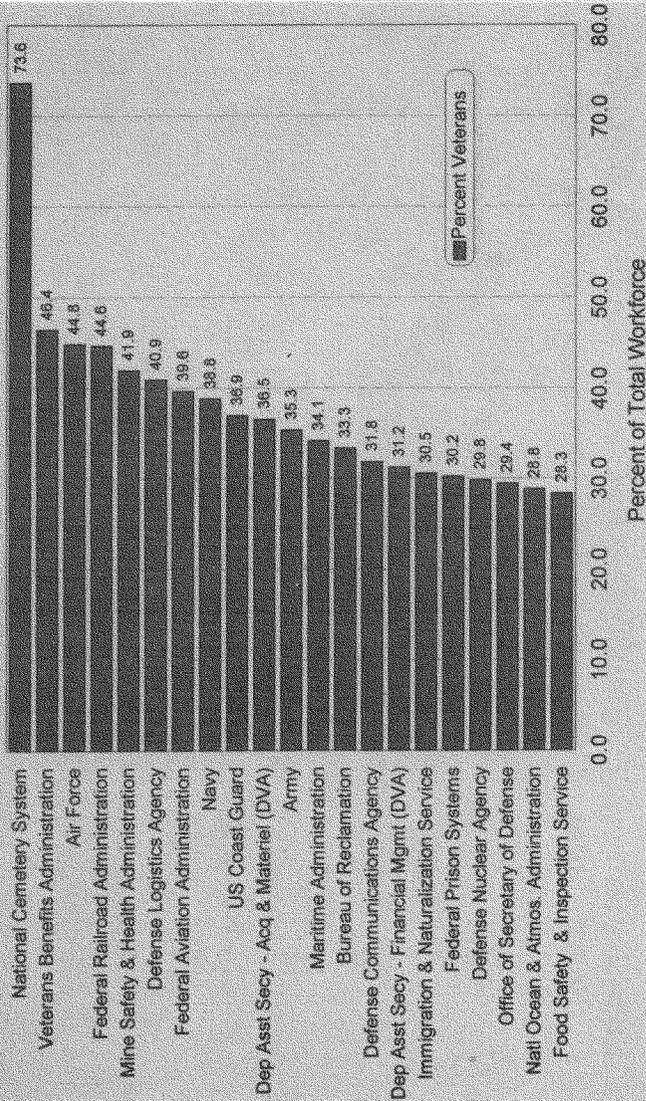
September 30, 1994



Source: U.S. OPM's Central Personnel Data File

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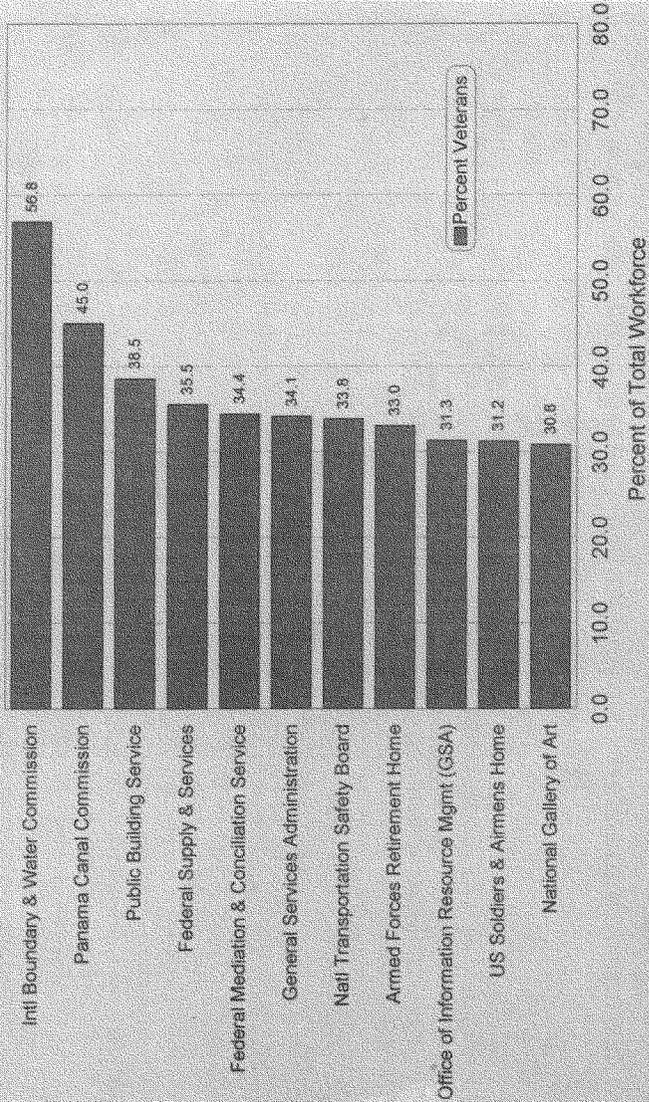
Non-Postal Federal Executive Departments (by Sub-Element) Exceeding the Representation (Percentage) of Veterans in the Federal Civilian Workforce September 30, 1994



Source: U.S. OPM's Central Personnel Data File

December 1995 - 33

Non-Postal Federal Executive Independent Agencies and Sub-Elements (200+ Employees) Exceeding the Representation (Percentage) of Veterans in the Federal Civilian Workforce September 30, 1994



Source: U.S. OPM's Central Personnel Data File

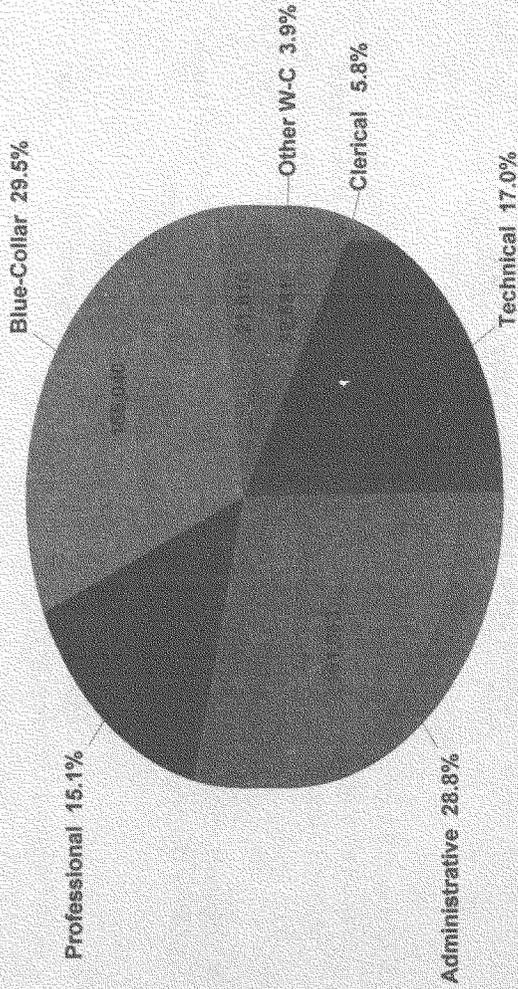
December 1995 34

PARTICIPATION OF VETERANS IN DIFFERENT OCCUPATIONAL GROUPS

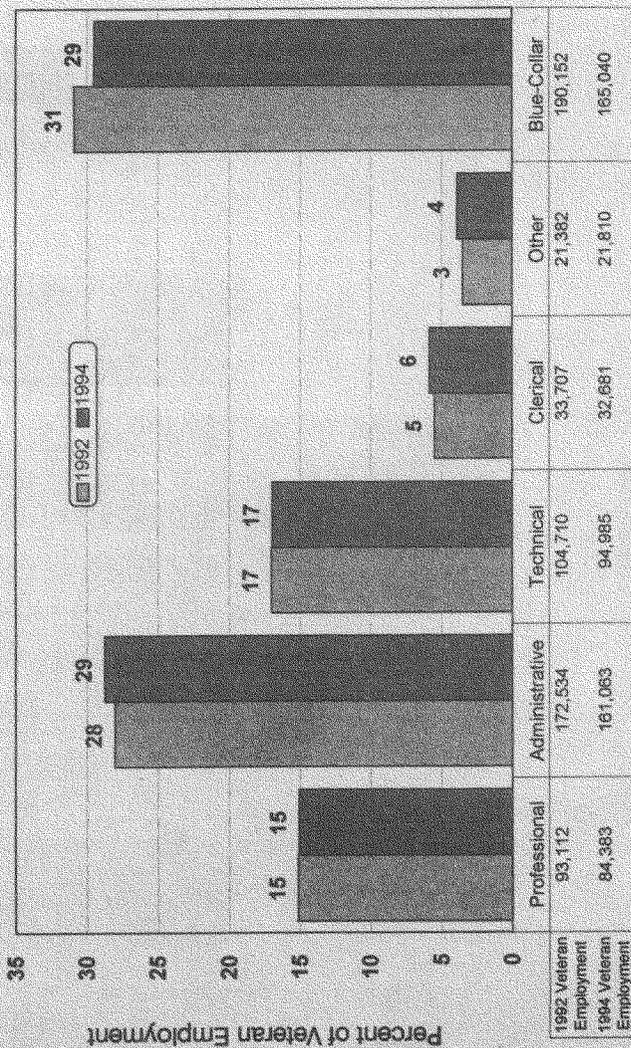
- ◆ **Almost 61 percent of veterans held permanent positions in professional, administrative, or technical occupations in GS and Related Pay Plans and the Senior Executive Service (SES).**
- ◆ **Veteran representation in all occupational categories has remained stable during recent downsizing of the Federal workforce.**
- ◆ **Veterans are prominent in Blue-Collar positions and White-Collar GS and Related Grades 9-15.**

Almost Sixty-one Percent of Veterans Held Permanent Positions in Professional, Administrative, or Technical Occupations in GS and Related Pay Plans and the SES

September 30, 1994



Veteran Representation in All Occupational Categories Has Remained Stable during Recent Downsizing of the Federal Workforce

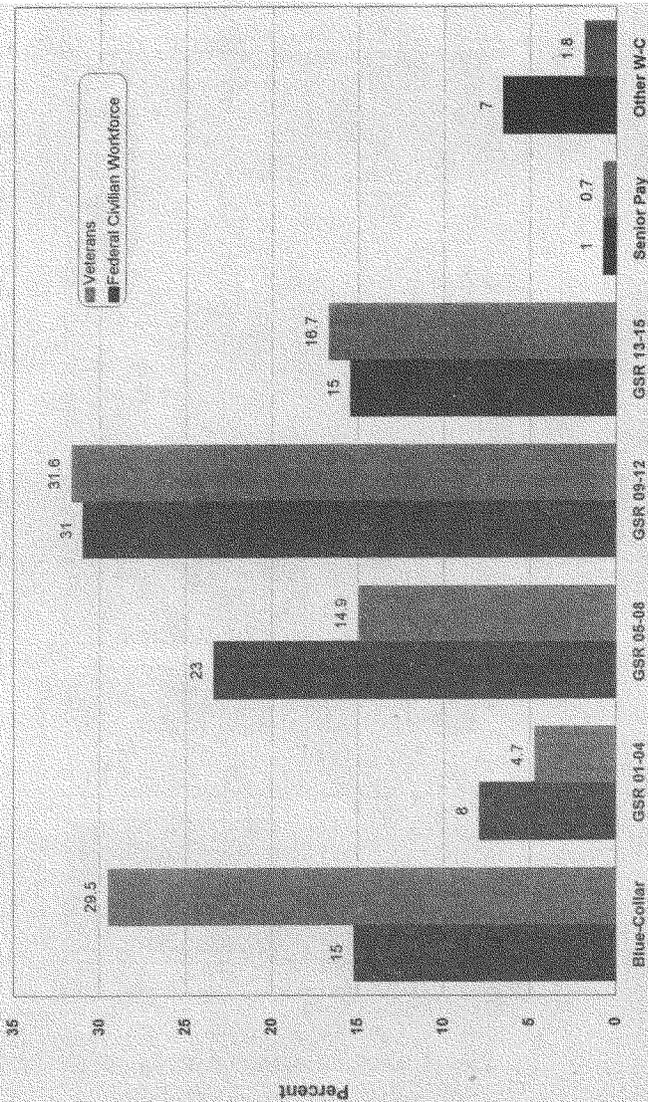


Source: U.S. OPM's Central Personnel Data File

December 1995 - 3

Veterans are Prominent in Blue-Collar Positions and White-Collar GS and Related Grades 9-15

September 30, 1994



Source: U.S. OPM's Central Personnel Data File

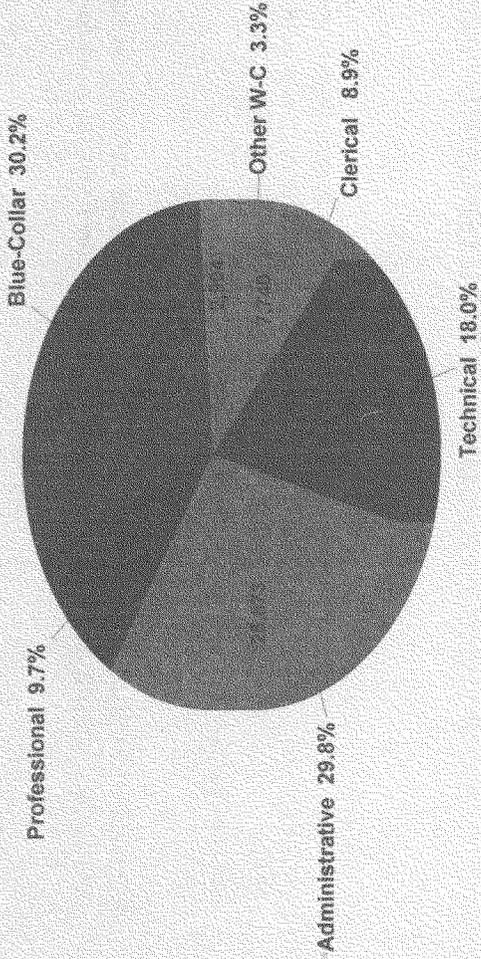
December 1995 - 38

PARTICIPATION OF DISABLED VETERANS IN DIFFERENT OCCUPATIONAL GROUPS

- ◆ **Almost 58 percent of disabled veterans held permanent positions in professional, administrative, or technical occupations in GS and Related Pay Plans and the Senior Executive Service (SES). Thirty percent are in Blue-Collar positions.**
- ◆ **Disabled veteran representation in all occupational categories has remained stable during recent downsizing of the Federal workforce.**
- ◆ **Disabled veterans are prominent in Blue-Collar positions and White-Collar GS and Related Grades 9-12 .**

Almost Fifty-Eight Percent of Disabled Veterans Held Permanent Positions in Professional, Administrative, or Technical Occupations in GS and Related Pay Plans and the SES

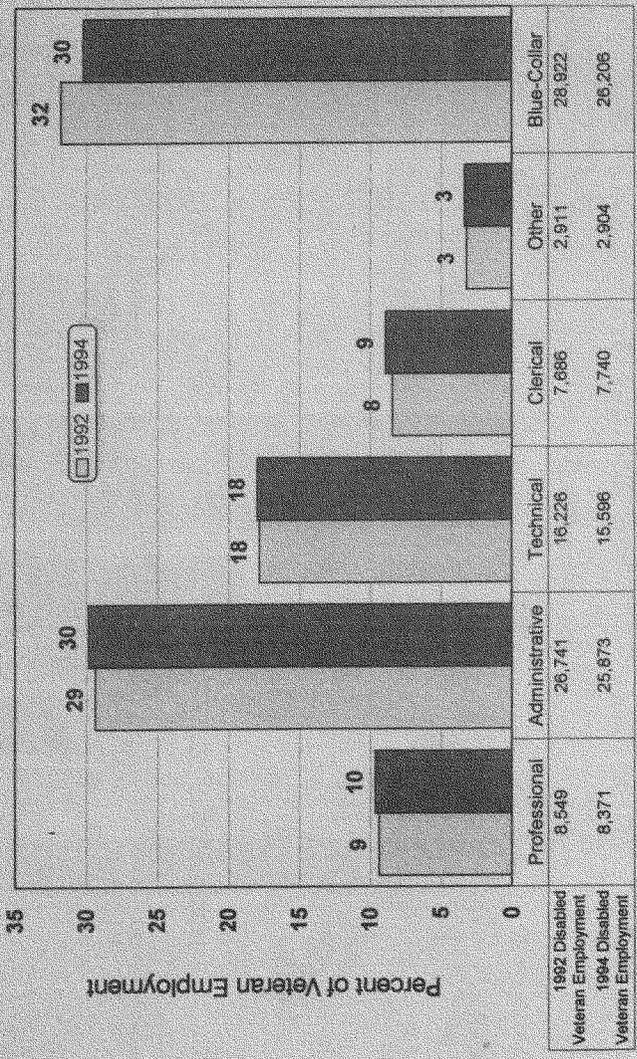
September 30, 1994



Source: U. S. OPI's Central Personnel Data File

December 1996 - 40

Disabled Veteran Representation in All Occupational Categories has Remained Stable during Recent Downsizing of the Federal Workforce

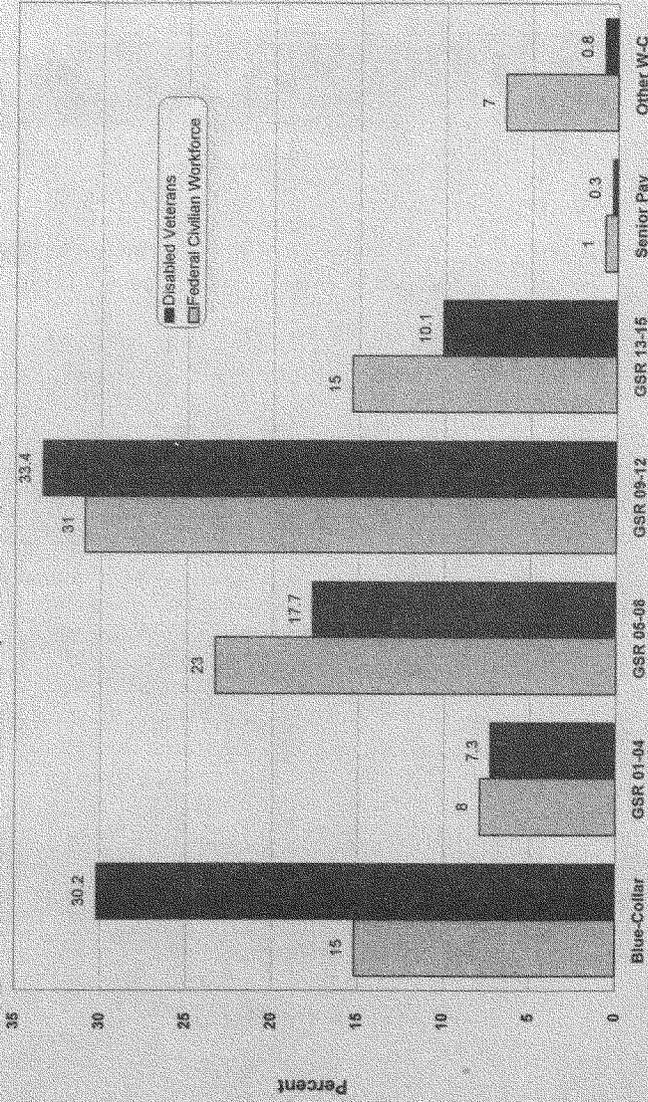


1992 Disabled Veteran Employment	9,549	26,741	16,226	7,666	2,911	29,922
1994 Disabled Veteran Employment	8,371	25,873	15,596	7,740	2,904	29,206

Source: U.S. OPM's Central Personnel Data File

Disabled Veterans are Prominent in Blue-Collar Positions and White-Collar GS and Related Grades 9-12

September 30, 1994



Source: U.S. OPM's Central Personnel Data File

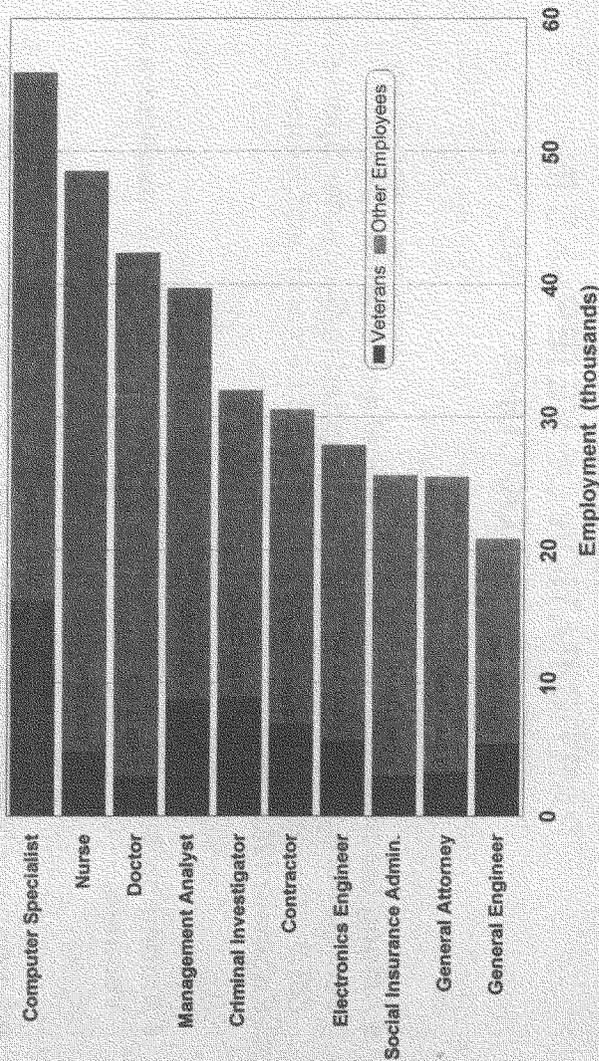
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PARTICIPATION OF VETERANS IN SELECTED OCCUPATIONS

- ◆ **Among the most populous professional and administrative occupations, veterans are best represented in Computer Specialist (28.9 percent), Criminal Investigator (27.8 percent), and General Engineer (26.0 percent) series.**
- ◆ **Among growing occupations, 42 percent of Customs Inspectors are Veterans.**
- ◆ **Among declining occupations, Veterans represent almost 60 percent of all Quality Assurance Specialists.**

Representation of Veterans in the Most Populous Professional and Administrative Occupations

September 30, 1994

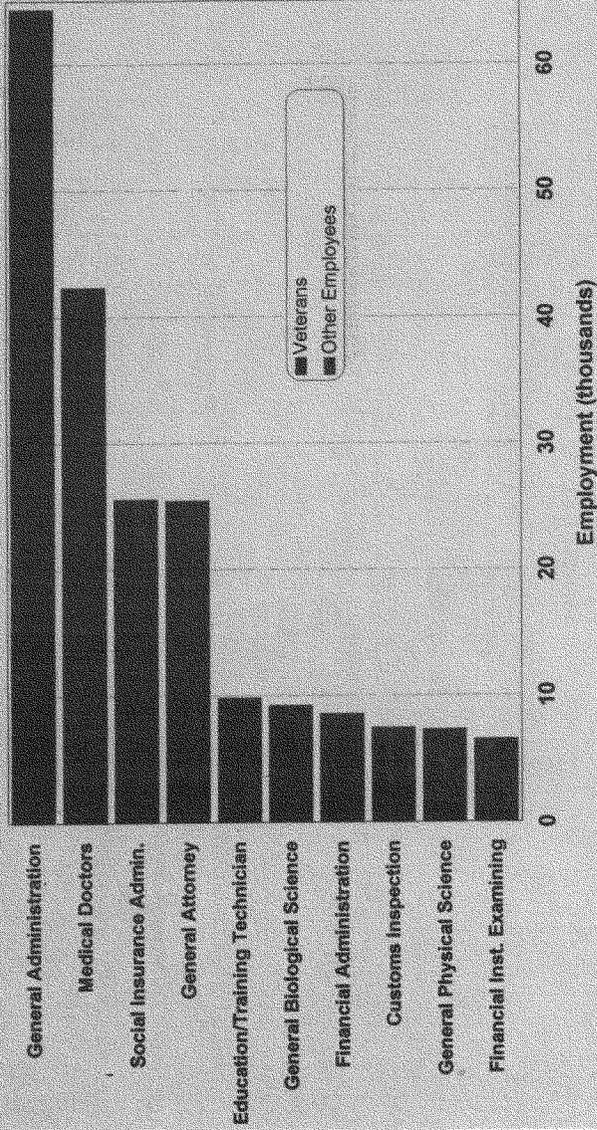


Source: U.S. OPM's Central Personnel Data File

December 1995 - 44

Representation of Veterans in Growing Occupations

September 30, 1994

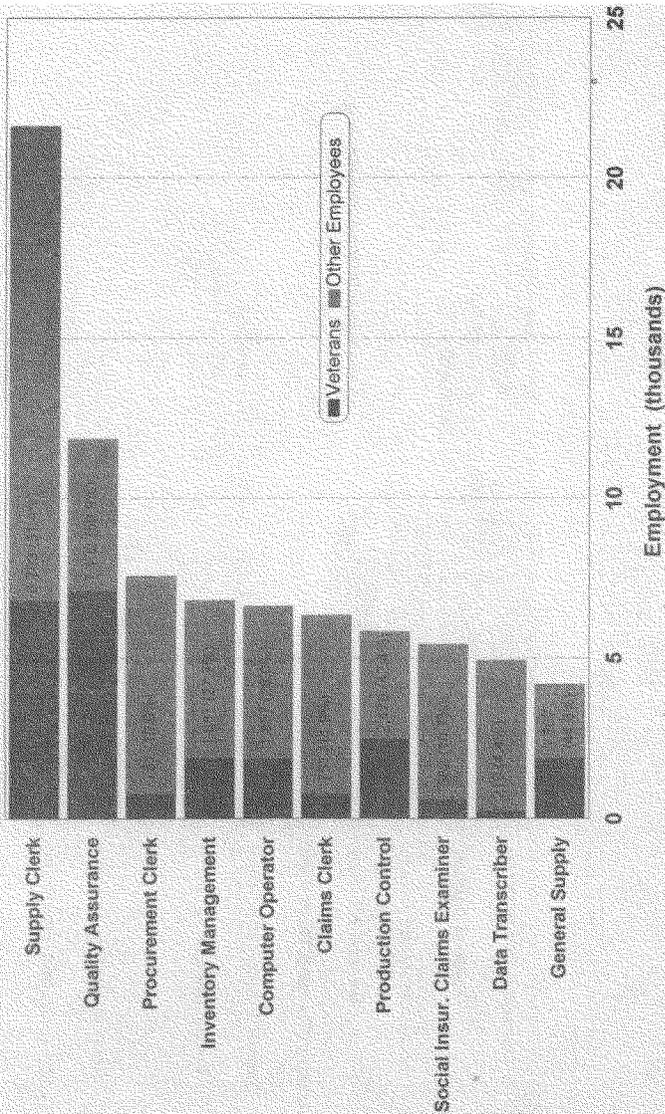


Source: U.S. OPM's Central Personnel Data File

December 1995 #6

Representation of Veterans in Declining Occupations

September 30, 1994



Source: U.S. OPM's Central Personnel Data File

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VETERANS IN THE FEDERAL GOVERNMENT

Glossary of Terms¹

Civilian Labor Force (CLF). The CLF data are from the Bureau of Labor Statistics' Current Population Survey, September 1994, and were adjusted to include data on Puerto Rico supplied by the Bureau of Labor Statistics, Commonwealth of Puerto Rico.

Competitive Service. The Competitive Service consists of all civil service positions in the executive branch except, (a) positions that are specifically excepted by statute; (b) positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and, (c) positions in the Senior Executive Service.

Conversions. Changes from one appointment to another appointment in the same agency without a break in service.

Disabled Veterans (30% or more) Hiring Authority. A hiring authority used to hire veterans who have a service-connected 30 percent or more disability. (See definition for **Title 5 of the Code of Federal Regulations, 316.402 (b)(5)**).

Executive Branch. It covers all agencies except the U.S. Postal Service, Postal Rate Commission, Central Intelligence Agency, National Security Agency, Tennessee Valley Authority, White House Office, Office of the Vice President, Board of Governors of the Federal Reserve Board, and Defense Intelligence Agency, as well as agencies in the legislative and judicial branches.

Excepted Service. Any Federal employee not in the competitive service.

Federal Civilian Workforce (FCW). The FCW covers permanent, part-time and full-time employment in the General Schedule and related pay plans, predominant prevailing rate wage systems, and the Senior Executive Service.

Full-Time. Employees who are regularly scheduled to work the number of hours and days required by the administrative workweek for their employment group or class, usually a 5 day workweek with 8 hours per day.

Full-Time Permanent (FTP). Employees working full-time work schedules and serving under career or career-conditional appointments.

General Schedule (GS). The basic compensation schedule for most Federal civilian white-collar employees.

¹ - Glossary of terms are definitions as they apply to the coverage in this portfolio.

VETERANS IN THE FEDERAL GOVERNMENT

GS and Related. The GS and any other pay systems that follow the grade structure of the General Schedule or whose grade structure can be equated to GS grades by level of work responsibility.

Grade. An indicator of hierarchical relationships among positions covered by the same pay plan. For example, GS grades range from 1 to 15.

Intermittent. Employees who, because of the irregular or occasional nature of their work, cannot be given a prearranged scheduled tour of duty. Intermittent employees receive compensation only for the time actually employed or for services actually rendered.

Median. The *median* of a group of numbers is the middle number or value when each item in the group is arranged according to size; it generally has the same number of items above it as well as below it.

Part-time. Employees who are regularly scheduled to work less than the number of hours and/or days required by administrative work week for their employment group or class.

Permanent. Employees who have either completed a probationary period or are not required to serve one.

Senior Executive Service (SES). A pay system for top Federal managers including career and non-career appointments above grade GS-15 and not exceeding Level IV of the Executive Schedule.

Senior Level Pay Plan (SL). A pay system covering employees formerly in grades 16 through 18 of the General Schedule.

Senior Pay (SP). A statistical category that covers employees in pay systems for top Federal executives earning salaries above that of GS grade 15 - step 10. It includes SES and SL appointments.

Separation. A dynamic data category used in the statistical profile to account for people who leave Federal service. It includes quits, discharges, Reduction-in-force (RIF), Miscellaneous Termination, Retirement, Death and other separations. It does not include employees who transfer out of one Federal agency and into another.

Temporary. Employees who are serving under career-conditional or trial appointments, and under career appointments who are serving initial probationary periods.

VETERANS IN THE FEDERAL GOVERNMENT

Title 5 of the Code of Federal Regulations, 316.402 (b)(15). This hiring authority allows agencies to make direct appointments without examination, which may lead to conversions to career appointments, for veterans who have a service-connected 30 percent or more disability. This authority is pursuant to responsibilities assigned to the Office of Personnel Management (OPM) under section 403 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4214), and section 307 of the Civil Service Reform Act of 1978 (U.S.C. 3112).

Title 29 of the U.S. Code, Section 791, et. seq. (Section 501 of the Rehabilitation Act of 1973, as amended). Requires Federal agencies in the executive branch of Government to develop affirmative employment action programs for hiring, placement, and advancement of persons with disabilities.

Veterans' Preference. An employee's entitlement to statutory types of preference in the Federal service based on certain active military service that ended honorably.

Veterans' Readjustment Act (VRA) Hiring Authority -- 5 CFR 307.103. This authority allows agencies to appoint any veteran who meets the basic veterans readjustment eligibility requirements provided by law (38 U.S.C. 4214).

Vietnam Era Veterans. Veterans who served during the Vietnam era -- August 5, 1964, to May 7, 1975.

Mr. MICA. We would like to welcome our second panel, Mr. John Fales, columnist from the Washington Times, better known for his authorship of Sergeant Shaft, John Davis, a veteran and former Federal employee, and James Daub, a veteran.

Do we have all of these witnesses here? Oh, we have two of them. Is Mr. Daub here, James Daub?

Gentlemen, it's the custom of our panel, as we are a Government oversight and investigations subcommittee, to swear in our witnesses. We don't do that with Members of Congress; they've already been sworn in when they start their terms. If you wouldn't mind standing and raising your right hand.

And I think Mr. Daub has joined us, just in time, if you wouldn't mind standing and raising your right hand.

[Witnesses sworn.]

Mr. MICA. And we'll let the record reflect the witnesses answered in the affirmative.

Again, I would like to welcome our three panelists. Some of you have prepared lengthy statements that will be made a part of the record, and you'll each be recognized for 5 minutes, if you would like to use some of those comments from what you're submitting or elaborate on any points of particular interest to you and what you may think may be of interest to the panel.

Mr. Fales, we will recognize you first, and since you are visually impaired, we will try to identify ourselves as we get to the question part of this panel.

So I would like to welcome you. We'll start out with John Fales, columnist for the Washington Times. You're recognized for 5 minutes.

STATEMENTS OF JOHN FALES, COLUMNIST, THE WASHINGTON TIMES; JOHN DAVIS, VETERAN AND FORMER FEDERAL EMPLOYEE; AND JAMES DAUB, VETERAN

Mr. FALES. Thank you, sir. And a kudo to you and this distinguished subcommittee. I do want to mention that veterans are diverse. They are Democrats and Republicans, and they vote.

I've submitted testimony, and I think there are about 54 pages.

Mr. MICA. Yes, rather lengthy. That's why I said you were limited to 5 minutes.

Mr. FALES. Don't I get reasonable accommodations as a disabled vet?

Mr. MICA. In fact, we'll even go for 6, if you promise not to read the whole thing.

Mr. FALES. Thank you, sir. I'll submit it in braille, sir. And I also—in addition to the testimony and the attachments, I also would like to add another memo to Shaft that was handed to me on the way in to submit for the record. It's from many of the foreign service individuals who are, as I would affectionally say, being shafted as we sit here at this testimony.

Mr. MICA. Without objection, your 54 pages, attachments and additional supplement will be made a part of the record.

Mr. FALES. Thank you, sir. I really appreciate it.

And I did want to thank my good friend Congresswoman Morella for her kind words and as you noticed in the testimony, I did mention the Beirut stamp, even though—and along with—to try to

show the attitude of the Postmaster General toward certain veterans and—but that was the reason I included that and Mrs. Morella has been so very helpful in trying to get a stamp to honor those who died of terrorist bombs in Beirut.

Mrs. MORELLA. Thank you, sir.

Mr. FALES. You have the statistics, you also have many of the other items regarding veterans. But what I want to do is try and put a face on the veteran today.

And through my columns over the years, many have written about their concerns. And you know, it seems the further we get away from a conflict, the more difficult it is to try and get earned benefits for veterans.

And I put in my written testimony a little blurb about how ageless the rancor is toward veterans in the military, how it exists and it existed many, many years ago, as Kipling wrote when he said, "Tommy this and Tommy that, and chuck him out, the brute, but it's savior of the country, savior of the country when the guns begin to shoot."

In my written statement, there is a young woman whose husband is dying of cancer. She has two little ones and she didn't know what to do. He's a Persian Gulf veteran. Well, since that letter, this individual passed away, she was losing her home, she had nothing. Fortunately, we were able to help her and she has dependency indemnity compensation and some educational benefits. But she is one person who would be eligible for veterans preference.

There is another 12-year combat vet in the Persian Gulf who is losing his home, his family. He's struggling along, and here's another individual who wanted to make a career; however, he's too sick at this period of time to even get up and go to work.

There's 800,000 men and women who were downsized out of the military, an additional 300,000 individuals who gave their all each year for the past 5 years, who gave their all. And we tend to "discard them"—a term that a Vietnam father used when he talked about his son, and the hardship he had after being wounded in the Persian Gulf.

These are faces. These are individuals. These are blood, guts. So when we talk about veterans preference, we talk about veterans, we're talking about human lives. Today 57 percent of those in the military are married and have families, 57 percent. Some are single parents.

So when we—when they leave service, it doesn't only affect their lives, their individual lives. And when they get veterans preference, it doesn't affect that individual person, it affects their wives, their husbands, and their daughters, and their sons.

While we celebrated the World War, we commemorated World War II; a good man, Postmaster General Runyon, was trying to circumvent veteran preference, he tried many ways to circumvent it. And that was in addition to not honoring those who died in Beirut.

In addition to that, the Kingmeister, as I affectionately call him in my column, Jim King, condoned it, and they were going to refer it to Justice. Fortunately, there was such an outcry that the White House rescinded that order. But one of the difficulties that we also have is the Kingmeister, or Jim King, is a person who approves of multiple personnel systems.

You take the new alternate personnel systems, which include with the elimination of the Hatch Act, the Whitten amendment, and we have serious problems, because it has become one big political game combined with bureaucratic functionaries who get their big bonus because they cooperate with many of the political appointees making it not only more difficult for veterans, but those with targeted disabilities, which I would say is severe disabilities.

And if you would ask Mr. King what the statistics are of those who are severely disabled in the workforce, in the Federal workforce today, it is atrocious. I will leave now, but for those who question, sir, paying back for the service for those who answered our country's call, I'm asking Mr. Davis just to recite this poem.

And I'm doing this for you, Congresswoman Morella, because I know how well you love poetry.

[The prepared statement of Mr. Fales follows:]

STATEMENT OF
 JOHN FALES
 (A.K.A. SGT. SHAFT, WASHINGTON TIMES)
 BEFORE THE
 SUBCOMMITTEE ON CIVIL SERVICE
 COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
 U.S. HOUSE OF REPRESENTATIVES
 30 APRIL 1996

A kudos to you, Mr. Chairman, and members of this important and distinguished subcommittee for holding this much needed hearing on veterans preference.

In October, 1995, Lennox E. Gilmer presented most informative testimony before your subcommittee which voiced the concerns and recommendations of the American G.I.Forum; the American Legion; American Veterans of World War II, Korea, and Vietnam; Non-Commissioned Officers Association; Paralyzed Veterans of America; Veterans of Foreign Wars; Vietnam Veterans of America; and the Disabled American Veterans and their respective Auxiliaries.

I studied Mr. Gilmer's well-researched document on veterans preference and concur with its findings and conclusions. In order not to be redundant I will not repeat most of what is contained in Mr. Gilmer's October 13 statement. However, in my own "shy shaftese," I will share with you, through their own words, the hurt, betrayal and anger of our nation's veterans. Mr. Chairman, the Subcommittee has the statistics and facts on veterans, veterans preference and veterans employment; I will try to put a human face on these individuals who answered their country's call--and Mr. Chairman, the call of the U.S. Congress.

For years many veterans, active military and their families have written to my "Sgt. Shaft" column in the Washington Times, voicing a myriad concerns regarding the hardships they have faced and the hostility they feel from their government and their peers who never served.

This disaffection and rancor against veterans is universal and ageless as portrayed in Rudyard Kipling's poem, "Tommy".

I went into a public-'ouse to get a pint o'beer,
 the publican 'e up an' sez, "We serve no red-coats here."
 The girls be'ind the bar they laughed an' giggled fit to
 die,
 i outs into the street again an to myself sez I:
 O it's Tommy this an' Tommy that, an' "Tommy, go away";

But it's "Thank you, Mr. Atkins," when the band begins to play
 The band begins to play, my boys, the band begins to play,
 O it's "Thank you, Mister Atkins," when the band begins to play.
 I went into a theatre as sober as could be
 They gave a drunk civilian room, but 'ad n't none for me;
 They sent me to the gallery or round the music-'alls,
 But when it comes to fightin' Lord! they'll shove me in the stalls!
 For it's Tommy, this, an' Tommy that, an' "Tommy wait outside";
 But it's "Special train for Atkins" when the trooper's on the tide.
 The troopship's on the tide, my boys, the troopship's on the tide,
 O it's "Special train for Atkins" when the troopers on the tide.
 You talk o' better food for us, an' schools, an' fires, an' all:
 We'll wait for extry rations if you treat us rational
 Don't mess about the cook-room slops, but prove it to our face
 The Widow's Uniform is not the soldier-man's disgrace.
 For it's Tommy this, an' Tommy that, an' "Chuck him out, the brute!"
 But it's "Saviour of 'Is country" when the guns begin to shoot;
 An' it's Tommy this, an' Tommy that, an' anything you please;
 An' Tommy ain't a blooming' fool -- you bet that Tommy sees!

Mr. Chairman, during the past few years our nation and our allies have been commemorating significant events remembering World War II. At the same time our leaders have proposed dilution of benefits for these aging veterans. Their need now, however, is improved VA medical care, which they have well-earned. In 1944, Congressman Starnes recognized the importance of transitioning these veterans back to civilian life. He said, "The biggest problem in the post-war is providing jobs for able-bodied American citizens who have served in the Armed Forces -- jobs by which they can support themselves and their families, jobs which will permit them to retain their self-respect and feel that the country for which they have offered their all has not failed them."

"When this war is over and our boys come home, they should not be forced to tramp the streets looking for jobs nor to live on charity. There should be a job ready and waiting in private enterprise or with the Government, Federal, State and local, for every American fighting man when he comes home."

If Representative Starnes would have said those words today, I am sure he would have not have used the term "able-bodied" and would certainly have included women.

During the same period of the commemoration, which Archie Bunker would refer to as "the Big War," we have had -- and continue to have -- several other conflicts throughout the world; an agitating book on the Vietnam war by former Secretary of Defense, Robert Strange McNamara; the thumbing of his nose at veterans by Postmaster General Marvin Runyon as he tried to circumvent veterans preference during a Postal Service reduction in force (rif); and the same Marvin Runyon arrogantly refusing to issue a commemorative stamp in honor of those who died at the hands of terrorist in Beirut during a peacemaking mission. Also during this time, the military has been downsized by 800,000 men and women and approximately an additional 300,000 men and women released from the military each year for the past five years.

Who are some of these veterans and their families who have been impacted?

In 1992, a concerned father wrote:

Dear Sgt. Shaft:

I'm writing this partly to tell you of the anguish and heartbreak that my wife and I have undergone during and since the Gulf war. I want you to understand how difficult is for me to express these feelings. I am a retired Navy officer with two combat tours in Vietnam. I have always believed in and support our country and its leaders. Now, among all the emotions I feel, the strongest is a sense of betrayal -- betrayal by my country and its leaders.

My son, Chuck, served as a Marine lance corporal in the Gulf. He was critically wounded during the second day of the ground war. Shrapnel from an Iraqi mortar round penetrated deep into his neck. The shrapnel struck his spine and completely paralyzed him, though he later regained feeling. Because of the danger or nerve damage, the shrapnel was left in his neck during medical evacuation. Chuck is home with us now. The Marine Corps awarded him 10 percent disability and discharged him -- discarded would seem a more appropriate description.

Sgt. Shaft, since my son's discharge, he has been to the emergency room twice and to our family doctor for severe back pain. He has shortness of breath, constant sinus flow, his hair is falling out, and his gums are bleeding and separated from his teeth, causing them to loosen. But throughout all this, he has kept looking for "that good job." Right now he is doing odd jobs at a local car dealership, for minimum wage. During his interviews for employment, everyone told him how much they

appreciated what he had done, but they just didn't have anything for him -- with his injured neck and all.

During a recent conversation, my son told me he had wished he had died in the desert; there was no place for him back home. Everyone is proud of him, but no one wants to help. As his father, I hurt for him and with him. His mother is confused and worries constantly about Chuck.

Before my son was wounded, but while he was in the war zone, he and his unit were given various inoculations. These young Marines trusted the chain of command to look out for them. What they received was untested, unsafe inoculations of anthrax and botulism serum and God knows what else. Those Marines also ingested massive amounts of sulfur dioxide, hydrogen sulfide and other residual elements emitted from the oil-well fires. Sheep, camels and humans were dead and dying on a large scale in my son's areas of operations. When my son went to sick call and complained of pain, he was told that he was all right and to get back to his unit as he was fit for full duty.

Chuck is entitled to \$60 a month for his 10 percent disability rating. However, since he got a check for \$6,600 when he was discharged, he apparently can't get any payments for who knows how long. The Department of Veterans Affairs is now starting to express interest in his case and, hopefully, they will straighten out some of this mess. I have already contacted Sen. Jesse Helms and Rep. Charles Taylor, who have expressed interest in my son's plight.

I personally consider this a military situation with military personnel responsible for my son's condition; they should be held accountable for their decisions and action, prior to and during the actual ground war.

I would like particular emphasis placed on two decisions: 1. to require our personnel to be vaccinated with unproven vaccines; and 2. exposing our ground troops to toxic gases from the fires when animals were already dead or dying. We do not need another Agent Orange situation. There is an article in the Uniform Code of Military Justice about unnecessarily endangering personnel under one's command.

Sarge, your help in ensuring proper care, compensation and job training and availability for my son and others in similar circumstances is needed.

--Concerned for My Son
Waynesville, N.C.

Washington Times, July 18, 1992

A reservist and civil servant wrote:

Dear Sgt. Shaft:

I must express my warmest regards and deepest gratitude to you and the national service officers of the Disabled American Veterans who work out of the Department of Veterans Affairs regional office in Washington, D.C.

Due to the multiple injuries I sustained during the Desert Storm war when the hydraulics on an aircraft door failed, causing the 300-pound door to collapse on me, I had my Air Force Reserve career and Civil Service job abruptly terminated in rapid succession. Within two years I found myself homeless, without transportation and trying to survive on \$75 per month and food stamps. My life declined from a successful, popular individual with all the amenities of life to a person who carried his belongings in a canvas bag and was fortunate if he could sleep in a shelter for the night.

I fought hard, with every ounce of my energy and with every instinct for survival, acting upon every piece of advice and recommendation that was given, but all efforts were failing because I was now unemployable. A lot of people were expressing sympathy, and it really seemed that they wanted to help but all the lights of hope were being extinguished.

Then I came to a DAV national service officer who had empathy, who knew quick, precise actions must be taken and who had the common sense to involve other people who could get things done. Thanks, Sgt. Shaft! Due to your efforts, the DAV, and the countless other people you were able to get involved in my behalf, the hemorrhaging has stopped. I am in receipt of my substantial compensation and my life is returning to normalcy.

With the assistance of VA vocational rehabilitation I am very hopeful that I may be able to gain the skills and knowledge that will enable me to be a productive contributor to my country again.

God bless those of you who continue to do strategic battle for those who served and are rendered disabled. Thanks to you and the DAV, this disabled American veteran is becoming an enabled American veteran.

--Sammy J.,
Prince George's County, (MD)

Washington Times, November 21, 1992

A veteran's wife wrote:

Dear Sgt. Shaft

I am writing on behalf of my husband, Jimmie, who was in the Army for four years. During his enlistment, he served in Saudi Arabia from September 1990 to March 1991 (six months, 27 days). His BTS date was May 7, 1993.

While in the Army, Jimmie became ill. He had symptoms of decreased appetite, weakness, back and leg cramps, and easy bruising. He did make several trips to the sick call but was instructed to go home and rest. These symptoms continued after his discharge. Once home, Jimmie sought medical attention at the Columbus, Ga., Medical Center and was newly diagnosed with acute myelomonocytic leukemia. He was then transferred to the Medical College of Georgia at Augusta for further evaluation and treatment.

Jimmie has since received his first treatment of chemotherapy and has had bad reactions to his medicine. Since I have been at my husband's bedside, we have lost our home due to having no income. We have two small children, 3 years and 6 months old, who have been staying with family. We need help!

---Renee B.,
Smith, Ala

Washington Times, October 11, 1993

A letter from a military wife:

Dear Sgt. Shaft:

I'm a humanitarian, but sometimes an individual just has to stand up and say, "Enough is enough."

Our troops originally were sent to Somalia to aid in providing food to a starving nation. And that nation still is in need of help. But at what point must we say, "Enough is enough"? Why must we be the principal nation to suffer heavy losses? Because we are the only remaining superpower? How long will that last? Our military is spread thin and downsizing at the same time.

Among the consequences of this course of policy: What will we do when Dependents Indemnity Compensation benefits can no longer be processed for surviving families of soldiers because the tax load is at the limit? Or when young men and women will no longer enlist because they are afraid that, should they become injured while serving in the armed forces, the government will not take responsibility? The questions go on and on.

I know Somalia needs help. Let's get mass reinforcements in there and take care of business! If not -- and this is my preference -- let's get these troops home. Let's not repeat the mistake, as in the Persian Gulf, of leaving a tyrant in power, and let's ensure that veterans of such conflicts are taken care of afterward.

Let's not repeat the nightmare of the Persian Gulf. Get the troops home or do the job right.

--a Persian Gulf widow,
New York state

Washington Times, November 8, 1993

Another veteran writes:

Dear Sgt. Shaft:

I have lived in Illinois for 20 years and left about five years ago to serve my country. I was an Airborne Ranger Infantry officer in the 82nd Airborne in both Panama and Iraq. When I was growing up I was taught that I could do anything I wanted in life, so I decided that what I really needed to do was find something truly worth doing. I found it in the Constitution, and I decided to defend it "against all enemies." Of course the budget cuts abruptly ended my career.

From there it got worse, but combat has given me an imperturbability that has allowed me to fight on. In October 1992 I got sick, and my boss would not let me in to work until I went home and got better. I developed red spots, swelling and fatigue that no doctor could explain. Ranger school was nothing compared with the effort of working 80-plus hours a week in the face of my illness. I finally gave in to my mother's demand that I go to the VA for treatment. I went every week on my one day off to find answers, to no avail.

During this time my wife, Kelli, had two miscarriages. Finally, on Jan. 20, 1993, my son, Alexander Fox, was born, but the doctors gave him less than a 20 percent chance to survive. He is still alive but the list of problems is extensive and confounding to the doctors. My symptoms have been slowly driving me into the dirt. Kelli has begun to develop the same difficulties, and the VA has told me they have recommended I be sent to the Houston specialty center.

That means that even though my son, my wife and myself are all sick with the same illness, they will only help me when I get to the end of the waiting list.

I have filed for disability, but it will not be approved until some sort of service connection is made. My son has been approved for SSI, and the Veterans Assistance Commission will

help us get through hopefully until the end of the year. In the meantime I stand to lose my home, my job, my wife, my son, my life and my honor. It is the worst punishment for me but I am begging for help.

TJA
Barrington, Ill.

Washington Times, December 20, 1993

A veterans plight:

Dear Sgt. Shaft:

For 20 years I have tried to apply for positions with the U.S. government. For 20 years I have been called a baby killer, a drug addict and a murderer because of my service during the Vietnam War. The following was the last straw.

I went to the VA medical center on Irving Street in Washington to apply for a position as an administrative officer with the hospital. I have the background that the VA posted in the personnel circular. I went with my resume and with my disability ruling to the personnel office. I have a 30 percent service-connected disability. I filled out an application and handed it to the clerk on duty. The clerk went to an office and stated to the person inside that I was out in the corridor. The person who was in charge of filling the position made a nasty comment about "not wanting to talk to me."

I have heard nothing from the VA since I went to the personnel office in December 1993. They have not called me for an interview, despite the fact that I have worked as a deputy department administrator at Walter Reed Army Medical Center, and despite the fact that I have experience as an operations manager at a nursing home. In addition, I have a degree in hospital administration and management and have nearly completed a master's degree in business management.

I would like you to ask the VA why I was not even considered for the job. I also would like to know if it was because I am a Vietnam veteran that I was not even considered?

R.E.T.
Dale City, Va.

Washington Times, May, 9, 1994

The wounds of Vietnam veterans and their families were reopened by the publication of Robert S. McNamara's book. The hurt and anger perpetrated on Vietnam vets and their families by McNamara's mea culpa can be best illustrated by the following letter to Sgt. Shaft:

Dear Sgt. Shaft:

I was delighted to hear that you had taken a copy of Robert McNamara's book, burnt it and placed the ashes at the wall of the Vietnam Veterans Memorial in Washington on Memorial Day. I thought you and your readers might be interested in my comments on Mr. McNamara's book and President Clinton's arrogant acceptance of it as a form of absolution for his action during Vietnam. I have attempted to share (and have shared) my comments with other publications.

After more than 20 years of struggling to put to rest our memories, the last thing many Vietnam veterans needed to hear from former Defense Secretary McNamara -- the individual most responsible for our experiences -- was that our sacrifices were in vain.

The bullet that entered my chest would have penetrated my heart but, by the grace of God, it hit a rib and ricocheted through my left lung. A second round lodged in the muscle of my right chest. Jagged pieces of shrapnel tore into both my legs, abdomen and left arm, and cut my right eye in half. To this day, metal fragments remain throughout my body.

After weeks of surgery and recovery, I regained the sight in my eye but lost several feet of my intestines plus my spleen, gallbladder, and a portion of my stomach.

What I did not lose as a result of my wounds on that day in July 1969 was my faith in God and my country, for I was one of the thousands of young men and women who answered their country's call to duty to serve in Vietnam.

Whether the war was "just" is an issue that we veterans must reconcile in our hearts and minds. However, I was not prepared to renew my journey of reconciliation through a television interview with Mr. McNamara.

His tears were not genuine, for if he truly felt remorse for his mistakes, he would not have promoted his book on the eve of the anniversary of the Communist victory in Vietnam.

Mr. McNamara will profit handsomely from the book and, although he announced his belief that our involvement in Vietnam was terribly wrong, he has yet to apologize to the disabled veterans that he helped to create or to the families of the 50,000 young Americans who died after he failed to act on his conclusion.

Never before had American soldiers won every major battle, as we did in Vietnam, but, because of men like the former defense secretary and his colleagues, we were not allowed to win the war.

To compound the pain, President Clinton was morally wrong in his decision to capitalize on the book by announcing that he felt vindicated. The president truly believes that either his decision not to serve in the military was justified or his political advisers have convinced him that the absolution from Mr. McNamara will be convenient response to that issue in the upcoming presidential campaign.

Mr. McNamara's book will not hasten the process of healing our country's divided opinions concerning Vietnam: When the president of the United States claims that he was right in his decision not to serve because he opposed the war philosophically and feared its potential impact on his life, new and very deep wounds are created in the hearts of those who derive solace in the belief that what we did was right because we answered our country's call to duty.

I am certain that God will forgive Robert McNamara, but, if I can assume the honor to speak for those who did not return home, it will be a long time before I can forgive him for his mistakes.

Richard Alan Richards
Springfield, Ill.

Washington Times, October 9, 1995

As McNamara was writing and having his "you were stupid to serve in Vietnam" book published, Postmaster General Runyon was sending the same message to Vietnam veterans and other vets who chose the Postal Service as their career. In his testimony before the Senate Government Affairs Committee, Mr. Runyon arrogantly said that under his leadership, the USPS was "... on the leading edge of reinventing government, already doing many of the things that the Administration, the Congress and this Committee want to do for the Federal government as a whole."

In his August 11, 1993 column, Bill McAllister of the Washington Post reported that Vice President Gore praised Postmaster General Runyon for shrinking Postal Service employment numbers. The Postal Service mentality is documented in a memorandum issued by Mary Elcano, Vice President and General Counsel to the Postal Service, which in part stated that "women and minorities comprise a large portion of the non-veteran group and RIF procedures can affect those employees in a way that seriously impairs the affirmative action accomplishments of an organization."

As you and Members of your Subcommittee may recall, Mr. Chairman, the Merit Systems Protection Board (MSPB) ruled that the so-called Postal Service "reorganization" was indeed a RIF. This put the USPS into a tailspin as it continued to insist that the MSPB reconsider its determination. The USPS was able to get the OPM to intervene on its behalf. In fact, OPM then formulated

and circulated draft rules incorporating the Postal Service reorganization methods -- which the MSPB had found unlawful.

As another affront to veterans and their families, Postmaster General Runyon and the Citizens Stamp Advisory Committee failed to issue a commemorative stamp recognizing the supreme sacrifice made by 273 Americans killed in Beirut. As you will note from the following correspondence to Sgt. Shaft, Mr. Runyon and his functionaries treated the families and friends requesting the stamp with scorn.

Dear Sgt. Shaft:

An article in the March issue of the VFW Magazine chronicled the history of stamps that have commemorated American veterans. There is no doubt that the stirring stamps honoring veterans from the Civil War to Desert Storm help reaffirm the values and traditions of our great country.

A newspaper article in December told how the USPS planned to issue a total of 102 commemorative stamps in 1994. In 1993 the Elvis stamp became USPS's all-time biggest seller, and it would seem to be no surprise that this year's list will include commemorative stamps honoring a host of entertainers from Bing Crosby to the Keystone Kops. Such stamps make money.

But, as the VFW article told us, the USPS repeatedly has turned down requests to issue a stamp honoring the memory and commemorating the sacrifice of the 273 American servicemen killed in Beirut in 1983-84. USPS officials reportedly told advocates of such a stamp that "not enough people were killed to warrant a commemorative stamp."

George Orwell
Rolling Over in the Grave

Dear Sgt. Shaft:

On Dec. 20, 1993, you recounted in your column the efforts of a concerned former Marine and others to get the U.S. Postal Service to issue a stamp commemorating the sacrifice of those who died in the 1983 bombing of the Marine barracks in Beirut, Lebanon. It seems the Citizens Stamp {Advisory} Committee did not believe the event worthy of recognition.

In early January, the Non-Commissioned Officers Association sent a letter asking the postmaster general to reconsider. We reminded him that the loss of life in that one day was the worst ever suffered by the Marine Corps. In response, Azeezaly S. Jaffer, manager of stamp services, thanked us for our interest and sent us the February/March issue of a catalog of collectible stamps. Presumably, he thinks we might find a suitable substitute.

We found the catalog interesting. Included were commemoratives for Legends of the West, including Nellie Cashman and Charles Goodnight, whoever they are; for broadcaster Edward R. Murrow; and a yellow Chinese dragon that will also adorn envelopes. So too will the legends of rock and roll, steam carriages, circus wagons, canoes of the 1800s, seaplanes, red squirrels and kittens.

Unfortunately, not one stamp in the book honors military service or sacrifice.

Sgt. Shaft, I urge your readers to let Postmaster General Marvin Runyon know this is an unacceptable situation.

Dick Johnson
Executive Director
Non-Commissioned Officers of America
Alexandria, Va.

Washington Times, May 23, 1994

A distinguished Member of this subcommittee, Rep. Constance A. Morella engaged in the following dialogue with Postmaster General Runyon during a House Committee on Post Office and Civil Service hearing on April 14, 1993:

Mrs. Morella: Since I have this opportunity, I would like, again, to ask to postmaster general to reconsider and give further thought to a stamp honoring the 241 of our American service men who lost their lives in a multinational peacekeeping and humanitarian mission in Beirut, Lebanon, on October 23, 1983.

Actually there were a total of 273 American service personnel lost during that 1982-84 period, along with many allied soldiers. I wondered if there could be a reconsideration of the stamp to honor them.

Mr. Runyon: Mrs. Morella, we have reconsidered that numerous times. . . .

Mrs. Morella: I know you have.

Mr. Runyon: . . . with the Citizens Stamp Advisory Commission . . . and their opinion is that we really do not commemorate disasters. We do recognize people in service who have lost their lives; we will have an issue of stamps issued on June 6, which I believe is the fourth issue of World War II stamps commemorating the people who served, not just the ones who died, but all who served in that war. And that is the basic premise that we are using in commemorative stamps. That's where we are.

Mrs. Morella: Of course, there is a concept of the phoenix rising from the ashes; that when you have a disaster, from that come victory and peace, ultimately. Maybe you will reconsider.

Mr. Chairman, as I previously mentioned, in the past five years the military has released 800,000 military men and women of our armed forces due to downsizing. Many of these individuals wanted to have the military as a career. An additional 1.5 million men and women transitioned back to civilian life during this same period. Unfortunately, Mr. Chairman, many of these men and women are not eligible for veterans preference, making their transition and pursuit of a federal job much more difficult.

As one astute writer to the Shaft column pointed out that those downsized from the military received less compensation than their defense civilian counterparts.

Dear Sgt. Shaft:

Let's look at what Congress is doing to reduce the number of civilians employed by the federal government and how that contrasts with its treatment of military men and women.

Sen. David Pryor, Arkansas Democrat, and Rep. William Clay, Missouri Democrat, have pushed through a package authorizing the Department of Defense to offer \$25,000 to \$37,000 to entice 30,000 civilian employee to begin collecting their pensions.

Sen. John Warner, Virginia Republican and Rep. Dan Glickman, Kansas Democrat, are sponsoring a proposal to give the Central Intelligence Agency authority to pay employees as much as \$25,000 to quit or retire this year. The president is expected to sign the bill.

The House is expected to approve a plan by Reps. Vic Fazio, California Democrat, and James P. Moran, Jr., Virginia Democrat, authorizing buyouts at the Government Printing Office, General Accounting Office and the Library of Congress.

Meanwhile, tens of thousands of military personnel are being forced to go home before they had planned with no added incentive or, in some cases, no retirement benefits at all.

By my calculations, DOD plans to spend a minimum of \$750 million to cut civilian manpower "without resorting to costly and disruptive layoffs."

But costly and disruptive layoffs are acceptable for the military.

Military people -- many of whom put their lives on the line every day -- are being forced to shoulder an inordinate share of

the sacrifice required to cut the budget deficit. Congress' failure to keep the faith with the men and women in uniform will have significant negative impact on morale and, ultimately, readiness.

--Disheartened Citizen,
Springfield

Washington Times, August 28, 1993

Mr. Chairman, today we have 27,000 troops serving in Bosnia. Of those there are 67% white males, 27% Black-Americans, 9% women and 4% other minorities. In addition, thousands of men and women in our military are playing significant roles supporting not only this mission but other troops engaged in hostile areas throughout the world. And, we must recognize the importance of their support roles when they leave service.

The following letter will elaborate:

Dear Sgt. Shaft:

At the start, permit me to say that I am twice a veteran and not a two-timing veteran. There is an obvious and meaningful difference in that statement. I believe that it is every veteran's obligation and responsibility, especially the few of us at the Veterans Administration, to assist any vet in time of need regardless of his or her particular problems. I am employed by veterans and receive a salary through the VA for my efforts, interest and dedication on behalf of veterans and their problems.

I believe in veteran' preference as a hiring practice, if the individual is qualified for the position, and I don't view this as "preferential" treatment. I know first-hand what it means to have been out of the job market for a couple of years and, upon discharge and returning to the "world," to learn that those who stayed behind occupy all the decent jobs with benefits and career opportunities. Hence, my letter.

I received a phone call at home on May 24 from a young, 12-year veteran of the Air Force who was honorably discharged in October 1994. He is married with two children. He had a temporary, part-time job with the Postal Service, delivering mail on a rural route and had applied for a full-time postal clerk position in his hometown. On May 18, he was selected based on his test scores and veteran's preference.

On May 22, however, he received a letter from a "Human Resources Specialist" who informed him that he was no longer under consideration for the job because his DD 214 did not show that he had been issued a campaign ribbon (for being overseas in some country like "Granola" or wherever), was not a disabled veteran, and therefore, as ". . . you failed to furnished [sic] proper documentation to support your five points and veteran's

preference status, your score has been adjusted to remove points and preference . . . you are no long under consideration for the Carrier position in Brunswick." He called me for assistance.

I contacted our central office personnel for a 5 USC citation to prove the "Human Resources Specialist" was in error. My question was met with disbelief, and I was referred to the Office of Personnel Management.

Sure enough, sarge, a veteran is not recognized as such (for federal hiring purposes) if he or she is unable to provide proof of the issuance of a campaign ribbon (foreign country hostilities only, please) or is, in fact, disabled as a direct result of active duty!

In this young man's case, he was sent to Dover AFB to assist in the bodybag return from Desert Storm and was not issued a campaign ribbon. He went where he was told and did what he was supposed to do and fortunately was not hurt or wounded. That's how military people are supposed to perform their duty to their country; do what they're told and stay out of harm's way. But I am preaching to the choir.

So, in essence, contrary to the news rhetoric, veteran's preference as a hiring practice is dead.

Sure glad I'll never have the opportunity to make those trips again. I regret that these young veterans of the '90s can't find assistance when returning to civilian life, get adequate medical care for their injuries and troubles, have to play catch-up with those who thought it was beneath them to wear clothing inconsistent with fads and eating sometimes not-so-pleasant yesterday's leftovers. I should have smelled a rat when some folks in my agency wanted to refer to them as "our customers" and not our veterans.

L.D.R.
Fredericksburg, Va.

Washington Times, July 17, 1995

Mr. Chairman, in the bowels of the bureaucracy are management officials who burrowed into the system while vets were burrowing into their foxholes. These sanctimonious individuals take pride in circumventing veterans preference and have their own incestuous hiring schemes of "You hire my guy, I'll hire yours," dealing with close and extended family, political cronies and buddies.

Newly created alternate personnel systems recently approved by the Office of Personnel Management have been met with the deafening silence of the so-called federal unions. Within these "Kingmeister" personnel systems, loyal federal service, job

security and veterans preference are laughingly ignored, and those individuals with targeted disabilities are kissed off.

Veterans preference can only be a reality if the administration and Congress pass legislation that penalizes those in the hiring hierarchy who are playing the game of circumventing veterans preference. This legislation must be enacted immediately as federal agency functionaries are playing foot-loose and fancy-free with RIF procedures, trying to succeed in circumventing veterans preference where the Postal Service failed. Retaliating against those vets and their witnesses when they challenge these illegal, abusive personnel actions is highlighted in the following letter.

Dear Sgt. Shaft:

Not too long ago you published a letter from John Davis concerning his experience with the Army. Mr. Davis described his ordeal when his veteran's preference rights were ignored in a reduction in force (rif). I was personally aware of Mr. Davis' case since I testified in his favor before the Merit Systems Protection Board. Testimony for which I, and my family, have paid dearly.

Even colleagues unfortunate enough to work with me have been retaliated against in an effort to discourage me from ever standing up for veteran's preference rights again.

I know, as a woman, that veteran's preference is the linchpin on which civil service is built. If it were to go away, the shockwave to us nonveterans would be catastrophic. Since the performance appraisal system is so racked with inequities, there would be chaos as agencies moved to keep those they liked and rif those they didn't; crashing into one wave of political convenience after another. This would be especially disastrous for the new minority hires as so many of these are veterans of Desert Storm.

Sarge, I can honestly tell you that the last two years have been hell. I've watched my husband's health deteriorate as my organization tortured him in order to punish me. I've lost the program I created. My agency has even gone so far as to deny my husband life insurance. I have been rendered irrelevant in an agency I loved because I told the truth . . . and worse, because I was right.

On the other hand, the veteran who raised me taught me that no right worth having was ever won without a fight. And the veteran I married and love would rather fight this battle than give up the rights that his service to his country promised him.

If President Clinton wants veteran's preference changed, then let him have the guts to openly propose the law and see it debated by the Congress. Underhanded precedential decisions like Davis v. Army are disgraceful and dishonest. And it leaves the little guy, like me, fighting a battle that should never have taken place.

Susan Odum
Northern Virginia

Washington Times, September 11, 1995

Mr. Chairman, today I have tried to put a human face on the American veteran and their families and why they need the strengthening of veterans preference laws. 57% of all military personnel are married and/or have dependents. Many are single parents. And, when these military personnel leave service they still have the responsibility to provide for their spouses and their sons and daughters. Furthermore, Mr. Chairman, we as a nation have an obligation to care for those who served.

To those who question veterans preference, and the need to take care of those who answered their nation's call, I respond through the words of George L. Skyeck, fellow combat Vietnam veteran:

"Soldier"

I was that which others did not want to be.
I went where others feared to go.
And did what others failed to do.
I asked nothing from those who gave nothing,
And reluctantly accepted the thought of eternal loneliness . . .
Should I fail.
I have seen the face of terror;
Felt the stinging cold of fear,
And enjoyed the sweet taste of a moment's love.
I have cried, pained and hoped . . .
But most of all,
I have lived times others would say were best forgotten.
At least someday I will be able to say that I was proud
Of what I was . . . a soldier.

Mr. Chairman, for the information of the Subcommittee I have attached a bio and some copies of past columns of "Sgt. Shaft". Should you and the Members of the Subcommittee on Civil Service have any questions, I will be glad to answer them or to get the correct answer for you.

Thank you, Mr. Chairman, for this opportunity to share with you the concerns of other veterans.

BIOGRAPHICAL SKETCH OF SGT. SHAFT

Sgt. Shaft was hatched in April of 1982 at the home of the veterans' newspaper, Stars & Stripes, in Washington, D.C. This moniker combines the name of its creator, John Fales Marine MOS in Vietnam "Scout Sgt.," with the military expression when wronged, "Shaft."

Sgt. Shaft's wry sense of humor, empathy for the underdog, and strong love of country and fellow veterans closely mirror the nature of its creator.

The weekly advice column resided in the Stars & Stripes from 1982 to 1985, and laid dormant until its rebirth in the Washington Times in 1991. The column, Fales is proud to say, gives an outlet for the concerns of active military, veterans, and their families in a national newspaper.

In addition to writing the column, John Fales is a full-time employee with the Federal Government and is President of the Blinded American Veterans Foundation.

Fales was born in New York City and served in the U.S. Marine Corps until his retirement on disability. His decorations include Purple Heart, Vietnam Service Medal, Armed Forces Expeditionary Service Medal, New York State Conspicuous Service Medal, Presidential Unit Citation, Combat Action Ribbon, South Vietnamese Cross of Gallantry.

Mr. Fales received his Bachelor of Arts degree from Saint John's University, New York and Master of Science degree in Education from Hofstra University, New York. Among the numerous awards Mr. Fales has received are: The President's Medal for Distinguished Service from the Freedom's Foundation; Outstanding Handicapped Federal Employee; Blinded Veterans Association's "Irving Diener Award"; United States President's Community Service Commendation; Chairman's Commendation from the Presidents Committee on Employment of the Handicapped; honored by the Vietnam Veterans Civics Councils as one of Washington D.C.'s Outstanding Vietnam Veterans.

He is a Life-time member of both the Disabled American Veterans (DAV), and the American Legion and a Member of the Veterans of Foreign Wars (VFW), Marine Corps League, AMVETS, Military Order of the Purple Hearts, and the National Press Club.

He has been a resident of Silver Spring, Maryland for 19 years and lives with his wife, Heea. They are the Mom and Dad of six children. Sgt. Shaft has no twin.

Despite talk, vets don't get priority

Dear Sgt. Shaft:

I read your Jan. 29 column with surprise. In responding to a federal employee who questions whether veterans preference has longevity in the Clinton administration, the reply overlooked the fact that President Clinton has kept his promise to protect veterans preference in federal employment. This is, as you know, reflected by the increased percentage of permanent jobs going to America's veterans over the past three years.

In fiscal 1994, the federal government hired 37,929 full-time permanent employees, of whom 33 percent were veterans. That proportion of veterans to total full-time, permanent hires is 73 percent higher than the average of fiscal 1989, 1991 and 1992.

It may be helpful to note that most new hires, not just veterans, enter federal service at the lower levels of the grade structure. As a matter of fact, 54 percent of all new hires enter the work force at the General Schedule 7 level or below.

In fiscal 1994, the highest concentration of total new hires — 49 percent — was in the General Schedule levels 4 through 7. Furthermore, fiscal 1994 statistics show that veterans hired in the midlevel General Schedule range (levels 8 through 11) exceeded the private sector and were proportionately represented to the total percentage of veteran hires.

Mr. Clinton has said: "Our nation owes a great deal to the men and women who have worn our country's uniform. The prosperity and freedom we enjoy are the priceless gifts of their service and commitment."

I have the privilege to communicate this message and try with the help of so many, including yourself, to make these words a reality. It is my hope that you will pass along this encouraging note to your readers.

— James B. King
Director
Office of Personnel Management

Sgt. Shaft

Dear Mr. King:

As you can surmise from perusing the following letter in my column, many federal bureaucrats are not taking President Clinton's words to heart. And, as the adage goes, actions speak louder than words.

I have also had an opportunity to peruse some of the alternate personnel systems you have approved with the deafening silence of the so-called federal unions. Within these "Kingmeister" personnel systems, loyal federal service, job security and veterans preference are laughingly ignored, and those individuals with targeted disabilities are kissed off.

Dear Sgt. Shaft:

I read with cynicism the answer from Preston M. Taylor Jr., assistant labor secretary for veterans employment and training, published in *The Washington Times* on Dec. 4. I worked for a quasi-federal agency that was abolished on Dec. 31. For the past 18 months I have been trying to find employment with the federal government.

I am a 70 percent disabled veteran. I possess an M.B.A., a B.S. and three associate degrees. I have more than 10 years' supervisory and management experience in

my career field (a field all agencies utilize). I am currently a GS-13, and I have been rated at the GS-14 level. I tell you this to put to rest the opinion some may hold that veterans are "given" jobs whether they qualify or not.

I have submitted SF171s to the Environmental Protection Agency; the Internal Revenue Service; the departments of Transportation, Energy, Defense, Justice, Labor and State; the U.S. courts; the Office of the Comptroller of the Currency; the U.S. Holocaust Memorial Museum; and various other agencies. These SF171s were submitted for jobs ranging from the GS-12 to the GS-14 level.

I have run the gambit of responses from "not qualified" to the "job has been canceled." What I have not encountered is the first interview or offer of a job. I have been talked to with respect by only a few of the human resources personnel with whom I have dealt. Several have returned my questions as to the status of the announcements with outright rudeness.

In one instance, I was told by a very helpful individual that I was the No. 1 person on the competitive list and that I had thrown a "monkey wrench" into the works. It seems that the hiring official wanted someone else in the position and could not find a way to get around me. Therefore, the position was not filled, and the announcement was allowed to expire.

Do not think that I have encountered only uncooperative people. On the contrary. Several have been, and continue to be, very helpful. What really upsets me is that I have paid my dues, and I am not asking to be "given" anything. The federal government paid out thousands of dollars to train me. It paid for four of my five degrees, and now it will not take advantage of what it paid for.

Do I need help? Yes. Have I done all I know how to do? Yes. Do I believe that President Clinton's administration is committed to helping the veterans? No! This opinion has been formulated based on what I have encountered and what I have been told, to my face, by several people within government who are in positions to know the prevailing attitudes.

All I can say now is, if you can, Sgt. Shaft, help!

J.S.R.
U.S. Air Force (retired)
Stafford, Va.

Dear J.S.R.:

As you can see from my first letter, I have brought your unsuccessful quest to the attention of the director of the Office of Personnel Management. In the bowels of the bureaucracy are management officials who burrowed into the system while vets were burrowing into their foxholes. These sanctimonious individuals take pride in circumventing veterans preference and have their own incestuous hiring schemes of "You hire my guy, I'll hire yours," dealing with close and extended family, political cronies, and buddies.

Veterans preference can only be a reality if the administration and Congress pass legislation that sanctions those in the hiring hierarchy who are playing the game of circumventing veterans preference.

• Send your letters to Sgt. Shaft, c/o John Fales, PO Box 63900, Washington, D.C. 20035-5900; fax to 301/622-3330; or send e-mail to Sgshaft@tmn.com.

DOS rif plan hazy on veterans preference



Dear Sgt. Shaft:

I am not certain that Sen. Jesse Helms intended to eliminate the seniority factor in ranking for the Department of State and the Department of State and our employees association (AFSA) are making a big deal out of the fact that it is not mentioned in the Helms' Amendment to the Foreign Service Act.

Veterans preference has been in the law since 1946 and has been interpreted by DOS as a factor secondary to performance and seems to be confused with the granting of hiring preference points. The DOS plan is to numerically rank employees by various performance criteria (not seniority) and give an additional five points to vets and 10 points to vets with a 30 percent disability. Under this biased reasoning, high ranked non-vets will have preference over vets whose numerical score places them in the middle and lower ranks. In addition, vets who have done good jobs can be low ranked with no documentation of outstanding performance.

The Helms Amendment specifies, however, that a rif must give due effect to military preference, subject to 5 USC 3501. Other parts of 5 USC are being considered to clarify that performance and preference are not to be ranked under a performance appraisal system. In this case, the preference is to be retained in preference to (all) other competing employees (3502-c); (2) in the instance of a reduction in grade or removal under this section (actions based on unacceptable performance) and (3) in the decision of the Department to specify the instances of the unacceptable performance by the

circumvention of veterans preference in an interim measure. This, while on behalf of the State Department AFSA continues, he is sending the men and women of our armed forces on a mission to "peacekeeping" missions in Bosnia and other parts of the world. Read on.

Dear Sgt. Shaft:
This is in response to the Jan. 29 letter from the "Perplexed Vet at State" who stated "AFSA... bluntly stated in its proposal... of the Foreign Service never served in the military, veterans preference will not be supported by AFSA". As AFSA vice president for the State Department, I feel compelled to set the record straight.

"Perplexed" may not be aware that legislation introduced by Sen. Jesse Helms and enacted into law in late 1994 requires the foreign affairs agencies to promulgate rules for this parts of the Foreign Service used informal rif procedures, which took veterans preference into account.

The Foreign Service personnel system is different from the civilian system in that the Foreign Service employees who are not promoted within a certain period of time are mandatorily retired. Because of the "up or out" nature of the Foreign Service, the AFSA States its preference to management's proposed draft rules, has taken the position that Foreign Service rif rules should be primarily merit-based, but also include veterans preference.

Helms' legislation states only that veterans preference be given "due effect" in a Foreign Service rif system, unlike the civil service system, which explicitly

state how veterans preference will be weighed.

So there is no confusion, the State Department AFSA continues its official position advocating retaining veterans preference as the sole factor — for retention, especially for those in greatest risk of being separated. As one who stands to benefit from veterans preference, I believe that AFSA's emphasis on the issue also given to prior military service is fair, realistic, and appropriate to State's employment profile.

Alphonse F. La Porta
State vice president
Foreign Service Association

Dear Mr. La Porta:

I have referred your letter to the House Subcommittee on Civil Service and to the House Veterans Affairs Committee for their consideration. The subcommittee has not played with veterans preference at the State Department. I have also referred your letter to Sen. Helms for his intent and clarification of the law referred to in your above letter.

Dear Sgt. Shaft:

Please let your readers know that the USS John Land AP 167 (WWII) is having a reunion on Sept. 19-21, 1996, in Houston, Texas. Contact: Richard A. Barned, Coordinator, 413 E. 99th Street, Bloomington, Minn. 55420, phone 612/881-6051. Thank you very much.

Richard A. Barned
Minn.

• Send your letters to Sgt. Shaft, 40 John Fales, PO Box 65900, Washington, D.C. 20035-5900; fax to 301/633-3330; or send e-mail to Sgshqft@trm.com on the Internet.

Foreign Service ignores veterans preference rule

Dear Sgt. Shaft:

I hope no one is betting any money on the longevity of veterans preference under the current administration. You can forget the official line being handed out by such bureaucratic luminaries as Preston M. Taylor Jr. He may be well-intentioned and he may even believe what he says, but the stronger message is the signal that the Clinton in-group has sent out for the past 30 years. That's pretty clear, isn't it? The military is bad, and veterans preference disadvantages women.

Of course it doesn't disadvantage minorities who serve in disproportionate levels in the military. Here in the State Department, where I am employed (with very few minorities in power positions), the American Foreign Service Association (AFSA) reads the signals very clearly and has bluntly stated in its proposals for downsizing that, since 80 percent of the Foreign Service never served in the military, veterans preference will not be supported by AFSA. It has already been downplayed by State Department management.

Sure makes me feel real good, Sarge, to know how much the Foreign Service thinks of the military service.

Perplexed Vet at State

Dear Perplexed,

The administration points with pride at the number of new veteran hires in the federal government. However, most of the new hires are at the lower levels of the grade structure. And this is after many years of training and acquired skills obtained from their military service and after they have "shown their mettle" and have been "all that they could be."

In fiscal 1994, the number of veterans hired for positions in the grades GS-1 to GS-15 broke down to this: 10,437 men, 2,068 women, 2,410 blacks, 900 Hispanics, 429 Asians, 221 American Indians, 8,531 whites.



Most were hired for the lower grades: GS-4, 1,586 new veteran hires; GS-5, 2,469; GS-6, 1,043; GS-7, 998.

As the scale heads toward the higher end of the pay scale, far fewer veterans get hired. For example, GS-8, 135 new veteran hires; GS-9, 1,001; GS-10, 106; GS-13, 328 new hires.

At the top of the chart, at grade level GS-15, 144 new hires: 137 men, seven women, 10 blacks, seven Hispanics, eight Asians and 119 whites.

Dear Sgt Shaft:

In your Sept. 11 column you quoted Susan Odom as saying, "Even colleagues unfortunate enough to work with me have been retaliated against in an effort to discourage me from ever standing up for veterans preference rights again." As one of those colleagues, I can testify to the truth of that statement.

We all have to work under conditions that are less than ideal. I have maintained my silence through different forms of reprisal. I've suffered for Susan's stand in the John Davis Veterans Rights case (projects lost, sudden job details to jobs no one else wants, denied credit for work I've been assigned, etc.) for some time. Last week's actions, however, scared me so badly that I felt I had to speak out.

Susan and I have worked together for more than 10 years in the Army Corps of Engineers. Like her, I am the daughter of a veteran, the sister of a veteran, the wife of a veteran and the mother of a newly enlisted son. My husband and I encouraged our son to join the service, even facing service in Bosnia, because we know how valuable that training and discipline can be to a young man.

As a black woman, I was especially concerned for my son's future in these turbulent times and I reassured him that the service provided the brightest future for him.

Yet as I was seeing my son off to service, the Army Corps of Engineers was busy finding ways to use me to further penalize Susan for her stand on the John Davis veterans rights case. They arbitrarily and cruelly docked my pay, rather than use my leave, then further denied ever doing so. Now, I'm left to wonder: Will my son return home from his tour of duty only to have to fight another battle with the Clinton administration for his veterans rights?

Outraged and Broke,
Forestville, Md.

Dear Outraged:

The sarge urges the appropriate congressional veterans and civil service committees to immediately hold oversight hearings on the shenanigans at the Corps of Engineers.

In the January 1996 edition of the American Legion magazine, Ken Scharnberg reports that court records in a claim involving the denial of bumping rights filed by John L. Davis, a GS-15 civilian employee with the Corps of Engineers, revealed that the corps' review board personnel intended "to teach Davis a lesson." Those same court records contained statements that "he ascended too fast, so he could descend fast."

• Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, DC 20035-5900; fax to 301/622-3330, or CompuServe 75533.2304@compuserve.com

MSPB member says it's for vets' rights

Dear Sgt. Shaft:

In your Nov. 6 column, a reader expressed concern that "Mr. (Harry) Redd's anti-strong veterans preference attitude is prevalent at the MSPB." Please inform your readers that the U.S. Merit Systems Protection Board takes great care to ensure that cases involving veteran status in federal hiring systems is given its full legal weight and authority as guaranteed under the 1944 Veterans Preference Act.

Moreover, creative efforts to sidestep veterans preference simply will not be tolerated by this member, nor will any MSPB office, administrative judge or department hold a different official view on this matter until such time the Congress decides to change the Veterans Preference Act. I reiterate Mr. Redd's disclaimer that his written or spoken comments reflect only his opinion and have no force or influence whatsoever on the board's handling of cases involving veterans preference.

Antonio C. Amador
Member,
Merit Systems Protection Board

Dear Mr. Amador:

May I refer you and my readers to Mr. Redd's letter in this column, which seems to contradict your statement that "creative efforts to sidestep veterans preference simply will not be tolerated by this member, nor will any MSPB office, administrative judge or department hold a different official view on this matter until such time the Congress decides to change the Veterans Preference Act." Mr. Amador, at a time when President Clinton is once again putting our men and women in harm's way, you and your fellow board members should be recommending the strengthening of veterans preference by proposing strong sanctions against those managers who attempt to circumvent it.

Dear Sgt. Shaft:

In your Nov. 6 column you commented on my article titled "Let's Reinvent Veterans Preference Now" that appeared in the summer issue of the Public Manager. Unfortunately, you mischaracterized both my article and my views.

No, Sarge, I'm not "anti-strong veterans preference" as you say. Quite the opposite: I'm a strong



proponent for proper recognition of the men and women who serve our country. In fact, as my article stated, I am myself a veteran. For these reasons, I believe it's important to point out that the current approach isn't serving veterans well.

I'm not alone in my view. The veterans service organizations have joined in expressing unhappiness with veterans preference as it currently works. Many federal managers don't like it either. Consequently, managers increasingly are using legitimate alternative procedures to fill jobs.

If enough managers use the alternative procedures (where veterans preference isn't a factor), veterans' federal hiring opportunities will be reduced.

My article says the current approach "doesn't appear to satisfy any stake holder well." Veterans organizations agree and understand that finding ways to improve the process is in the best interest of those they serve. In fact, veterans service organizations have been working with the Office of Personnel Management to identify possible changes in the hiring process that will not only preserve veterans preference but improve its application.

Be fair to your readers, Sarge. Let them know that my article offers two alternatives, one of which is to "scrap the current approach altogether (abolish veterans preference as we know it) and establish in its place a noncompetitive hiring authority" for preference eligibles. By not reporting that I was suggesting alternatives, and by reporting my phrase ("abolishing veterans preference as we know it") incompletely and out of context, you have done your readers and me a disservice.

To conclude, I don't believe that "change" is automatically bad. And like representatives of the Disabled American Veterans and other veterans service organiza-

tions, I think the time has come to find a way to change how preference is granted to eligible individuals. I never questioned whether it should be granted.

While you may not agree with my views, I hope you will extend me the courtesy of printing this response.

Harry C. Redd III

Dear Harry:

I strongly suspect that the veterans service organizations such as the DAV, VFW and the American Legion are much closer to my views on veterans preference than yours. Federal departments and agencies already have noncompetitive "V.R.A." selection authority if they wish to use it. What is needed is to treat circumventing veterans preference as an act of discrimination, and strong sanctions should be levied against managers and their agencies who are guilty of this intolerable behavior.

Veterans who challenge those who have denied them veterans preference are put through a maze of legalistic hijinks by the same agencies that are in existence to protect their veterans preference employment rights. Veterans should not have to pursue relief to a myriad of stonewalling departments and boards only to end up in court with only mounting legal debts to show for their efforts.

Mr. Redd, I also suggest that you, Mr. Amador and my readers peruse "With Preferences Like These" in the January 1996 issue of the American Legion magazine by Ken Scharnberg. Mr. Scharnberg describes the trials and tribulations of veterans as they attempt to travel the regulatory road of veterans preference only to be hampered by bureaucratic, legalistic detours.

Reiterating what I have said in my past columns, Mr. Scharnberg writes: "The blunt truth is that veterans preference laws are regularly ignored or circumvented by federal hiring managers (some of whom will go so far as to reject entire lists of candidates simply because a veteran's name appears on that list). Worse, there is little a veteran can do to redress the wrong."

• Send your letters to Sgt. Shaft, c/o John Fales, PO Box 65900, Washington, DC 20035-5900; fax to 301/622-3330, or CompuServe 75533.2304@compuserve.com

Administration official insists veterans' preference is secure

Will stay despite 'reinvention' of the government

Dear Sgt. Shaft:

I read with great interest, and some disappointment, the portions of your Nov. 6 column on veterans' preference in the federal government. As a presidential appointee and veterans' advocate, I strongly support veterans' preference. Since I took office in 1993, there has been no change to the contrary in this administration's signals to me regarding my agency's mission to assist veterans who feel they have not been given preference in their pursuit of federal jobs.

Of the approximately 500,000 veterans employed full-time by the federal government, there have been and always will be individuals who have questions about how veterans' preference has been applied to them, or who have disputes with the system. I appreciate your willingness to step forward and ensure that the voices of each of these veterans is heard.

However, it is terribly unfair to suggest that each of these cases represents a hidden Clinton administration agenda to dump veterans' preference. In fact, what the president himself has said, as well as the statements and actions of his appointees, show that to be absolutely untrue.

President Clinton stated in writing on June 22, 1994: "I remain committed to preserving the veterans' preference act. With the service that veterans have provided to this nation, they deserve nothing less."

Clearly, with both political parties agreeing that the federal government must downsize and reinvent itself, civil service reform is inevitable. I believe that equating "reinvention" with "elimination" of veterans' preference does veterans a disservice, and urge you to promote constructive dialogue about the issue.

Preston M. Taylor Jr.
Assistant Secretary,
Veterans Employment
and Training
Department of Labor

My good friend Preston:

I have no doubt of your personal



erans' preference. However, there is no doubt that a bureaucratic game called "Circumvent Veterans' Preference" has been and is being played throughout the federal, state, and local governments.

I have forwarded to you a copy of comments by Harry C. Redd III, senior research analyst in the U.S. Merit Systems Protection Board's office of policy and evaluation, which appeared in the summer 1995 issue of *The Public Manager* (referred to in that Nov. 6 column). I understand that his remarks were reviewed by the Office of Personnel Management's office of diversity prior to publication.

In addition, I have referred to your attention the trials and tribulations of V.R.G., a Vietnam veteran, whose attempts to obtain a job with the federal government also have been written about in this column.

The Sarge would happily print your next letter relating how you, as a presidential appointee and veterans advocate, have personally helped V.R.G. and other veterans in need obtain a position in the federal government commensurate with their abilities.

Dear Sgt. Shaft:

Your columns encourage me to write. This does not come easy to me, because I prefer to solve personal challenges myself. This time, however, after all my efforts have failed, I would welcome some outside support.

I am a Vietnam veteran. My future looked promising in early years. I earned a bachelor's degree and a master's in structural and civil engineering. Later on I studied for and obtained a professional engineering license in the states of Maryland, Virginia and Pennsylvania.

Then I was hit by a series of depressions. It was a constant on-and-off battle. Not cognizant of the seriousness of the condition, I struggled to maintain the high level

was used to but could not uphold the same.

In March 1988, while I was trying to work for a Ph.D. in my field, I experienced a devastating nervous breakdown.

A long, much too long, period of unemployment and recuperation in my parents' home followed. The longer my unemployment lasted, the less likely it became to be hired. This is frightening.

I never applied for financial support. I do not wish to receive any as long as I can manage on my own. Now I am in stable health with hardly any medication to take. I need to go on with my life by obtaining a job and be able to support a family.

In having conquered many challenges so far, my appreciation to hold and fill a job cannot be exceeded by too many other people.

I love my country and served when I was called to active duty. I always led a clean and honest life. During the last years I accumulated a big file of job applications to government and the private industry. None of them materialized.

I love my profession and kept pretty much up to date by taking refresher courses at the University of Maryland and also continued subscriptions to professional magazines. I helped my aging parents to keep up with house and car repairs and developed mechanical, electrical wiring and carpentry skills. Many times I took temporary jobs and did volunteer work.

Although I am qualified in structural and civil engineering, I would welcome the opportunity to work in a different field.

To overcome the odds, I need some help, Sarge. May I reach out to you for your support to get a job, which I, entirely on my own, would not be able to obtain otherwise at the present time?

V.R.G.
Edmonston, Md.

Dear V.R.G.:

I have forwarded your plea for a position in the federal government to presidential appointee and veterans advocate Preston M. Taylor Jr. Hope this helps.

Send your letters to Sgt. Shaft, c/o John Fales, PO Box 65900, Washington, DC 20035-5900; fax to 301/622-3330 or CompuServe

LSD guinea pig still waiting for some relief from Congress

Dear Sgt. Shaft:

You may recall that I am the vet who was given massive doses of LSD at Edgewood Arsenal in Maryland during the early 1950s. I have sought relief from the Army, Air Force, Department of Defense and the Veterans Administration, all without success, and have been barred from the courts by the Feres Doctrine.

You have supported my efforts to obtain relief from Congress. In the last session, H.R. 3350 was introduced in the House, cleared committee and passed the full House. The bill then went to the Senate and cleared committee with amendments as the 103rd Congress came to an end.

Tom Davis, my representative in the House, has introduced my bill in the current Congress, H.R. 1009. The bill is in committee, awaiting further action. I am optimistic since it is the same bill that passed the last Congress.

We still need a big push in the Senate, which I expect to come either next month or early next year.

It is a great satisfaction to me to observe the reaction of the administration and the Congress to the recent news of radiation and other experimenting in the 1950s and '60s. I hope other unwitting guinea pigs of the U.S. government do not have to wait as long as I have for relief.

I thank you for all that you have done for me in the past and ask for your continued support. And thank you for anything you can do for me.

Lloyd Gamble
Fairfax

Dear Lloyd:

As you know, I have been in personal contact with Republican Reps. Tom Davis of Virginia, Gerald Solomon of New York and Lamar Smith of Texas, chairman of the House Judiciary subcommittee that must mark up and report out your relief bill. We soon will be commemorating another Thanksgiving Day, and George Washington and our constitutional forefathers must be rolling over in their graves as they watch the turkeys at the Army treat you like a



guinea pig, lie to you and the Congress, and then fail to give you constitutional due process.

The sarge once again urges the House of Representatives to expeditiously pass the Lloyd Gamble private relief bill, H.R. 1009, and the Senate to follow suit.

Dear Sgt. Shaft:

A letter in your recent column from the Army man who had such a rough time with the Army "justice" system tore my heart once more.

My second of six sons, David, was a successful West Point graduate in the Class of 1977, a major, a nuclear physicist and the father of two. He had an accident involving severe injuries to his wife. All the authorities agreed that it was an accident until her family claimed to those authorities that he had tried to kill her.

David was tried in civilian court for aggravated assault. He was found not guilty. The Army had already decided that he was guilty of that charge and several others that were thought not strong enough for civilian charges. He was brought to general court-martial, found guilty on all charges and sent to prison for 23 years. The Convening Authority awarded his wife about \$1,000 more per month in alimony than did the civilian divorce settlement that was reached at the same time.

The Army has approved the numerous illegal uses of its own rules. And a "not guilty" person has been trashed and buried with no hope of redress — ever.

David's wife never testified that he had ever tried to hurt her. Two years after the fall, she filed for insurance to cover expenses of "the accident when she fell from her husband's arms as he was car-

rying her." She remarried two years after the conviction and continued illegally to take alimony for two years until the paycheck stopped at his dismissal from the service. She refused to allow my husband or me (the grandparents) or any of the Schneider uncles, aunts or cousins access to the children.

We won our grandparent rights in courts from New Jersey to New York to Kansas and now to Florida. In Florida, she has been found "willfully guilty of contempt of court" when she refused to obey the judge's orders.

The Army has terribly damaged me and my family. No one wants to admit that the military justice system is less than perfect. No one is willing to stand up for what is right. No one will listen. No one is willing to jeopardize a career to do the right thing. What have we come to?

Patricia Hervey Schneider
Great Falls, Va.

Dear Mrs. Schneider:

Unfortunately, the lives of many innocent men, women and their families are ruined by Pentagon policy poltergeists. Those unseen policy wonks have created an unfair legal system that eliminates due process and at the same time fosters double-jeopardy decisions adverse to those serving our country in uniform.

Your son seems to be one of the unfortunate military types whose life has been ruined by a process without objective recourse. It is high time that the president, with the concurrence of Congress, create a commission to review these Pentagon judicial policies and immediately appoint a civilian review board to review your son's situation and similar cases.

The sarge's heart goes out to you and your husband in the hope that you soon will be able to shower your grandchildren with love.

• Send your letters to Sgt. Shaft, c/o John Fales, PO Box 63900, Washington, DC 20035-5900; fax to 301/622-3330, or CompuServe 75533.2304@compuserve.com.

What's next for veterans preference?

Officials seek to 'reinvent' federal system

Dear Sgt. Shaft: The Washington Times of Sept. 11 included a correspondent's letter from a reader who commented that President Clinton was proposing changes regarding veterans preference. As a widow of a retired veteran, I wish to learn more of this proposal.

C.C.
Washington, D.C.

For beginners, a "must read" for veterans is an article in the summer 1995 issue of the Public Manager, "Veterans Preference Now" by Harry C. Redd III, a senior research analyst in the Office of Public Policy and Evaluation, U.S. Merit Systems Protection Board (MSPB). Although it is a document that the veterans and do not represent the views of the MSPB, Mr. Redd's anti-strong veterans preference attitude is prevalent at the MSPB, the General Accounting Office, and other departments and agencies throughout the federal government.

The premise of Mr. Redd's article is that since managers circumvent veterans preference anyway, then why not reinvent it, thereby making it more palatable to the MSPB and his colleagues at agencies, whose role is to oversee adherence to veterans preference and other personnel laws. Should

on the civil service that entire reductions-in-force using Davis vs. Army as the basis for their actions.

"Unfortunately, this case is only one attempt by the Clinton administration to reinvent veterans preference. Veterans Preference Act. Discrimination against veterans in all phases of employment is now rampant in the federal government. The administration has advocated over-sight responsibility for placing the blame for veterans preference on the executive. On that note, I ask your support to ensure that those of us who faithfully served our nation will not be dumped onto the streets in the name of cultural diversity.

"Mr. Davis has been in contact with Chairman Alton S. Foss and with the Committee on Veterans' Affairs subcommittee on Education, Training, Employment, and Housing. Both representatives have expressed interest in ensuring that veterans preference is followed in the future. However, they have without open public debate, the pattern is clear that the Clinton administration will continue to turn its back on those who unselphishly served when called to serve.

Ted Kallivas
Springfield, Va.

Dear Ted:

The sergeant joins in your plea to Mr. Gingrich. Additionally, I urge the majority of the 104th Congress to strengthen veterans preference, thereby protecting those citizens who have, in time of need,



Sgt. Shaft

be urging sanctions on managers who attempt to circumvent veterans preference.

It is ironic that the two managers at the Army Corps of Engineers who have been thumbing their noses at veterans preference status are now being promoted to senior executive-level positions at the corps. Read on.

Dear Sgt. Shaft: I am sure with your readers letter, sent to House Speaker Newt Gingrich.

"You may recall that we had a brief conversation at National Air-Port on Sept. 11, 1995, concerning the circumvention of veterans preference by the Clinton administration. You asked that I provide you with additional information. In that regard, I am pleased to furnish the enclosed news clippings.

John I. Davis, a fellow Vietnam War veteran, has been waging this battle on behalf of veterans for three years. He has enlisted the assistance of the American Legion, Veterans of Foreign Wars, Disabled American Veterans and the National American Veterans' Association. I suspect his case has had on veterans in the federal work force. In fact, Mr. Davis recently learned from

Mr. Speaker, I invite you to respond to my comments and to Mr. Kallivas in my column.

Shaft kudos

Our beloved Marine Corps will be 220 years old Friday. The sergeant joins his fellow Marines in a loud "Glory to the Corps" and a booster-out chorus of "Happy Birthday" and the Marine Corps hymn. And

Saturday we will once again be celebrating the anniversary of the visit and place flags and other mementos at veterans' gravesites and memorials, one thing should be obvious: we will see no hypophenated-American soldiers, sailors, airmen or Marines at these sites. Only as Americans were killed, wounded, and risked our lives as we fought a common enemy.

It is now incumbent on us as veterans to strengthen the fabric that binds us together as Americans, while at the same time fighting our own battles. We must, by setting an example for all Americans, purge our nation of bigotry, hatred, aversion and greed.

And vets, you and your family catch the VA-National Medical Musical Group featuring the incomparable Sandi Parr with the Songwriting and the DAR Constitution Hall. Call Ticketmaster for information.

Send your letters to Sgt. Shaft, c/o John Fales, PO Box 65900, Washington, D.C. 20035-9900; fax to 301/622-3330, or CompuServe 301/622-3330.

Vietnam vets offended by McNamara's book

Dear Sgt. Shaft:

I was delighted to hear that you had taken a copy of Robert McNamara's book, burnt it and placed the ashes at the wall of the Vietnam Veterans Memorial in Washington on Memorial Day. I thought you and your readers might be interested in comments on Mr. McNamara's book and President Clinton's arrogant acceptance of it as a form of absolution for his actions during Vietnam. I have attempted to share (and have shared) my comments with other publications.

After more than 20 years of struggling to put to rest our memories, the last thing many Vietnam veterans needed to hear from former Defense Secretary McNamara was a list of the most responsible for our experiences — that our sacrifices were in vain.

The bullet that entered my chest would have penetrated my heart but, by the grace of God, it hit a rib and ricocheted through my left lung. A second round lodged in the muscle of my right chest. Jagged pieces of shrapnel tore into both my legs, abdomen and left arm, and cut my right eye out. To this day, about my body, remain in after weeks of surgery and recovery. I regained the sight in my eye but lost several feet of my intestines, plus my spleen, gallbladder, and a portion of my stomach.

What I did not lose as a result of my wounds on that day in July 1969 was my faith in God and my country. For I was one of the thousands of young men who volunteered their country's call to duty to serve in Vietnam.

Whether the war was "just" is

a convenient response to that issue in the upcoming presidential campaign.

McNamara's book will not hasten the process of healing our country's divided opinions concerning Vietnam. When the president of the United States claims that he was right in his decision not to serve because he opposed the war philosophically and feared its potential impact on his life, new and very deep wounds are created in the hearts of those who derive solace in the belief that what he did was right. Do you think we are certain that God will forgive Robert McNamara, but if I can assume the honor to speak for those who did not return home, it will be a long time before I can forgive him for his mistakes.

Richard Alan Richards
Springfield, Ill.

Dear Richard:

You eloquently express the feelings of hundreds of thousands of Americans who served gallantly when their country called. Many of these same veterans are writing to this columnist. They feel betrayed by the likes of the McNamaras of our country and are embittered by the attack they now face on their well-deserved benefits.

Many of our fellow Vietnam vets are voicing concern for those who served before them. At the base of the Hill, Korean veterans who by their promised medical care and pensions being eroded. Vietnam vets are also concerned about those in the military now and the Persian Gulf. Somalia and downsized vets recently kicked off by

government with a "thank you, but what have you done for me lately?"

Our active military force structure is way below strength and puts too much emphasis on a less-than-adequate National Guard and Reserve. Thousands of our active military families are on food stamps, and well-trained, dedicated troops, with many years of devoted service, are being summarily dispatched under the guise of "right-sizing." The more things change, the more things stay the same. We must, therefore, be ever vigilant since McNamara clones are alive and well throughout our government.

Shaft kudos

The sergeant told that Robert Timberg's fine book, "The Night: A Memoir of the Vietnam War," would inspire me to write. I was published by the Hindicapped Division of the Library of Congress. As soon as Simon & Schuster gives its permission to the LOC, blinded vets and other visually handicapped Americans will have an opportunity to read this "riveting, provocative and pungent" book, as the reviewer in "The Washington Times" put it, about Americans who served in Vietnam and those who did not.

The sergeant urges readers to read the book. I urge combat vet Timberg's book, which profiles five publicly prominent Vietnam veterans: James Webb, Oliver North, Robert (Bud) McFarlane, John Poindexter and Sen. John McCain. • Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, DC 20035-5900; fax to 301/622-3330, or CompuServe 75533-2304@compuserve.com



an issue that we veterans must reconcile in our hearts and minds. However, I was not prepared to retrace my journey of reconciliation through a television interview with Mr. McNamara.

His tears were not genuine, for if he truly felt remorse for his actions, he would not have composed his book on the 30th anniversary of the Communist victory in Vietnam.

Mr. McNamara will profit handsomely from the book and, although he announced his belief that our involvement in Vietnam was terribly wrong, he has yet to apologize to the disabled veterans that he helped to create or to the families of the 50,000 young Americans who died after he failed to act on his conscience. We veterans who served had American soldiers win every major battle, as did win Vietnam, but, because of men like the former defense secretary and his colleagues, we were not allowed to win the war.

To compound the pain, President Clinton was morally wrong in his decision to capitalize on the book by announcing that he had vindicated. The president truly believes that either his decision not to serve in the military was justified or his political advisers have convinced him that the absolution from Mr. McNamara will be

OPM chief responds on lawyer fees, suggests appeal in federal court

Dear Sgt. Shaft:

I apologize for the delay in responding to the information you faxed me in June regarding the case involving Big Al. The document you sent was the petition for review of the Merit Systems Protection Board (MSPB) initial decision in this attorney fees matter filed by Big Al's attorney, N.A.C. At that time the MSPB had not issued a final decision concerning the attorney's petition for review or the response to that petition filed by the Office of Personnel Management (OPM). On July 31, 1995, the full board issued an order in the case, a copy of which I have sent you, that denied the attorney's petition for review because it does not meet the MSPB's criteria for review.

That order, which Big Al and his representative should also have received by now, states that the MSPB's initial decision in this appeal is now final. If Big Al and his attorney choose to appeal this decision further, judicial review of the MSPB's decision is available in the U.S. Court of Appeals for the Federal Circuit, as explained in the MSPB's July 31 order.

Since the time for judicial review has not expired, the matter is still under consideration to be in litigation. Thus, I am sure you will understand that I cannot comment about the specific facts in the appeal, the arguments made by the parties, or the MSPB's decision. I can say that none of the issues in this appear to concern Big Al's status as a veteran.

To give you a brief synopsis of this matter, OPM initially denied Big Al's application for disability retirement, which he has appealed to the MSPB. Following an initial MSPB decision that reversed OPM's decision, OPM chose not to appeal to the full board and fully complied with the terms of the order by the administrative judge. In other words, OPM approved Big Al's application for benefits and put him in a hardship (interim) pay status, which included his annuity as well as a lump-sum payment retroactive to his last day in pay status.

Big Al's attorney, N.A.C., later filed a petition for attorney fees that was untimely. OPM responded by filing a motion to dismiss. The administrative judge provided both parties the opportunity to file briefs concerning the



timeliness issue, then dismissed the petition for attorney fees as untimely filed. N.A.C. then timely filed the petition for review with the full board. This afforded N.A.C. further opportunity to submit arguments relating to the MSPB's regulations regarding filing deadlines.

Again, I regret the delay in responding and any distress this may have caused Big Al. As I indicated earlier, he now has the opportunity to pursue this matter in the federal circuit if he files a request with the court within 30 days after receipt by him or his representative of the MSPB's July 31 order. And thanks once again for your ongoing interest in our vets.

James B. King

Director

Office of Personnel Management
Dear Jim:

The sarge understands that there are mitigating circumstances in which one might respond late to an inquiry, such as the tardiness in your response, or even to legal time frames. As you know, Jim, in 5 U.S.C., section 7701(g)(1), "... the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved on reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice."

In this case, the OPM and MSPB review board bureaucratic barristers, in the interest of justice, should not have relied only on "Gotcha, gotcha" case law, but on what is right, common-sense law.

Dear Sgt. Shaft:

Please advise how I can get help for a blind veteran. He served in World War II, and I would like him referred to a blind rehabilitation center as he has no other physical

limitations. He lives close to the VA hospital in Allen Park, Mich., but I don't know if this is the place to take him. Please advise.

E.M.M.

Melvindale, Mich.

Dear E.M.M.:

The sarge has referred your friend to the director of blind rehabilitation at the Department of Veterans Affairs' central office. He has assured me that the VA's Visual Impairment Service Team coordinator based at the Allen Park VA will soon be contacting your friend.

Shaft kudo

The sarge sadly bid farewell as Taps were recently played for his friend and mentor, George "Buck" Gillispie—a blinded World War II veteran and pioneer in blind rehabilitation. At the annual reunion of the 756th Tank Battalion Sept. 21, a massive heart attack stopped this warrior of rights for disabled veterans. During World War II, Buck served in one of the most outstanding combat units in the European theater of Operations, which participated in seven campaigns in North Africa, Italy, France, Germany and Austria. This tank battalion earned 924 individual decorations, including two Medals of Honor and three Distinguished Service Crosses, as well as two unit citations.

For the past 10 years, members of Congress who have furthered efforts on behalf of sensory disabled American veterans have received recognition from the Blinded American Veterans Foundation in honor of this titan of blind rehabilitation. Another indication of the esteem in which Buck was held among blinded veterans is the bronze plaque that now stands at the Department of Veterans Affairs Blind Rehabilitation Center in West Haven, Conn.—where Buck once served as chief.

Because of you, Buck, the lives of many blinded veterans and their families are much brighter and fruitful, including mine. Our friend Buck will be laid to rest this morning in New Haven. All his many friends send their condolences to his wife, Carol.

• Send your letters to Sgt. Shaft, c/o John Fales, PO Box 65900, Washington, D.C. 20035-5900; fax: to 301/622-3330, or CompuServe 75533.2304@compuserve.com

Couple suffers retaliation at work after backing veterans' preference

Dear Sgt. Shaft:

Not too long ago you published a letter from John Davis concerning his experience with the Army. Mr. Davis described his ordeal when his veteran's preference rights were ignored in a reduction in force (rif). I was personally aware of Mr. Davis' case since I testified in his favor before the Merit Systems Protection Board. Testimony for which I, and my family, have paid dearly.

Even colleagues unfortunate enough to work with me have been retaliated against in an effort to discourage me from ever standing up for veteran's preference rights again.

I know, as a woman, that veteran's preference is the linchpin on which civil service is built. If it were to go away, the shockwaves to us nonveterans would be catastrophic. Since the performance appraisal system is so riddled with inequities, there would be chaos as agencies moved to keep those they liked and rif those they didn't;



crashing into one wave of political convenience after another. This would be especially disastrous for the new minority hires as so many of these are veterans of Desert Storm.

Sarge, I can honestly tell you that the last two years have been hell. I've watched my husband's health deteriorate as my organization tortured him in order to punish me. I've lost the program I created. My agency has even gone so far as to deny my husband life insurance. I have been rendered irrelevant in an agency I loved because I told the truth... and worse, because I was right.

On the other hand, the veteran who raised me taught me that no right worth having was ever won without a fight. And the veteran I married and love would rather fight this battle than give up the rights that his service to his country promised him.

If President Clinton wants veteran's preference changed, then let him have the guts to openly propose the law and see it debated by the Congress. Underbanded precedential decisions like Davis vs. Army are disgraceful and dishonest. And it leaves the little guy, like me, fighting a battle that should never have taken place.

Susan Odum
Northern Virginia

Dear S.O.:

The sarge has shared your concerns with Jim King, the director of the Office of Personnel Management.

• Send your letters to Sgt. Shaft, c/o John Files, PO Box 63900, Washington, DC 20035-5900; fax to 301/622-3330, or CompuServe 75533.

For blind VA staffer, EEO complaint reaps further discriminatory deeds

Dear Sgt. Shaft:

Let me bring you up to date on my continuing saga with the Department of Veterans Affairs' equal employment opportunity program. After being bypassed for a promotion, I filed an EEO complaint based on my targeted and protected status as a legally blind federal employee. Like most EEO and affirmative-action programs, the VA's policies look great on paper.

Practicing what is preached, however, appears to be a different matter. Since I filed my EEO complaint in September 1993, my career has taken a noticeable turn for the worse. I no longer am allowed to continue as editor of the facility's newsletter, coordinate a pilot program on community relations, routinely attend staff meetings and briefings, direct the majority of the medical center's marketing and outreach programs — the list goes on and on. I no longer retain the same autonomy, responsibilities and professional status held before my EEO involvement. I am suffering from what you might call EEO whiplash or constructive reassignment.

The VA boldly endorses its EEO program as a prompt and fair resolution process that prohibits reprisal. As for now, the agency has yet to articulate any legitimate nondiscriminatory reasons for the adverse actions I have experienced since filing several EEO complaints. Instead of resolving these issues at a fraction of the cost, the agency now has allowed this process to become lengthy investigations costing thousands of taxpayer dollars.

While this entire process has been going on, I have seen my career seriously regress. My colleagues are now asking me embarrassing questions and want to know why I am no longer considered the agency's public affairs officer or why my name no longer appears on the VA public affairs council roster. Fellow staff members ask me why the EEO minutes publicly disclosed a report that my supervisor had taken personnel actions against me. All incoming correspondence involving me must now be reviewed by the facility's front office. Even mail personally addressed to me is opened before being routed to me.

When I requested a large-screen computer monitor, the embarrassment continued. My supervisor responded by calling the request a nicety rather than a ne-



cessity and asked for current documentation showing the need for such accommodation, despite the fact that I entered the federal government through a Schedule A appointment that certified my permanent and severe disability of less than 20/200 vision.

And the embarrassment has not been limited solely to me. My EEO representative, a disabled Vietnam veteran who uses a service dog to enhance his wheelchair mobility, was ticketed twice by VA police after meeting with me. The police said that only blind persons could have dogs on VA property.

Shortly after requesting accommodations related to my public affairs duties, I was told by my supervisor that I was being reassigned to a different position. When I realized this assignment would represent a reduction in my autonomy, professional responsibilities and career growth opportunities, I again filed through the EEO process. In turn, my supervisor presented me with a written counseling of criminal misconduct for my role in sending out a news release announcing a VA award, despite my following the same news release procedure that I had practiced without question for the past eight years and as outlined in my position description.

It turned out that I was being disciplined for the same action that had twice won me the VA's highest honors in public affairs. Again I exercised my right to challenge this adverse action through the EEO process. My supervisor then rescinded a lifetime achievement award for which I had been nominated by the VAMC chaplain. This supervisor openly admitted that she had never read the nomination criteria or reviewed the lengthy application outlining my career and community work.

These and other actions by my supervisor continued until December 1994, when she went on vacation and never returned. Throughout this entire episode, my health and career have suffered tremendous setbacks. My

encounter with the VA's EEO program contrasts an agency that boasts of being an EEO leader and affirmative-action employer. From my perspective and that of other persons with disabilities, this EEO program appears to do more to protect itself than those it was designed to help.

Although I may not have 20/20 eyesight, it is the agency that appears to lack vision in this case.

Doghouse Dan
Reno, Nev.

Dear Doghouse Dan:

Looks like you're still rolling snake eyes at the Department of Veterans Affairs. In a message to all Department of Veterans Affairs employees commenting on the anniversary of the signing of the Americans With Disabilities Act, Secretary Jesse Brown wrote: This anniversary ... prompts restatement of my commitment to affirmative action in VA's hiring and advancement of employees with disabilities. I have directed VA senior managers to adopt specific performance standards for achieving their facility goals for representation of people with disabilities. They are now directly accountable for those goals.

But since the enactment of the ADA, employment of persons with severe disabilities — not only at the Department of Veterans Affairs, but throughout the federal government — has decreased dramatically. Let's hope that publicizing your plight will lead top administration functionaries to review not only your situation, but all government recruitment, advancement and retention policies as they pertain to people with targeted disabilities.

Shaft kudo

The Sarge, along with other guests, is looking forward to joining Rep. Bob Stump, Arizona Republican, and the Non-Commissioned Officers Association in a tribute to Rep. Floyd D. Spence, South Carolina Republican. Mr. Spence will receive the group's prestigious L. Mendel Rivers Award on Sept. 20 at the U.S. Botanic Gardens in Washington. Hearty congratulations, Chairman Spence.

Write to Sgt. Shaft, c/o John Fales, at PO Box 65900, Washington, D.C. 20035-5900; fax him at 301/622-3330; or send e-mail to 75533.2304 on CompuServe.

Prevailing veteran denied legal fees

Dear Sgt. Shaft:

I am a retired disabled Navy veteran. I contacted you about two years ago when I was wrongfully discharged from a position with the federal government. At that time, you put me in contact with a veteran lawyer. Even though I had no money to pay him, he took my case on speculation that if he won the case, the regulations would provide for fees.

We filed an application with the Office of Personnel Management for a disability retirement. It was denied. We went through two stages of appeal and finally went to a hearing before the Merit Systems Protection Board. There, he won the case and got me a small but much-needed disability retirement.

When we filed a motion for legal fees, it was denied because it was four days late. There were many reasons for the delay, which are too long to go into here. Suffice it to say that time-limit rules were only applied to the individual and not to the government, which was able to disregard such limits with impunity.

The MSPB is sending a signal to all lawyers who might be willing to take a case such as mine that they will do you out of your hard-earned legal fees. What lawyers will take a case on speculation under so hostile an environment?

Without the granting of legal fees, I am responsible for payment. The conduct of the case took hundreds of hours of work. The bill is larger than the pension I was awarded. The only way that I can pay this bill is to sell my home, and unless my appeal of the denial is successful, I may just have to do that.

Big Al
Fairfax, Va.



Dear Big Al:

What amazes the sarge is how the apparatchiks in our government, after failing to shaft you directly, are again trying to shaft you by failing to pay your attorney's deserved and reasonable legal fees. I faxed a copy of your legal beagle's petition for review to Office of Personnel Management Director Jim King, thinking that, after assessing this injustice done to your attorney, he would act in your behalf. As of this date I am still awaiting an answer from the Kingmeister, who, last year, with fanfare, steadfastly exclaimed how great an advocate for veterans he was.

Dear Sgt. Shaft:

I was born in New York City and lived there until 1993, when I moved to Virginia. During the war I served with the 88th Infantry in Italy. The last issue of our association newspaper, the Blue Devil, had some notes regarding medals that you might want to pass on to your readers. I imagine there are a few more New Yorkers in the area.

B.R.
Springfield, Va.

Dear B.R.:

As a proud recipient of this New York State medal, the sarge is happy to reprint the following item from the Blue Devil:

"Decorated veterans, who were residents of the State of New York at the time they received at least one of some 40 United States medals, may be eligible to receive a Conspicuous Service Cross from the state. Best bet is to enclose a copy (never the original) of your discharge (front and back) with a letter asking if it is enough to establish eligibility for the New York State Conspicuous Service Cross with devices and certificate. Send it to Charles M. Amoroso, CW03, NY Army National Guard, State of New York, Div. Military and Naval Affairs, 330 Old Niskayuna Road, Latham, NY 12110."

Another item that caught the Sarge's attention in the Blue Devil is that World War II veterans can now buy military medals, ribbons, heraldry items and garrison caps at post or base exchanges. Previously, only retired military could shop for these items. The change in policy is a result of numerous requests to buy these items during the many 50th anniversary commemorations of WWII.

Dear Sgt. Shaft:

I would like to share with you and your readers my copyrighted sonnet on the American flag. It was judged the prize-winning poem at the International Academy of Poet's annual meeting in August 1989:

Burn the American flag? Not mine, you won't!

There are just so many insults that the human heart can endure, But burning or spitting on "Old Glory" is something you don't.

Carry out. Do not doubt that the millions of veterans will cure These gratuitous slurs to a symbol, both sacred and loved,

By smashing the insolent persons who burn, and then cry, "free speech."

Justice Brennan proclaimed to the world that burning the flag Was nothing more than a childish, and not quite harmless gag.

He signaled that freedom of speech was American lore; a "song"

Which permitted that "flag-burning, hate-niks" his despicable day.

Many patriots think that Judge Brennan's message was terribly wrong.

They believe that true justice requires that dissidents pay For burning, or trashing, this emblem beloved of all

Americans who honor the flag, and who won't let it fall.

Auburn J. Lamb
Silver Spring

Dear Auburn:

A kudo to you and to all the members of the House of Representatives who voted to pass the flag-protection amendment. It is now incumbent on those in the Senate to also listen to the American people and pass this amendment to protect this unifying symbol of our great country.

• Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900; fax to 301/622-3330, or CompuServe 75533.2304.

Veteran's preference not for all who served

Sgt.
Shaft

Dear Sgt. Shaft:

At the start, permit me to say that I am twice a veteran and not a two-timing veteran. There is an obvious and meaningful difference in that statement. I believe that it is every veteran's obligation and responsibility, especially the few of us at the Veterans Administration, to assist any vet in time of need regardless of his or her particular problem. I am employed by veterans and receive a salary through the VA for my efforts, interest and dedication on behalf of veterans and their problems.

I believe in veteran's preference as a hiring practice, if the individual is qualified for the position, and I don't view this as "preferential" treatment. I know first-hand what it means to have been out of the job market for a couple of years and, upon discharge and returning to the "world," to learn that those who stayed behind occupy all the decent jobs with benefits and career opportunities. Hence, my letter.

I received a phone call at home on May 24 from a young, 12-year veteran of the Air Force who was honorably discharged in October 1994. He is married with two children. He had a temporary, part-time job with the Postal Service, delivering mail on a rural route and had applied for a full-time postal clerk position in his hometown. On May 18, he was selected based on his test scores and veteran's preference.

On May 22, however, he received a letter from a "Human Resources Specialist" who informed him that he was no longer under consideration for the job because his DD 214 did not show that he had been issued a campaign ribbon (for being overseas in some country like "Granola" or wherever), was not a disabled veteran, and therefore, as "... you failed to furnish [sic] proper documentation to support your five points and veteran's preference status, your score has been adjusted to remove points and preference ... you are no longer under consideration for the Car-

rier position in Brunswick." He called me for assistance.

I contacted our central office personnel for a SUSC citation to prove the "Human Resources Specialist" was in error. My question was met with disbelief, and I was referred to the Office of Personnel Management.

Sure enough, sarge, a veteran is not recognized as such (for federal hiring purposes) if he or she is unable to provide proof of the issuance of a campaign ribbon (foreign country hostilities only, please) or is, in fact, disabled as a direct result of active duty!

In this young man's case, he was sent to Dover AFB to assist in the bodybag return from Desert Storm and was not issued a campaign ribbon. He went where he was told and did what he was supposed to do and fortunately was not hurt or wounded. That's how military people are supposed to perform their duty to their country; do what they're told and stay out of harm's way. But I am preaching to the choir.

So, in essence, contrary to the news rhetoric, veteran's preference as a hiring practice is dead.

Sure glad I'll never have the opportunity to make those trips again. I regret that these young veterans of the '90s can't find assistance when returning to civilian life, get adequate medical care for their injuries and troubles, have to play catch-up with those who thought it was beneath them to wear clothing inconsistent with fads and eating sometimes not-so-pleasant yesterday's leftovers. I should have smelled a rat when some folks in my agency wanted to refer to them as "our customers" and not our veterans.

L.D.R.
Fredericksburg, Va.

Dear L.D.R.,

You are on target. Vets like those in your letter get Maggie's drawers from the government when seeking veteran's preference. Here are the facts from the Office of Personnel Management: "Five points

are added to the passing examination score of a veteran who served during the period Dec. 7, 1941, to July 1, 1955; or for more than 180 consecutive days, any part of which occurred after Jan. 31, 1955, and before Oct. 15, 1976; or in a campaign or expedition for which a campaign medal has been authorized, including Lebanon, Grenada, Panama and Southwest Asia (Desert Shield/Storm). Medal holders who enlisted after Sept. 7, 1980, or entered on active duty on or after Oct. 14, 1982, must have served continuously for 24 months or the full period called or ordered to active duty. The service requirement does not apply to veterans with compensable service-connected disabilities, or to veterans separated for disability in the line of duty, or for hardship."

At a time when 30,000 soldiers each month must depend on food stamps to feed their families and countless number of veterans live on the streets, it is incumbent that our nation ensures the transition from active military service to civilian life is a fruitful one.

All veterans released from honorable military service should be eligible for veteran's preference. And those federal department heads, managers and supervisors found to be circumventing veteran's preference should be held accountable and disciplined, and veterans wronged should be made whole through adequate relief.

The Clinton administration is in the process of preparing a Federal Human Resource Management Reinvention Act of 1995. It is imperative that not only the veterans-service-organization employment gurus get involved, but all veterans must get involved to ensure that a strong veteran's preference section is an integral part of this legislation.

• Send your letters to Sgt. Shaft, c/o John Fales, PO Box 65900, Washington, D.C. 20035-5900; fax to 301/622-3330, or CompuServe 75533.2304.

VA yet to act on 2 vindicated officials

Dear Sgt. Shaft:

Thanks for highlighting in your April 10 column the dilemma faced by Franklyn K. Coombs and Dr. Bruce B. Blasch at the VA Medical Center in Decatur, Ga.

Many will recall in early 1993 the news about the sexual-harassment allegations made against Mr. Coombs, director of the Rehabilitation Research and Development Center, and Dr. Blasch, associate director. There were also allegations about fraud relating to Mr. Coombs and the Atlanta Research and Education Foundation (AREF).

Because of these allegations, Mr. Coombs' appointment with the VA was not renewed, and Dr. Blasch was permanently removed from supervisory duties and from his position as associate director.

Deborah Hyde, the former employee who made the allegations that were published in the Atlanta Journal Constitution on May 4, 1993, sued, seeking \$8 million from these VA officials. Her suits were subsequently thrown out of federal court, as was her appeal.

She was then sued by Mr. Coombs and Dr. Blasch for libel, slander and defamation. The court ruled in their favor. In other words, it was proven in courts of law that Mr. Coombs and Dr. Blasch are innocent.

The latest article about the outcome of the lawsuit was on page 6 of the local section of the Feb. 21, 1995, edition of the Constitution, next to the obituaries. When Ms. Hyde made the allegations, her picture was in the paper, and the story took up almost a whole page. Also, the inspector general's investigations of the allegations pertaining to Mr. Coombs and the AREF were also favorable, and no wrongdoing was discovered.

My point is that when Mr. Coombs and Dr. Blasch were accused of sexual harassment, the media were all over it. Now that the complainant, Ms. Hyde, has ruined the careers of these outstanding professionals, a small article is hidden in the local news.

I wrote a letter to Jesse Brown, secretary of the Department of Veterans Affairs, on Feb. 23, 1995, asking for his personal attention to this matter. Needless to say, the response I received from his staff (dated April 3, 1995) was not helpful. I again wrote Secretary Brown on May 1, and have not received a response as of this date.

I am unaware of any positive action by the VA to correct the wrongs done to Mr. Coombs and Dr. Blasch. I am also curious as to what will be done to the employees still here who supported the allegations against the two men.

Ron Cebulski, U.S. Army
sergeant major (retired)
Tucker, Ga.



Dear Sergeant Major:

The sergeant received a copy of this letter sent to Mr. Brown by Sen. Barbara Mikulski, Maryland Democrat:

"Dear Secretary Brown:

"I wanted to bring to your attention the enclosed column entitled "Sgt. Shaft," from the April 10 Washington Times. I hope you will ensure that everyone involved in this matter is treated fairly."

Dear Sgt. Shaft:

My sister is a widow of a World War II veteran who died in 1967. Before his death he received VA benefits (35 percent, I believe). My sister received VA benefits until the youngest of their four children reached age 18.

I was under the impression that she would receive VA benefits again when she reached age 60. She says that the VA told her she was not eligible for any benefits. She is now 68.

She receives a very small Social Security benefit and works part time. Please let me know if she is eligible for any VA benefits.

A.N.D.

Bowie

Dear A.N.D.:

I shared your letter with those

in the know at the VA. The VA death benefit is based on qualifying service and need. Age is not a factor. The current statutory income limit for an unremarried surviving spouse is \$448 per month. This monthly amount is reduced by income from other sources including Social Security and wages.

It appears from your letter that your sister is not eligible based on income in excess of the statutory limit. She may address any specific questions to a VA counselor at 800/827-1000.

Dear Sgt. Shaft:

I served in the Philippines with the U.S. Marines during World War II and believe I am entitled to some additional medals: Philippine Liberation Medal, Philippine Defense Medal, Philippine Republic Presidential Unit Citation, World War II Victory Medal and the Asia-Pacific Campaign Medal. How do I go about getting these decorations?

Dick B.
Wheaton

Dear Dick:

You and other veterans who are trying to receive the above-listed medals should request application forms from the Embassy of the Philippines, Veterans Affairs Section, 1600 Massachusetts Ave. NW, Washington, D.C. 20036, phone: 202/467-9409; fax: 202/467-9437. Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900, fax to 301/622-3330, or CompuServe 75533.2304.

The Washington Times

16-year veteran, family see QMP as unkindest cut

Dear Sgt. Shaft:

It was in February of 1992 that I, then a staff sergeant, was beginning my 16th year in the U.S. Army. I was assigned to the 11th Airborne Cavalry Regiment in Fulda, Germany, and had begun my tour there with my family in 1990. It wasn't that month that I was summoned to the squadron sergeant major's office, where I was informed that I had been selected to be discharged from the military under the Qualitative Management Program (QMP). This was during a period of time when the early retirement, SSB, VSI, voluntary incentive programs had been in effect to downsize the military. When I was selected on this QMP list it made me ineligible for any of these programs.

The Qualitative Management Program is designed to identify traits or patterns of deficiencies and weaknesses that a soldier has in a decision process to determine whether a soldier should be retained or denied the opportunity to serve.

In my case the cited documents for the basis of the QMP were a performance deficiency due to the charge of driving while under the influence of alcohol that occurred in 1988 (four years earlier) and a physical fitness deficiency due to one fitness test that I had failed in 1990. One physical fitness test failure in 16 years shows no pattern of a physical fitness weakness as far as I am concerned. A DUI has no relation or pattern to the physical fitness tests.

I will be the first to agree that a DUI charge is very serious, and I do not condone this. My questions are: How many soldiers to this day have DUIs on their records, and how many from the time that I separated have been allowed to continue their careers and retire?

My concern is that I was allowed after the 1988 charge to continue my service, i.e., allowed to reenlist for six years, attend the Non-Commissioned Officers Academy, received orders and took my family to Germany, spent a campaign in the Persian Gulf war.

Upon my return from the Gulf I find out that, because of a mistake I made four years prior, my family had been facing quite uncertainty. If the DUI was a stopper it should have happened then, in 1988.

In my military records there is not one Article 15. Scores on all of my skill qualification tests are all 90 percent and above. My non-commissioned officer reports would reflect excellent skills and scores, certificates of achievement, letters of commendation, and other Army achievements.

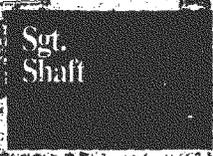
Of course I appealed the QMP. But when my commander informed me that he would not support me because, in his words, he did not know me, that my dreams of retirement, college for my children and the basic American dream were over.

In September 1992 I had no choice but to separate from the Army. I immediately contacted a New Jersey congressman who opened my case to the Military Board of Corrections in February 1993. I was told that it would take time before my case was heard.

In June 1994 I transferred my file to an Indiana congressman. Through his office I found that my case had been closed the same month it had been opened. At that time, the Indiana congressman's office had the case reopened and received June 1994, and my file went back to the bottom of the waiting list.

Someday, I would like to feel that my service meant something. I chose a career that nine out of 10 persons would not consider. I spent 16 happy years as a soldier devoted to my country. I wish to proud that I did.

K.D.W. Jr.
Indianapolis, Ind.



Sgt. Shaft
The sarge aims a large missile at former Secretary of Defense Robert S. McNamara

Dear Mr. McNamara:

I am surprised how the Army can treat you and other service members who served honorably and with distinction so callously while simultaneously treating other members of the service almost with a reverence, despite misconduct. If a service member, for instance, has HIV, the Army keeps him on active duty, cares for him medically and if and when he has AIDS, treats the member for disability.

It appears to the sarge that it is really you and soldiers in your situation who are getting shafted.

Shaft shot

The sarge aims a large missile at former Secretary of Defense Robert S. McNamara.

book "In Retrospect: The Lessons of Vietnam," years. This Harvard ecologist finally tells the two Presidents Johnson had and now Mr. McNamara is saying his 30 pieces of silver about how he, the beta president, the country's finest men.

was Mr. McNamara's policy of limited engagement, the politically, especially and socially connects the draft while, at the same time, lowering military standard and draft, the country's socially and educationally disadvantaged for service in Vietnam.

Do show, disdain: Mr. McNamara's past and recent service in Vietnam.

The sarge will leave the ashes of Marine buddy, J.C. Arnold's 16E, Line 117, at the Vietnam Veterans Memorial.

Shaft kudos

The sarge is looking for being a guest of fellow Vietnam veteran, Tom Ridgeway, at the Commonwealth Partners in Leadership Dinner on April 27 in Pittsburg.

The sarge is honored breaking bread with fellow veterans through the Vietnam Veterans Leadership Program in W. Pennsylvania, which he dedicates to serve fellow veterans, their family and their country, are the true heroes.

Send your letters to: Sgt. Shaft, John Fales, P.O. Box 65900, Pittsburgh, PA 15265-9900. 301/622-3330, or via computer 75533.2304.

Slandered vets seek reputation

Dear Sgt. Shaft:

In January 1992, front-page headlines in The Washington Post and Atlanta newspapers, in addition to TV news reports, and even comments from the floor of the U.S. Senate, cited a Veterans Affairs Office of Inspector General report that women at a V.A. medical center in Atlanta were asked to join an "Itty Bitty Titty Club" by their supervisors, Dr. Bruce Blasch and Frank Coombs. Under pressure from Sen. Barbara Mikulski, Maryland Democrat, the VA promised that no one involved in the allegations would continue as a supervisor.

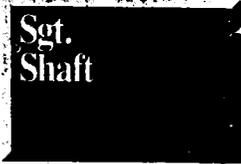
The VAMC Atlanta fired Mr. Coombs for creating a hostile environment and allowing Dr. Blasch to make the alleged remarks. The VA also permanently removed Dr. Blasch from supervision based on the allegations of Deborah Hyde as reported by the VA Office of Inspector General. After the OIG report was made public, Ms. Hyde sued the VA for \$8 million for sexual harassment. Her case was dismissed.

The OIG "investigation" did not interview any current VA employees about the alleged "Itty Bitty Titty Club." Another of Ms. Hyde's allegations was that "in Coombs' presence, Blasch grabbed another woman's butt, and said to Coombs, 'We don't have to worry about sex harassment here.'"

Neither the OIG nor the VA hospital director bothered to ask this other woman if the alleged event had ever occurred as claimed by Ms. Hyde.

In a Feb. 17, 1995, civil case, a jury found Ms. Hyde lied and Dr. Blasch had been slandered by her public statements. Since the decision in Dr. Blasch's favor, the VA has stonewalled any decision to reinstate his supervisory status and has refused to discuss Mr. Coombs's status.

The VA has refused to take any action to help re-establish the shat-



tered careers resulting from the faulty investigation, the actions taken by the hospital director, and the publicity the VA report caused Mr. Coombs and Dr. Blasch from these false allegations. Further, VA Secretary Jesse Brown has ignored letters from these two Vietnam veterans requesting a review of the case and its adverse effects on research to aid disabled veterans.

We now echo what former secretary of labor, Ray Donovan, once said after he was found not guilty, "Now, how do I get my reputation back?"

Dr. Bruce Blasch
Mr. Frank Coombs
Atlanta, Ga.

Dear Bruce and Frank:

It is incumbent upon Secretary Brown to fully review this travesty of justice. Just as sexual harassment has no place at work, neither do false accusations regarding sexual harassment. The appropriate congressional committees should hold hearings to review this harrowing investigation so that your professional reputations are publicly restored.

Dear Sgt. Shaft:

I was in the Air Force from November 1959 until August 1963. After basic training in San Antonio, Texas, I went to Keesler Air Force Base for tech training. I had a roommate who was a good friend, and during the latter part of 1960, he set me up on a blind date. After we both left Keesler, we went our separate ways and have

never seen each other again.

In 1963, I married the girl he fixed me up with, and we are still married with three great kids. Over the years, I have tried many times to find Sam L. Davis and have never had any luck. I would love to be able to tell him he was the key to many years of happiness for Betty and myself. Is there any chance that there is any new methods I might use to find him?

Richmond, Va.
Dear Dave: Those in the know at the Noncommissioned Officers Association tell the sarge that the Privacy Act of 1974 prohibits releasing the addresses of former service members without their express written consent. However, the agency below will forward your properly assembled mail to the former member's last known address.

Please note: A Social Security number or serial number must be provided for the former service member. Correspondence that does not contain this information will be returned to the sender.

It is suggested that you: Write a letter to the individual. Place it in a stamped, sealed envelope addressed to the individual. Include your return address. Provide serial number or Social Security number for the individual you are attempting to contact. Place the first postage-stamped, sealed envelope in a second envelope addressed to the following:

National Archives Records, Administration U.S. Air Force, 9700 Page Blvd., St. Louis, MO 63132-5200.

Any readers of this column who may know the whereabouts of matchmaker Sam L. Davis please contact the sarge.

• Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900, fax to 301/622-3330, or CompuServe 75533.2304.

Columnist's diatribe an affront to veterans

The sarge fires a salvo at Colman McCarthy, a columnist for The Washington Post, for his Feb. 7 effusion, "Glory-Seekers and the Bomb." The columnist, like his namesake, Charlie, is a puppet, but his strings are manipulated by the anti-military, anti-veteran radical left. It is Mr. McCarthy who is the whiner, not the American Legion and other veterans service organizations that challenged the Smithsonian revisionists on the Enola Gay exhibit.

Mr. McCarthy's derision of Memorial Day and Veterans Day is an affront to every American who has ever been "government issued." As outrageous as his alaming of military service was, Mr. McCarthy's call for our countrymen to honor those who failed to serve. Those anti-war, anti-American renegades gave aide and comfort to the enemy and endangered the lives of GIs who answered the nation's call.

The poster boy of the limousine-liberal elite, Mr. McCarthy had the gall to ask Americans to honor "the valor and sacrifices of conscientious objectors to war." To say that they are "enshrined in American history" is ludicrous. Mr. McCarthy's fellow travelers' cowardice, under the guise of conscientious objection, are enshrined at Pearl Harbor, Auschwitz, Cambodia, the Holocaust Museum and the Vietnam Veterans Memorial.

By the way, Mr. McCarthy, what do you say to your three sons when they ask you, "What did you do in the war, Daddy?"

Dear Sgt. Shaft:

The following is my letter to these key members of Congress: Republican Reps. Bob Livingston of Louisiana, Floyd Spence of South Carolina, John Kasich of Ohio, Bob Stump of Arizona, Bill Archer of Texas and Gerald Solomon of New York.

In anticipation of another congressional attack on entitlements, I want you to know my views of annual cost-of-living adjustments (COLAs) for military retirees. COLAs for these retirees are not handouts or welfare; they are moral obligations of the govern-

ment that date to 1963. At that time, military retirees were promised annual COLAs to compensate for low retirement pay. When I retired from military service in April 1963 in the grade of senior master sergeant with more than 21 years of service in the Army and Air Force, my monthly retirement pay was only \$218. The only way I can cope with inflation is by annual COLAs.

Here is only one example of rising inflation: When I became a resident of the U.S. Soldier's & Airmen's Home in September 1990, my monthly user fee was \$234. It is now \$272.75. Residents now pay a monthly user fee of 25 percent of their federal income. But starting with fiscal '98, which begins Oct. 1, 1997, user fees will increase to 40 percent of all income for residents residing in the dorms and to 65 percent of all income for residents residing permanently in the USSAH Health Center.

Also, user fees increase with each receipt of COLAs in Social Security pay and military retired pay. When the higher fees become effective, my monthly tab will be more than \$676.00, assuming that I receive COLAs of at least 2.8 percent in Social Security pay and military retired pay in years 1996 and 1997.

My monthly fee will then be \$126.06 more than my gross monthly Social Security pay. No consideration is given to the fact that USSAH residents have many expenses other than user fees. I have financial obligations to family members as well as federal and state income taxes. I am now at age 76, unemployed, with service-connected disabilities that have been recognized by the Veterans Administration.

Because medical appointments at military hospitals are becoming harder to obtain, even for medical emergencies, it is necessary that I be enrolled in Medicare Parts A and B and have Medicare supplemental insurance. My present monthly gross income is \$1,599.40.

I fully understand the importance of deficit reduction. Military retirees are willing to make financial sacrifices to reduce the

Sgt.
Shaft

deficit as long as the sacrifices are fair. The Omnibus Budget Reconciliation Act of 1993, which grants COLAs to federal civilian retirees on April 1 in years 1994 through 1998 and a COLA on Jan. 1, 1999, while delaying COLAs for military retirees from Jan. 1 to Oct. 1 until 1999, is not fair or equitable. To borrow a few words once used by President Clinton, this is "wrong, wrong, wrong, wrong."

Inflation does not discriminate. Inflation affects military retirees as much as it affects federal civilian retirees. Annual COLAs for military retirees are directly related to recruitment and retention in the armed forces. Active-duty personnel are well aware of the steady decline in retiree benefits. If pay and benefits for active-duty personnel and retirees keep declining, there surely will be an exodus from active duty when the economy improves.

My question to members of Congress: How do you expect me to cope with inflation if I do not receive annual COLAs?

Senior Master Sgt. R.P.F. (Ret.)
U.S. Air Force

Dear R.P.F.,

The sarge empathizes with the plight of military retirees. Many of our government's contracts with its most deserving citizens are on the brink of being broken due to the hundreds of billions of dollars ripped off by the savings-and-loan and the junk-bond scammers — many of whom are still living high off the hog.

For your information, Rep. James F. Moran, Virginia Democrat, introduced HR 38 to eliminate the disparity between the periods of delay for civilian and military retiree cost-of-living adjustments in the Omnibus Budget Reconciliation Act of 1993. Mr. Moran was joined by 18 co-sponsors when he introduced the bill.

Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-9900, fax to 301/622-3330, or CompuServe 75533.2304.

CHAMPUS cut hits disabled retired vets

Dear Sgt. Shaft:

In 1981 I retired from the Marine Corps with 21 years active service and became entitled to the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) until age 65. My entitlement to CHAMPUS was based on my retired status.

I was fortunate to find civilian employment but soon suffered a heart attack. I was able to work full time until 1987, when I was medically retired by my civilian employer. I was eligible for disability insurance that I purchased, but not health insurance. (While employed, it was my choice to use CHAMPUS or to participate in employer-provided coverage.) Because my civilian employer and I had contributed to Social Security for the previous 23 quarters, when I was adjudged to be Social Security disabled I became eligible for Social Security Disability Income. After 24 months of SSDI (1989) I became eligible for Medicare Part A and was given the option to purchase Part B (1995 premium is \$46.10 per month).

At age 51, by chance, I learned my CHAMPUS entitlement had been terminated. The Department of Defense had ended its responsibility to provide my "guaranteed" health care and "cost shifted" it to the Department of Health and Human Services under the Medicare program, which provides different and reduced coverage.

In 1991, Congress restored CHAMPUS benefits as secondary coverage to "under age 65 Medicare-eligible" retired military beneficiaries despite opposition from the Defense Department. While Congress intended to restore an equitable health coverage with Medicare paying the major expenses, the law fell short because Medicare and CHAMPUS are complex programs with many undetermined differences that leave gaps in dual-coverage situations.

Since the Defense Department continues to provide its disabled civilian retirees with continuing equal coverage under the Federal Employees Health Benefit Program primary to Medicare, I am perplexed that in order to save money it treats the disabled military retirees and their families differently.

Sgt. Shaft

In December 1994, after many attempts to regain my earned CHAMPUS entitlement, I filed a formal complaint with the commandant of the Marine Corps, Gen. Carl Mundy. Although it is a difficult task to file a complaint with one's service, there seemed to be no kinder way to raise this untenable situation to a level requiring a thorough examination and adjudication by the Marine Corps.

The loss of CHAMPUS has resulted in financial disaster for many other disabled military retirees. This has caused frustration and emotional despair, accelerating poor health conditions and serious family crisis situations.

"The Marine Corps takes care of its own" is a time-honored tradition. I hope Gen. Mundy responds positively to my suggestion that he initiate a request for legislation restoring eligibility to CHAMPUS as primary coverage to Medicare, accepting the moral and legal obligation for health coverage without discrimination because of disability. All active-duty personnel and reservists and their family members must understand they are at risk of severe disability or end state renal disease and the consequences of a reduced military health care benefit when they need it most. I encourage others who share my concern about this inequity to express their thoughts and support to Gen. Mundy.

V.M.S., Lt. Col. (ret.), USMC
Springfield

Dear V.M.S.:

Your eloquent presentation of the dilemma you and other disabled military retirees face highlights the bureaucratic bungling of earned health and other benefit programs. It is imperative that the 104th Congress parade Marine Corps Commandant Gen. Mundy, with other defense and government officials, before the appropriate committees which have legislative authority to correct these inequities. Semper fi.

Shaft kudo I

At a recent ceremony at the Department of Labor auditorium, 50 veterans, men and women, received professional certificates for completing an intense, six-week course to fully prepare them to make a difference in our troubled inner cities. The Departments of Labor and Justice jointly provided grant funds to the National Center for Housing Management, which developed and conducted this Leadership Employment of Armed Forces Personnel (LEAP) instruction.

These 50 LEAP participants accepted the awesome challenge of preparing to manage and maintain public-assisted housing projects, most of which will be located in Department of Justice "weed and seed" cities. The participants' military bearing, dedication to mission and commitment to serve will be fully challenged as they manage these public-housing projects and serve as role models for inner-city youth.

The sarge salutes Secretary of Labor Robert Reich and Preston Taylor, assistant secretary for veterans employment training, for spearheading this initiative. It is, however, incumbent upon the residents of these neighborhoods to fully cooperate with the LEAP professionals to make this program a success. This seems to be more than another "touchy-feely" federal social frolic.

Shaft kudo II

The sarge lauds the Arena Stage for making its 1994-1995 brochure and all programs available in alternate format to people who are blind or have low vision. Arena Stage is the birthplace of audio description—a carefully timed narration of on-stage action broadcast via an inconspicuous FM receiver, using the finest audio describers from the Metropolitan Washington Ear. Other accommodations include program books in audio-cassette format; touch tours of backstage areas, sets and costumes; and wheelchair accessibility.

• Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900, fax to 301/622-3330, or CompuServe 75533.2304.

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The Washington Times

Veterans in Foreign Service not protected

Dear Sgt. Shaft: I am writing from within that small contingent of federal employees who know how veterans preference is faring here.

When Congress mandated the writing of reduction-in-force rules for the Foreign Service, it specified that military preference be used in determining who goes, and who stays. Department of State management has devised a system in which employees would be divided into high- and low-ranked groups. Half of the employees would find themselves in the mid-ranked group, with the remainder divided between the top and bottom groups.

Each of these groups would be subdivided into those with and those without military service. The highest category would be veterans in the high-ranked group, followed by high-ranked nonveterans, mid-ranked veterans, and mid-ranked nonveterans, etc.

The effect of this is that a nonveteran in the high-ranked group has preference in a rif situation over all veterans in the remaining three-fourths of employees. The difference between a nonveteran at the bottom of one group and a veteran at the top of the next lower group might be minimal. In a rif all nonveterans in higher groups are preferred over all veterans in lower groups.

Neither civil service-style bumping rights nor length of federal service play any role in the State Department's rif rules. With nonmilitary criteria such as years of service, absent, and veterans' preference, watered down, the State rif rules facilitate

as a result of the draft (not applicable to females) yet who will see the deck stacked against veterans so that fewer women, and more men, potentially become subject to a rif.

All those involved in fending off the sarge attacks on veterans benefits should be interested in what is happening here in the Foreign Service, and the sarge's support would be appreciated. State's new rif rules should recognize the progress in the civil service. AFSA notwithstanding, State should be strengthening protection for veterans, not playing diversity games.

T.J.M.
Springfield, Va.

Dear T.J.M.: Holy Christopher! The sarge knew our foreign policy under this administration is a disaster. It seems that the State Department's chutzpah shafing those whose sacrifices have made this country great. The sarge urges the new Congress to review State's policy of circumventing the contract with America's veterans.

I noted your Nov. 21 column about the sarge's latest attack on the 100 Congress. I appreciate your acknowledgment of our work in your column, and I can tell you that if I am privileged to be the ranking minority member of the House Committee on International Affairs, I will work closely with my friend Bob Stump to make sure our nation's veterans and the programs they depend on are protected.

Rep. G.V. "Sonny" Montgomery

Dear Mr. Chairman: Thank you for your kind words — and while I have your ear, a strong letter from you and Mr. Stump to Secretary of State Warren Christopher would be most appreciated. Veterans preference in the Foreign Service would be appreciated by our nation's veterans. Good luck to you and Mr. Stump and all the members of the House Veterans Affairs Committee the upcoming 104th Congress.

Shaft kudo

The sarge gives an extra high five and a thumping pat on the back to D.J. Johnson, corner-scoring the touchdown of his career — he has pledged to donate \$250 to the paralyzed veterans fund. The sarge's interference made by any member of his team during the National Football League regular season, and to doubt that he pledge to \$500 for each interception by the Falcons in the regular season play (Atlanta gets 100 points).

"When people go off to war, everyone cheers them," said the 28-year-old Mr. Johnson. "But as soon as they come back, everything's just totally forgotten and they're just totally forgotten back to the veterans who fought for our country."

The Paralyzed Veterans of America, a veterans' service organization chartered by Congress, has for almost 50 years served the needs of veterans who have been disabled by traumatic brain injury or spinal cord injury or disease.

Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 63500, Washington, D.C. 20035-5000, fax: 46301622-3330, or Compuserve 753532304.

Veterans' preference rules shift with wind

Dear Sgt. Shaft:

This is to bring you up to date on my continuing veterans' preference saga with the Army Corps of Engineers, a situation you first reported in August.

The good news is that the U.S. Court of Appeals will review the Merit Systems Protection Board's (MSPB) reduction-in-force decision in *Davis vs. Army* on Dec. 6. You may recall that the (full three-member MSPB panel rejected my petition for review and let stand an administrative judge's ruling that I had no "bumping" rights during a r/f, despite considerable evidence to the contrary. This ruling is important to veterans because it strikes down the "minimally qualified" provision (for bumping) which is central to the 1944 Veterans Preference Act.

Running a r/f is tricky business, even for those seasoned by years of experience, so it came as some shock when the full MSPB turned down my appeal without a cursory look. The skepticism increased upon learning that the presiding official, William L. Boudien, a non-veteran, had been an administrative judge for less than a year and *Davis vs. Army* proved to be his first reduction-in-force case.

Even more suspicious, Mr. Boudien ignored undisputed testimony that the Corps of Engineers leadership.

- Admitted it was out to teach me a lesson.

- Vowed I wouldn't bump anybody (in the r/f).

- Boasted it would spend me dry (using taxpayer resources).

- Claimed I had aligned myself too closely with a former (Reagan administration) political appointee and now "had to pay the price."

Finally, my attorney, a recognized expert in the field of civil service law, raised two "legal er-



ror" questions that should have popped OPM circuit breakers from here to San Francisco.

Furthermore, you don't have to be Robert Shapiro to know that you never challenge a 50-year-old law unless you want to see it overturned, which is exactly what the Clinton Justice Department is doing in this instance.

Consequently, should the administration prevail before the federal tribunal, agencies will then be able to determine veterans' qualifications using subjective criteria. As such, this new standard will become the reduction-in-force equivalent of moving the goalpost while the kick is in the air.

At that point, surge, your average draft-dodger will have the same degree of r/f protection as a combat-decorated Marine.

John L. Davis
Springfield, Va.

Dear John:

President Clinton and his top-level functionaries stated with fanfare their commitment to bail rights of vets mandated by the veterans' preference legislation. In your situation, as described in your letter, and in the following letters, either the administration's right hand doesn't know what its left is doing or it "speaks with forked tongue." Read on:

Dear Sgt. Shaft:

I have been a public servant

since May 1960 and can only agree with Mr. John L.D. as reported in an earlier column. I have been refused lateral transfer or promotions because what I do for a living doesn't fit "word for word" with the position for which I applied. (I'm looking at a r/f next year, so I'm looking for other positions.)

My opinion, and that of my peers, is that this indicates a system of selection based on personal favors and cronyism and has had a negative impact on the morale of those attempting to get ahead in the civil service (or just get a job). Many have either left or have given up trying to get ahead because of this perception, myself included. I hope I make it through longevity.

Dazed and Confused Veteran
Quantico, Va.

Dear Dazed Veteran:

Read on:

Dear Sgt. Shaft:

As a former applicant to the U.S. Foreign Service, your column of Oct. 10 was illuminating. In 1992 I met with a panel of foreign service examiners after passing the written examination.

An examiner asked me what I had done in Vietnam. I explained that I had been in the Air Force. The examiner said, "Oh, you must have bombed a lot of children in those days." I explained that would have been beyond the scope of my duties as a nurse.

Other Vietnam veterans have had similar experiences. A former Marine told me he was rejected after he had inquired into the selection process. He was told by the foreign service examiner: "Our selections are not simply based on merit; we know who we want in the foreign service. Most veterans come from the wrong social backgrounds and didn't attend back-

ground colleges."

The plight of veterans rejected by the foreign service due to their "untouchable" caste status is a matter of concern to those of us who have experienced the problem.

Shirley F.
Northern Virginia

Dear Shirley:

Thank you for sharing your experience with the elitist State Department. The sergeant's fate machine is also spitting out ruminations and horror stories from veterans at the Federal Deposit Insurance Corp. It seems the FDIC, with the cooperation of the National Treasury Employees Union, is conspiring to circumvent veterans' preference, playing the r/f semantics game.

Shaft kudo

All veterans and their families should join the sergeant in saluting Rep. G.V. "Sonny" Montgomery, Mississippi Democrat, for his outstanding House Veterans Affairs leadership during the 103rd Congress. With the cooperation of his committee's ranking member, Rep. Bob Stump, Arizona Republican, and their excellent committee staff, Mr. Montgomery halted the decimation of the Department of Veterans Affairs' health care system.

Mr. Montgomery also led the fight for a myriad of earned veterans' benefits, including medical care and compensation for aging Persian Gulf vets. The sergeant is confident Mr. Stump will fill Mr. Montgomery's vital leadership shoes with the support of Mr. Montgomery as ranking minority member in the new Congress.

• Send your letters to Sgt. Shaft, c/o John Foley, PO Box 65900, Washington, D.C. 20015-5900, or fax to 301/622-3330.

Clintons ignore needs of veterans

Dear Sgt. Shaft:

With the revelation that Hillary Rodham Clinton tried to enlist in the Marine Corps in 1975, one must wonder what the administration's view and treatment of veterans would be if she had been successful.

Coming on the heels of President Clinton's recent Oxford wish that he had "the military experience" to add to his resume and of his "love for the military," one can only wonder who the smartest woman in the world is trying to impress—certainly, this vet is not impressed by the latest antics of either of the two commanders in chief. I'm even having a difficult time "feeling the pain" that both obviously are suffering.

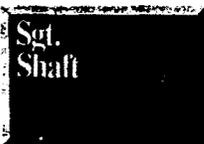
I do believe the Marine Corps should reconsider Mrs. Clinton's request even at this late date. The Marine Corps, indeed the military services, would benefit. The smartest woman in the world would ease the implementation of expanded combat roles for the gentler sex.

You can see the 1996 campaign slogan now: "It's the economy, stupid" would be supplanted with "Care for Veterans too, stupid."

L.R.
Arlington, Va.

Dear L.R.: Many Americans and my readers feel that the first couple shows disregard toward military service. This contempt was reinforced by having the Pentagon give the Haitian president and defrocked friar, Jean-Bertrand Aristide, a 21-gun salute while Mr. Clinton praised him on our White House lawn. The first couple's abuse of our military men and women is disgraceful.

The co-presidents' support of Mr. Aristide allowed him access to Haitian funds that he used to live lavishly and pay former Maryland Democratic Rep. Mike Barnes and other voracious lobbyists. These millions of dollars should have been used to feed, clothe and shelter the Haitian poor.



The attitude of this administration toward our military and veterans, fortified by the National Education Association, leaves nothing to the imagination as to why our schools and the doves-turned-hawks flying around Washington do not encourage our children to participate in the commemoration of Veterans Day. Maybe George Stephanopoulos should get the president a new sign stating, "Care for our veterans, and it's our economy, stupid."

Dear Sgt. Shaft:

I would appreciate any information you can give me pertaining to burial in Arlington National Cemetery. I am a retired Navy man, and I live in the area. In the event that I die before my wife, I want her to know the proper procedures to follow in obtaining a gravesite, time for burial, honor guard, etc.

However, if she predeceases me, what procedures should I follow in having her laid to rest in Arlington? We hope to be buried in the same plot.

I am told that it is possible for my wife to be buried in Arlington as long as I qualify. Any information would be greatly appreciated.

C.S.R.
Temple Hills, Md.

Dear C.S.R.: Those in the know at the Department of Veterans Affairs tell the sarge there are 130 veterans cemeteries designated as national cemeteries in the United States. Some 114 are operated by the Department of Veterans Affairs, 14 by the Department of the Interior and two by the Department of the Army. At Arlington, eligibility requirements are different than at other national cemeteries.

Arlington requires the deceased to be included in one or more of the following categories: those who died on active duty; those having 20 years active duty or active reserve service that qualifies them for retired pay; those honorably discharged for a disability rated at 30 percent or more before 1949; and holders of the nation's highest military decorations, including the Purple Heart.

A recent change provides eligibility for former prisoners of war as well.

The spouse or unmarried child of any of the above or of any person already buried in Arlington is also eligible. Spouses who die before the veteran may be interred in a national cemetery prior to the veteran.

At VA national cemeteries all veterans who were discharged under other than dishonorable conditions are eligible for burial, as are spouses and dependent children.

To ensure that all will go smoothly when interment is requested, whether for the veteran or the spouse, it is a good idea to assemble papers relating to military service ahead of time. These would include discharge papers, VA claim number, records of decorations, service number and any other supporting documents. Cemetery personnel will verify eligibility at the time of request for interment. This is usually done through a private funeral director.

There is no charge for a gravesite in any national cemetery, or for a government headstone or marker. Only one gravesite per family will be assigned.

The VA maintains Quantico National Cemetery in Triangle, Va., close to Washington. The cemetery, opened in 1983 and has ample space to serve area veterans and their families well into the next century.

For information about Arlington, call 703/695-3250; for Quantico, 703/690-2217. For information about national cemeteries in general, call the National Cemetery System, Public and Consumer Affairs Service, 202/773-5221.

Hope this helps.

Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900, or fax to 301/622-3330.

Worker 'excellence' doesn't pay at VA

Blind man's EEO call foils his future

Dear Sgt. Shaft:

Allow me to introduce you to "Doghouse Dan."

Since joining the federal government in 1987, Dan has established himself as one of the VA's top-rated public affairs professionals. During the past five years his work has resulted in six VA Public Affairs Excellence Awards and two Silver Spikes from the Public Relations Society of America. Not bad for a guy diagnosed as legally blind since age 10.

He wasn't always known as "Doghouse Dan." It is a recently dubbed moniker Dan could live without. Despite his VA success, upward-mobility opportunities have been difficult to come by. Last year when his supervisor was promoted to another facility, Dan saw his opportunity and applied to be chief of the pilot program he co-developed and managed at the Reno, Nev., VA Medical Center. His outstanding work performance ratings, awards, and successful work record pointed toward Dan's being a logical choice.

It didn't happen, however, and in an effort to ascertain why his qualifications and affirmative action status were not considered, Dan exercised his rights and filed an EEO complaint. He never anticipated what would happen next.

Since Dan filed his initial EEO complaint and reprisal, his autonomy, scope of responsibility and stature as a public affairs professional have been diminished to that of an office clerk. Regardless of past performances, his status is no longer equal to that of VA colleagues, and Dan now finds himself leashed in "management's doghouse."

In all likelihood, it may be months or even years until he is unleashed from this doghouse. As someone with a severe disability, Dan has dealt with adversity and barriers before, yet he never envisioned an EEO system designed to protect itself more so than his rights. Though he jokes about being someone who is "out of sight," Dan now wonders why EEO and



Sgt.
Shaft

affirmative action are "nowhere in sight."

Dan J.S.
Reno, Nev.

Dear Dan:

Sounds to the sarge like VA management is rolling you snake-eyes and trying to hound you from your position. I am outraged that the big dogs in the Department of Veterans Affairs Medical Center at Reno are having you play Russian roulette with your career, and I urge Department of Veterans Affairs Secretary Jesse Brown to personally investigate.

I have also communicated your dicey situation to Rep. Barbara Vucanovich, Nevada Republican, and I am certain her good office will enter the game.

I am astonished that some feds at the Department of Veterans Affairs are still ignoring the 1973 Rehabilitation Act. Keep pawing and good luck.

Dear Sgt. Shaft:

You done good in the response to DVA Secretary Brown (June 6 column). Keep up the friendly fire. Another joke and myth is OPM's Veterans Recruitment Programs. This is just lip service, and everyone below the big wheels knows it. Like Harry S. said, if they can't stand the heat...

J.M. (Vietnam veteran)

Dear J.M.:

Isn't democracy wonderful? My good friend Jesse "in his heart knows I'm right."

Shaft kudo

The sarge salutes Dr. Steven Joseph, the new assistant secretary of defense for health affairs, for

his proactive Gulf War Illness Program. It provides standardized, comprehensive clinical evaluations to Persian Gulf veterans on active duty or in the reserves.

The purpose of these evaluations is threefold. First, to assure all those with a health problem that everything possible will be done to look for potential causes and exposures that may explain their symptoms. Second, to ensure special attention is directed to assisting this group. Third, by publicizing this through command channels, media, and other ways, the Department of Defense is attempting to encourage all persons in this group to report for a medical evaluation if they have medical concerns.

This effort has been coordinated with the Department of Veterans Affairs. Further information on this program is available by calling 800/796-9699.

The sarge also lauds Edwin Dorn, undersecretary of defense for personnel and readiness, for his policy of not separating service members with these symptoms until there is further clarification of disability entitlements. The Department of Defense is to be commended for trying to deal with a difficult and frustrating problem in an open, forthright, and intense manner, and having the common sense to designate Ronald Blanck, commanding general, Walter Reed Army Medical Center, to lead the charge.

Shaft shot

The sarge aims a large caliber shot at Postmaster General Marvin Runyon's continued assault on veterans and their sacrifices. First he and his apparatchiks insult the families of those heroes who were killed in a terrorist attack in Lebanon by not honoring their dedication with a stamp, stating nonchalantly, "We don't commemorate tragedies."

Now Carvin' Marvin has tried to circumvent and destroy veterans' preference under the guise that this earned legislative right is detrimental to women and minorities. The sarge is astonished by the deafening silence of the politically correct crowd when attacks are made on Arabs, Christians and veterans.

• Send your letters to Sgt. Shaft, c/o John Fales, PO Box 65900, Washington, D.C. 20035-5900, or fax to 301/622-3330.

Are veterans being ripped off on 'bumping rights'?

Dear Sgt. Shaft:

In recent months much has been said and written about attempts to dilute veterans' preference in the federal work force. Granted that motives are difficult to establish absolutely, but from where I stand the following Merit Systems Protection Board (MSPB) decision has all the earmarks of a "backdoor" smoking gun.

Last year I was one of only two persons adversely affected by an Army Corps of Engineers reduction in force (RIF) here in Washington. I appealed my downgrade to the MSPB and as a decorated Vietnam veteran believed I had considerable "bumping" rights and could easily qualify for a position at my former grade. However, the agency argued, and MSPB law Judge William L. Boulden agreed, that I did not meet even minimal qualifications for my former grade.

For anyone who finds this a force-puzzling exercise, the contested positions was classified in the same series as my former job and turned out to be a near-perfect match.

According to Mr. Boulden, I met all the basic qualifications except for the "day to day administrative [non-supervisory] management of an office." Despite my three hours of testimony and corroborated from an expert witness, and the "evident" administrative management duties at the GS-13 level and was therefore unqualified for the position.

Please understand we are not talking about nuclear physics here. When a veteran is denied bumping rights because he failed to perform the exact administrative task at his current grade or

upholding Harvey White vs. U.S. Postal Service, Merit Systems Protection Board decision. I also recently shared your brief with Mr. King and have said that I would support any MSPB decision. I told him that I firmly believe that the administrative judge's decision in your case — that your "bumping" rights were not violated — is legal error and the deletion will, in fact, change the nature of assignment rights to require that preference employees perform the exact duties of the job into which "bumping" rights are sought.

I reiterate that managers who are found to have circumvented sanctioned preference should be held liable for whole relief, including compensatory damages and attorney's fees during all stages of administrative and formal complaint process.

I understand that OPM has a program for employees known by the acronym "WEL" — Women's Executive Leadership Program. The program provides for GS year development opportunities for 1-12 employees that may facilitate them to the fast track. The program is excellent and includes exposure to executives in key positions as a shadowing assignment and many other opportunities to gain insight and experience to the functions of top management. I must say that it seems to be more of an opportunity to learn than got on the front lines. What do you think, Sarge Shaft? (I'm a single male, and I'd like to try it?) And

— Bruce in Bethesda

Dear Bruce:

As you know, the serge never starts an issue, and as a result, I have no idea that you and I have been eligible to dip in the pool of bumping rights. The WEL Office of Personnel Management officials say 101 men have gone through the program since it began in 1984. I suggest you call Marianne Maloney at OPM's public affairs office for more information.

Shaft kudos

The serge congratulates the American Legion on its 75th anniversary of serving veterans, their families and the American way of life. The American Legion is proud to have been an important part of our military during times of war and peace, is legendary. The organization's college financial aid handbook, "Need a Lift?" demonstrates the Legion's longstanding commitment to higher education.

The serge extends heartfelt good wishes to fellow blinded veteran Dennis Whitton of the Department of Veterans Affairs Regional office in Indianapolis. I have known and worked with Dennis for almost 20 years, and value his friendship. This friendship has been solidified by our mutual commitment to fellow veterans and to their families. Good luck to you, Dennis, and your wife, Jagie.

Send your letters to Sgt. Shaft, c/o John Pales, PO Box 65900, Washington, D.C. 20035-5900, or fax to 301/622-3330.



one grade lower bureaucrats have finally found a way to gut the 1944 Veterans Preference Act.

I have asked the full MSPB to review the ruling. But regardless of the outcome, my distress will be far from over. When the complaint prevails in cases of race, sex or age discrimination, back pay, attorney's fees and, other awards automatically in accordance with existing law. But in other cases, no such provisions are written into the law — regardless of how egregious management's actions may have been or how much legal cost is incurred. In fact, Army officials boasted they would "spend [me] dry" with taxpayers' money before this ordeal was over.

What then is the incentive for veterans to stand up for their legal rights, and what ever happened to the "preference" in veterans' preference?

John L.D.
Springfield, Va.

Dear John:

Got the good word Friday that OPM Director James B. King honored President Clinton's stated commitment to veterans' preference by telling the Justice Department to withdraw OPM's appeal

FACE A6 / MONDAY, AUGUST 1, 1994 *

The Washington Times

More official reassurance on Veterans' Preference Act

Dear Sgt. Shaft:

In response to your columns on veterans' preference in federal hiring: Along with Ronald-W. Drach, national employment director of the Disabled American Veterans, I too would like to request any documentation you have available indicating that the administration is making efforts to alter veterans' preference.

This administration has not made any proposal that would in any way diminish, restrict or eliminate the preference to which veterans are entitled. To be sure, there have been many proposals made by Vice President Al Gore's National Performance Review that would make many changes in the way the government operates, but veterans' preference is not an item that is even on the table. My staff and I have been through the report of the National Performance Review page by page, and I noted no reference to changing the Veterans Preference Act, contrary to what you have reported.

The report of the National Partnership Council on page 27 states clearly, "Statutes regarding veterans' preference and anti-discrimination must also be observed." This statement is made in the Legislative Proposals section that says, "The NPC recommends a federal hiring system consisting of a legislative framework of government-wide principles and flexible authorities that form the basis for decentralized, agency-based hiring programs." This is the only reference to veterans in this report.

Also, page 10 of the National Performance Review draft report, "Reinventing Human Resource Management," states quite pointedly adherence to the Veterans Preference Act. The statement there strengthens Office of Personnel Management purview of ruling agency requests to pass over veterans with a 30 percent or more disability. Again, this is the only reference to veterans in this report.

In November 1993, OPM submitted its Annual Report to Congress on Veterans' Employment in



the Federal Government. The report indicates that OPM continues to place emphasis and provide direction to agencies on recruitment, employment and advancement opportunities for veterans. Particular attention is being focused on disabled veterans, Vietnam-era veterans, and post-Vietnam-era veterans. The report states that the federal government continues to be the leader in veterans' employment.

Compared with other sectors of the economy, it employs two times the percentage of veterans; three times the percentage of Vietnam-era veterans; five times the percentage of disabled veterans; and seven times the percentage of 30 percent or more disabled veterans. The report also notes that the number of veterans is declining in the overall population. For fiscal 1992, 13.5 percent of total federal hires were veterans.

Months ago I met with representatives of veterans' service organizations. Mr. Drach accurately reported my statements in that meeting. I assured them that when and if the administration considered any changes, I would alert them immediately. To date, I have not had to contact them.

As a veteran myself and a past commander of a Disabled American Veterans chapter, I wholeheartedly support the Veterans' Preference Act. At my confirmation hearings I was asked if there are preferential treatment categories that warrant review or attention by OPM, and I responded in the negative.

Veterans' preference has a long, proud history that dates back to the Civil War. Preference is fixed in law, and there are no proposals

to change this. OPM cannot unilaterally change the preference provisions, and agencies are certainly not at liberty to ignore them. Let me assure you that we remain solidly committed to upholding the principle of veterans' preference and its applications in agencies.

I appreciate the opportunity to set the record straight.
James B. King, director
Office of Personnel Management

Dear Mr. King:

I was happy to break bread with you and provide the documentation you requested, which included select pages from the Merit Systems Protection Board report "Entering Professional Positions in the Federal Government" (March 1994) and materials concerning Office of Personnel Management's intervention in the case of Harvey White vs. U.S. Postal Service, Docket Number Ph035190312-1-1.

I was encouraged by your candor when you stated that you did not realize your decision to intervene in the White case would cause adverse consequences to veterans' preference.

I was also heartened by the public statements made by you, Preston Taylor, Veterans Affairs assistant secretary for veterans employment, VA Secretary Jesse Brown, and Labor Secretary Robert Reich, echoing President Clinton's pledge on June 27, Veterans Employment Day: "As we celebrate the 50th anniversary of this important law [Veterans Preference Act], I assure you that this administration's support for the act has not diminished. I remain committed to preserving the Veterans Preference Act. With the service that veterans have provided to this nation, they deserve nothing less."

We must now, however, join hands and strengthen this vital veterans' mandate.

• Send your letters to Sgt. Shaft, c/o John Fales, PO Box 65900, Washington, D.C. 20035-5900, or fax to 301/622-3330.

USPS stamp snub is disservice to 273 soldiers killed in Beirut

Dear Sgt. Shaft:

An article in the March issue of VFW Magazine chronicled the history of stamps that have commemorated American veterans. There is no doubt that the stirring stamps honoring veterans from the Civil War to Desert Storm help reaffirm the values and traditions of our great country.

A newspaper article in December told how the USPS planned to issue a total of 102 commemorative stamps in 1994. In 1993 the Elvis stamp became USPS's all-time biggest seller, and it would seem to be no surprise that this year's list will include commemorative stamps honoring a host of entertainers from Bing Crosby to the Keystone Kops. Such stamps make money.

But, as the VFW article told us, the USPS repeatedly has turned down requests to issue a stamp honoring the memory and commemorating the sacrifice of the 273 American servicemen killed in Beirut in 1983-84. USPS officials reportedly told advocates of such a stamp that "not enough people were killed to warrant a commemorative stamp."

George Orwell
Rolling Over in the Grave
Dear George:

Read on.
Dear Sgt. Shaft:

On Dec. 20, 1993, you recounted in your column the efforts of a concerned former Marine and others to get the U.S. Postal Service to issue a stamp commemorating the sacrifice of those who died in the 1983 bombing of the Marine barracks in Beirut, Lebanon. It seems the Citizens Stamp Committee did not believe the event worthy of recognition.

In early January, the Non-Commissioned Officers Association sent a letter asking the post-



master general to reconsider. We reminded him that the loss of life in that one day was the worst ever suffered by the Marine Corps. In response, Azeezaly S. Jaffer, manager of stamp services, thanked us for our interest and sent us the February/March issue of a catalog of collectible stamps. Presumably, he thinks we might find a suitable substitute.

We found the catalog interesting. Included were commemoratives for Legends of the West, including Nellie Cashman and Charles Goodnight, whoever they are; for broadcaster Edward R. Murrow; and a yellow Chinese dragon that will also adorn envelopes. So too will the legends of rock and roll, steam carriages, circus wagons, canoes of the 1800s, seaplanes, red squirrels and kittens.

Unfortunately, not one stamp in the book honors military service or sacrifice.

Sgt. Shaft, I urge your readers to let Postmaster General Marvin Runyon know this is an unacceptable situation.

Dick Johnson
Executive Director
Non-Commissioned Officers
of America
Alexandria, Va.

Dear Dick:

As we approach Memorial Day, you and my readers may find interesting the following remarks between Rep. Constance A. Mor-

ella, Maryland Republican, and Postmaster General Marvin Runyon, from a House Committee on Post Office and Civil Service hearing on April 14:

Mrs. Morella: Since I have this opportunity, I would like, again, to ask the postmaster general to reconsider and give further thought to a stamp honoring the 241 of our American servicemen who lost their lives in a multinational peacekeeping and humanitarian mission in Beirut, Lebanon, on Oct. 23, 1983.

Actually there were a total of 273 American service personnel lost during that 1982-84 period, along with many allied soldiers. I wondered if there could be a reconsideration of the stamp to honor them.

Mr. Runyon: Mrs. Morella, we have reconsidered that numerous times.

Mrs. Morella: I know you have. Mr. Runyon: ... with the Citizens Stamp Advisory Commission ... and their opinion is that we really do not commemorate disasters. We do recognize people in service who have lost their lives; we will have an issue of stamps issued on June 6, which I believe is the fourth issue of World War II stamps commemorating the people who served, not just the ones who died, but all who served in that war. And that is the basic premise that we are using in commemorative stamps. That's where we are.

Mrs. Morella: Of course, there is a concept of the phoenix rising from the ashes; that when you have a disaster, from that come victory and peace, ultimately. Maybe you will reconsider.

* Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 63900, Washington, D.C. 20035-5900, or fax to 301/622-3330.

Brown shoots back at 'untrue' column

Dear Sgt. Shaft: You consider that calling me a "joke" (your March 14 column) to be a fair expression of opinion, but I take it as an inaccurate and unfair personal attack. The implication of what you wrote is that I have betrayed the trust of my readers, but that has not been sitting on my hands regarding the issue of veterans' preference as it applies to the federal work force. That is patently untrue.

When you choose to publish material that is untrue in my opinion you have overstepped the privileges afforded your column. Moreover, your readers should be advised that you know very little about what Jesse Brown does, and what he has accomplished.

For the record, I have voiced my views on the sanctity of veterans' preference loudly and clearly within this administration. Even though this is an area that is repeatedly being attacked by the Department of Veterans Affairs, I felt as a veterans' advocate, it would be expected of me to take a position against any move that would dilute the protections veterans have in implementing federal personnel restrictions.

I sought and received a personal hearing on this matter with Vice President Al Gore; I discussed it with Office of Personnel Management Director Jim King, and I have met with several other veterans organizations. Mr. King has assured us there's no substance to what you claim.

Your column also misrepresented the facts regarding VA services to areas. There is no "government recommendation" to close the Hines Blind Center. The possi-

center will not be relocated. Mr. Brown, in 1989 VAMC, Lebanon, Penn., had a proposal for a blind rehabilitation center. It was approved, but nullified his proposal for a blind center but was beat out by Tucson. Since that time there has been conversation between Congress and the VA about the establishment of a BRC at Lebanon. Although the VA has not approved it as the next BRC, nothing has been forthcoming and no one seems to be able to make a decision to do it. No decision means fewer blinded veterans being relocated.

I also refer you to the OPM's information on the case of Harvey White vs. U.S. Postal Service, Docket Number: PH035190312-1. There is no doubt that this is an attempt by the administration to weaken veterans' retention rights and that Mr. Brown is waiting patiently for you, Assistant Secretary of Labor for Vets Preston Taylor, Mr. King and Mr. Gore to hold a press conference to reassure veterans that veterans' preference will be strengthened, not weakened.

Send your letters to Sgt. Shaft, c/o John Foles, PO Box 65900, Washington, D.C. 20035-9900, or fax to 301/622-3330.

Advocates veterans' preference

Dear Mr. Brown:

There you go again! Read... my words. As I told a member of your staff, "I am not a 'joke' or a 'joke' as 'Judas' was from a veteran angered by the roadblocks he encountered while trying to get a federal job, not my own thoughts."

Your assertion that the sarge was a "panderer" in my Shaft, shot (Jan. 16, 1993) defending you which I repeat in case you have forgotten:

"The sarge is burning at the bright white coals of the OMB director and the privileged cronies of the political left and right, Michael E. Kinsley, John H. Sununu and Lynn Germain Cutler on a recent CNN, Crossfire Program. The sarge is a pro-Secretary-designate Brown for his expressing that he will be the secretary "for veterans affairs" is un-acceptable."

"It's ironic that these four 'Crossfire' cohorts, whose names I have listed, should have the nerve to even comment on Mr. Brown's well-meant remarks. As Sen. Arlen Specter, Pennsylvania Republican, aptly said during Mr. Brown's confirmation hearing: "The sarge is a pro-Secretary-designate Brown for his expressing that he will be the secretary "for veterans affairs" is un-acceptable."

Additionally, your comment that you met with the "old" Veterans Affairs officials and that the "new" Veterans Affairs decision has been made regarding the Hines Blind Center" is as far from what you should have stated; that the VA blind rehab



Sgt. Shaft

bility of relocating it has been evaluated, but no decision has been made. In fact, no decision regarding the matter is anticipated in the near future.

To ensure that there is no misunderstanding of VA's position, I have discussed the Blind Rehab Center with various members of Congress. I have met with the national leadership of the Blinded Veterans Association, and we have discussed several dozen other veterans groups in writing. In every instance, the same message has been conveyed — those groups would be consulted before any final decision is made.

Throughout the first time your columns have revealed a tendency to criticize this administration without an accurate and fair recitation of the factual situation involved, I have to ask myself: "Why do you continue to do this, or whether you are embarked on a particular political agenda? I would hope you will print this letter in its entirety, and correct the inaccuracies contained in your March 14 column."

Jesse Brown, Secretary, Department of Veterans Affairs

Vets' preferences remain in question

Dear Sgt. Shaft:

I have again reviewed your March 14 article regarding the "administration's attack on veterans' preference." After a second reading of the article, I have become concerned that conflicting information on the issue of veterans' preference has been made available.

In a meeting with the director of the Office of Personnel Management, James B. King, the Veterans' Service Organizations (VSOs) were advised that Mr. King had no intention of modifying veterans' preference either in the hiring process or in reductions in force. He did tell us that in the event the administration would pursue any changes, he would first consult with the VSOs to let us know such a proposal was being offered. To this date we have not heard from Mr. King.

Information in your article alleges that Mr. King is "thumbing his nose at veterans' preferences" and the "administration is attempting to revise the federal government's layoff policy ... reducing the importance of military service in job protection."

Because of the seriousness of the allegations in your article, I would appreciate it if you would furnish me with any documentation you have available indicating that the administration, either through policy, proposed legislation or proposed rule-making changes, is indeed making overt efforts to modify veterans' preference as your article indicates. The DAV needs to challenge the administration if this is indeed happening. Thanks for your consideration of this request.

Ronald W. Drach
National Employment Director
Disabled American Veterans

Dear Ron:

After learning of the scuttlebutt concerning the proposed adverse anti-veterans' preference language in the National Performance Review draft and confirmation of this in another news report, I contacted the information specialist at the Office of Personnel Management. I offered Mr. King



Sgt.
Shaft

this column not only to disassociate himself from the National Performance Review draft but also to issue a strong statement on veterans' preference and, hopefully, a directive to federal departments and agencies to hire veterans, especially disabled veterans.

The OPM chief, however, declined the invitation. As you know, Ron, the administration will be holding ceremonies commemorating the 50th anniversaries of the G.I. Bill and veterans' preference in June. These ceremonies will be meaningless if they are not accompanied by proposed fast-track legislation strengthening these worthwhile programs. The veterans' preference laws must also be adhered to by federal government apparatchiks. As you will see in the following letter, this is not the case.

Dear Sgt. Shaft:

For 20 years I have tried to apply for positions with the U.S. government. For 20 years I have been called a baby killer, a drug addict and a murderer because of my service during the Vietnam War. The following was the last straw.

I went to the VA medical center on Irving Street in Washington to apply for a position as an administrative officer with the hospital. I have the background that the VA posted in the personnel circular. I went with my resume and with my disability ruling to the personnel office. I have a 30 percent service-connected disability. I filled out an application and handed it to the clerk on duty. The clerk went to an office and stated to the person inside that I was out in the corridor. The person who was in charge of filling the position made a nasty comment about "not wanting to talk to me."

I have heard nothing from the

VA since I went to the personnel office in December 1993. They have not called me for an interview, despite the fact that I have worked as a deputy department administrator at Walter Reed Army Medical Center, and despite the fact that I have experience as an operations manager at a nursing home. In addition, I have a degree in hospital administration and management and have nearly completed a master's degree in business management.

I would like you to ask the VA why I was not even considered for the job. I also would like to know if it was because I am a Vietnam veteran that I was not even considered?

R.E.T.
Dale City, Va.

Dear R.E.T.

I am sharing your letter with the VA's White House liaison and the director of the VA Medical Center in Washington. Hopefully we'll both get some concrete answers to your questions and give you the employment consideration you deserve.

Dear Sgt. Shaft:

Please inform your readers that the Third Marine Division Association is seeking the whereabouts of former division members, attached personnel and units. Comradery and a unique educational scholarship program are the elements that link our members together. For information, call Bill Krueger, sergeant major, USMC, retired. 703/451-3844.

Shaft kudo:

Congratulations to Reps. Leslie Byrne, Virginia Democrat, and Robert Stump, Arizona Republican, this year's recipients of the Blinded American Veterans Foundation George "Buck" Gillispie Congressional Awards. The sarge also applauds Mike Causey, Washington Post columnist, and Susan Kidd, Channel 4 news anchor, for winning the Foundation's Carlton Sherwood Media Awards. The awards will be presented at a congressional afternoon reception on Capitol Hill on June 14.

Female K-9 officer in Gulf encounters sexual harassment

The Washington Times

* MONDAY, FEBRUARY 14, 1994 / PAGE A11

Dear Sgt. Shaft:

After a two-year battle with the Air Force, I finally received my disability, which allows me time to pursue another service-related dispute.

I was in the Air Force from Dec. 17, 1987, to April 3, 1991. I got the career field that I wanted — security police. As you know, this is a very male-dominated career field. As a woman, when I entered I was under the assumption that I would be treated equally. As my first day began, I noticed a difference in the treatment of men and women. But it didn't really hit hard until I became a K-9 handler.

At my first assigned base, I encountered quite a bit of chauvinism from my male co-workers. Their idea of women was tossed at me every day. I knew this was wrong, so I took a few of them to Social Actions. I thought this would be the end of it, but I was sadly mistaken. The violators were slapped on the wrist and sent out to harass me again, which they did.

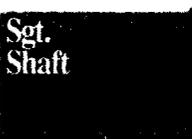
I escaped twice to Panama, where I earned letters of appreciation, but returned to my original base and its harassment.

Then Operation Desert Shield happened, and I was sent to Saudi Arabia. Three other K-9 handlers from my base were sent with me, along with one from another facility.

Everything started going wrong when I was approached by a tech sergeant who asked me to have sex with him. When I refused, he set out on a personal vendetta against me. Then my supervisor got into the "action." He claimed he was helping me out by conveniently moving me into his living quarters. I disputed this but was told it was an order.

From there the real trouble started. Although my supervisor was married with two children, he began to make sexual comments to me, followed by sexual advances.

When my relationship with my state-side boyfriend ended, I began to date, and my supervisor became jealous. He threatened that if I did not have sex with him, I would be reduced (receive an Article 15, which can mean penalties such as extra duty, pay forfeiture and grade reduction). I made myself clear that



I was not going to have sex with him. We both knew that he could not give me an Article 15 or there would be an investigation, and he would be punished. Time went on, and the sexual harassment and threats continued. I became seriously involved with another single man. My supervisor threatened that if I became pregnant, I would receive an Article 15. I was angry. My supervisor knew that I had been told by doctors that I couldn't become pregnant.

To my surprise, I did become pregnant and was told to leave Saudi Arabia as soon as possible.

But my supervisor and commander stopped the process. They had me retake the pregnancy test three times. My supervisor also threatened to keep me in Saudi Arabia and put so much stress on me that I would lose the baby.

All his threats came true. While I was fighting for the life of my child, my commander handed me papers for an Article 15. Because of this I lost my baby. ----- from the hospital I was given an Article 15 and sent back to my base in Texas.

I knew I could get some help in the United States. But to my astonishment my first sergeant threatened to discharge me if I went to Social Action about the sexual harassment. The day I went in and made the charges, I was given the processing paperwork for a 39-10 discharge. A month later I discharged under honorable conditions. To this day I am fighting an appeal. But it has now been more than two years, and all the answers I receive from the government are lies.

I blame my supervisors, the commander and the U.S. Air Force for the murder of my unborn child, and also for my discharge.

Please, if you can help me in any way, I'd be deeply appreciative.

M. W.
Anderson, Calif.

Dear M.W.:

Your letter highlights the complex social issues facing our co-ed military today, and for this reason, the Department of Veterans Affairs is attempting to deal with the aftermath of situations like yours.

The Women Veterans Health Programs Act of 1992 authorized new and expanded services for women veterans, including counseling for sexual trauma on a priority basis (along with specific health services for women and full-time women veterans coordinators in the four VA medical regions). At VA's nationwide network of 201 vet centers, the highest percentage of women reporting sexual harassment or assault are Persian Gulf war veterans, which may reflect both changed attitudes about reporting these events and the larger number of women who served in the Gulf.

To respond to the legislation, the VA has augmented staff at 69 vet centers with full- and part-time counselors who have specialized skills in providing counseling to women for the aftereffects of sexual trauma. Women veterans who have served during any wartime or peacetime era are eligible.

The surge urges you to contact your nearest VA medical center for assistance. The surge also urges Congress to commission an outside, objective panel to review the impact women have had on the military, and also to revisit the new women-in-combat policies. The surge recommends that this objective panel consist of Rush Limbaugh, Pat Buchanan and G. Gordon Liddy; however, Mrs. Shaft favors Rep. Patricia Schroeder, Gloria Steinem and Bella Abzug.

Send your letters to Sgt. Shaft, c/o John Pales, P.O. Box 65900, Washington, D.C. 20035-5900 or fax to 301/622-3330.

Beirut veterans lose their fight for stamp of approval

Dear Sgt. Shaft:

A young Marine who served in Beirut at the time of the bombing recently reminded me that 10 years has passed since that tragic event. He also shared a letter that indicates Marines and their families ran into a stone wall trying to get approval from the U.S. Postal Service for a commemorative stamp.

What's going on? The Postal Service can commemorate anything and everything, from pet rocks to Elvis, but some knucklehead turns down the Beirut stamp because he thinks the loss of 241 American lives in one day "lacks significance."

This is absurd. What can people do to get the Postal Service to wake up?

Concerned Former Marine
Alexandria

Dear Concerned:

The sarge's first reaction to your letter was astonishment. However, in this era of feticide frenzy, homo promo, turkey-baster babies, pupil prophylactic proliferation, jaundiced judges, cocaine kooks and Danahue, nothing should surprise me and the pundits are wondering why Rush Limbaugh is so popular. For the postal apparatchiks to stamp out honoring these peace-keeping U.S. heroes is outrageous, and the sarge has personally conveyed these sentiments to Postmaster General Marvin Runyon and Rep. Constance Morella, Maryland Republican.

As one family member who wrote to Mr. Runyon remarked, the statement from a postal employee indicating this killing "lacks significance in American history," compounded with the statement, "not enough people were killed to warrant a commemorative stamp," is ludicrous, insulting and clearly indicates that those who died in the name of peace surely died in vain.

Dear Sgt. Shaft:

I have lived in Illinois for 20 years and left about five years ago to serve my country. I was an Airborne Ranger Infantry officer in the 82nd Airborne in both Panama and Iraq. When I was growing up I was taught that I could do anything I wanted in life, so I decided that what I really needed to do was find something truly worth doing. I found it in the Constitution, and I decided to defend it "against all enemies." Of course the budget cuts abruptly ended my career.



From there it got worse, but combat has given me an imperturbability that has allowed me to fight on. In October 1992 I got sick, and my boss would not let me in to work until I went home and got better. I developed red spots, swelling and fatigue that no doctor could explain. Ranger school was nothing compared with the effort of working 80-plus hours a week in the face of my illness. I finally gave in to my mother's demand that I go to the VA for treatment. I went every week on my one day off to find answers, to no avail.

During this time my wife, Kelli, had two miscarriages. Finally, on Jan. 20, 1993, my son, Alexander Fox, was born, but the doctors gave him less than a 20 percent chance to survive. He is still alive, but the list of problems is extensive and confounding to the doctors. My symptoms have been slowly driving me into the dirt. Kelli has begun to develop the same difficulties, and the VA has told me they have recommended I be sent to the Houston specialty center.

That means that even though my son, my wife and myself are all sick with the same illness, they will only help me when I get to the end of the waiting list.

I have filed for disability, but it will not be approved until some sort of service connection is made. My son has been approved for SSI, and the Veterans Assistance Commission will help us get through hopefully until the end of the year. In the meantime I stand to lose my home, my job, my wife, my son, my life and my honor. It is the worst punishment for me, but I am begging for help.

TJA
Barrington, Ill.

The Washington Times

PAGE A10 / MONDAY, DECEMBER 20, 1993

Dear TJA:

I have contacted Bob O'Brien at the Veterans Leadership Program in Chicago, and Bob and his cadre of volunteers reacted to your plight like gangbusters. He assured me they and your family with a small grant and will continue to act as a lifeline with local, state and federal bureaucrats until you and your family get on your feet. Keep in touch.

Dear Sgt. Shaft:

It grates like a nail on a blackboard to read "Shaft kudo." The singular of kudos is kudos, not kudo. Do 50 push-ups and field strip your Webster's and sleep with it tonight.

FR., Cpl. USMC (Ret.)
Chevy Chase

Dear FR.:

Picky, picky, picky. From Webster's II, New Riverside University Dictionary: "The word kudos is etymologically a singular form, a modern borrowing of Greek kudos, glory, renown." In very recent times, however, kudos has been reanalyzed as a plural form and consequently a new singular kudo sometimes occurs. Certain features of kudos predispose it to this kind of treatment. In the first place, it is an unfamiliar word, drawn from the vocabulary of Homer, by academic and learned persons. In their usage, it did not often occur as the subject of a sentence, where the verb could provide a clue to whether kudos was singular or plural.

"Secondly, kudos has no recorded plural in English. A person unfamiliar with Homeric Greek who saw the form kudos in an English publication would be likely to interpret it as the regular plural of a noun ending in o, like typos for typo and allos for alio."

* Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900, or fax to 301-622-3330

MONDAY, NOVEMBER 8, 1993

Clinton health plan: Would it help vets?

Dear Sgt. Shaft:

Recently I heard Jesse Brown, secretary of veterans affairs, claim victory for veterans in the Clinton health care reform proposal. Is Mr. Brown's enthusiasm justified?

— B.C. (Forgotten Before)
Fairfax, Va.

Dear B.C.:

Scuttlebutt has it that Mr. Brown may be wrong, and you may be forgotten again. According to one Hillary commission report, the current Clinton proposal would leave the VA as a medical system for vets.

In order to remain independent, enough veterans would have to choose the VA as their primary medical care provider to fund the system. That means that 3.5 million to 4.5 million veterans who are not now being treated by the VA would have to select the department as their primary provider.

Here's the kicker: If the VA does not attract enough vets to support the system, Hillary commission contingency plans suggest that the VA's 171 hospitals and 252 outpatient clinics would be converted to "public health centers of excellence." As such, they would be required to provide priority care to veterans for service-connected disabilities. Additionally, the hospitals and clinics would be opened to serve the poor and others whose enrollment in health maintenance organizations is undetermined.

Finally, under the "centers of excellence" concept, all those in need of high-cost procedures such as kidney dialysis, coronary bypass surgery and organ transplants might be forced into these former VA hospitals as a cost-saving measure.

Veterans are cautioned to remember a maxim of Ronald Reagan's — "trust, but verify" — when dealing with the Clinton health care plan.

Dear Sgt. Shaft:

I'm a humanitarian, but sometimes an individual just has to stand up and say, "Enough is enough."

Our troops originally were sent to Somalia to aid in providing food to a starving nation. And that nation still is in need of help. But at what point must we say, "Enough is enough"? Why must we be the principal nation to suffer heavy losses? Because we are the only remaining superpower? How long will that last? Our military is spread thin and downsizing at the same time.



Among the consequences of this course of policy: What will we do when Dependents Indemnity Compensation benefits can no longer be processed for surviving families of soldiers because the tax load is at the limit? Or when young men and women will no longer enlist because they are afraid that, should they become injured while serving in the armed forces, the government will not take responsibility? The questions go on and on.

I know Somalia needs help. Let's get mass reinforcements in there and take care of business! If not — and this is my preference — let's get these troops home. Let's not repeat the mistake, as in the Persian Gulf, of leaving a tyrant in power, and let's ensure that veterans of such conflicts are taken care of afterward.

Let's not repeat the nightmare of the Persian Gulf. Get the troops home or do the job right!

— a Persian Gulf widow,
New York state

Dear Persian Gulf widow:

The sarge has been patiently waiting to see the young Clintonistas at the White House payroll stampede to military recruiting offices, answering the commander in chief's call for duty in Somalia, Haiti, Bosnia, and other hot spots around the world.

With Veterans Day being celebrated this week, the sarge dedicates to the Persian Gulf veterans — and those who have served and are serving in Somalia — this poem.

"Soldier" by George L. Skypeck, a fellow Vietnam veteran:

I was that which others did not want to be.

I went where others feared to go,
And did what others failed to do.
I asked nothing from those who gave nothing,

And reluctantly accepted the thought of eternal loneliness . . .

Should I fail,
I have seen the face of terror;
Felt the stinging cold of fear,
And enjoyed the sweet taste of a moment's love.

I have cried, pained and hoped . . .
But most of all,

I have lived times others would say were best forgotten.

At least someday I will be able to say that I was proud

Of what I was . . . a soldier.

Shaft kudos

The sarge salutes his fellow Marines on Nov. 10, our 219th birthday. Semper fi

Once again, on Nov. 11, we honor the nation's veterans. Let us reflect where America would be if these men and women had chosen not to serve because it was inconvenient. And where would our nation be today if those millions of vets who fought and died had decided to serve only in "good wars" and conflicts? Reflect also on Benjamin Franklin's observation, "There never was a good war or a bad peace." When visiting the Vietnam Veterans Memorial this week, please stop by the panel of Marine Cpl. J.C. Arnold, who served with the old sarge in Vietnam in 1967, and offer a prayer for him and his comrades.

Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900, or fax to 202/622-3330

The Washington Times

* MONDAY, OCTOBER 25, 1993 / PAGE A9

Dear Sgt. Shaft:

I was interested to read the letter from Rich Kolb, the editor of VFW Magazine, published in a recent column. I am a veteran who served with the New Zealand army in Vietnam. For the past 20 years I have lived in Washington, D.C., and for me the Vietnam Veterans Memorial is a place where I can go to reflect on that time, that place and those who paid the ultimate price.

While it is not "our" memorial, veterans of your allies in Vietnam share a great feeling of kinship with it. Therefore, Mr. Kolb's suggestion of honoring the allies there would please all who shared in this struggle with you.

— M.A.B., Washington, D.C.
Dear M.A.B.

As I stated in my column, I fully support the remembrance of our allies at the Vietnam Veterans Memorial. This could be done with placement of trees, with plaques, and/or allied flags adjoining Old Glory. Veterans Day, Nov. 11, will soon be here, and the Sarge has admonished, and will continue to admonish, the Washington area school systems to observe this national holiday.

The sarge challenges the school districts to set aside the week preceding Veterans Day to have students review the sacrifices our veterans have made throughout the history of the United States.

Dear Sgt. Shaft:

My husband finally decided, after many years, to elect survivor's benefits for me from his retired military pay. He filled out the proper forms and returned them during the open enrollment period, which ended on March 31, 1993. It gave me peace of mind that he did this because we have children who are minors.

Unfortunately, my husband passed away about a month after having elected the benefits. The Army Retired Pay Operations at Fort Harrison informed me that, since my husband was not enrolled in the program for the required two years, that there would be no survivor's benefits and that I would only receive deductions that had been taken out so far. I checked the enrollment form my husband had filled out. Nowhere did it state that in order to receive benefits there was a two-year waiting period.

My husband and I also had called



Vietnam memorial special to foreign vet

Fort Harrison and spoken to people there to get advice, and we also had talked by phone with others in the Washington area. No one told us about the waiting period.

This has been quite a shock. I am left in a serious financial predicament without this additional income. What gives? Can you explain this, but most importantly, can you help me? I have two children, 14 and 17, that I must support and educate.

— H.J.P., Potomac, Md.

Dear H.J.P.:

Unfortunately, the information provided by the Army Finance Center is true. The law creating the latest open enrollment period for the Military Survivor Benefit Plan required that those who enroll survive for two years as a precondition to benefit eligibility. Since all had previously declined enrollment on one or more occasions, this provision was deemed fair. As a result, you will receive only a refund of the Survivor Benefit Plan premiums paid by your husband prior to his death.

However, I asked my friends at the Non-Commissioned Officers Association to see if you might be eligible for any other benefits. According to their research, your husband died of complications from several conditions, including asthma. It also appears the asthma first manifested itself while your husband was on active duty.

Even though your husband never sought disability compensation for his asthma and was never treated by the Veterans Administration for the condition, you may still be eligible for benefits as the survivor of a disabled veteran.

If NCOA is successful in pressing your case, you will receive monthly payments of \$750 for yourself, plus \$100 for each child under 18. You and the children also will become eligible for educational assistance and other benefits as the survivors of a disabled veteran.

Good luck, and keep me up to date.

Shaft kudo

This past summer, the Department of Veterans Affairs inaugurated a new nationwide awareness campaign among its 250,000 employees, emphasizing themes of caring and courtesy under the banner of "VA — Putting Veterans First."

In announcing plans for systematic adoption of the program, VA Secretary Jesse Brown said, "Because we are undoubtedly the government's largest single employer of direct-public-contact personnel, we have a special need to emphasize customer service. The tone we establish with our veterans in their encounters with VA must communicate a total sense of caring and courtesy."

The VA annually serves the nation's veterans and their dependents and survivors — an estimated one-third of the total U.S. population.

"We want to provide clear guidelines to our employees, not only to reinforce a sense of responsibility for being pleasant and helpful, but also to demonstrate that in the long run, it helps us be efficient," Mr. Brown said. He explained that by reducing time spent on consumer complaints and by taking an early interest in individual concerns, VA could increase its productivity.

The sarge lauds the Department of Veterans Affairs for this worthwhile venture, with the understanding, however, that many veterans will fall through the cracks — keeping the sarge busily sharpening his shaft.

*Send your letters to Sgt. Shaft, c/o John Fales, P.O. Box 65900, Washington, D.C. 20035-5900, or fax to 301/622-3330

dam Hussein with the mother of all smiles.

Dear Sgt. Shaft:

In your Sept. 27 column you state that the undiagnosed illness suffered by Persian Gulf veterans was first deemed to be stress-related. This is not correct. In fact, from the beginning the Department of Defense has stated that while stress may play a role, this is a distinct illness that could be due to a number of different causes.

Second, the Department of Defense did contact Ret Adair and determined neither he nor his colleagues developed this illness.

Next, as you know, exhaustive studies have been done concerning the vaccines with no evidence of long-term effects. Other countries have reported no evidence of significant medical problems in similar situations, despite some stories in the British press.

Thank you for this opportunity to set the record straight and provide some solid information to concerned veterans and families about the seriousness with which the Defense Department is pursuing this. We don't have the answers yet, but we are getting closer. Keep up the good work with your column.

Maj. Gen. Ronald R. Blanck
Commanding Officer
Walter Reed Army Medical Center

Dear Gen. Blanck:

Thank you for the heads-up. I know your concern for our Persian Gulf vets. Unfortunately, Department of Veterans Affairs' docs are lagging in this area.

Dr. Susan B. Malher, the VA's assistant chief medical director of environmental, medicine and public health, and some of her tranquilizing troubadours, are not getting the word on stress and are replacing valium with valium.

She has repeatedly stated publicly that the symptoms suffered by these veterans are caused by stress. As recently as Feb. 3, a VA colleague diagnosed her as stressed. "Multiple chemical sensitivity is a valid diagnosis," she said. "I got it from that Persian Gulf vet." "What was it that Persian Gulf vets are preparing themselves for?" she asked. "Persian Gulf veterans don't 'blather' to the Department of Veterans Affairs."

Dear Sgt. Shaft:

I am writing on behalf of my husband, Jimmie, who was in the Army for four years. During his enlistment, he served in Saudi Arabia from September 1990 to March 1991 (six months, 27 days). His ETS date was May 7, 1993.

While in the Army, Jimmie became ill. He had symptoms of decreased appetite, weakness, back and leg cramps, and easy bruising. He did make several trips to the sick call but was instructed to go home and rest. These symptoms continued after his discharge. Once home, Jimmie sought medical attention at the Columbus, Ga., Medical Center and was newly diagnosed with acute myelomonocytic leukemia. He was then transferred to the Medical College of Georgia at Augusta for further evaluation and treatment.

Jimmie has since chemotherapy first treatment of chemotherapy and has had reactions to his medicine. Since I have been at my husband's bedside, we have lost our home due to having no income. We have two small children, 3 years and 6 months old, who have been staying with family. We need help!

Renee B., Smiths, Ala.

Dear Renee:

The sergeant has contacted a couple of benevolent bureaucrats at the VA regional offices at Louisville, Ky., and Montgomery, Ala. After hearing of your plight, they have expedited your husband's claim and have rated him 100 percent, and, by now, he should have received a check. Give my best to your husband and kisses to your kids.

Shaft kudo

The sergeant once again salutes our nation's federal employees for their generous participation in the past and upcoming Combined Federal Campaigns. As you know, the sergeant has an affinity for the Blind American Veterans Foundation, listed as No. 1253 in the Combined Federal Campaign booklet.

The sergeant is looking forward to joining Sen. John McCain and the Non-Commissioned Officers/Associations in honoring Sen. Dan Coats, Indiana Republican, at a reception on Wednesday at the Russell Senate Office Building.

Congratulations, Mr. Coats, on being selected to receive the prestigious L. Wendell Rivers Award. It is well-deserved.



Dear Sgt. Shaft:

Your Shaft shot of Aug. 14 hit the bull's-eye. The Department of Labor should be expanding programs for veterans rather than abolishing them.

With the downsizing of the military over the next few years, thousands of veterans will be looking for jobs or training opportunities.

Our "grateful nation" should leave the mechanism in place to help those who were there to protect us.

T.L., Medford, Mass.

Dear T.L.:

Dismantling the Department of Labor's training programs and apparatus, combined with the intolerable delay in processing veterans' claims by the VA and delays of services to veterans eligible for education and vocational rehabilitation programs, is disgraceful. Veterans and their families are lingering on the brink of poverty while high-level functionaries at the Departments of Labor and Veterans Affairs tinker with and diminish programs that affect their lives. This treatment of America's veterans, especially our Persian Gulf veterans, must be leaving Sad-

Incentives to quit military trail those offered to civilians

Dear Sgt. Shaft:

Let's look at what Congress is doing to reduce the number of civilians employed by the federal government and how that contrasts with its treatment of military men and women.

Sen. David Pryor, Arkansas Democrat, and Rep. William Clay, Missouri Democrat, have pushed through a package authorizing the Department of Defense to offer \$25,000 to \$37,000 to entice 30,000 civilian employees to begin collecting their pensions.

Sen. John Warner, Virginia Republican, and Rep. Dan Glickman, Kansas Democrat, are sponsoring a proposal to give the Central Intelligence Agency authority to pay employees as much as \$25,000 to quit or retire this year. The president is expected to sign the bill.

The House is expected to approve a plan by Reps. Vic Fazio, California Democrat, and James P. Moran Jr., Virginia Democrat, authorizing buy-outs at the Government Printing Office, General Accounting Office and the Library of Congress.

Meanwhile, tens of thousands of military personnel are being forced to go home before they had planned with no added incentive or, in some cases, no retirement benefits at all. By my calculations, DOD plans to spend a minimum of \$750 million to cut civilian manpower "without resorting to costly and disruptive layoffs."

But costly and disruptive layoffs are acceptable for the military.

Military people — many of whom put their lives on the line every day — are being forced to shoulder an inordinate share of the sacrifice required to cut the budget deficit. Congress' failure to keep the faith with the men and women in uniform will have a significant negative impact on morale and, ultimately, readiness.

— Disheartened Citizen,
Springfield

Dear Disheartened:

Unfortunately, history repeats itself in the treatment of our military and veterans. As the amount of time passes after an armed conflict, the less emphasis is placed on our country's commitment and concern for our military and veterans' welfare. For this reason, veterans must be ever-vigilant to ensure that Congress honors the covenant with these dedicated men and women.



Dear Sgt. Shaft:

A few weeks ago, your column commended the wonderful work performed by volunteers. Because of your interest in volunteers, I would like to tell your readers about the Robert R. McCormick Tribune Foundation and its voluntary support of the 75th anniversary of World War I veterans.

Robert R. McCormick was the editor and publisher of the Chicago Tribune when World War I began. He served as a colonel in the American Expeditionary Force in France until after the Armistice, then returned to assume his duties at the newspaper until his death in 1935.

Throughout his long life, he never forgot his experiences in the Great War. He renamed his own estate Cantigny to commemorate that American victory in 1918. When he died, he left the bulk of his estate to a group of trustees with instructions to establish an organization devoted to charitable works, forming what is known today as the Robert R. McCormick Tribune Foundation.

The foundation has planned special events for the 1993 National Convention of the Veterans of World War I and Auxiliary. It has designed a 75th anniversary commemorative medal, honoring the estimated 43,048 surviving participants in the First World War. Presentation of the medal will be made on Aug. 30 to all World War I veterans attending the convention. Medals will be available for distribution to living World War I veterans unable to attend. Distribution will be made upon application to the Department of Veterans Affairs.

Please give this wonderful foundation a kudo for its efforts to honor our World War I heroes.

— L.S.,
Springfield

Dear L.S.:

The Sarge salutes the Robert R. McCormick Tribune Foundation and our country's WWI vets. It is their dedication that has made America great. Wear your medals proudly.

Dear Sgt. Shaft:

Thank you for helping me clear up a confusing situation regarding CHAMPUS, my health coverage, and disenrollment.

After several calls to different members of Congress, base hospital commanders, lawyers and many others regarding my health coverage without results, I realized that they weren't just "picking" on me and I decided to write you. If only I could express my surprise and pleasure at your interest! Maj. Marsha Weaver called and requested proof regarding my husband's death. She also gave me new Gold Star pins, did paperwork and issued a new ID card. Base CHAMPUS told her that I had been misinformed about "disenrollment"; that it should be covered and applied to the total deductible. I hope they are right and that I won't need to find out for a very long time.

The Gold Star Wives are often confused with the organization for mothers and parents, so I didn't find it unusual that Maj. Weaver had not heard of us, but I provided her with an information brochure and applications. Thank you for that opportunity as well.

May I also express my appreciation for your plain answers? Quite refreshing in the age of PC, double-speak and Lord only knows what else.

— Gold Star Wife,
Shreveport, La.

Dear Gold Star Wife:

Thank you for your kind words. The Sarge appreciates the sacrifices you and your family have gone through for our country. Good luck.

• Send your letters to Sgt. Shaft, c/o John Poles, PO Box 65900, Washington, D.C. 20035-5900, or fax to 301-622-3330.

Mrs. MORELLA. Thank you, Mr. Fales.

Mr. DAVIS. By George L. Skypeck, entitled, "Soldier." And if I may read it.

I was that which others did not want to be. I went where others feared to go and did what others failed to do. I asked nothing from those who gave nothing and reluctantly accepted the thought of eternal loneliness should I fail. I have seen the face of terror, felt the stinging cold of fear, and enjoyed the sweet taste of a moment's love. I have cried, pained, and hoped, but most of all, I have lived times others would say were best forgotten. At least someday I will be able to say that I was proud of what I was, a soldier.

Mr. MICA. I thank you, Mr. Fales, for your testimony and also Mr. Davis for reading that verse. And I would now like to recognize Mr. John Davis, who is a veteran and former Federal employee. You're recognized for 5 minutes, sir.

Mr. DAVIS. Thank you, Mr. Chairman. I have submitted a statement for the record, and I would just like to read a brief statement, if I may.

Mr. MICA. Without objection, your complete statement will be made a part of the record.

Mr. DAVIS. Thank you, sir. Chairman Mica, subcommittee members, I am honored to be testifying before your subcommittee this morning. Likewise, I applaud you for scheduling this much-needed hearing on veterans preference. Let me begin by stating that I am a Vietnam veteran. I flew Army helicopters in the central highlands, where I was awarded the Distinguished Flying Cross, Bronze Star, and multiple awards of the Air Medal.

And I mention this only because I am proud of my military service and would not hesitate to serve again, should my country call.

My problems began with the Army Corps of Engineers, when I accepted the opportunity to work for a dynamic Presidential appointee who wished to streamline the agency and make it more efficient. Needless to say, the Corps hierarchy wasn't exactly enamored with his unsolicited ideas for change. I received two promotions within 3 years, much to the chagrin of the Corps.

When my boss retired, I reverted back to the Corps and began a nightmarish odyssey which was to last for 3 years. I bounced from job to meaningless job. I was told by the ranking civilian in the Corps that I had aligned myself too closely with the previous Assistant Secretary and now "had to pay the price."

I went 3 years without job standards or performance evaluations, which is in direct violation of OPM regulations. In March 1993, my agency ran a 50-person reduction in force. Prior to the RIF, management went to great lengths to place individuals whose jobs would not be abolished, or jobs would be abolished, rather, into positions equal to their current grade.

Not surprisingly, I failed to qualify for any other job at my grade level. Consequently, I would become, in effect, the only employee in an organization of more than 1,200 to be downgraded as a result of the RIF.

At that point, Mr. Chairman, the conflict was no longer personal; now we were treading down the slippery slope of challenging veterans preference. And it was obvious that the outcome of this struggle had implications that reached far beyond the Army Corps of Engineers or the well-being of one John L. Davis.

I appealed my downgrade to the Merit Systems Protection Board. As my written statement indicates, I lost my appeal, on an unbelievably minor detail. In addition, the MSPB judged that personal animus did exist and that the command was, indeed, out to get me.

However, the judge ruled that none of that mattered, because I would have been downgraded regardless, which is a lot like saying it's OK to shoot the guy because he's probably going to die, anyway.

I was placed in a single person competitive level during the RIF. In regard to my assignment or bumping rights, the MSPB judge ruled I was not qualified for a position almost identical to the one I had held before the RIF. In my opinion, this matter of assignment or bumping rights strikes directly at the heart of the 1944 Veterans Preference Act.

As it stands, the entire RIF procedure hinges on the establishment of the competitive level, and that is not what the original law intended, nor the way it was initially applied.

In conclusion, Mr. Chairman, violation of veterans preference must be made a punishable offense. At present there is no agency even to hear complaints of veterans violations. In my case, I found relief only after I filed a reverse discrimination complaint with the Equal Employment Opportunity Commission.

Had laws protecting against this type of discrimination been on the books, I doubt that the Army Corps of Engineers would have been so aggressive in its actions toward me or in its continuing actions against Susan A. Odom and her husband, whose situation I discussed in some detail in my written statement.

Again, sir, I thank you for this opportunity to testify, and I will be pleased to answer any questions you may have.

Mr. MICA. I thank you, and we will defer questions until we've completed all three panelists. I'd like to welcome and now recognize Mr. James Daub, a veteran. You're recognized for 5 minutes.

{The prepared statement of Mr. Davis follows:}

TESTIMONY OF JOHN L. DAVIS
GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE

April 30, 1996

Chairman Mica, Subcommittee members. I am honored to be testifying before your Subcommittee this morning. Likewise, I applaud you for scheduling this much needed hearing on Veterans Preference. I also wish to thank Emil Naschinski and Ken Scharnberg of the American Legion; Sid Daniels of the Veterans of Foreign Wars; and John Fales, also known as *Sgt. Shaft* of the Washington Times. Early on these gentlemen recognized the threat to Veterans Preference that *Davis vs. Army* presented. Along with this Subcommittee, their support has proved invaluable in focusing attention on this rapid erosion of veterans' rights in the Federal workplace. By relating my experience this morning, I hope that I can, in some small way, inform you of the process as well as help spare others from a similar fate.

Let me begin by stating that I am a Vietnam Veteran. I flew Army helicopters in the Central Highlands region, where I was awarded the Distinguished Flying Cross, Bronze Star, and multiple awards of the Air Medal. I mention this only because I am proud of my military service, and would not hesitate to serve again should my country call. My Civil Service career began in 1975 and continued until July 1995, when I opted for early retirement

as part of a settlement agreement reached with my agency, the U.S. Army Corps of Engineers. I had not wanted to end my career at that point, but in light of the events of the preceding three years, I felt I was left with no other alternative.

I joined the Corps in late 1988 after a four year stint with the Army's medical command in Europe. I returned to Washington because I was offered the unique opportunity to work for a dynamic individual who had amassed a proven record of success in the private sector. Appointed by President Reagan and reappointed by President Bush, he had accepted the daunting task of transforming the Army Corps of Engineers from its traditional role of dam builders into a more technically diverse and responsive Federal Agency. Needless to say, his programs were not exactly embraced with open arms by the Corps hierarchy.

Soon I advanced to the position of his special assistant. I received two promotions within three years, much to the chagrin of the Corps, to which my position still officially belonged. When my boss retired, I reverted back to the Corps and began my nightmarish odyssey which was to last for three years. I bounced from job to meaningless job. I was told by the ranking civilian in the Corps that "*[I] had aligned myself too closely with [the previous Assistant Secretary]*", and now "*[had] to pay the price*". Part of that price required that I sit at a desk in a storage area littered with defunct personal computers. Another aspect

was that I went three years without job standards or performance evaluations, which meant that I could not seek employment outside of the Agency. As everyone in Federal Government knows, you are only as good as your last performance appraisal.

In March 1993, Corps headquarters announced that it would conduct a fifty-person reduction-in-force (rif). Although no one would actually "hit the street" as a result, the rif was necessary to "align people with positions." Prior to the rif, management went to great lengths to place individuals whose jobs would be abolished into positions equal to their current grade. These measures included creating positions that did not exist before the rif began, allowing supervisors to choose which employees would be rifed into their offices, and backdating personnel documents to circumvent OPM rif regulations. Not surprisingly, I was informed that I did not qualify for any other job at the GM-15 level. Consequently, I would become, in effect, the only employee in an organization of more than twelve-hundred to be downgraded as a result of the rif.

At that point, Mr. Chairman, the conflict was no longer personal. Now we were treading down the slippery slope of challenging Veterans Preference, and it was obvious that the outcome of this struggle had implications that reached far beyond the Army Corps of Engineers or the well-being of John L. Davis.

I appealed my downgrade to the Merit Systems Protection Board (MSPB), challenging my single-person competitive level and failure to award me assignment rights as a result of my preference eligible status. In addition, I alleged that the rif had been tainted by prohibited personnel practices. At my MSPB hearing, my attorney presented un rebutted evidence that the Corps had failed to compare my position description with other job descriptions prior to the rif. On that basis alone, he argued, the rif should be overturned. Amazingly, the administrative judge agreed with his reasoning, although he still sided with the Agency: *"The [Position Classification Chief] had no recollection of how appellant's competitive level was actually determined....Agency documents do not indicate what, if any, positions appellant's former position was compared to, in determining its competitive level."* In essence, Mr. Chairman, the MSPB ruled that violation of an employee's *substantive right* was now an allowable offense, and the message to management was loud and clear: send us your rifs, and we'll gladly sweep your violations under the rug.

In regard to my assignment, or "bumping" rights, the administrative judge ruled I was not qualified for a position almost identical to the one I had held before the rif. Though I demonstrated that I had performed every critical element of the position in question, the judge still ruled that I had not performed the exact *"day-to-to administrative management of an*

office" at either the GM-14 or GM-15 levels. In my petition for review, my attorney wrote, *"To accept this position would, in fact...be a dilution of assignment rights, and a rewriting of OPN's rif regulations, which neither the administrative judge nor the board are permitted to make."*

I make this point, Mr. Chairman, because neither my attorney, who literally writes the book each year on significant MSPB and Federal Appeals Court decisions, nor my expert witness at the hearing, were aware of any case in the MSPB archives which so narrowly interpreted rif assignment rights prior to *Davis vs Army*. Moreover, my own research failed to disclose any such cases. When I wrote to the MSPB seeking clarification, I received a terse response which indicated that the three-member panel believed existing precedent covered my case, although no evidence to bolster that claim was ever presented.

In my opinion, this matter of assignment, or "bumping" rights, strikes directly at the heart of the 1944 Veterans Preference Act. When the law was originally written, the provision that a preference eligible employee only need be "minimally qualified" to displace a nonveteran in round two of a rif, served as extra cushion for veterans as well as a warning bell for management. During downsizing, it worked in the Agency's best interest to keep veterans in properly constructed competitive levels. That way, management could maintain some

measure of control over the rif process. In those days "minimally qualified" meant precisely that: when a veteran was released from a competitive level, the entire competitive area became the veteran's hunting ground. In other words, unless a job description contained some highly-specialized requirement, the veteran would be allowed to "bump" into the job of a nonveteran as the law intended. Such is not the case today, as *Davis vs. Army* clearly demonstrates. Round two rights--or assignment rights--need to be restored to the reduction-in-force process. As it stands, the entire rif procedure hinges on the establishment of the competitive level, and that is not what the original law intended, nor the way it was initially applied.

Perhaps the most intriguing aspect of *Davis vs. Army*, though, is the Gordian knot logic employed by the administrative judge to explain why the Army Corps of Engineers had not committed a prohibited personnel practice in its zeal to "*teach [me] a lesson.*" In unrebutted testimony, Susan A. Odom and I both testified that Corps high ranking officials had vowed, "*Because [I] had ascended fast, I could descend just as fast.*" Further, he discounted more unrebutted testimony that management had promised, "*[I] wouldn't bump anyone during the rif, my Veterans Preference status notwithstanding.*" The judge agreed that personal animus did exist, and that the command was indeed "*out to get [me].*" However, the judge ruled that none of that mattered because I would have been downgraded regardless. Which

is sort of like saying that it's okay to shoot the guy because he's probably going to die anyway.

A moment ago I mentioned Susan A. Odom. Susan testified on my behalf at the MSPB hearing despite considerable risk to her and her husband's career. Susan displayed extraordinary courage by stepping forward to take the stand in defense of Veterans Preference. She has submitted a statement for the record, and I hope the Subcommittee will give it a careful reading.

Finally, Mr. Chairman, I wish to conclude by offering a few observations on ways I believe the present system can be improved. First, violation of Veterans Preference must be made a punishable offense. As it stands, there is no penalty for trampling upon veterans' rights. In fact, two of the biggest offenders in my case, including the self-proclaimed "architect of the rif," were recently promoted to the Senior Executive Service. I also have reservations concerning the MSPB's activist role in interpreting Veterans Preference laws. As currently configured, the Board is too susceptible to political pressure, and is accountable virtually to no one. The Federal Court of Appeals, the only body to review Board findings, has such a narrow standard of review that it rubber stamps about ninety-seven percent of all MSPB decisions.

Adherence to Veterans Preference laws should be a critical

element of every manager's position description, the same as EEO. Violation of these laws should be dealt with in a prompt and decisive manner. At present, there is no Agency to hear complaints of Veterans Preference violations. In my case, I found relief only after I filed a reverse discrimination complaint with the Equal Employment Opportunity Commission. Had laws protecting against this type of discrimination been on the books, I doubt that the Army Corps of Engineers would have been so aggressive in its actions toward me, or in its continuing actions against Susan Odom and her husband.

Again, I thank you for this opportunity to appear before you this morning. I will be pleased to answer any questions you may have.

Mr. DAUB. Thank you very much. Mr. Chairman, thank you for giving me the opportunity to testify before this committee on behalf of H.R. 2510.

As you know, the intent of this resolution is to extend veterans preference to individuals who served in connection with Desert Shield/Desert Storm.

Our unit was activated for Desert Shield/Desert Storm in December 1990. At that time we were split into two groups, one being sent to the Desert, and our group was sent to Rhein Mein Air Force Base in Germany, in accordance with directives sent from higher headquarters. Our group was sent to Germany to perform aircraft maintenance and direct support of the theater of operation. The maintenance we performed was beyond available capabilities in the desert. As a consequence, I feel that our mission in Germany was just as critical as those in the Desert. Without our contribution to the war effort, the Desert mission capabilities would have been adversely affected. We were released from active duty in March 1991. Up until now we have not received any recognition for our effort. Due to the circumstances I have mentioned, I feel recognition in the form of veterans preference is justified.

Veterans preference enhances the Federal employees' chances for promotion and gives them retention preference in reduction-in-force situations. In today's Department of Defense work environment, it seems the possibility of reduction-in-force increases daily.

You can see where our concerns lie as Desert Shield/Desert Storm veterans and also as Federal employees without the 5 points preference. The current policy allows 5 point veterans preference only for those who served in Southwest Asia and disregards everyone else who was on active duty at the same time.

Vietnam era veterans all receive 5 points preference, no matter where they served in the world. Why should it be any different for Desert Shield/Desert Storm veterans? The military, after all, is a total force per the Department of Defense, except, it seems, in this matter.

Thousands of members of the Reserves and National Guard performed their functions well during the Persian Gulf war, in locations throughout the world. You know as well as we do, the war would not have been the success it was without these people. Little recognition, if any, occurred for those of us that served in other areas of the world, as we did, in direct support of the war.

Under the Department of Defense policy of Total Quality Management, equitable recognition should be granted to all who successfully completed their assigned tour of duty during the war. The current policy on veterans preference is in direct conflict with this policy.

The current veterans preference policy on Desert Shield/Desert Storm is wrong. All the veterans of these operations should be recognized for their sacrifices and efforts. Though we served to the utmost when called upon, we have no more Federal employee retention rights than the nonveteran who was home with his family watching the war on CNN.

We performed our job proudly, and now we are asking for recognition in the form of Federal employee veterans preference rights. We are asking your help to correct the current policy by

moving H.R. 2510 out of committee, and onto the House for consideration.

Thank you again for giving me the opportunity to bring what we consider to be an important veterans matter.

Mr. MICA. I thank you for your testimony and also each of our panelists.

I have a couple of questions. I'd like to start with Mr. Fales, if I may. You probably have as much contact with the veterans population as anyone, at least in this area. And I'm wondering if you could name the top three or four concerns that you have heard with respect to veterans preference in the Federal hiring process. Mr. Fales, maybe you could give the committee some of the perspective that your readership shared with you.

Mr. FALES. Yes, sir, I can bring up a few. No. 1 would be the Corporation for National Service, their alternate personnel system, which has been approved by Mr. King; and you have people who are career Federal employees and you have this newly created alternate personnel system, which totally ignores veterans preference. And even during the RIF procedure you could have an individual who is a disabled veteran, has 15 years in service there, but they would have separate RIF registers.

In addition, they have used the—supposedly the alternate personnel system competitive—supposedly, it's also supposed to be competitive. Unfortunately, it's really noncompetitive. Many individuals have been dumped over there by the White House in Schedule C positions.

In addition, another one of the frustrations of many of the veterans today is the concern over what's been happening with the RIFs, and how they are trying to circumvent veterans preference. And when they try and go and get some relief and some help, they find that there isn't a process for them.

The Equal Opportunity process, as bad as it is, that procedure is much better than for a veteran trying to get some redress. For example, I had an opportunity to talk to Preston Taylor, the Assistant Secretary for Veterans Employment, and he mentions how he has this authority to investigate complaints of veterans. Well, that doesn't deal with RIFs.

In addition, he does not have any subpoena power as he does have in the Office of Veterans Re-employment Rights. In that law, his authority in the Office of Veterans Re-employment Rights—if somebody in the Government is called overseas or called into active duty and the Federal agency does not rehire him or give him his veterans re-employment rights, Mr. Taylor and his functionaries can go in. They have subpoena power and they can handle the case immediately.

Unfortunately, under the average veterans preference, he has no authority at all, and he has none in regard to subpoena authority at all, but he has none in the area of veterans preference, and none in the area of RIFs.

There is an anger out there as Vietnam vets who have been through a lot, and McNamara's book just—God, it had my fax machine running, my e-mail, just filled with anger and hurt, and then along comes Postmaster General Runyon and he started circumventing veterans preference and they saw the hurt again.

And as you know, we fought hard to—we had to fight a little harder coming back from Vietnam and now in the pinnacle of our careers they are now downsizing, and it's almost like "it's *deja vu* all over again," as Yogi Berra would say.

We see the same thing happen to our sons and daughters who are now coming out of the military and being forced, because of downsizing, to end careers and enter new ones. And then getting the rancor of those who did not serve.

But that's just a few. If you would like, I could go home and get all these letters and bring them back and put it for the record. My wife would love to get rid of all these piles of letters.

Mr. MICA. I don't know if we want to create a volume that large, but you have outlined some of the problems.

One of the concerns we just heard from Mr. Davis is the inadequate system of redress when someone has a complaint. It appears that there is no place to turn to. What would you put in place to correct this situation? An appeals system or what enforcement of veterans preference would you prefer or recommend?

Mr. FALES. Well, there has to be some kind of counseling stage, first, sir, as there is with the EEO process. In that area, you're talking to a nonbiased individual who is gathering facts and being able to find out actually if there has been some circumvention of veterans preference, or if a veteran has been, and I would use the term "discriminated against," because his or her rights have been violated.

If that doesn't settle or come to some kind of conclusion, then I would have an investigation with subpoena power, be able for them to go in, to look at personnel files, to get all the fact finding. Unfortunately, if a veteran does this, he has to do it himself or hire an attorney to enter into this. And you know how expensive that can be.

And then there has to be adjudication, a fair and equitable adjudication, and quick—remember we always talk about the criminals getting due process and quick due process, but God, it's important that this process be handled as quickly as possible.

Another thing, too, is that, you'll notice I pointed out in my written testimony, and it deals with John Davis. The retaliation that individuals get, Susan Odom and her husband and others, what it does is their careers are hurt because of the same individuals, especially in this Army Corps of Engineers. So what will happen if these managers are not penalized, then they're going to continue to go about their own little way of circumventing veterans preference. Also, they'll continue to retaliate against witnesses and who would be a witness, unless we have some kind of mechanism in place to sanction those individuals.

And, you know, it's about time. You know, we've had TQM, and we have had so many management programs, I think it's about time we had leaders in our Federal agencies again.

Mr. MICA. I thank you for your comments and want to ask Mr. Davis a similar question. I know you're disappointed in the outcome of your particular case, but part of the purpose of this hearing is to look beyond individual cases, see what went wrong with this system, and how it can be corrected.

And if we set up a system of grievance or redress wrongs, how would you approach this organizationally and as far as opportunity for veterans to appeal?

Mr. DAVIS. First, if I may clarify something just a little. I said I found relief or redress through the EEO process, if I may explain that real quickly. It was obvious there was no mechanism through the Merit Systems Protection Board at all. And one of the reasons for that is that veterans preference or veterans rights or whatever are lumped into other areas.

For instance, under reduction-in-force, if you look into the archives of the MSPB, the only time you ever see veterans preference violations come up is when it's eligibility. In my case, it's assignment rights, it's competitive levels. It's diluted in that way. In terms of prohibited personnel practices, that's exactly what it is, unless you fall under one of the lists of prohibited personnel practices, then violation of someone's veterans rights are nonexistent.

But I was saying about the EEO, I got into that channel, as I said, because I had exhausted the other means and, one thing, I was in debt, it cost me \$30,000 to combat this. And probably everyone is not as pigheaded as I am, but it's very expensive to do, as Sergeant Shaft pointed out.

So I had a considerable investment, not only in time, but also what I considered to be principle. And one of the things that I did find out is that through the EEO channels, you can go to a civil trial. And you may recall that the Corps of Engineers last May, May 1994, lost a \$3.2 million civil trial to one of their employees who had charged and successfully charged them with sexual discrimination.

And I found out these figures may not be totally accurate now, but a year ago this time, the Army had taken 24 cases before a civil court, and each one of those cases the Army had lost, so the score is 24 to nothing in favor of the plaintiffs. And one of the reasons is because the systems that are in place now, whether it's EEO at the preliminary process, whether it's the Merit Systems Protection Board, in my opinion, the system is established where you basically condone each other's behavior.

And I'm sure there are reasons for that that I don't fully understand, but when these cases are getting before juries, they're getting clobbered. And as I said, the only way I could redress mine was to go through EEO, or at least head in that direction.

I would like to see very much, as John pointed out, that if someone's veterans preference rights are violated or someone stands up for veterans preference rights, as Susan Odom did, that immediately it becomes, it's handled as a prohibited personnel practice or you can set into motion at that time a mechanism which will allow you to address this problem.

Also, too, one thing I would like to add is that these things are very, very costly to management also when these disputes—you end up, pockets within the organization or suborganizations very often good people go down with these. Not only the person who has the allegation or the person who feels like they've been wronged, but supervisors.

And a lot of times, the people who stir up the problem, if you will, or management who initially feels for whatever reasons they

should initiate this action, they sort of disappear, and the people on the front lines—and I know at the Corps right now, there are several offices that literally have been destroyed because of this, and the individuals within those offices, from having to fight these fights. And one reason is because of the protracted nature of them, they go on and on and on and on.

Possibly, if the Merit Systems Protection Board is not the vehicle for this, then possibly, someone had mentioned at one time a Federal court, perhaps, a version of the Federal court. Whether that's a good idea or not, I don't know, but at present, sir, there is just no way for a veteran to seek any sort of redress unless you lump it into something else.

Mr. MICA. It sounds like your service in Vietnam was a rather mild experience compared to the battle you've been through. One of the final things, and I don't want to abuse the time here, but something that's disturbing in your case is and that you mentioned, again, retaliation. And one individual in particular that was mentioned, I guess, Susan Odom and her husband have been retaliated against because of her support for your position.

Would you describe briefly for the subcommittee her involvement and how the agency retaliated? Also, when you finish, I'm going to enter a statement I have from her as part of the record that she sent to me. So if you would relate to the subcommittee what's taken place here, I would appreciate it.

Mr. DAVIS. Susan stepped forward before my hearing in January 1994. She came forward and said she had heard information, first hand information, from people within the management of the Corps of Engineers who said essentially that I wasn't going to bump anybody regardless if I was a veteran or not, that the organization was going to "pay me back" because of working for a political person who was appointed by President Reagan and reappointed by President Bush.

And she, as a matter of principle, just could not let that lie. And so she stepped forward and testified at my MSPB hearing with that information, and I also had some corroboration of my own. One of the people who had said these things before he retired came to me and confirmed them. When this happened, Susan had won—had just received one of the highest awards that you can get in the Government, the Meritorious Civilian Service Medal, for a program that she had originated, the program that she had implemented, and in fact had been adapted Corps-wide. That was taken away from her.

Susan also had gone to college with the agreement with the agency that they would pay her tuition when she graduated or she completed her credits; they—this was in 1994, following all this, they still have not paid. She's had collection agencies hounding her. The agency will not rectify that.

They have pitted her against her husband, who is also a Corps of Engineer employee, because of particular programs that Susan was in charge of that her husband—they established him as her counterpoint. They have called her very, very insulting names. They have made comments which have been corroborated such as "we don't need people like her in the organization."

Basically, they have demeaned her. They have stuck her in a corner the same as they did with me. And it's all because she came forward to testify. Susan has also written to the Office of Special Counsel, and they have initiated an investigation. And this was some time ago, and I don't believe she's heard back from them.

She is also trying to seek redress through the EEO channels at this time. But her career is over. A very, very bright, promising woman who had a great career is over. As I mentioned in my comment, I hadn't wanted to retire when I did. I had no choice. I certainly had no future. When you don't have performance appraisals, you can't go from one agency to another. Everybody wants to see your performance appraisals, so I don't know where Susan is headed with hers, but her career is over there.

And, again, it's because there is no mechanism in place to protect people who will come forward. But Susan did it on the basis of principle, I can tell you that.

Mr. MICA. I appreciate your comments. Susan Odom has written me, and I'm going to ask that, without objection, her comments and detailing of this experience also be made a part of the record.

[The prepared statement of Ms. Odom follows:]

Susan A. Odom
9124 Galbreth Ct.
Springfield, VA 22153-1108
703-440-9139

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service

30 April 1996

Dear Mr. Chairman:

I am writing to express my deep appreciation to you and your fellow committee members for your advocacy of Veterans Preference and to offer in testimony my experiences in defending Veterans Preference in the U.S. Army Corps of Engineers.

In January of 1994 I testified for John L. Davis before the Merit Systems Protection Board. In my un-rebutted testimony I told the administrative judge of hearing management officials say:

1) that John L. Davis had ascended fast and he could descend just as fast,

2) that his Veterans Preference was irrelevant because he was going to be "punished" for working for a politically appointed assistant secretary of the army,

3) that I should not concern myself with his problems because they were "going to take care of him," and

4) that I would be "smart" to forget my testimony before I gave it.

Despite John Davis' courageous fight the Merit Systems Protection Board ruled against him and upheld the U.S. Army Corps of Engineers decision to

RIF John in favor of a minority woman.

When I testified for Mr. Davis, I was four months pregnant with a child for whom my husband and I had been praying for fifteen years. By 1 March I was working full-time at home because the stress in my office was endangering my pregnancy. Since then the following things have happened to my career and my husband's (also a U.S. Army Corps of Engineers employee):

- The Chief of Staff of the Corps of Engineers told senior management officials that: **"We don't need people like her in the Corps of Engineers,"**
- The Corps denied me career-enhancing programs that they had approved me for prior to my testimony,
- My immediate supervisor told my co-workers that I was a "Bitch."
- The program I created, and for which I won the Meritorious Service Medal, was taken away from me and given to a higher graded person,
- When the higher-graded individual retired, they transferred my program to another inexperienced person without ever letting me compete for the job,
- Harassing "hang up" calls daily from my supervisor's office during my high-risk pregnancy while I worked at home,
- They ordered that I move from my private office to an open bay area while 6-months pregnant,
- My husband has been denied promotion and overworked, while my work has been taken away leaving me with only minimal, lower-graded work and a great deal of idle time,
- Our baby was born with a facial deformity that doctors believe may have been caused by the stress placed upon me during the pregnancy,
- My husband was denied paternity leave after the birth of our baby even though I had not recovered from surgery and needed his help,
- The Corps has denied us life insurance through the Federal Employees Group Life Insurance Program,
- My husband has been sent on travel with no advance notice and forced to use our personal funds for that travel,
- Both of us have had travel reimbursements withheld for months

- **causing us to be hounded by creditors,**
- **The Corps has refused to pay the tuition bills, which they had committed to paying before my testimony, thus denying me my degree,**
- **We have been denied training,**
- **I have had no Individual Development Plans for three years,**
- **Friends have testified against me, at the behest of my agency, on fear of persecution,**
- **My husband has repeatedly been assigned as my counterpoint on every important program I handle thus ensuring that we are always professional "at odds" in an attempt to undermine our personal relationship,**
- **The Corps Chief of Public Affairs wrote a letter to the Washington Times implying that I had lied to that newspaper,**
- **A Corps lawyer acted as the personal attorney of an individual drawing up a complaint for her signature against me,**
- **My supervisors have made it impossible for me to maintain my exceptional ratings by withdrawing support to my programs,**
- **Our health has been negatively affected and we have lost our private life insurance/investment plan,**
- **The deputy Chief of Staff of the Corps of Engineers advised my supervisors to take summary action against me, including writing to the Washington Times, without ever questioning me.**

Standing against a tide of wrongness is expensive to the soul as well as the pocket and it can be devastating to a family. Perhaps the worst part of what the Corps has done to us is the knowledge that my husband and I are not alone. The roll call of other Corps veterans who have seen their rights abused and their careers ended simply for telling the truth include: John Davis, Jeff Wilbanks and Brenda Bishop from Little Rock, Page and Sharon Johnson of Washington, D.C. and many more. The outcry from abused veterans has gone up from all across the U.S. Army Corps of Engineers: the Lower Mississippi Valley Division, the Southwestern Division and the North Central Division to name a few.

There was a time when simply passing a law was enough to ensure proper treatment of our veterans. In the present bureaucracy under which I labor, however, the penalties for noncompliance must outweigh the expediencies of ignoring the law or it will not be obeyed. The new veterans, the women and minorities who make up our volunteer forces, deserve and must have the protection of Veterans Preference. Cases must not be allowed to *"slip through the cracks"* setting dangerous precedents like the John L. Davis case. Appeal or grievance process must be streamlined and speeded up to allow cases to be decided before individuals, families and agencies are destroyed. In short, I stand behind any proposal that includes provisions for:

- *Federal Managers, officials and employees to be fired, demoted or otherwise disciplined for ignoring or circumventing Veterans Preference.*
- *Allowing an agency's funds to be cut off until they comply with veteran's preference and the responsible official(s) who had not complied are appropriately disciplined.*
- *Responsible official(s) losing the privilege of "sovereign immunity" and allowing them to be sued as individuals for damages when they flout Veterans Preference laws.*

Furthermore, an outside, unbiased agency should handle punitive measures. Anything handled within the agency, against its own management, is doomed to bias and unfair use. The managers who were responsible for my career, my husband's career and Mr. Davis' career were promoted by my organization into the Senior Executive Service and

confirmed by OPM. The deliberate denial of an employee's Veterans Preference rights should be a prohibited personnel practice and dealt with accordingly; it should not result in being raised to the pinnacle of civil service.

As I have said in previous testimony, I also endorse Mr. James E.

Colvard's advice:

"The law should be changed to allow one level of appeal above the person against whom the complaint is lodged with rights to civil court being the next course of action."

This is the best of all worlds; the system would be streamlined allowing both the employee and the manager access to impartial judgement via the courts. Though it does engender an immediate investment by the employee, if that expense is reimbursable upon a successful conclusion, I believe it is fair.

Along with these safeguards I urge the Congress to consider placing an agency's adherence to the Veterans Preference laws as a mandatory, yearly evaluation on each agency's Management Control Plan. Thus, each agency would be forced to report their progress to the Congress in their Annual Assurance Statement.

I have been lucky enough in my travails to be have met some wonderful, dedicated people and I would like to take this opportunity to thank some of them: the estimable and redoubtable Mr. John Fales (a.k.a. Sgt Shaft) of the Washington Times, and Mr. Danny Devine (Congressional

Committee on Veterans Affairs) for his understanding of the issues confronting veterans and his willingness to take those issues on. I also want to express my admiration and appreciation to my attorney, Ms. Elizabeth Newman of Kalijarvi, Chuzi and Newman for her wisdom and counsel.

There isn't enough time or money in the world to recompense my family and me for what we have endured – for the dreams, the health, the friends, the idealism we have lost. Nevertheless, if at the end of this struggle, we can look back and see that a stronger Veterans Preference law was enacted it will all have been worth it. In closing let me just say that without the selfless courage and personal code of honor of a John Davis, or the sacrifice and endurance of a Jeff Wilbanks and Brenda Bishop, the abuse of veterans rights inflicted by the U.S. Army would never have come to light. I hope God grants them the strength to carry on. Thank you for your time.

Susan A. Odom

Mr. MICA. It's a rather disturbing tale. I'm not certain as to the accuracy of everything that's been submitted here, but I'm quite shocked by some of what I read and the conduct of the Corps, even the conduct of the Merit Systems Protection Board and some of the others involved in this situation and certainly is something that this subcommittee should look further at, and I'll thank you for your testimony.

I've taken more than my time, and I want to yield now to the ranking member, Mr. Moran, for questions.

Mr. MORAN. Well, thank you very much, Mr. Chairman. As you put Ms. Odom's testimony properly into the record, I think we should put Jim King's in the record as well. Maybe you've already done that.

Mr. MICA. No, we haven't. But without objection, so ordered. And we did receive testimony from Mr. King, the head of OPM, and it will be made a part of this record. Thank you.

[The prepared statement of Mr. King follows:]

STATEMENT FOR THE RECORD OF
HONORABLE JAMES B. KING
DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

at an oversight hearing on

VETERANS' PREFERENCE IN
FEDERAL EMPLOYMENT

APRIL 30, 1996

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

AT THIS HEARING ON THE IMPORTANT SUBJECT OF VETERANS' PREFERENCE IN FEDERAL EMPLOYMENT, I'M PROUD TO REPORT THAT PRESIDENT CLINTON HAS KEPT HIS PROMISE TO PROTECT THE PRINCIPLE OF VETERANS' PREFERENCE. FURTHER, WE WISH TO ASSURE YOU THAT AS WE MOVE TO MORE FLEXIBLE HIRING SYSTEMS FOR THE GOVERNMENT, THE PREFERENCE THAT IS NOW EXTENDED TO VETERANS WILL NOT BE DIMINISHED ONE BIT. VETERANS' PREFERENCE IS AN EARNED RIGHT AND WILL NOT BE COMPROMISED.

EVEN THOUGH MORE THAN 160,000 FEDERAL JOBS HAVE BEEN ELIMINATED DURING THE CLINTON ADMINISTRATION, THE PERCENTAGE OF JOBS GOING TO AMERICA'S VETERANS HAS ACTUALLY INCREASED. IN THE 1980s WE HEARD A LOT OF TALK ABOUT REDUCING THE SIZE OF THE GOVERNMENT, BUT IN FACT IT GOT BIGGER. PRESIDENT CLINTON, IN CONTRAST, HASN'T JUST TALKED ABOUT A SMALLER FEDERAL GOVERNMENT, HE'S GIVEN

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US ONE, WHILE STILL PROTECTING THOSE WHO HAVE PROTECTED OUR NATION'S FREEDOM. I'M PROUD THAT WE CAN REAFFIRM THE SOLEMN BOND BETWEEN OUR VETERANS AND THE GRATEFUL NATION THEY SERVED--AND CONTINUE TO SERVE.

COMPARED TO OTHER SECTORS OF THE ECONOMY, THE FEDERAL GOVERNMENT EMPLOYS TWICE AS MANY VETERANS, THREE TIMES AS MANY VIETNAM-ERA VETERANS, FIVE TIMES AS MANY DISABLED VETERANS, AND SEVEN TIMES AS MANY OF VETERANS WHO HAVE SUFFERED MORE THAN 30 PERCENT DISABILITY.

MR. CHAIRMAN, FIRST LET ME BRIEFLY PROVIDE A PICTURE OF THE GOVERNMENT'S OVERALL SUCCESS IN EMPLOYING VETERANS, AND IN DOING SO DURING A TIME WHEN SUBSTANTIAL DOWNSIZING OF THE GOVERNMENT HAS BEEN NECESSARY. FOR EXAMPLE, VETERANS AS A PERCENTAGE OF FULL-TIME PERMANENT NEW HIRES ROSE FROM 17 PERCENT IN FISCAL YEAR 1991 TO 33 PERCENT IN FISCAL YEAR 1994. FURTHER, VETERANS AS A PERCENTAGE OF THE TOTAL WORKFORCE HAVE HELD STEADY AT ABOUT 28 PERCENT FOR THE PAST FOUR YEARS, AND ARE WELL-REPRESENTED IN AGENCIES THROUGHOUT THE GOVERNMENT. AT THE SAME TIME, IT IS TRUE THAT MANY VETERANS HAVE LEFT THE GOVERNMENT IN RECENT YEARS. HOWEVER, THIS IS FUNDAMENTALLY DUE TO THE AGING OF THE POPULATION ELIGIBLE FOR VETERANS' PREFERENCE, AND TO THE FACT THAT DOWNSIZING HAS BEEN ACCOMPLISHED PRIMARILY--AND RIGHTLY--BY VOLUNTARY SEPARATIONS THROUGH RETIREMENT AND BUYOUT PROGRAMS WHICH ARE USED

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MAINLY BY OLDER WORKERS. IN DEFENSE AGENCIES, WHICH EMPLOY A LARGER PROPORTION OF VETERANS THAN DO OTHER AGENCIES, VETERANS HAVE BEEN LESS AFFECTED BY REDUCTIONS IN FORCE THAN OTHER EMPLOYEES. IN FISCAL YEARS 1993 AND 1994, VETERANS CONSTITUTED 37 PERCENT OF THE WORKFORCE IN AGENCIES UNDERGOING SEVERE DOWNSIZING, BUT ACCOUNTED FOR ONLY 26 PERCENT OF THOSE SEPARATED IN RIF ACTIONS.

BY LAW, VETERANS ARE ENTITLED TO PREFERENCE OVER OTHER EMPLOYEES FOR RETENTION IN RIF ACTIONS. THE AGENCY HAS THE RESPONSIBILITY OF DETERMINING APPROPRIATE COMPETITIVE LEVELS FOR THE RIF ACTION. IT IS TRUE THAT A COMPETITIVE LEVEL COULD CONSIST OF A SINGLE EMPLOYEE, WHEN APPROPRIATE, BUT IN ALL CASES OPM REGULATIONS REQUIRE AGENCIES TO ESTABLISH COMPETITIVE LEVELS SOLELY ON THE BASIS OF THE DUTIES AND RESPONSIBILITIES OF THE POSITIONS IN QUESTION. FURTHER, QUALIFIED VETERANS HAVE THE RIGHT TO "BUMP" NON-VETERANS ELSEWHERE IN THE ORGANIZATION IN WHICH THE RIF IS TAKING PLACE. THESE VETERANS' PREFERENCE RIGHTS PROVIDE VERY STRONG PROTECTIONS IN RIF ACTIONS.

OPM TAKES ITS ENFORCEMENT OF VETERANS' PREFERENCE VERY SERIOUSLY. AS PART OF OUR NATIONWIDE AGENCY REVIEW PROCESS, WE ASSESS THE AGENCIES' APPLICATION OF THE VETERANS' PREFERENCE LAW IN THE FEDERAL EMPLOYMENT PROCESS. THIS INCLUDES A PROGRAMMATIC REVIEW OF THE AGENCY'S USE OF SPECIAL VETERAN EMPLOYMENT PROGRAMS AND APPOINTMENT AUTHORITIES. WE ALSO REVIEW AGENCY RECORDS TO ASSURE THAT VETERANS' PREFERENCE IS BEING APPLIED APPROPRIATELY IN

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INDIVIDUAL STAFFING ACTIONS. BASED ON OUR FINDINGS DURING AGENCY REVIEWS OR FROM OTHER SOURCES OF INFORMATION, WE REQUIRE AGENCIES TO MAKE PROGRAMMATIC CORRECTIONS TO IMPROVE THEIR EFFECTIVENESS IN THE USE OF VETERAN EMPLOYMENT PROGRAMS. IF WE FIND VIOLATIONS IN THE APPLICATION OF VETERANS' PREFERENCE IN INDIVIDUAL CASES, WE DIRECT THE AGENCY TO TAKE APPROPRIATE CORRECTIVE ACTIONS. THESE ACTIONS IN INDIVIDUAL CASES ARE MEANT TO REDRESS THE RESULTS OF ANY FAILURE BY AN AGENCY TO PROVIDE A VETERAN HIS OR HER ENTITLEMENTS UNDER THE LAW. SUCH CORRECTIVE ACTION MAY EVEN INCLUDE THE REMOVAL OF ANOTHER PERSON FROM A POSITION TO WHICH HE OR SHE WAS APPOINTED, AND THE PLACEMENT OF THE VETERAN INTO THE POSITION TO WHICH HE OR SHE IS ENTITLED.

ANOTHER OF OPM'S OVERSIGHT RESPONSIBILITIES IS THE REVIEW OF THE MEDICAL INFORMATION CONCERNING DISABLED VETERANS WHO ARE REJECTED FOR EMPLOYMENT BY THE AGENCY TO WHICH THEY HAVE APPLIED. ON AVERAGE, WE OVERTURN 40% OF THESE MEDICAL PASSOVER CASES REFERRED TO US BY AGENCIES, THEREBY ALLOWING THE VETERAN TO BE HIRED.

MR. CHAIRMAN, AS YOU KNOW, FOR THE PAST 5 YEARS THE DEPARTMENT OF AGRICULTURE HAS OPERATED A DEMONSTRATION PROJECT THAT HAS TESTED AN ALTERNATIVE TO THE "RULE OF THREE" IN HIRING. UNDER THE PROJECT, APPLICANTS ARE PLACED IN ONE OF TWO CATEGORIES, "QUALIFIED" AND "ELIGIBLE," BASED ON THEIR QUALIFICATIONS. QUALIFIED DISABLED VETERANS ARE AUTOMATICALLY PLACED IN THE QUALITY GROUP.

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ALL CANDIDATES IN THE QUALITY GROUP ARE AVAILABLE FOR SELECTION, WITH ABSOLUTE PREFERENCE GIVEN TO VETERANS. IF THERE ARE NO VETERANS IN THE QUALITY GROUP, THEN ANOTHER CANDIDATE FROM THAT GROUP MAY BE SELECTED. THE CATEGORY RATING SYSTEM HAS BEEN A CLEAR SUCCESS--BOTH FOR AGENCIES AND FOR VETERANS. THE MANAGERS WHO HAVE TRIED THIS SYSTEM TELL US IT GIVES THEM MORE FLEXIBILITY AND BETTER SELECTIONS, AND THE VETERANS SERVICE ORGANIZATIONS HAVE SUPPORTED IT BECAUSE MORE VETERANS HAVE BEEN HIRED UNDER IT. OPM BELIEVES THAT IT WOULD BE APPROPRIATE TO EXTEND THIS SUCCESSFUL SYSTEM--WHICH FULLY PROTECTS VETERANS' PREFERENCE WITHIN A MORE EFFECTIVE HIRING SYSTEM--TO OTHER FEDERAL AGENCIES. FURTHER, IN RECENT YEARS OPM HAS DELEGATED EXAMINING AUTHORITY TO MANY FEDERAL AGENCIES, WITH NO ADVERSE EFFECT ON VETERANS' PREFERENCE. BASED ON OUR EXPERIENCE, WE BELIEVE THAT A MORE DECENTRALIZED HIRING SYSTEM CAN WORK BETTER WHILE FULLY MAINTAINING THE BENEFIT OF VETERANS' PREFERENCE.

MR. CHAIRMAN, THE ADMINISTRATION IS PROUD OF ITS CONTINUING SUCCESS IN PROTECTING THE PRINCIPLE OF VETERANS' PREFERENCE IN FEDERAL EMPLOYMENT. ON THE 50TH ANNIVERSARY OF THE SIGNING OF THE VETERANS' PREFERENCE ACT, PRESIDENT CLINTON SAID, "OUR NATION OWES A GREAT DEAL TO THE MEN AND WOMEN WHO HAVE WORN OUR COUNTRY'S UNIFORM. THE PROSPERITY AND FREEDOM WE ENJOY ARE THE PRICELESS GIFTS OF THEIR SERVICE AND COMMITMENT."

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VETERANS' PREFERENCE IS A COMMITMENT THAT CANNOT AND WILL NOT BE CHANGED. AS WE WORK WITH YOU TO IMPROVE THE FEDERAL PERSONNEL SYSTEM, YOU MAY BE ASSURED THAT PRESERVATION AND PROTECTION OF VETERANS' PREFERENCE WILL CONTINUE TO BE A TOP PRIORITY.

Mr. MORAN. And I appreciate that, Mr. Chairman, we don't have a representative of the administration testifying today, but they are really the ones on trial, if you will, and I think perhaps I ought to summarize some of the points that he makes in his statement.

Mr. MICA. Mr. Moran, this is just a hearing. The trial hasn't started.

Mr. MORAN. No. But I can see what's coming, Mr. Chairman. So I think that as the ranking Democrat here, I really ought to summarize some of the points that the administration makes.

Mr. King, as the person primarily responsible for implementing veterans preference in the Federal Government, begins by saying that the veterans preference that is now extended throughout the Federal workforce will not be diminished one bit even though more than 160,000 Federal jobs have been eliminated during the Clinton administration. The percentage of jobs going to America's veterans has actually increased. They are proud that they can reaffirm the solemn bond between veterans and the grateful Nation they serve and continue to serve.

Compared to other sectors of the economy, the Federal Government employs twice as many veterans, three times as many Vietnam-era veterans, five times as many disabled veterans, and seven times as many veterans who have suffered more than 30 percent disability, as compared to every other sector within the economy.

Veterans as a percentage of permanent new hires rose from 17 percent in fiscal year 1991 to 33 percent in fiscal year 1994. So in other words, from the Bush administration to the Clinton administration, if a comparison is being made, there is a chart, and I'm going to submit this chart for the record as well, that shows that the percentage of veterans of new-hires actually goes up significantly.

In defense agencies, which employ a larger proportion, obviously, of veterans than other agencies, veterans have been substantially less affected by reductions-in-force than other employees. I'm just summarizing here. These statements are backed up by a lot of statistics, but I'm just going to summarize the points.

Qualified veterans have the right to bump nonveterans within any organization that has RIFs taking place. And that is fully protected, that bumping right, are veterans over nonveterans. Clearly there have been exceptions apparently to that case, but I think as a committee we need to look at what is taking place across the Government.

As part of the nationwide agency review process, that OPM has undertaken, they assess the agency's application of veterans preference law in the Federal employment process. And if they find violations in the application of veterans preference in individual cases, they say that they will direct the agency to take appropriate action. And corrective action may even include the removal of another person from a position to which he or she was appointed and the placement of the veteran into the position to which he or she is entitled.

Another of OPM's oversight responsibilities is the review of the medical information concerning disabled veterans who are rejected for employment by the agency to which they have applied. On average, OPM overturns 40 percent of these medical pass-over cases re-

ferred to OPM by the agencies, thereby allowing the veteran to be hired.

Now, the Department of Agriculture has a demonstration project going on that has tested an alternative to the rule of three in hiring. Qualified veterans are automatically placed in the quality group. There's two categories, of course, qualified and eligible, based on qualifications.

This quality group gives absolute preference to veterans, and it is working very well. OPM looks forward to providing more decentralization of hiring practices throughout the agencies, and they think that a decentralized hiring system is going to achieve a lot of other benefits, but they are confident that it will not reduce the benefit of veterans preference.

In concluding, he says the administration's proud of its continuing success in protecting the principle of veterans preference and employment, and wants to work with the committee to improve the Federal personnel system, but assuring the preservation and protection of veterans preference will continue to be a top priority.

That's the summary of an extensive statement, and I'm glad that we'll be putting that into the record.

Now, do I have any more time to ask questions?

Mr. MICA. Certainly. I took double my time, and you're equal to the same.

Mr. MORAN. Just cut me off.

Mr. MICA. I will.

Mr. MORAN. Thank you. Why don't I address the first question to Sergeant Shaft? It's nice to see you again, Mr. Fales.

In your testimony, you referred to over a dozen letters that you've received, but only two of them really dealt specifically with veterans preference. The first didn't complain about the administration so much, but rather the fact that the administration could not give him the preference he wanted, because the law covering the Persian Gulf war is too restrictive. I guess Congressman Fox had to leave, but I think that legislation applies to that situation.

The second was from Susan Odom and dealt with the issue presented by Mr. Davis. The OPM Director's response pretty well addresses the implication that you made in your testimony, but in terms of the specific examples, I don't know that you have concrete examples in the testimony where veterans preference was abused or denied.

Mr. FALES. Congressman Moran, if you would notice to the attachments, I have a letter from Jim King in there to the column, you know, discussing certain areas of veterans preference, so if you would like—like I said, my wife would love to get rid of these letters.

Mr. MORAN. No. No. No. It's OK.

Mr. FALES. I will be happy to bring you a carload of veterans' complaints. In fact, I'll bring them and put them in alternate format for you, sir.

Mr. MORAN. No, that's OK. Unless George wants to spend the next few months reading through them. You did focus a lot of your testimony on the Postal Service, but of course, the Postal Service is an independent agency. In fact, Marvin Runyon, who is a good guy, I like him, but he is a Bush appointee.

Mr. FALES. I said veterans are Democrats and Republicans.

Mr. MORAN. I understand. I don't know that problems with the Postal Service, assuming that there are some, are necessarily indicative of any negative attitude on the part of the Clinton administration.

Let me ask Mr. Daub about—and thank you, Mr. Fales. Do you think veterans preference should be extended to all military personnel that were active during the Persian Gulf war or only those personnel and reservists who were called overseas? I want to understand your request for the extension of veterans preference. I understand Congressman Fox is addressing that in his bill.

Mr. DAUB. Yes. My feelings about the veterans preference for Desert Shield and Desert Storm is that anybody that was in direct support there of Operation Desert Shield/Desert Storm should be receiving a veterans preference. In our case, when we were called up, we were called up as part of the 250,000 reserve and Guard call-up. When we were called up; we had no choice as to where we went. We were proud to go serve our country. We went and served our country over in Germany. That's where they needed us at that point in time.

One of the other individuals that is here today, he ended up in England. We also had people that ended up staying up at Westover Air Force Base in direct support. Without the individuals that were supporting the war from other locations, the theater of operations would not have had the food that was required, would not have had the materials.

In our case, in Germany, I was in charge of an area that was rebuilding turboprop engines. We went through 50-some engines, rebuilt them, sent them back to the theater of operations. They would not have had those engines in that case.

Mr. MORAN. I don't deny that, Mr. Daub, and I'm not being confrontational, I'm just trying to get some understanding of how practical this might be, Congressman Fox's bill.

His bill ties those who were called to active duty to support Desert Shield and Desert Storm. The Defense Department, assuming the Defense Department can distinguish those in that category from others who had no role in liberating Kuwait. You apparently have back-up documentation to show that the Defense Department can make that distinction, do you?

Mr. DAUB. Yes, I do. My orders state it and also my DD214 states that I was activated for Desert Shield.

Mr. MORAN. It might be useful to provide that for the record, to show that it can be done. I'm sure he's providing that to Mr. Buyer's subcommittee as well.

Do you have any rough estimate of how many servicemen and women would come under the three categories of one, receiving a combat badge for Desert Shield/Desert Storm, two, those who would qualify for veterans preference under your bill, and third, those who were on active duty on stations while those actions were taking place, who would not qualify? Do you have any rough numbers, rough estimates?

Mr. DAUB. No, I don't.

Mr. MORAN. At some point we're probably going to need some rough estimate to know what the cost impact of the bill would be.

Mr. DAUB. Well, as far as cost impact, to give 5 points veterans preference, there is no cost impact. There are no benefits other than the 5 points veterans preference that go along with it.

It's at no cost to the Government. All it is saying to the individuals, you served your country well, and we are going to give you this 5 points veterans preference, which will protect you when you're in civil service jobs. So it's a no cost situation.

Mr. MORAN. I understand. OK. That's fine. It might be useful to know the scope, but you make a good point. And the other committee is probably going to look into that extensively.

Would it include Haiti and Bosnia operations?

Mr. DAUB. I believe they are all separate, as of right now. And I think they fall under expeditionary medals that are out there right now.

Mr. MORAN. Let me ask some questions of Mr. Davis, and I'll try to make it fairly quick.

Were you a Bush appointee or working for a Bush appointee? Were you a political appointee?

Mr. DAVIS. No, sir. I was not. I was a career civil servant.

Mr. MORAN. And you went to the Merit Systems Protection Board. How did they resolve it?

Mr. DAVIS. Well, they ruled against me on the three areas that my attorney based the appeal. One was the fairness of the competitive level, the second was assignment or bumping rights, and the third was prohibited personnel practice. The administrative judge ruled, yes, these things happened, but for some reason they don't really matter.

What I think was one of the most stunning things for me, and my attorney expressed the same concern, was that the full board or the three members of the Merit Systems Protection Board did not even give my appeal a cursory look. They denied the petition to review with just a statement.

And I had hoped that I could get some sort of idea from them why they were taking these stands, certainly on the bumping rights, because we could not find anything in the MSPB previous cases, and even some of the Federal Appeals Court cases, that predated the Merit Systems Protection Board that had narrowed veterans—they don't call them veterans, they call them 1As, Subgroup—1A bumping rights. And I still have not been able to find anything, sir, that is that narrow.

Mr. MORAN. You then appealed to the U.S. Court of Appeals?

Mr. DAVIS. Yes, I did.

Mr. MORAN. And the resolution there?

Mr. DAVIS. Well, you know, they have a very, very narrow standard of review. And, in fact, well over 90 percent of all MSPB cases are affirmed by the Board.

They said essentially that if OPM wants to say that certain qualifications are for jobs, then it's not their business to tell OPM what are qualifications. So it was a very narrow view on a very narrow issue.

And, also, too, we did not even appeal the prohibited personnel practices—that's where the EEO came in, because I understand that there are something like two cases in the last 5 years an ad-

ministrative judge has ruled in favor of the appellant on prohibited personnel practices.

Mr. MORAN. But you were offered a GS-14 job where you would have retained your pay and your benefits and your grade level; isn't that accurate?

Mr. DAVIS. It was quite a diminution of duties, and I had what they call "retained pay" for 2 years. One of the things that concerned me, Mr. Moran, is that I really had to fight for this. During the first RIF, I was in a competitive level of 1. In fact, in my grade level, which was a 15, 12 of the 15 competitive levels were people of 1.

In the second one, I was put into a separate competitive level again, although I was working in an office with four people the same grade as me, the same series, who essentially were doing the same job, and I was the only one who was put outside of competitive level. So I had to fight extremely hard to get that overturned, and it was obvious to me what was happening next, that we were going to have another RIF, and guess what, you're not qualified again.

Mr. MORAN. You feel that a new redress system should be established, and that there should be some sanctions, penalties for abusing the veterans preference or denying it. What kind of sanctions would you impose, Mr. Davis?

Mr. DAVIS. Well, first of all, I think that the people who are responsible, actually responsible, for violating one's veterans preference and can be proven—I know in my case, again, the person who described himself as the architect of the RIF is now a member of the Senior Executive Service. He went to other agencies and boasted that what was happening with me had nothing to do with—in other words, veterans preference and everything else was being ignored, because it was a personal animus-type thing.

I guess the first thing, sir, I would suggest is not to promote those people. Obviously, there is no fear, if you will, of violating one's veterans preference. I think that the penalty should be along the lines of those that are certainly with the Equal Employment Opportunity violations. I think that managers should be sanctioned. I think that certainly attorneys' fees, which you always accrue, you always end up with an attorney, I think there should be no doubt that they should be repaid.

I have seen proposals where some people say that some of the violations have been so egregious against veterans that funding to the agency should be a stipulation where it could be withheld. I have seen other proposals where perhaps managers could lose the sovereignty of the organization and could be sued personally.

Again, those are strong stipulations, but I think there are a lot of violations right now. But I think the first thing, sir, is to get it out of—in other words, to have a separate category for veterans preference, because as I said, in my case, there was none. You violate someone's veterans preference, you may violate their gender, their sex, or whatever, but you are not violating their veterans preference. And that does make a difference, because people out there do not in any way hesitate to take on a veteran, because there is no penalty.

Mr. MORAN. OK. I've exhausted both my time and my questions. I have to say, I worked during the Nixon and, well, actually 6 years during the Nixon administration, and there were a number of political appointees who had been in the Johnson administration, who received similar treatment. I think these kinds of things do happen. They are unfortunate, and I'm sorry that you've had to go through as difficult a time as you obviously have. And I appreciate the testimony of all three gentlemen, thank you.

Mr. MICA. And I also appreciate the testimony of our panelists today.

We tried to pick panelists who can talk from various perspectives. And certainly John Fales, you represent the voice of many veterans and have enunciated today some of their concerns.

We thank you for your testimony, Mr. Davis. As Mr. Moran, the ranking member said, regardless of who is in power or who controls the administration, injustice should not prevail, and there should be some system for grievance and redress, and one of the purposes of this hearing today is to look at what's taking place and how we can correct it. So we thank you.

And, also, Mr. Daub, for your perspective. It is interesting, too, to see the changing nature of our veterans and military population and the many men and women who now are called up in reserve status. It's interesting to see how much more that we rely on those individuals as we downsize the military, and they play an important role in a new, changing military establishment.

So, again, I want to personally thank you on behalf of our full committee and subcommittee for your participation today and your contribution to this hearing, and we'll excuse you at this time.

If I may, I would like to call our third panel, and we have several organizations who are testifying next. One, the Disabled American Veterans, represented by Ron Drach, and also the American Legion, which is represented by Emil Naschinski. I believe our third panelist's flight was canceled. Mr. Kahn is not here; is that correct? So we will have two individuals in this panel.

If you could remain standing, gentlemen, for just a second; as I said, this is an investigation and oversight subcommittee, and I will swear you in.

[Witnesses sworn.]

Mr. MICA. Thank you.

Mr. MORAN. Mr. Chairman, I have had some groups backed up in my office since 10:30; I'm going to have to go over there. But I mean no slight to the witnesses. I'm very sorry that I won't be able to listen to their testimony, but I do have their written testimony. I thank you for having this hearing, Mr. Chairman.

Mr. MICA. I thank you, and with that, with those comments from the ranking member, I will first welcome Mr. Ron Drach, and what we'll do is recognize you for 5 minutes. If you have a lengthy statement, we will submit it without objection to the record. And if you would like to summarize and then we'll also listen to both of you and then go back for questions.

But, Mr. Drach, on behalf of the panel we welcome you and your testimony on behalf of the Disabled American Veterans. You're recognized, sir.

STATEMENTS OF RONALD DRACH, NATIONAL EMPLOYMENT DIRECTOR, DISABLED AMERICAN VETERANS; AND EMIL NASCHINSKI, ASSISTANT DIRECTOR OF ECONOMICS, AMERICAN LEGION

Mr. DRACH. Thank you very much, Mr. Chairman. On behalf of the DAV, I want to thank you for conducting these hearings today and providing us the opportunity to testify on this important issue.

Much has been said this morning about veterans preference, and one thing I would like to point out is that DAV believes that veterans preference is an entitlement. It was never intended to be a re-adjustment benefit. It was never intended to be just something to recognize service. It was intended to be an entitlement, and we believe it should stay as an entitlement.

Much also has been discussed about the re-appeal or lack of appeal rights, redress rights, no investigations, other than a very cursory one.

And I think it's very ironic, Mr. Chairman, when you look at what the military service members have done for this country over the years, the history of our country, that to preserve and protect certain rights and benefits that as a class veterans are the only group in this country that do not enjoy civil rights as a class. As an individual we have civil rights, but as a class, we cannot go to EEOC or any other agency and say that our civil rights as a veteran have been violated.

In terms of enforcement, there is really only two areas where there is any real, I think, meaningful enforcement, although it doesn't always pan out in each individual case. One is the rule of three, which provides for the initial hiring when the top three candidates must be looked at, and while they are not really an appeal right to the veteran for him or herself, there is a process through which an agency must justify why they're not selecting a preference-eligible over a nonveteran.

The other is the RIF, which was discussed in great length this morning; and of course, there are certain appeal rights that flow with the reduction in force. One of the concerns that we've had, and it was discussed again briefly this morning, is the delegation of hiring authority.

Starting back in probably 1979 or 1978, there was a case brought to court that said that the testing processes through the Civil Service Commission or the Office of Personnel Management were culturally biased against certain segments of the population. The court eventually ruled that the testing at that time was in fact biased and had to be thrown out and new testing systems had to be put in place.

I think that was really the start of the delegation of authority, if you will. And what concerns me most about what's going on today with delegation of authority is that we as an organization who represent, you know, more than a million members, have enough trouble trying to oversee or get accountability from OPM in its present existence and the current structure of veterans preference.

If you allow every agency, independent and otherwise, every department, to have their own personnel system, with their own system of applying veterans preference without any central account-

ability or central redress system, you might as well forget about veterans preference. We're not going to have it. For we won't be able to monitor it, and I'm sure you won't be able to monitor it. OPM doesn't want to monitor it.

So we're really going to be in a bind if we continue to allow delegation of hiring authorities without some mechanism whereby there is accountability and that would include some form of redress and appeal rights.

Another area that veterans do enjoy some protections, disabled veterans anyway, was added by the Civil Service Reform Act of 1978, and that deals with medical pass-overs of those individuals who are disabled, and the agency proposing to pass over an individual must justify to OPM medical reasons why they're passing over that individual or not hiring that individual for medical reasons.

I've been doing some looking at the correspondence. Like Sergeant Shaft and others, you know, I get tons and tons of mail from individual veterans complaining about this and that. I would have to say, Mr. Chairman, that the vast majority of complaints that I get are from existing employees, and their complaint is not so much with veterans preference as such, it's more with affirmative action.

Now, they got hired 5 years ago, 10 years ago, whatever, and they were hired as a GS-4, GS-5, and under Title XXXVIII, U.S. Code, there is an affirmative action provision that requires Federal departments and agencies to take affirmative action for employment and advancement in employment.

And historically and traditionally, the agencies, when you bring this to their attention, they say, "Well, we gave them their veterans preference when we hired them. That's all we have to do." That's not true. Title XXXVIII is very explicit in those actions. But most of these individuals are very frustrated because of that.

I mentioned alternative personnel systems, and there was some discussion also about the Postal Service, and that was the first alternative personnel system, back in 1970, that I'm aware of. And what happened there was the Postal Reorganization Act. And if you look into the history of that act, you'll find that Congress, both houses of Congress, were very explicit in their determination that veterans preference would be counted in the new Postal Service. And I think we have to look at that. If there is any congressionally authorized alternative personnel systems, veterans preference must be part of it.

I would suggest that Section 4703 of Title V dealing with demonstration projects be amended to provide for veterans preference and any alternative systems or demonstration projects. And I have many other recommendations that are attached to my statement. But I'll conclude with that, Mr. Chairman. Thank you very much.

[The prepared statement of Mr. Drach follows.]

**STATEMENT OF
RONALD W. DRACH
NATIONAL EMPLOYMENT DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
APRIL 30, 1996**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than one million members of the Disabled American Veterans and its Auxiliary, I want to thank you for allowing us the opportunity to appear before you today to further discuss the issue of veterans' preference in federal employment.

Mr. Chairman, Mr. Len Gilmer, Associate National Legislative Director of the Disabled American Veterans, appeared before this Subcommittee on October 13, 1995, and presented a consensus document on behalf of the Disabled American Veterans (DAV); American G.I. Forum; American Legion; American Veterans of World War II, Korea, and Vietnam (AMVETS); Non-Commissioned Officers Association (NCOA); Paralyzed Veterans of America (PVA); Veterans of Foreign Wars (VFW); and, the Vietnam Veterans of America (VVA). I request the incorporation of that prepared statement into today's proceedings in order to have a comprehensive record on the issues.

In your invitation to appear, you indicate "The purposes of this hearing are to examine whether the employment preferences accorded veterans by law are being faithfully applied by the federal government and ways in which opportunities for veterans can be improved." The first part of that statement, "being faithfully applied by the federal government," provides us an opportunity to indict both the Office of Personnel Management and its predecessor agency, the Civil Service Commission, as well as the individual departments and agencies.

Mr. Chairman, this indictment stems from my 21 years as National Employment Director for the DAV and the experience gained over those years in dealing with issues surrounding veterans' preference violations. The indictment against the federal government is predicated on the fact that there has never been a meaningful appeal/redress system available to an individual veteran or a veterans' service organization (VSO) if either thought veterans' preferences were being violated (the exception being in a Reduction In Force {RIF}). In those 21 years Mr. Chairman, OPM, at best, gave a cursory review of a veteran's complaint which most often consisted of a report from the alleged offending agency. That report was used as the basis for telling the veteran that no violation had occurred. An investigation of the allegations was never conducted.

With a less than aggressive enforcement of veterans' preference by OPM, many departments and agencies took that as a green light to ignore veterans' preference. OPM has consistently taken the position that they do not want to "police" federal agencies in any way.

Mr. Chairman, preference eligibles are afforded or are statutorily entitled to two protections through OPM. One is specifically related to veterans' preference and the other was added by the Civil Service Reform Act of 1978.

The first one is the "Rule of 3" (Section 3318, Title 5, U.S.C.). However, the Rule of 3 does not convey any specific "appeal rights" to the veteran." Section 3318, subparagraph (a), requires "the nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available..." (Emphasis added). The literal interpretation of "shall select" has never been implemented because agencies historically have returned these certificates unused. This was a ploy that was unveiled in the late seventies during the Civil Service Reform Act debate that agencies used to circumvent veterans' preference.

With the hiring authority delegated to many agencies for most jobs today, the maintenance of a certificate of eligibles is virtually nonexistent. Does this delegation of authority itself circumvent veterans' preference and violate the Congressional intent of the Veterans' Preference Act to select from certificates of eligibles? We think yes. Has it been ongoing? We think at least since 1977 and probably before.

Second, a benefit for disabled veterans was added by the Civil Service Reform Act and is contained in Section 3312(b) Title 5 U.S.C.

In essence, this provision prohibits federal departments and agencies from denying a disabled veteran employment based on a disability without first obtaining approval from OPM.

Mr. Chairman I receive complaints almost daily, either by mail or by phone, from disabled veterans who are experiencing some employment problem. Some of these individuals are attempting to find employment either in the private sector, federal sector, state or local government. Others are worried about potential RIFs and some are concerned about affirmative action and its application to them as a qualified disabled veteran. Still others are concerned that either their attempts to obtain federal employment, maintain federal employment, or be promoted is impeded by their disability and the discriminatory effects of supervisors or others making a decision affecting their employment status.

I would have to say that the vast majority of complaints that I get are from disabled veteran federal employees (and many times postal employees) who question what affirmative action means because their employer will not recognize obligations under affirmative action. The authority and responsibility for affirmative action stems from Section 4214, Title 38, U.S.C. However, it is important to point out that since the original enactment of affirmative action by Public Law 93-508 the federal government has not enforced the Congressionally mandated requirements for employment and advancement in employment for qualified disabled veterans. It should also be pointed out that current law does not provide for veterans' preference

considerations in a promotion or a transfer and all too often the agency's attitude is that veterans' preference was used to get the individual into employment and their obligation ends with that.

Mr. Chairman, in the whole context of veterans' preference, the record should reflect that there are two categories of veterans: 1.) those who are eligible for veterans' preference, and 2.) honorably discharged veterans not eligible for veterans' preference. In order for a veteran to be a preference eligible, he or she must have:

- Served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955; or
- Served on active duty as defined by Section 101(21) of Title 38 at any time in the armed forces for a period of more than 180 consecutive days, any part of which occurred after January 31, 1955, and before the date of enactment of the Veterans' Education and Employment Assistance Act of 1976 [October 15, 1976] not including service under Section 511(d) of Title 10, pursuant to an enlistment in the Army National Guard or the Air National Guard or as a reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; and who has been separated from the Armed Forces under honorable conditions.

Mr. Chairman, given that definition, very few of those active military servicemembers who served after October 15, 1976 are eligible for veterans' preference. However, many of them who were discharged within the last ten years are eligible for a Veterans' Readjustment Authority (VRA) appointment authorized by Section 4214, Title 38 U.S.C. Veterans who received a disability while in the armed services would be eligible for "10 point" preference.

Mr. Chairman, another concern that has been raised is the "potential proliferation of alternative personnel systems." The United States Postal Service (USPS) had the first alternative personnel system that we are aware of as a result of the Postal Reorganization Act of 1970. In the Congressional debate, it was determined that Congress wanted to assure the continuation of veterans' preference in the postal service and so incorporated it in both the statute and report language. Alternative personnel systems today may be established in two ways:

- 1) as a demonstration project (Section 4703, Title 5 U.S.C.) authorized by the Civil Service Reform Act of 1978; and
- 2) by current Congressional action. Unless Congress amends Section 4703, Title 5 U.S.C., demonstration projects are permitted to be developed "without regard to other law." However, if Congress considers amending Title 5 to allow alternative personnel systems for other departments or agencies, Congress itself has the authority, and we

believe responsibility, to assure strong veterans' preference language is included in any such legislation.

We urge you, Mr. Chairman, and members of this Subcommittee, to talk to your colleagues and request their support in assuring any new legislation, be it for a restructuring of civil service in general, or establishing alternative personnel systems that veterans' preference be made an integral part of any such legislation.

Mr. Chairman, in the October 13, 1995 testimony, we provided several recommendations and concerns. Rather than repeat them in this testimony, they are attached.

Thank you again, Mr. Chairman, for allowing us this opportunity and I will be happy to answer any questions.

FROM:
THE STATEMENT OF LENNOX E. GILMER
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE
U.S. HOUSE OF REPRESENTATIVES
OCTOBER 13, 1995

RECOMMENDATIONS AND CONCERNS

While the details of a veterans' preference procedure may change, *we urge the Congress to maintain veterans' preference principles* and ensure that the system can provide meaningful monitoring and oversight for uniform implementation of the law.

We also wish to acknowledge OPM's frequent meetings with veterans' service organizations and the many briefings by this administration regarding their draft civil service reform proposals.

We are concerned that the reduction of OPM staff, decentralization of personnel functions, and contracting for previously provided OPM services, will reduce the development of adequate veterans' preference policy oversight and monitoring. For example, we have been informed that the OPM Career Entry Group unit will be virtually done away with. Housed within that unit are personnel who decide whether or not federal agencies may pass over veterans in hiring and whether or not an agency has inappropriately found a veteran rated at 30 percent medically unsuitable for a position.

Historically, OPM has stringently applied veterans' preference laws, disallowing the vast majority of passover of veterans and finding in favor of the veteran in the case of medical unsuitability. In these cases, the agencies have already made a decision that they do not want to hire the veteran. If OPM gives up its authority in this area, the agency will make its own decision. Why should the agency reverse itself? We believe the agency will find its reasons for not hiring the veteran fully justified.

We urge the Congress to require OPM to maintain passover and medical unsuitability decision making at the OPM level.

We believe that one of the greatest detractors from veterans' preference is the tremendous number of non-competitive and excepted appointing authorities. We believe that as agencies increased control over the maintenance of registers, utilization of more subjective ranking tools, and appointing authorities which do not require rating and ranking of candidates, veterans'

preference has suffered. Special hiring authorities, such as that agreed to in the settlement of the Luevano lawsuit, have been created which do not require veterans' preference in appointment. *We encourage this Congress to reduce the number of non-competitive and accepted appointing authorities.*

RIF is probably one of the most demoralizing personnel actions to affect an agency's workforce. Even those who continue in employment are adversely affected emotionally. As was previously cited in this testimony, federal agencies have attempted to creatively avoid veterans' preference in reduction. Most notably, the USPS in 1992 conducted what it referred to as a reorganization. Ultimately, the Merit System Protection Board (MSPB) ruled that the reorganization was a RIF and that the USPS had violated veterans' preference eligibles' rights. The USPS exhausted its legal remedies when it appealed to the MSPB for a final decision. Because the USPS disagreed with that adverse decision as well, it appealed to OPM, which under the law, would have to request reconsideration at the Board and failing in that effort, appeal the decision to the federal court. OPM interceded on behalf of the USPS.

Finally, the President, at the request of veterans' preference organizations and VA officials, prevailed on the Justice Department to drop the appeal filed in Federal District Court. However, in the meantime, OPM was circulating draft rules, which if they had been adopted, would have incorporated the disputed illegal practices of the USPS in RIF rules. In effect, this would have authorized the USPS to do what it had just been ordered by MSPB not to do. Veterans' service organizations were successful in opposing these rule changes inside OPM.

It is interesting to note that the U.S. Court of Appeals District of Columbia Circuit decided on June 29, 1983 that a USPS "Reorganization" in 1975 had been found similarly in violation of RIF procedures, but did not require the agency to reverse its actions because there was no loss of pay. *Benjamin Franklin American Legion Post No. 66, et. al. v. United States Postal Service*, 732 F.2 945 (DC, 1983). Thus, the USPS did not learn from its first mistake, or some might argue, did learn from its first mistake and assumed it could get away with it again.

The Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236) at Section 611 authorizes the State Department to write its own RIF rules. "AFSA News: flier dated April 7, 1995 outlines State Department proposed rules to implement their new RIF personnel policies.

As outlined in 94 S.T.A.T.E. 263920, the Department's proposed regulations first provide for review of those members in a given competition group (i.e., a group defined by class and skill code, whose members are competing against each other for retention) of employees who are untenured or serving on LCEs. These employees will be rank-ordered according to merit. Next, the remaining employees in the competition group are ranked according to merit, and the resulting order of merit list is divided into three parts: bottom 25 percent, middle 50 percent, and top 25 percent. Employees will then be rifed according to reverse order of merit in the following sequence: non-military preference employees in the group of untenured members or those serving on LCEs, military

preference employees in the group of untenured employees or those serving on LCEs, non-military preference employees in the bottom 25 percent, military preference employees in the bottom 25 percent, non-military preference employees in the middle 50 percent, military preference employees in the middle 50 percent, non-military preference employees in the top 25 percent, military preference employees in the top 25 percent. Within each military preference subgroup, veterans with compensable service-connected disability of 30 percent or more will be rifed only after all other military preference employees in the subgroup.

Thus, the State Department undoes veterans' preference as accorded all other Executive Branch employees who are covered by Title 5 U.S.C. Unlike the RIF provisions covering Title 5 personnel, the State Department RIF rules RIF veteran career employees before non-veteran career employees rated in a higher merit group.

The U.S. Geological Survey (USGS) may have found an interesting method of reducing RIF preference by creating numerous one-person competitive levels. If an agency abuses the assignment of personnel to competitive levels, it impacts veterans' rights to bump in or retreat to positions in their competitive level. We believe that federal agencies sometimes adopt this technique to protect certain employees from bumping by veterans' preference eligibles.

We are very concerned about the creativity of federal agencies as they attempt to avoid the effects of veterans' preference in RIF. *We encourage that this area of the law be strengthened, making it clear that for veterans' preference eligibles, an assignment to a reduced grade, although they continue to be paid and maintained at their old grade level, constitutes a RIF from which they would derive veterans' preference RIF protections. Veterans should have the right to appeal veterans' preference RIF violations to the MSPB. We believe that all federal agencies should be subject to these requirements. We see no need to exempt any federal entity from these obligations.*

We have noted that Administration proposed civil service reform includes unlimited personnel research programs and demonstration projects. We are concerned that the adoption of what is described as the Administration proposal would allow an agency as large as DoD to declare its whole personnel system a research or demonstration project which ultimately OPM could approve, all without approval of the Congress. *We believe this authority is much too broad and would seriously impact the need for uniformity in the application of personnel rules to federal employees. We agree that there should be a mechanism for the federal government to conduct personnel research and through demonstration projects, however, we think there should be a limit in the size of the project and that OPM not have the right to waive veterans' preference principles. We believe that final option of personnel practices should include the oversight of the Congress with adoption into law where necessary.*

The Administration has proposed the creation of an appointing authority which would allow term appointments for up to five years. After a period of time, employees hired under this authority could be non-competitively converted to permanent employees. Although the

Administration proposal provides for the initial hiring to incorporate veterans' preference, the Administration language does not limit the final appointment to the job in which the person was temporarily hired. Thus, the appearance is that the Administration, while providing veterans' preference in the initial term appointment, might convert such person to any career position without regard to veteran status. *This undoes veterans' preference in appointment to career positions.* At the minimum, such authority should require that a person hired under this authority only be converted into a career appointment in that position.

We frequently receive calls from veterans alleging that their veterans' preference rights have been violated by federal agencies. At this time, they have no administrative recourse which will ensure a prompt, in-depth investigation or response to their concerns. Additionally, even when the agency admits they created an error, denying the veterans their preferential rights, the remedies are generally benign.

For example, a veteran might be improperly passed over by a federal agency in initial appointment. If the agency's errors are discovered, the agency simply offers the veteran a priority placement the next time they fill such a position. Thus, the veteran is denied employment illegally and may or may not ever be placed in a federal job. *We recommend amendments to current law providing veterans a complaint process which, in its initial stages, would be informal but would allow for appeals ultimately to the federal courts. This legal language should incorporate remedies which would provide the veteran all benefits of employment as though the original error had not been committed.* Thus, they should receive a job with seniority pay and all of the benefits as though they had been properly hired initially.

Title 38 U.S.C. Section 4214 requires federal agencies to write a disabled veteran's affirmative action plan for compensably disabled veterans. OPM has implemented their obligation under this law by simply certifying agency plans that meet the regulatory requirements. OPM rules do not require oversight, monitoring or a process ensuring affirmative action is applied in hiring or promotion. Thus, most of the agency plans are so benign as to have no effect.

For disabled veterans' affirmative action to be treated seriously, we believe the law must require a process which will define the intent of Congress. *We urge this Subcommittee to amend current law consistent with court rulings to provide for affirmative action to be taken among the top equally qualified candidates and requiring that disabled veterans be selected for promotion.* In this scenario, if a compensably disabled veteran is competing for a merit promotion, and the disabled veteran is rated as qualified as the most qualified candidate, then the disabled veteran must be selected for the position.

We believe that efforts beginning with the Carter Administration to modify veterans' preference have created a culture which is resistant to veterans' preferences as a concept in federal civil service. We believe that without centralized enforcement and oversight ensuring uniform application of veterans' preference, the various separate agencies are likely to undermine any veterans' preference law passed by the Congress. If there is not a centralized monitoring and oversight responsibility maintained in an agency, such as OPM, we believe that uniform

application of veterans' preference will be lost. The Administration plans to streamline and downsize federal agencies, including the Office of Personnel Management, along with fiscal restraint imposed by this Congress, will result in the loss of a central adjudication of passover and medical unsuitability veterans' protections. *We urge the adoption of legislative language which will require the maintenance of veterans' preference monitoring and oversight as well as passover and medical unsuitability responsibilities to assigned personnel in OPM.*

Mr. MICA. I thank you for your testimony, and now I'll recognize the representative of the American Legion, Mr. Naschinski.

Mr. NASCHINSKI. Chairman Mica, the American Legion appreciates having this opportunity to share with you our views on the reform of veterans preference. We also appreciate your leadership in addressing the many problems that currently exist with veterans preference.

As you know, the Veterans Preference Act of 1944 converted the existing patchwork of veterans preference laws, administrative rules, and Executive orders into a national policy. That legislation recognized the sacrifices of America's war veterans by providing a slight advantage in Federal hiring and retention. In the beginning, Federal agencies gladly complied with the provisions of the new veterans preference law.

Unfortunately, however, as time passed and the memory of war faded, so did America's concern for fulfilling her obligation to her citizen-soldiers. Today, the provisions of the veterans preference law are for all intents and purposes meaningless.

The American Legion believes that there are several reasons for this, Mr. Chairman. First is the fact that Federal managers do not understand the reasons for granting veterans preference to those who fought to keep this country free, nor do they understand how it works. That problem is compounded by the fact that many veterans are unclear about their rights under the law.

Another problem stems from the fact that affirmative action programs and the Civil Rights Act of 1964 provided protection from discrimination for women and minorities. That legislation also required Federal agencies to establish goals and time tables for the recruitment of women and minorities. Because veterans preference is an earned entitlement, and not an affirmative action or civil rights program, there have never been any quotas for hiring veterans.

As a result, there was and is very little incentive for Federal agencies to hire veterans. While the American Legion does not oppose increasing employment opportunities for women and minorities, we do object to the fact that all too often, that goal has been accomplished by denying veterans their rights under the law.

Mr. Chairman, the American Legion believes that a major problem with veterans preference is that veterans have no protection from discrimination. Unlike women and minorities, veterans have never had an adequate redress system for instances of discrimination. As a result, Federal managers routinely discriminate against veterans.

Their rationale in breaking the law is that veterans preference prevents them from hiring the most qualified person for the job, or because they believe it discriminates against women and minorities. What they fail to realize, however, is that veterans preference is completely neutral with regard to the veteran's gender and/or ethnicity.

With the mandatory downsizing of the Federal Government, many Federal agencies have become extremely creative in finding ways of circumventing veterans preference. Probably the best example is the 1992 reorganization of the U.S. Postal Service and

how it used save-pay and save-grade to circumvent veterans RIF rights.

If legislation is introduced as a result of this hearing, it must provide a clear, independent and user-friendly mechanism that can be utilized by veterans who believe that their veterans preference rights have been violated. Veterans must have the right to sue an agency or a hiring official if they believe that their veterans preference rights have been violated.

The American Legion fails to see why a Federal official should be protected by sovereign immunity if they have broken the law. They should also be held accountable if they allow policies to develop that establish patterns or practices of discrimination against veterans, especially disabled veterans in the hiring, promotion and retention or the appeal rights process.

That same legislation must also contain language that will require Federal agencies to certify annually as being in compliance with veterans preference statutes. Any agency that is not in compliance with the law should have its funding impounded until such time as appropriate corrective action has been taken.

On behalf of the American Legion's 3 million members, Mr. Chairman, again, thank you for allowing us this opportunity to share our concerns and recommendations. The American Legion looks forward to working with this subcommittee to rectify the many problems that currently exist.

[The prepared statement of Mr. Naschinski follows:]

STATEMENT OF EMIL W. NASCHINSKI, ASSISTANT DIRECTOR
NATIONAL ECONOMIC COMMISSION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES
ON
VETERANS PREFERENCE REFORM
APRIL 30, 1996

Mr. Chairman and distinguished members of the Subcommittee: The American Legion appreciates having this opportunity to share its views on the reform of veterans preference. Attached to this statement is a copy of Resolution #9, entitled *Veterans Preference in Reduction-In-Force Situations*, which was adopted by The American Legion's National Executive Committee in May of 1994. Also attached is a copy of Resolution #134, entitled *Veterans Preference*, which was adopted at The American Legion's 76th Annual National Convention in 1994. We respectfully request that both resolutions be made a part of the record of this hearing.

The third item that is attached to our written statement is a copy of an article entitled *With Preferences Like These...*, which appeared in the January 1996 issue of *The American Legion Magazine*. That article reports on some of the violations of veterans preference statutes that were uncovered by one of the magazine's staff reporters who was doing research for a routine article on veterans preference. We request that it also be made a part of the record.

Mr. Chairman, as you and the members of this Subcommittee know, America's recognition of her war veterans dates back to the Revolutionary War. That recognition was formalized in March of 1865 when Congress passed legislation that gave federal hiring preference to service-connected, disabled veterans of the Union Army.

Congress realized that those who had fought to protect and preserve the Union, and who had become disabled as a result of that service, would have great difficulty in securing employment. It believed that the Civil Service Act would provide a modicum of relief for disabled veterans by providing them an opportunity to share in this nation's prosperity.

Over the next few decades, a number of laws, administrative rules and executive orders regarding veterans preference came into being. One of those laws was enacted at the end of World War I when veterans preference was expanded to include non-disabled veterans and the widows of veterans who

died as a result of their military service. Today, those who are eligible for veterans preference are known as preference eligibles. Mr. Chairman, in this statement, the word "veteran" will refer to all preference eligibles.

When The American Legion was founded in 1919, one of its first goals was to convert the existing patchwork of laws, administrative rules and executive orders into one national policy that would be protected by law. That goal was realized 25 years later when President Roosevelt signed the Veterans Preference Act of 1944 into law. That legislation recognized the sacrifices of America's war veterans by providing a slight advantage in federal hiring and retention.

The purpose of the Veterans Preference Act of 1944 was not to create a federal workforce made-up entirely of veterans, but rather, to address the readjustment needs of the men and women who had served their country during a time of war. It also was meant to assist them in regaining the lost ground their civilian careers had suffered as a result of the months and years spent in military service.

In the beginning, the federal government gladly complied with the provisions of the new veterans preference law. Unfortunately, however, as time passed and the memory of war faded, so did America's concern for fulfilling her obligation to her citizen-soldiers. Today, the provisions of the original legislation and its amendments as codified in Title 5, U. S. C. are, for all intents and purposes, are meaningless.

Mr. Chairman, The American Legion believes that there are several reasons for this. First is the fact that many federal managers do not understand the reason for granting veterans preference to those who fought to keep this country free, nor do they understand how it works. That problem is compounded by the fact that many veterans are unclear about their rights under veterans preference statutes.

The American Legion's National Veterans Preference Committee recognized those problem a number of years ago and published a pamphlet entitled *Questions and Answers About Veterans Preference*. It was meant to answer the questions veterans most commonly ask about this entitlement. It was also meant to be a tool for educating the general public about veterans preference. *Questions and Answers About Veterans Preference* was widely distributed through The American Legion's 16,000 Posts.

Another problem stems from the fact that Congress passed legislation which provided protection for women and minorities and which also required federal agencies to establish "goals" and "timetables" for the recruitment of

**NATIONAL EXECUTIVE COMMITTEE
OF
THE AMERICAN LEGION
INDIANAPOLIS, INDIANA
MAY 4-5, 1994**

RESOLUTION NO: 9

SUBJECT: Veterans' Preference in Reduction-in-Force Situations

WHEREAS, The National Veterans Preference Act of 1944 established certain veterans' rights concerning employment in Federal government; and

WHEREAS, One of those rights is protection in Reduction in Force (RIF) situations; and

WHEREAS, In August 1992, the Postmaster General announced a plan to restructure the United States Postal Service (USPS); and

WHEREAS, That restructuring involved a significant downsizing of the agency's management structure, affecting approximately 30,000 positions; and

WHEREAS, On November 2, 1992, the Postmaster General announced that no layoffs would result from the restructuring and that employees who moved to positions at lower grades than their pre-restructuring positions would receive indefinite saved grade and saved pay; and

WHEREAS, The term "saved pay" means that employees will not experience a reduction in base salary; however, if the employee's base salary exceeds the maximum base salary of the position to which they are assigned as a result of the restructuring, they will not receive pay raises or cost of living increases until the maximum base salary of the position into which they are assigned reaches the employee's current salary; and

WHEREAS, Although both veterans and non-veterans have been affected by this policy, the Merit System Protection Board (MSPB) has ruled that the USPS is in violation of the law as set forth in Title 5, United States Code, concerning veterans in RIF situations; and

WHEREAS, MSPB's decision has been stayed pending an intervention by the Office of Personnel Management which contends that when saved grade and saved pay are provided there is no RIF and hence no appeal process is available to affected employees; and

WHEREAS, The actions of both USPS and OPM are in clear violation of the intent of Congress, now, therefore, be it

RESOLVED, By the National Executive Committee of The American Legion in regular meeting assembled in Indianapolis, Indiana, on May 4-5, 1994, that The American Legion reaffirms its strong opposition to any and all efforts to nullify or circumvent existing veterans preference statutes; and be it further

RESOLVED, That The American Legion strongly opposes the continuation of the policy of saved grade and saved pay nullifying a reduction in force as it is not compatible with the intent of Congress regarding the rights of veterans in reduction-in-force situations.

**SEVENTY-SIXTH NATIONAL CONVENTION
OF
THE AMERICAN LEGION
MINNEAPOLIS, MINNESOTA
SEPTEMBER 6, 7, 8, 1994**

RESOLUTION NO. 134

SUBJECT VETERANS PREFERENCE

WHEREAS, Our federal government specially selected as mentally, morally and physically fit, certain members from its society, specially trained this group, subjected them to stringent rules and regulations, removed them from home, family and employment, asked of them a special sacrifice, and required some of them to suffer wounds they will live with forever, and

WHEREAS, A grateful nation through its representatives in the Congress of the United States and state legislatures, has in recognition of that special service and loss of employment opportunity while defending the country in time of need, extended a long history of employment the returning veterans by enacting the Veterans Preference Act as contained in Title 5, USC, and Chapter 3-3, South Dakota Code, and

WHEREAS, The term "veteran" includes every category of society -- sex, age, religion, ethnic group, race and creed, and

WHEREAS, Absence from the highly competitive job market due to military service creates an unfair and unequal burden on veterans in competing for federal and state jobs, and

WHEREAS, The Veterans Preference Law accomplished the legislative purpose of honoring veterans and provides a small advantage in competing for federal and state jobs, and

WHEREAS, There are prominent groups and individuals in the United States today who ignore the employment disadvantages accrued by individuals due to military service, who blindly allege that veterans preference is "discriminatory", who blatantly overemphasize the advantages of veterans preference although presumably aware of the fact that approximately 38 million veterans in our population have not chosen or have not been successful in obtaining a federal or state position, now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Minneapolis, Minnesota, September 6, 7, 8, 1994, that the President of the United States and governor of each state be informed that this organization deplores each and every attempt to degrade, dilute or modify the historical precedent of giving job eligibility preference to

those who are taken from their communities to serve their country in time of war, and that the President and governors reject any and all proposed legislation that would reduce employment opportunities for veterans in the federal or state work force, and be it further

RESOLVED, that The American Legion strongly support veterans' preference in federal, state, and local employment, as provided by a grateful nation, and oppose any effort to reduce this preference, and be it further

RESOLVED, that The American Legion reaffirms its strong opposition to any and all efforts to nullify or circumvent existing veterans preference statutes.



For job-seekers, being a veteran used to mean you got a leg up. Now it often means you get a thumbs down.

By Ken Scharnberg

WHEN John Minnick applied for a public-relations position at the federally sponsored Holocaust Museum in Washington, D.C., he felt optimistic. After all, he had a solid track record of related experience, coupled with managerial expertise. And because it was a federal job, Min-

nick—a disabled veteran—thought that veterans preference statutes would give him just the edge he needed.

"My application was one of four selected by the Office of Personnel Management (OPM) and forwarded to the Holocaust Museum personnel director," says Minnick, who learned through a friend at OPM that he had scored the most points under the federal application-rating system.

Then things took a strange turn. The museum personnel manager called OPM and said the establishment preferred somebody else—a non-veteran. It wasn't that Minnick was unqualified. The personnel manager simply wanted the other applicant.

Just like that, Minnick was out, and another candidate was in.

What John Minnick experienced is a direct violation of veterans preference statutes that affect thousands of veterans each year. The blunt truth is that veterans preference laws are regularly ignored or circumvented by federal hiring managers (some of whom

will go so far as to reject entire lists of candidates simply because a veteran's name appears on that list). Worse, there is little a veteran can do to redress the

wrong. For example, when Minnick complained about the incident, he was told that the personnel manager at the museum was new, and that an inexperienced OPM staff member had erred. And that was that. Excuses, but no job.

Years ago, John Minnick's story might have had a different ending. That's because years ago, veterans preference in federal employment was taken far more seriously. The laws first took life as part of the GI Bill and were based on a solid rationale: Military service interrupts an individual's normal career progress. To level the playing field, the government developed a point system for federal job testing. To give veterans an edge, five

Ken Scharnberg is veterans affairs editor of THE AMERICAN LEGION MAGAZINE.

REJECTED— The government says the best number of disabled veterans. But the number is steadily dropping because non-veterans are being hired instead.

points were awarded for wartime service (or more recently, for having served in a war zone), 10 points if the veteran had a service-connected disability. The points would be added to any federal employment exam with a score of 70 or more. And that is how things generally worked—until 1978.

That year, President Carter's Reorganization Plans abolished the Civil Service Commission (CSC), the governing body that heard and ruled on veterans preference appeals. The CSC was replaced by the Merit System Protection Board (MSPB), and the United States Code was rewritten so that "hearings and appeals with respect to veterans preference" became "hearings and appeals with respect to examination ratings." A subtle change, perhaps, but it is now clear that OPM and MSPB no longer interpret the law in a manner consistent with its meaning and spirit prior to 1978.

According to OPM figures, some 615,080 non-postal-employee veterans were working for the federal government at the end of FY91. This was down by 138,000 from FY87, an 18.3 percent drop OPM attributed to the aging veteran population. By FY94, the figure had dropped to 560,028, a number that includes the 12,610 veterans newly hired the same year, according to OPM. All told, both the number of veterans currently in federal employment and the number being brought in are shrinking.

And yet, since 1991, expeditionary medals—the current basis for granting preference to non-disabled veterans—have been awarded to about 1 million GIs of the Gulf War, Somalia and Haiti. With that many "new" veterans qualified for preference in federal hiring, plus those from the Vietnam era seeking a mid-life career change, the number of veterans in federal jobs should be going up, not down.

In fairness, the federal government remains the nation's largest employer of disabled veterans; overall, about 20.7 percent of all federal employees outside of the postal system are veterans. This sounds like an impressive percentage until the numbers are compared to data from when CSC was still intact. In 1973, half of all federal employees—1.35 million workers—were veterans.

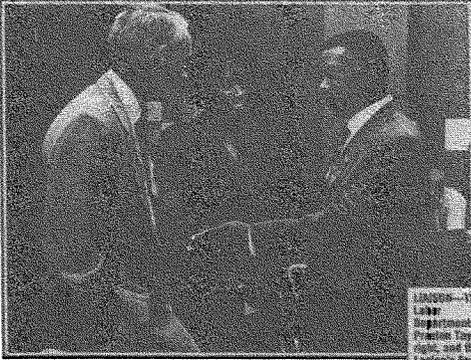
Officially, the government tends to

deny that much is amiss. During a recent meeting on the issue, OPM director James King said his department fully supported veterans preference. Richard Weidman of the Veterans Economic Action Coalition remains skeptical. "That's just so much smoke," said Weidman, who contends that blatant violations of veterans preference laws take place regularly. "What OPM does not seem to understand is that veterans preference is the law," said Weidman. "It's not

The blunt truth is that veterans preference laws carry very little weight and are regularly ignored or circumvented.



With Preferences Like These...



LABOR—The top Department's Preston Taylor, left, and then- Legat's Economic Consulting Division, left. This does not reflect veterans preference bias.

something they can ignore because it is inconvenient. Moreover, it is an earned right. It was not granted to them by accident."

The growing anti-veteran bias is clearly visible once you learn to decode the government's often-confusing memos and reports. For example, in a report on federal hiring sub-

Today, about 20.7 percent of all federal employees outside of the postal system are veterans. In 1975, half of all federal employees—13.5 million workers—were veterans.

mitted to Vice President Al Gore, the MSPB stated, "The interaction of two staffing requirements embedded in federal personnel law—veterans preference and the 'Rule of Three'—is widely viewed as an impediment to good hiring practices." What this means in English is that the top three or more candidates for a government job (based on points scored) are for-

warded to the hiring manager for consideration; the so-called "impediment to good hiring" is that if one of the three is a veteran, the manager is supposed to give preference to that individual. Indeed, later in its report, the MSPB proposes legislation to undercut or abolish the Rule of Three. Such a step would formalize the contempt for veterans preference now practiced informally by many federal hiring managers.

Government managers justify their actions on the grounds of "improving the federal work force." They say they want the flexibility to hire a non-veteran applicant—for example, a recent college graduate—who scored higher on the exam when one deducts the bonus points awarded to the veteran simply for being a veteran.

However, under existing law, a manager already has the option of rejecting the entire list and requesting a new one. Taking advantage of this loophole is a common practice, according to James Hubbard, director of the Legion's National Economic Division. Hubbard says lists may be rejected several times until the manager finds the "right" person. The GAO confirms that about 71 percent of applicant lists containing a veteran at the top are returned as a result of

"candidates lacking desired qualifications." Tellingly, when no veteran's name appears on the list, 51 percent are returned.

Compounding the bias against veterans, according to Preston Taylor, director of the Department of Labor's Veterans Employment and Training Services, is the fact that the federal government is undergoing a massive reduction-in-force (RIF). By law, during a RIF, a veteran has "bumping rights," which simply means he or she can transfer into another position of the same level and "bump" a non-veteran of an employee with less tenure. Because veterans preference gives veterans such statutory protections during RIFs, other federal employees see them as a threat. All of which leaves non-veteran federal personnel feeling "angry and scared," says Taylor.

But there is a subtler reason why veterans are often shunted aside in favor of others, at least by civilian government contractors subject to federally mandated hiring policies: fear of discrimination cases brought by minorities. A person protected by Equal Employment Opportunity (EEO) laws who is discriminated against can sue and collect

damages. Faced with the choice of a possible reprimand from OPM (which rarely happens anyway) or the very real threat of legal action and monetary settlement with those protected under EEO, contract employers routinely reject veteran applicants in favor of women and minorities, says the Veterans Economic Action Coalition (VEAC).

Interestingly, VEAC, a veterans preference advocacy organization, cites a handful of suits that tried to apply EEO guidelines in veterans preference cases, without success. It seems veterans are not included in the classes protected from discrimination under federal civil rights laws.

UNFORTUNATELY, even when the veteran lands the job, that doesn't always end the problem. The grim truth is that the job protection that once existed for veterans is rapidly being eroded.

Consider what has happened in the U.S. Postal Service. Some 278,000 veterans were employed in 1991 by the postal system, the nation's largest veteran employer. In 1994, newly

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PREFERENCES

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appointed Postmaster General Marvin Runyon, under orders to downsize the massive USPS, hit upon a cunning plan. Knowing that he could not undertake an actual RIF without running afoul of veterans preference statutes, Runyon instead shuffled his people around, moving former managers into low-ranking positions where they were supervised by individuals of lesser grade and tenure. Coupled with this was a freeze on all raises and cost of living adjustments for the former managers until the pay of the lower-paid supervisors eventually rose to meet the former managers' incomes through annual COLA—a process that could take many years. In this way, the USPS would save millions by not having to pay salary increases or COLAs.

The affected employees, veteran and non-veteran alike, appealed to the MSPB, which agreed that the demotions did in fact constitute a RIF. Runyon wanted to appeal the decision, but fortunately for postal employees, President Clinton stepped in and told him to return them to their former positions.

STILL, Runyon had a trump card to play. He abolished some positions on paper, then renamed them and gave them revised duties. Thus, when veterans demanded their old jobs back, Runyon was able to tell some of them truthfully—if unfairly—"That position no longer exists."

In an interesting footnote to the postal caper, Joseph J. Mahon Jr., OPM's vice president of labor relations, wrote that among other things, Runyon's RIF was "too likely to have an adverse effect on minorities and women in the work force." By law and regulation, the only people whose jobs are protected during a RIF are veterans.

Yet somehow, affirmative action became the larger consideration over veterans preference, once more revealing the government's true priorities.

In document after document, whether from the USPS or other government agencies, the overriding concern seems to be minority body count: *Do we have enough blacks, Hispanics and women in our workplace?* Sadly, where veterans are concerned, the

question too often seems to be, *Can we think up another loophole to avoid veterans preference?*

Take the case of John L. Davis, a GS-15 civilian employee with the Army Corps of Engineers. A Korean veteran, Davis had worked for the government for 40 years. In March 1993, he was notified that his position would be eliminated as part of a RIF. According to Davis, there were as many as six positions at the GS-15 level within his department that he should have been able to bump to. His application to these positions was denied because, according to the civilian personnel officer, he was unqualified. He was offered a lower-paying job in another government office, which he ultimately was forced to accept.

HE APPEALED the decision to the MSPB. Though he acknowledged that "day-to-day administrative management of an office" was the only qualification he lacked for the position, he reminded the board he had similar experience at a lower pay grade. (In any case, federal managers have conceded in court that few people step into these managerial slots with every criterion fully met.)

Davis argued that he was denied his right to bump due to office politics and personal animosity. He supplied witnesses who testified that after he told another manager he intended to bump for the job in the event of a RIF, the manager complained to the director. Court records also showed that review board personnel intended to "teach Davis a lesson." Those same records contained statements that "he ascended fast, so he could descend fast," and that there were "political consequences" to Davis' actions.

Administrative Judge William L. Boulden wrote, "I find that [Davis] has established that [two review board members] were motivated by personal animus with regard to the appellant's rights under the RIF, and thus, the agency's determination of those rights could, under the circumstances, have been based on prohibited personnel practices."

A great victory for Davis? Not quite. Boulden wound up ruling against him, basing his decision on the dubious argument that Davis lacked managerial experience in the higher pay grade.

And there was nothing Davis could do about it. (Nor does the injustice end there, apparently: Susan Odum, a coworker and one of the people who

testified on Davis' behalf, claims that the Department of the Army is now retaliating against her husband and her.)

The State Department has concocted yet another method to ensure that "favored" non-veterans are retained within the government. Here the work force is divided into three sections, or "cones": the top-ranking 25 percent; the middle-ranked 50 percent; and the lowest-ranked 25 percent. Each cone is treated as a separate entity. This means the veterans in the highest cone enjoy full preference and RIF protection—but it also means the non-veterans in the top level have preference and protection from veterans in the two lower cones.

Thus, as so often happens, the government has applied veterans preference rules in an uneven, be-thankful-for-small-favors manner. And still, as Ray Smith, chairman of the Legion's National Economic Commission, puts it, "You can count on some manager or director figuring out some way to sidestep the rules."

THE SEARCH for silver linings in all this leads mostly to a handful of individuals waging their own personal war on behalf of veterans. For instance, PULF Legionnaire Robert Donahue, a Local Veterans Employment Representative in Charles City, Iowa, received The American Legion National Outstanding Employment Service Officer Award for work placement, training and schooling of veterans. Donahue, a member of Post 278 in Osage, Iowa, found ways to get jobs for veterans in an area plagued by low employment.

Another "point of light" shines within the Department of New York, where the VEAC's Rick Weidman also is the department's veterans' employment chairman. According to Department Adjutant Richard Pedro, Weidman and others have begun an aggressive effort to train, counsel and find employment for New York veterans. Other Legion Departments—notably South Carolina, Wisconsin and Utah—are also actively involved in finding veterans work in the private sector.

But admirable as these efforts may be, they do little to tip the scales of injustice that played havoc with the likes of John Minnick, John Davis and many thousands of other veterans—men and women who made the mistake of believing that veterans preference laws actually meant what they said.

Mr. MICA. I thank both of you, and you both represent probably the most distinguished veterans organizations and have been so active in keeping veterans concerns before the Congress, and we appreciate your testimony.

Gentlemen, I've only been here for 36 months, but I've seen a lot of changes, they have been taking place, and there are going to be taking place, tremendous changes in the Federal workforce, the way we conduct the Government, governmental operations.

Before us, coming in the next few days, probably, is a proposal by the administration which Mr. Moran and I are going to introduce to make some reforms in civil service and reforms in management style. What we did a few years ago, we're not doing in the same way. I use this to preface it, you know, there are changes coming and we need to prepare for them.

We will probably have a more—well, we already have a more decentralized personnel system. Maybe welfare as we know it still remains the same, but OPM as we know it is changed. We're seeing a decentralization of its authority, more changes in management style, more based by particular activity or function. And I think that will continue.

We're also seeing privatization, which will be another challenge. And my question to you is what system can we legislatively mandate or put in place which would ensure, one, that there is some recognition, real recognition, of veterans preference; second, that there is a grievance procedure and an appeal process?

So, again, think of this new structure and tell me how you would put this in place, what would be your recommendation, if you wouldn't mind discussing that, Mr. Drach?

Mr. DRACH. Yes, thank you, Mr. Chairman. We've been struggling with that a number of years. DAV and the other veterans service organizations came to pretty much an agreement a couple of years ago that veterans preference isn't really working the way it did 50 years ago, in a large part because of the way the Federal Government is now doing its hiring.

What we haven't agreed on yet is what we would like to see happen in terms of any changes, so we're still—we have an informal group of the major veterans organizations that will be meeting to discuss this in a little bit more detail. But let me just make some general comments.

One is, as I stated earlier, with the decentralization, I don't know how many agencies and departments there are, but if each one has their own personnel system, which is the way I think we're going, you're going to have each one doing their own thing. It's almost like trying to monitor IBM. IBM may have one hiring policy in New York and one in Denver and one in Florida and one in California. How can we, as an organization, monitor and assure that veterans preference will be applied?

I think as a start, any new legislation must be very explicit in the congressional intent that you mean that veterans preference will apply. Now, whether that veterans preference takes the form of what we've had for the last 50-some years or whether it takes some other new form, we're not sure.

We think it needs to definitely take a new form in terms of an appeal, and Mr. Buyer has asked us as a followup to a hearing last

week to provide him with some ideas on what we think that appeal process should look like. Again, this is an area that the veterans service organizations have talked about and have yet to come to real agreement beyond the principle.

And I think, I forget who mentioned it earlier, there has to be some informal process first, try to resolve it informally with time limits so that an agency can't drag this out for 2 or 3 years. After a certain timeframe, the next step in that appeal process would kick in, eventually leading to courts and let the courts decide.

Mr. MICA. Thank you. Mr. Naschinski, you had a method of gentle persuasion, which you recommended—cut off their funding, I think it was.

Mr. NASCHINSKI. That may be a bit drastic, but I think it would work.

Mr. MICA. You know how to get to the heart of the matter. But maybe you could relate to the subcommittee your recommendations for how we can address some of these problems: decentralization, the different management styles, the enforcement of veterans preference, and then the grievance and appeals process.

Mr. NASCHINSKI. Mr. Chairman, let me say that I concur with everything that my colleague Mr. Drach said, and I also concur with something that was said earlier today. Mr. Fales recommended, if I understood him correctly, that a system be devised that would be modeled on EEOC. We believe that would be a real deterrent to the kinds of discrimination we currently see going on.

The other thing, of course, is making Federal managers responsible for their actions. If they want to break the law, fine, but they will have to pay the consequences.

Mr. MICA. One of the other areas that we're seeing dramatic changes and will see dramatic changes in, is privatization. Some functions are now being privatized, ESOPs are becoming more the norm, or will be instituted for various Government and formerly all-governmental functions.

Do you think we should be giving some preference to veterans who would be willing to take on some of these privatization tasks? Is that an area that we might consider, Mr. Drach?

Mr. DRACH. Absolutely, Mr. Chairman. You asked a question different from what I thought you were going to ask. But by all means, right now we have veterans who contact us consistently about wanting to start their own businesses and going through the Small Business Administration. And there are no programs currently in the law that provide any meaningful preference or anything for veteran-owned businesses or those who want to own their own business.

I think the ESOP idea certainly gives them an opportunity to start their own business. Whether that person be a potentially displaced employee or whether it be somebody that's already out there in the private sector, who may already have a small business or wanting to start a small business, we would certainly support some sort of veterans preference language in that.

Mr. MICA. Do you have a comment, Mr. Naschinski?

Mr. NASCHINSKI. Once again, I concur with what my colleague has said. For some time now, the American Legion has been working with the Small Business Administration and the offices of small

and disadvantaged business utilization within various Federal agencies to promote employment opportunities for veterans and small business opportunities for veteran-owned businesses.

I've lost my train of thought. But, yes, we would be in favor of that.

Mr. MICA. One of the other areas that we're facing now is the reduction in force and the civilian defense employees have certainly taken the brunt of some of the reductions in force, and we've also seen the problem of the single position competitive levels in RIFs.

How do you see us dealing with this problem—the veterans who are being thrown overboard in kind of a wholesale fashion. Do you have any recommendations for addressing this, Mr. Drach?

Mr. DRACH. Mr. Chairman, RIFs today are somewhat new in the sense that we haven't undergone real major RIFs in the last 20 years that I've been in Washington, working on employment issues. There have been sporadic ones. But one of the things that I've found out early on back in the 1970's when there were RIFs was that—I want to be careful how I say this, because I don't want to sound like I want to micromanage agencies and I don't want to ask you to micromanage agencies. But in a RIF there is a lot of latitude as to the number of jobs that are going to be abolished, the location of the jobs that are going to go, the functions that are going to go.

And an example, if you really want to do away with veterans in a RIF, what you do is you look at a concentration of a particular function where veterans may hold a lot of those jobs. And if you restrict that reduction in force to that function, who is going to go? The veteran, because, you know, for the most part they may not have bumping rights. And so if they are in a particular function there and you abolish that function, then the competitive area, the competitive level is very narrow. And that can be done with impunity right now.

If I'm told that I have to get rid of 10 percent of my workforce, I'm not told who they have to be. I'm not told where they have to be from. I'm told to reduce it by 10 percent, and I have a lot of flexibility to determine who I want to get rid of.

How you protect against that without some micromanagement, I'm not really sure. I think a strong appeal process, maybe separate from MSPB, that would be appropriate. And sometimes you wonder are they trying to get rid of me because I'm a veteran, or are they trying to get rid of me because they don't like me, or are they trying to get rid of me because I really don't adequately perform?

It's difficult to fire somebody through an adverse action. So a RIF may be a real palatable alternative to an adverse action to get rid of somebody they don't like. But it's very easy to formulate a RIF that affects 90 percent or higher of only veterans.

Mr. MICA. Mr. Naschinski, did you want to comment on this RIF situation?

Mr. NASCHINSKI. Well, as I pointed out in the testimony, some agencies are having trouble calling a spade a spade. Postal Service was one example, and there are many others. Saved-pay and saved-grade was nothing but a RIF. And on two occasions, MSPB found in favor of the veterans. Even then the Postal Service was willing to file another appeal, which is just beyond belief.

I might just tell you one other quick story. This is rather sad. I recently had a letter from a veteran who worked for GAO and he was outstationed in one of their field offices. And because of downsizing, GAO realized that they had to get rid of so many people. Of course they were going to try and use attrition to the greatest possible advantage. And then they decided that they couldn't meet their goals by simply using attrition, so they decided that they would close their field offices. And what they did was they made each field office a separate competitive area. And the employees within that office were not allowed to transfer out, and when the office was closed, the veteran had—in fact, all of the employees had—no place to go. Veterans certainly couldn't have utilized their bump and retreat rights in that instance.

So this gentleman who was an 18-year employee of GAO, with many outstanding ratings, was suddenly out on the street. There is something wrong, Mr. Chairman, with a system like that.

Mr. MICA. Well, we're trying to find solutions to some of the problems that we've heard detailed today.

Mr. NASCHINSKI. You can certainly count on the American Legion's cooperation and support through that process. We will be more than happy to work with you in resolving some of these problems.

Mr. MICA. These are complex issues and sort of a target that's moving and changing almost as we speak and meet here today. So it's quite a challenge for the Congress, and even for your organizations, as far as coming up with exact remedies. But, again, that's part of the purpose of this hearing today.

Now, I think both of you are familiar with Congressman Fox's bill, which would extend veterans preference to individuals who served in connection with Operations Desert Shield and Desert Storm. I think you may have been here when he testified earlier.

Do you support that bill, Mr. Drach; and has your organization taken positions on it?

Mr. DRACH. We have no official position based on a resolution from our national convention, Mr. Chairman, but we did testify a couple of years ago at an earlier Congress on a very similar bill that may have been introduced by Mr. Gilman. I don't recall exactly who introduced it about 3 or 4 years ago.

The only concern I have, and I haven't read the bill in its entirety, the only concern that I have is determining who is "in support of." Several years ago we looked at that issue at it relates to the veterans readjustment appointing authority for Vietnam era veterans. And the Senate Veterans Affairs Committee wanted to narrow that eligibility to those who served in combat or in a combat-support role. And after talking with DOD and others, everybody realized that it would probably become an administrative nightmare to try to validate that or to prove.

The DD214, which is commonly used to establish veterans preference, typically wouldn't have that kind of information on it that I was in Germany in support of Desert Storm. So we would take it a step further. You know, the cold war is over but are we any safer today than we were during the cold war. People go into the military service to serve their country. Why shouldn't they be al-

lowed to have veterans preference when they come out from serving their country.

And we would suggest that you take a look at extending that through the whole era, the same as we did for Vietnam back—I don't remember exactly when it was extended, but Title V was amended to include the whole Vietnam era and we would suggest that you take a look at extending it to the whole era.

Mr. MICA. Mr. Naschinski.

Mr. NASCHINSKI. Mr. Chairman, the American Legion does have a position. We adopted a resolution several years ago calling for veterans preference to be extended not only to those who were in receipt of the Southwest Asia Service Medal, but to all who were called up during that period. And, in fact, to all who were in the service during the Desert Storm Era. As you know, that's still going on.

I will be happy to provide you with a copy of our resolution.

[The information referred to follows:]

**SEVENTY-FOURTH NATIONAL CONVENTION AMERICAN LEGION
RESOLUTION NO. 408**

Subject: Veterans' Preference for Desert Shield/Storm Veterans

WHEREAS, America has traditionally shown her gratitude to those citizen soldiers who served during a war or armed conflict by providing certain entitlements; and

WHEREAS, One of those entitlements has been a small advantage when seeking federal employment and in the retention of that employment; and

WHEREAS, One criterion for granting veteran preference to any group of veterans is that they served honorably during a war or that they received a campaign badge or expeditionary medal; and

WHEREAS, Veteran preference is granted to those honorably discharged veterans who served a minimum of 180 consecutive days on active duty (other than for training) any part of which occurred after February 1, 1955, and before October 15, 1976, unless discharged for a service-connected disability; and

WHEREAS, A criterion for granting veterans preference to those who entered the military after September 7, 1980, is that they must have served on active duty for a minimum of two years unless discharged because of a service-connected disability; and

WHEREAS, Under certain circumstances the mothers, spouses, widows or widowers of deceased or totally and permanently disabled veterans may be granted preference eligibility; and

WHEREAS, Executive Order 12754 established the Southwest Asia Service Medal for those members of the United States armed forces who participated in military operations in the Persian Gulf or in the contiguous waters or air space on or after August 2, 1990, and before a terminal date which has yet to be prescribed by the Secretary of Defense; and

WHEREAS, Section 2 of that same executive order authorized the medal to be awarded posthumously to any person covered by and under the circumstances described above; and

WHEREAS, Of the 540,000 American troops who participated in Operations Desert Shield and Desert Storm, 106,000 or 19.6% were members of the Guard or reserves; and

WHEREAS, Of the Guard and reserve members who were deployed to the Persian Gulf, to date a total of 71 either were killed in action, died as a result of wounds received or died from non-hostile causes; and

WHEREAS, Even though all members of the Guard and reserves who served in the Persian Gulf,

both living and dead, received the Southwest Asia Service Medal, most do not qualify for veteran preference because of the amount of time spent on active duty; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Chicago, Illinois, August 25, 26, 27, 1992, that the American Legion seek legislation that would authorize veteran preference for those Guard and reserve members who served during Operation Desert Shield/Desert Storm regardless of the amount of time spent on active duty.

Mr. MICA. Thank you. We have asked most of the questions that we wanted to, at least from this side of the aisle this morning. And I want to thank both of you for your participation, and for your organization's leadership and commitment on behalf of veterans.

Did you have any final comments, Mr. Drach or Mr. Naschinski?

Mr. DRACH. My only final comment, Mr. Chairman, is to thank you again for having these hearings and including us in this process, and as Mr. Naschinski said, the DAV will be more than happy to work with you and other members of the committee as we go down this road to try to make sure we have a good system. Thank you.

Mr. MICA. Well, again, we thank both of you. We're pleased to have the cooperation of the Veterans Committee, Mr. Buyer, Mr. Fox and others who have been leaders on some of these issues.

We, today, held this hearing to seek sort of a status report on where we are with veterans preference, and some of the problems we've uncovered. We've also explored some of the possible solutions.

I look forward to working with you and others as we try to keep those commitments to our veterans on this very important question about veterans preference.

So we thank you again for your participation. We have some additional statements, requests for statements to be made a part of the record and quite a bit of interest in this hearing for additional comments. So I'm going to keep the record open for 2 weeks to receive additional testimony. Without objection, so ordered.

There being no further business to come before this subcommittee, this meeting is adjourned. Thank you.

[Whereupon, at 11:25 a.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

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AN OVERVIEW OF VETERANS' PREFERENCE
VETERANS ECONOMIC ACTION COALITION

BEFORE

THE HOUSE OF GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE

TUESDAY

APRIL 30, 1996

Mr. Chairman, and distinguished Members of the Subcommittee on Civil Service, I thank you for the opportunity to appear here today. My name is Gerard C. Kahn and I am Vice president of Veterans Economic Action (VEA), a not for profit veterans rights organization. As pleased as VEA is to be accorded the privilege of being here today, we are even more delighted merely that a hearing devoted to this issue is taking place.

VEA hopes this will be an event that will mark the beginning of a movement to stop the two decades long decline toward de facto and de jure demise of *veterans' preference* in the United States of America. If all of us who care about veterans approach this subject with a clear, non-partisan demand for simple justice and a commitment to getting everyone to obey the law, we can begin to reverse of the erosion of *veterans' preference* in the hiring, promotion, and retention of Federal employees that has occurred since 1978.

VEA is here today to add our voice in some small way to this start of a National discussion on *veterans' preference*, and offer our views on whether the *veterans' preference* laws are being faithfully applied by the bureaucracies of the Federal government. We believe that in order to address this important issue a short history of the *Veterans' Preference Act of 1944* and subsequent Public Laws and Reorganization plans that have affected "*veterans' preference*" is both necessary and helpful.

BACKGROUND

The *Veterans Preference Act of 1944* as amended is currently found in *Title 5 United States Code* §§ 1302, 2108, 3305, 3308-3320, 3351, 3363, 3501-3504, 7512 and 77011. Before examining the current problems being encountered by preference eligibles with respect to the veterans' preference statutes two issues need to be examined. The first the legal challenges that arose in the 1970's and the effects of the *Civil Service Reform Act (Pub.L. 95-454)* and the *Reorganization Plan Number Two (2) of 19782*.

Through out the 1970's both Federal and State *veterans' preference* statutes were contested in Americas courts. Most of the plaintiffs in these cases claimed that *veterans preference* per se violated the Equal Protection Clause of the Fourteenth Amendment. The courts at that time overwhelmingly decided in favor of the veterans' preference

1 U.S. Code on CD-ROM, Containing the General and Permanent Laws of the United States, in force on January 4, 1993. Prepared and published under authority of Title 2, U.S. Code, § 285b by the Office of the Law Revision Counsel of the U.S. House of Representatives. Table of Popular Names, Veterans Preference Act

2 43 F.R. 36037, 92 Stat 3783.

statutes. In 1974 the United States Court of Appeals, for the Fifth Circuit eloquently stated³:

"The statutory objectives are hardly mysterious given the long-standing, widespread existence of veterans preference legislation at all levels of government. Indeed, 'it is apparent to anyone who has lived through a period of war that contrived explanations are not necessary.' **August v. Bronstien**, *supra* note 4, 369 F. Supp. At 193. Historically veterans' preference laws have been directed to three principal objectives: (1) to recognize that the experience, discipline, and loyalty that veterans gain in military service are conducive to the better performance of public duties; (2) to encourage citizens to serve their country in time of war and to reward those who through impressment or through enlistment, did so; and, (3) to aid in the rehabilitation and location of the veteran whose normal life style has been disrupted by military service. [See alsofn 3] Appellants do not really challenge the propriety of any of these objectives, and in any event the decisions cited above -- as well as the plethora of cases on which they rely -- amply demonstrate that the legitimacy of the governmental interest in veterans' preference legislation is beyond serious judicial dispute."

Most of the legal challenges ended with the June 5, 1979 Supreme Court Decision in The Personnel Administrator of Massachusetts v. Helen B. Feeney⁴. The sole question for decision in this appeal was did Massachusetts, in granting an absolute lifetime preference to veterans, discriminate against women in violation of the Equal Protection Clause. The Court held:

"...the statutory history shows that the benefit of the preference was consistently offered to "any person" who was a veteran. That benefit has been extended to women under a very broad statutory definition of the term veteran. ... When the totality of legislative actions establishing and extending the Massachusetts veterans' preference are considered, see *Washington v. Davis*, 426 U.S., at 242, 96 S. Ct., at 2049, the law remains what it purports to be: a preference for veterans of either sex over nonveterans of either sex, not for men over women."⁵

"... The appellee, however, has simply failed to demonstrate that the law in any way reflects a purpose to discriminate on the basis of sex."⁶

³ *Jose Rios, et al. v. Dr. Everett G. Gillman, etc., et al. etc.*, 499 F. 2d 329, 332 (1974). See also *Russel v. Hodges*, 2 Cir. 1972, 470 F. 2d 212, 218; *White v. Gates*, 102 U.S. App. D.C. 346, 253 F. 2d 868, cert. denied, 1958, 356 U.S. 973, 2 L. Ed. 2d 1147; *Eiernerman v. Jones*, *supra* note 4, 356 F. Supp at 259; *Koelfgen v. Jackson*, *supra* note 4, 355 F. Supp. At 253; *Stevens v. Campbell*, *supra* note 4, 332 F. Supp. At 106.

⁴ 442 U.S. 256, 99 S. Ct. 2282.

⁵ *Supra* at 279,280, 2296,2297.

⁶ *Supra* at 281, 2297.

During the 1970's substantial pressure was also brought to bear upon the President and the Congress to "Reform" the Civil Service system. This pressure resulted in President Carter submitting his *Reorganization Plan Number 2 of 1978*⁷ to Congress on May 23, 1978 (amended on July 11, 1978) and the Civil Service Reform Act (CSRA) of 1978. It was the implementation of Reorganization Plan Number 2 of 1978 on January 1, 1979 and the CSRA of 1978 on January 12, 1979 that by either commission or omission defeated *Veterans' Preference*.

The key to any benefit, right or entitlement is the availability of an effective redress mechanism. Prior to January 12, 1979, 5 U.S.C. 1104 provided this mechanism. It provided:

(b) The functions named by subsection (a)(5) of this section do not include functions of the commission with respect to - (4) the hearing or providing for the hearing of appeals with respect to examination ratings, veterans preference, racial and religious discrimination, disciplinary action, performance ratings, and dismissals, and the taking of final action on those appeals;

President Carter's *Reorganization Plan Number 1 of 1978* created the Equal Employment Opportunity Commission (EEOC) and transferred from 5 U.S.C. § 1104 (b)(4) the hearing of appeals with respect to racial and religious discrimination to EEOC. Section 202 of *Reorganization Plan Number 2 of 1978* titled "Functions of the Merit Systems Protection Board and Related Matters" provided:

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes: (i) 5 U.S.C. 1504-1507, 7325, 5335, 7521, 7701 and 8347(d) (ii) 38 U.S.C. 2023.

Therefore, the *Reorganization* plans transferred or dropped the hearing or providing for the hearing of appeals for racial and religious discrimination and for examination ratings. This would seem to indicate that section 202 transferred to the Board the hearing or providing for the hearing of appeals with respect to *veterans preference*, disciplinary action, performance ratings and dismissals on January 1, 1979.

The CSRA added a new Chapter 12 to Title 5 U.S.C. and defined the "Powers and Functions of the Merit System Protection Board and Special Counsel" in § 12058. It provides:

⁷ See 5 U.S.C. § 1101 Historical and Statutory Notes.

⁸ Now 5 U.S.C. § 1204. The Powers and functions of the Office Special Counsel were transferred to 5

(a) The Merit Systems Protection Board shall - (1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title [**Reorganization Plan Number 2 is under this title**], section 2023 of title 38, or any law, rule or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter.”

Section 904 of the CSRA Provides:

“Except as otherwise expressly provided in this act, no provision of this act shall be construed to - (1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this act; or (2) limit, curtail, or terminate the President’s authority to delegate, redelegate, or terminate any delegation of function.”

To date we have been unable to find any expressed provision in the CSRA eliminating the Boards function of hearing of appeals or providing for the hearing of appeals with respect to veterans’ preference. In fact the only historical notes found relating to **5 U.S.C. 1104(b)(4)** are:

“In subsection **(b)(4)**, the words ‘as is now authorized to be taken by the commission’ are omitted as surplusage.” And “Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.⁹

Further, our research has provided no reason to believe that any part of **Section 202(a)** of the *Reorganization Plan Number 2 of 1978* is in any way inconsistent with any provision of the CSRA. However, the fact remains that since 1979 a preference eligible applying for a position with the federal government has no appeal right as a preference eligible if denied a right expressed in the *Veterans Preference Statutes*. The **Merit System Protection Board (MSPB)** has held they have no jurisdiction to hear the appeals for the last seventeen plus years (since January 1, 1979).

Applicants for Federal positions who believe they have been discriminated against based upon race, color, religion, sex, national origin, handicap or age may file a complaint that is investigated and at the request of the complainant a hearing is held before an **Equal Employment Opportunity (EEO) Commission’s Administrative Law Judge** and can then file a civil action. If you put yourself in the position of a Federal Manager having to make a choice between ignoring veterans preference in hiring which carries little or no risk or not hiring an applicant who is covered under any part of the

U.S.C. § 1212.

⁹ Historical notes, “amendments” 5 U.S.C. § 1104, U.S. Code on CD-ROM.

EEO statutes who has a right of appeal that could impact or even end your career. who would you choose to ignore?

It is not important how the hearing or providing for the hearing of appeals with respect to veterans preference disappeared, it is only important that it did. It is believed that this mysterious disappearance of a hearing right for preference eligibles is largely responsible for the decline of preference eligibles in the Competitive service which dropped from **1,350,00 in 1977** to the **560,028 in 1994**.

VETERANS PREFERENCE IN ACTION

This section will address "*Veterans' Preference Statutes*" and how they are used, evaded or ignored as a matter of convenience by Federal Bureaucracies. The bedrock upon which veterans preference is built rests upon **5 U.S.C. § 3309**. A preference eligible who receives a passing grade in an examination is awarded either 5 or 10 points to their score to determine their ranking upon a register of eligibles. The **General Accounting Office (GAO)** found¹⁰:

"For nearly all of the applications **GAO** reviewed, the veterans' preference points due applicants matched the points given them on hiring certificates prepared by OPM or other executive agencies. Also, veterans were correctly ranked on the certificates.

Many bureaucrats believe that the simple act of awarding the proper points to scores and ranking them upon a certificate is all that is required to comply with *veterans' preference*. Once the applicants are ranked and placed upon a certificate they then need to be used by an agency if veterans preference is to mean anything. The following statutes all rely on the use of certificates to be of any value at all: **5 U.S.C. §§ 3313, 3314, 3315, 3316, 3317, 3318, and 3320**. However, in 1992 the **GAO** found¹¹:

These 648 certificates included instances of both nonveterans and veterans who were top-ranked candidates. However, a greater percentage of certificates were returned unused when a veteran appeared at the top (71 percent) than when a nonveteran did (51 percent).

The return of unused certificates is not a new phenomena. A 1977 report found¹²:

¹⁰ Federal Hiring Does Veterans Preference Need Updating? GAO/GGD-92-52, March 1992, pg. 2, ¶ 2.

¹¹ Supra at pg. 4 ¶ 4.

¹² Conflicting Congressional Policies: Veterans' Preference and Apportionment v. Equal Employment Opportunity. FPCD-77-61; B-167015. September 29, 1977, Report to Congress; by Robert Keller, Acting Controller General. (Now GAO) pg. 20.

Agencies informed us that they sometimes use questionable procedures to obtain women who cannot be reached on CSC registers. These include:

- writing job descriptions to fit the qualifications of particular applicants.
- Listing jobs with CSC as "intermittent" employment to discourage veteran applications.
- Requesting and returning certificates unused until veterans who are blocking the register have been hired by another agency or for other reasons are no longer blocking the register.. ...

Finally, GAO in the March 1992 report found¹³:

While OPM requires agencies to provide explanations when returning certificates unused, it generally does not enforce this requirement. Even when reasons are provided, OPM does not maintain an analyze the information (e.g., do trend analyses) to determine whether the probability that veteran bias exists or whether its certification system is unable to identify candidates with the right mix of qualification and experience."

As long as agencies are allowed to return certificates unused or use special hiring authorities veterans preference will be denied. In a case that has been before the general public for quite some time, John Minnick, who was on a certificate that was sent to an agency was decertified at the request of the agency by OPM and was later found to be qualified. He's still unemployed.

5 U.S.C. § 3310 restricts competition for custodial positions to preference eligibles as long as they are available. *Frank Santamaria*, a preference eligible who served during the Korean War applied for a position as a custodial laborer at a United States Department of Veterans Affairs (VA) Medical Center in New York. He was hired as a temporary employee twice but each time was denied a permanent position because the VA had restricted those positions to those preference eligibles who were **VRA14** eligible even though the black letter law states, "restricted to preference eligibles as long as preference eligibles are available." Frank was never made aware that a permanent position existed and was never even considered because he was not VRA eligible.

Steven Cytryszewski, a 70% disabled veteran had been out of work for many years and under the care of a Psychologist and a Psychiatrist for Post Traumatic Stress Disorder. He began to make progress with his treatment and was informed by his Psychologist that they now believed he could proceed with his life and seek employment. Steve applied for a custodial position with the United States Postal Service.

¹³ See fn 10 pg. 34.

¹⁴ See 38 U.S.C. § 4214.

Without being informed or being provided the opportunity to respond he was passed over three time and removed from the list. An EEO complaint was initiated and during the final interview we were told that he was passed over and removed from the list. An appeal was then filed with the MSPB and was dismissed for lack of jurisdiction.

In a similar case in the competitive service in 198415 the Federal Circuit found jurisdiction as an employment practice administered by OPM (See 5 CFR § 1201.3(19)). Steve's appeal cited 39 U.S.C. 1005(a)(2) which states:

The provisions of title 5 relating to a preference eligible (as that term is defined under section 2108(3) of such title) shall apply to an applicant for appointment and any officer or employee of the Postal Service in the same manner and under the same conditions as if the applicant, officer, or employee were subject to the competitive service under such title. ...”

Mr. Cytreszewski appealed the initial decision to the Board in Washington, D.C. and was denied and filed for Judicial review with the United States Court of Appeals for the Federal Circuit and lost. When the Attorney representing Mr. Cytreszewski and I were leaving the Court house the Attorney representing the Board walked over and said, “The law was on your side but the case law was against you.” The case cited by the Board and relied upon by the Court had no bearing whatsoever on Mr. Cytreszewski's case. As an addendum to our testimony we have attached an overview of veterans preference statutes please review 5 U.S.C. 3320.

REDUCTIONS IN FORCE

The biggest issue being faced by preference eligibles in Federal service is the downsizing of the Federal government. Whether an agency calls it downsizing or restructuring a Reduction-In- Force by any other name is still a Reduction-In-Force.

The best known example of the any other name syndrome occurred when the United States Postal Service conducted a “restructuring” and informed preference eligibles that they would not receive any “entitlements” and would be treated as any other employee. In a declaration made by *Joseph J. Mahon, Jr.*, Vice President, Labor Relations offered by the United States Postal Service (USPS) as evidence in MSPB appeals it states:

(4) To fulfill the Postmaster's pledge to change the way the Postal Service does business and to reduce the layers and size of middle management, the Postal Service sought advice

15 See Lackhouse v. Merit Systems Protection Board, 734 F. 2d 1471 (1984) and 773 F. 2d 313 (1985).

of the Office of Personnel Management and consulted with Postal Unions, management organizations, and customers.

(5) The consensus which emerged from these contacts was that a reduction in force (RIF) should be used only as a last resort and that alternatives should be pursued. A RIF was seen as too disruptive to operations and the Postal Service's ability to provide consistent, reliable mail service to the American public; to complicated, expensive, and time-consuming, **too likely to have an adverse effect on minorities and women in the workforce**; [emphasis added] and too likely to produce harsh, arbitrary results in individual cases.

(6)... whereas running a RIF would have resulted in laying off more recently hired workers, whose families would be devastated."

These sentiments sound quite reasonable and caring, however, the USPS is in the expected service and the only individuals who could appeal the agency actions would have been preference eligibles as a result of 39 USC § 1005(a)(2). Further, 42 U.S.C. 2000e-11 provides:

"Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preferences for veterans."

It would appear then that at least part of the USPS's decision was based upon an improper motive and in fact granted an unwarranted preference to minorities, women and the recently hired at the expense of preference eligibles.

Following the same line of thought in a 1990 GAO report¹⁶ found that:

"On May 11, 1990, the Assistant Secretary of Defense, Force Management and Personnel, required the military services to perform an impact analysis before a RIF to assess and guard against any disproportionate impact on EEO groups.

As far as we know this policy started in 1990 is still in effect today and is effecting the way that RIF's are suppose to be conducted. A case in point is the Department of the Army's, Watervliet Arsenal in Watervliet, NY. This facility was required to conduct an EEO impact analysis prior to submitting it's RIF plan for it's February 2, 1995, RIF.

It was also interesting to find out that as on September 19, 1993, the Arsenal was given authority to proceed with temporary promotions, reassignment actions, changes to lower grades and details. It now appears that many of these personnel action helped to insulate chosen individuals from the effects of the RIF.

¹⁶ Defense Force Management The 1990 Reduction-In-Force at the Mare Island Naval Shipyard, GAO/NSIAD-91-306, August 1991, pg. 4.

This process seems to be repeating itself at the Defense Logistics Agency in Garden City, Long Island, NY. We were contacted by a preference eligible assigned to this facility. He brought to our attention that it appeared that many nonpreference eligible employees had been promoted, reassigned and or put into positions that would not be effected in the upcoming RIF.

As agencies begin to fashion how they will conduct RIF's, and use computer programs (RIF Whiz and others) to manipulate and target different individuals and/or groups it will become increasingly important that the Legislative Branch makes clear their intent. It is generally a bad idea to micro manage. However, for the last seventeen (plus) years the Federal bureaucracies have amply demonstrated in that if they are given any room to manipulate a veterans preference statute, they will.

CONCLUSION

For nine years I worked for New York State Department of Labor as a Labor Service Representative (DVOP).¹⁷ During my tenure I received hundreds of complaints from preference eligibles who had been denied their rights as applicants to or employees of Federal agencies. The problem's stem from bureaucracies that often believe they are answerable to no one.

Bureaucracies have frustrated members of both political parties in both the Legislative and Executive Branches. The problems facing Veterans and Veterans' Preference statutes have been going on since the 1970's and can resolved with the assistance of both parties and the Legislative and Executive Branch.

I have attached a **Ten-Point Program** on *Veterans' Preference* that could be accomplished **this** year if the Executive branch and the Congress work together in good faith to restore to veterans the right to preference in Federal employ that had already been granted some fifty years ago. I urge all concerned to get about accomplishing the mission.

VEA, and I personally, believe that this is a question that is central not only to veterans who may wish to seek or retain Federal employment, but rather it is a question of whether the elected representatives of the people can force the "permanent" bureaucracies to obey the laws. I would suggest that this is a question that strikes at heart of the question of our future as a democracy.

¹⁷ See 38 U.S.C. § 4103A

Mr. Chairman, that concludes my remarks. I would be pleased to answer any questions you or your distinguished colleagues may have. Again, I thank you for the opportunity to appear here today.

Veterans Economic Action Coalition

Addendum 1

Possible solutions for saving veterans' preference

1. Keep the "Rule of Three."
2. Eliminate **ALL** "Special Hiring Authorities." These are now used primarily to circumvent veterans and disabled veterans on the lists.
3. Require each Federal agency or entity, and all Federal contractors, to list **ALL** job openings with the automated job bank of the state employment security agencies in such a way that the job will come up as a "match" when the DVOP, LVER, or other staff person does the automated "veterans' file search" that matches veterans with jobs for which they meet the minimum qualifications.
4. Require Federal agencies to allow any veterans' preference eligible to compete for any job for which he/she meets the minimum qualifications other than already being "inside" the agency. (This is the only way for veterans to begin to "catch up," given the discriminatory pattern of the last twenty years.)
5. Individual veterans need to have adequate notice of and access to a clear, independent, and "user friendly" redress mechanisms that can be utilized when a veteran believes that he or she has been denied a right under the "veteran preference statutes" in either the competitive or excepted service.
6. Federal managers, officials and employees should be subject to being fired, demoted or otherwise disciplined if they fail to adhere to and enforce veterans' preference or if they allow policies to develop that establish a pattern or practice of discrimination against veterans, especially disabled veterans, in the hiring, promotion, retention or appeals of such rights.

7. Require that all Federal Departments, Agencies or other entities in either the competitive service or the excepted service must be certified each year as being in compliance with all “*veterans preference*” statutes. The reporting mechanism already established under 38 U.S.C. 4214 would be used and expanded to include the total number of veterans hired, the hiring authority used by the agency to hire the veteran, and the grade and positions that the veterans were hired for. Failure to comply with these requirements would result in the impoundment of funding for the agency until they complied with these requirements, or began making satisfactory progress on a suitable corrective action plan, and until the official(s) responsible for the failure to comply are relieved or otherwise appropriately disciplined.

8. Veterans who believe that their rights under the “veterans preference” statutes are violated would have the right to sue the agency and the responsible official(s). If it is determined that the responsible official(s) acted, or allowed others to act, with disregard for the “veterans preference” statutes, the responsible official(s) would lose the privilege of “sovereign immunity” and could be sued as an individual for damages.

9. Require that the Merit System Protection Board (MSPB) begin to act immediately in such a way as to enforce all veterans’ preference laws, and to publish all decisions that have bearing on veterans’ preference in such a way that veterans and veterans’ advocates can have access to such decisions, and all internal papers and memoranda, without cost.

10. Take legislative action that would prevent Federal agencies and entities from establishing narrow “bands” for purposes of a Reduction-In-Force(RIF) that would require each Federal entity to take such steps as would reduce the impact of any RIF on veterans’ preference eligibles (particularly disabled veterans), and that would forbid any Federal entity to take any action in the two years preceding a RIF or during a RIF that takes any other demographic factor into account.

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AN OVERVIEW OF VETERANS' PREFERENCE

ADDENDUM (II) TO THE TESTIMONY
OF THE
VETERANS ECONOMIC ACTION COALITION
BEFORE
THE HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE

TUESDAY
APRIL 30, 1996

(Mr. *Zohar*)

INTRODUCTION

The information provided in this file should not be construed as legal advice. It's only purpose is to provide an overview of the statutes that stem from the Veterans Preference Act of 1944 as amended. The veterans' community would be far better served if the term "Veterans' Preference" were dropped from the collective vocabulary and replaced with the term veterans' preference statutes.

It has been our experience that when veterans preference is discussed it is usually referred to in very general and or nebulous terms. It has also been our experience that very few veterans (a.k.a. preference eligibles) actually know how it works, who eligible or what if anything can be done if they are denied a benefit under the veterans preference statutes.

This should come as no surprise considering the Byzantine process that defines it. The process starts with a Public Law (PL) which is then codified into the United States Code (U.S.C.), interpreted by the Office of Personnel Management (OPM) into regulations and further interpreted in the Federal Personnel Manual (FPM) and finally(?) individual agencies interpreted the FPM into their own procedural manuals. When a question arises concerning the interpretation of these laws, rules and regulations the Merit Systems Protection Board (MSPB) an Administrative Law agency or OPM makes a determination. If that determination is still in question the issue is appealed to the United States Court of Appeals for the Federal Circuit and then perhaps to the United States Supreme Court. This process is continually repeating itself as the three branches of government attempt to define, manipulate or interpret "Veterans' Preference Statutes."

As Veterans Preference becomes more of an issue with both Federal legislative and administrative bodies it is imperative that those who represent the interests of the veterans community know exactly what veterans preference is and how it's suppose to work. To attempt to debate the issue without understanding the issue is like being invited to a gunfight and bringing a knife; your going to lose every time.

VETERANS PREFERENCE A STATUTORY OVERVIEW

According to the January 4, 1993, edition of the U.S. Code on CD-ROM the Veterans Preference Act of 1944 as amended can be found in the following sections of law:

**5 USC §§ 1302, 2108, 3305, 3306, 3308-3320, 3351, 3363, 3364, 3501-3504, 7512
and 7701.**

The purpose here is not to enter into a discussion on how administrative bodies and the courts have interpreted the law but to paraphrase where possible each section of law. Remember the law is continually changing and that these laws were in force on January 4, 1993, and may have changed since that date.

RULES

5 USC § 1302 (a) gives OPM the responsibility and authority subject to the rules prescribed by the President under this title [title 5 U.S.C.] for the administration of the competitive service. Further, OPM shall prescribe regulations to control, supervise, and preserve the records of, examinations for the competitive service; (b) gives OPM the authority and responsibility to prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference **shall** be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia; © OPM shall also prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference **shall** be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment and retention, in the exempted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia; and (d) may prescribe reasonable procedures and regulations for the administration of its functions under chapter 15 (Political Activities of Certain State and Local Employees) of this title.

Boiled down to it's salient points 5 USC § 1302 provides OPM with the authority and responsibility to prescribe regulations for control, supervise, and preserve the records of, examinations for the competitive service; shall prescribe and enforce regulations that implement the Congressional policy that veterans preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment and retention, in the Competitive Service; and shall prescribe regulations for the administration of the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention in the Exempted Service in Executive agencies.

Therefore, OPM has the authority and responsibility to prescribe regulations, in both the Competitive and the Excepted Service to carry out the Congressional policy and executive orders. Further, in the Competitive service OPM has the responsibility to enforce Congressional policy and Executive orders issued in furtherance thereof found in 5 USC §§ 2108, 3305, 3306, 3308-3320, 3351, 3363, 3364 and 3501-3504.

VETERAN; DISABLED VETERAN; PREFERENCE ELIGIBLE

5 USC § 2108 is relatively straight forward. It codifies who is a preference eligible and entitled by virtue of either their military service or the service of a spouse, son or daughter to the bounties of the Veterans Preference Act of 1944 as amended and codified in title 5 USC. Generally speaking preference eligibility is established by service on active duty in the armed forces during a war, campaign or expedition for which a campaign badge has been issued; or service between 1952 and July 1, 1955; or service on active duty for more than 180 consecutive days any part of which occurred after January 31, 1955, and before October 15, 1976; and by service on active duty in the armed forces, and separation therefrom under honorable conditions, and has established the present existence of a services connected disability or is receiving compensation, disability retirement benefits, or pension under a public statute administered by the Department of Veterans Affairs.

COMPETITIVE SERVICE; EXAMINATIONS, WHEN HELD

5 USC § 3305 in effect requires OPM to hold examinations for the competitive service at least twice a year in each State, territory or possession where there are individuals to be examined. OPM shall also hold an examination for a position to which an appointment has been made within the preceding 3 years on the application of an individual who qualifies as a preference eligible under 5 USC § 2108 (3)(c)-(g). The examination shall be held during the quarter following the application.

5 USC § 3306 was repealed by Public Law 95-228§ 1, February 10, 1978, 92 Stat. 25.

**COMPETITIVE SERVICE; EXAMINATIONS;
EDUCATIONAL REQUIREMENTS PROHIBITED; EXCEPTIONS**

5 USC § 3308 prohibits OPM or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have the proscribed minimum education. The Office shall make the reasons for it's decision under this section a part of it's public records.

PREFERENCE ELIGIBLES; EXAMINATIONS; ADDITIONAL POINTS

5 USC § 3309 requires a preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to 10 additional points

above the earned rating if they are a preference eligible as defined by 5 USC § 2108(3)(c)-(g) and 5 additional points if they are a preference eligible as defined by 5 USC § 2108(3)(A).

**PREFERENCE ELIGIBLES;
GUARDS, ELEVATOR OPERATORS, MESSENGERS, AND CUSTODIANS**

5 USC § 3310 provides that in examination for positions for guards, elevator operators, messengers, and custodians (as these terms are defined by FPM subchapter 4 sec 4-5) competition is restricted to preference eligibles as long as preference eligibles are available.

PREFERENCE ELIGIBLES, EXAMINATIONS; CREDITING EXPERIENCE

5 USC § 3311 provides that in examination for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit for service in the Armed Forces when his employment in a similar vocation to that which examined was interrupted by the service; and for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service and organizational activities regardless of whether he received pay therefor.

PREFERENCE ELIGIBLES; PHYSICAL QUALIFICATION; WAIVER

5 USC § 3312 requires OPM or other examining agency when determining qualifications for appointment in or reinstatement in the competitive service shall waive requirements to age, height, and weight unless the requirements are essential to the performance of the duties of the position; and if an examining agency determines that, on the basis of evidence before it that a preference eligible under 5 USC § 2108(3)(c) who has a service-connected disability of 30 or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible taking into account any additional information provided in any such response. Upon completion of the review by the Office it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

COMPETITIVE SERVICE; REGISTER OF ELIGIBLES

5 USC § 3313 provides that the names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles for scientific and professional positions GS-9 or higher, in the order of their ratings, including points added under section 5 USC § 3309; for all other positions disabled veterans who have a compensable service connected disability of 10 percent or more, are listed in order of their ratings, including points added under 5 USC § 3309; and all remaining applicants in order of their rating including points added under 5 USC § 3309. The names of preference eligibles shall be entered ahead of others having the same rating.

REGISTERS; PREFERENCE ELIGIBLES WHO RESIGN

5 USC § 3314 provides that a preference eligible who resigns at the request of OPM is entitled upon request to OPM to have their name placed again on all registers for which they may be qualified for in the order proscribed by 5 USC § 3313.

REGISTERS; PREFERENCE ELIGIBLES FURLOUGHED OR SEPARATED

5 U.S.C. § 3315 provides that a preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have their name placed on appropriate registers and employment lists for every position they have established qualifications for in the order named by 5 U.S.C. § 3313; and OPM may declare a preference eligible who is separated or furloughed without pay under 5 U.S.C. § 7512 to be entitled to the benefits to subsection (a).

PREFERENCE ELIGIBLES; REINSTATEMENT

5 U.S.C. § 3316 provides that on the request of an appointing authority, a preference eligible who has resigned, dismissed or furloughed may be certified for and appointed to a position for which they are eligible in the competitive service, and Executive agency or the government of the District of Columbia.

COMPETITIVE SERVICE; CERTIFICATION FROM REGISTERS

5 U.S.C. § 3317 provides OPM shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider three names for appointment to each vacancy in the Competitive service; when an appointing authority, for reasons considered sufficient by OPM, has three times considered and passed over a preference eligible who was

certified from a register, certification of the preference eligible from appointment may be discontinued. However, the preference eligible is entitled to advance notice.

COMPETITIVE SERVICE; SELECTION FROM CERTIFICATES

Under 5 U.S.C. § 3318 the nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under 5 U.S.C. § 3317(a) unless objection to one or more of individuals certified is made and sustained by OPM for proper and adequate reason under the proscribed regulations; If an appointing authority proposes to pass over a preference eligible in order to select an individual who is not a preference eligible, such authority shall file written reasons with OPM. OPM shall make the reason part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority to support the pass over of the preference eligible. OPM shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority and any response from the preference eligible. When OPM completes its review it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings; In the case of a preference eligible described in 5 U.S.C. § 2108(3) who has a disability of 30 percent or more, the appointing authority shall at the same time it notifies OPM it shall notify the preference eligible of the proposed passover, the reasons thereof, and inform them of their right to respond to OPM within 15 days of the date of such notification. OPM shall require a demonstration by the appointing authority that the passover notification was timely sent to the last known address of the preference eligible prior to completing its review; a preference eligible who is not 30 percent or more disabled, or their representative, shall be entitled on request to a copy of the reasons submitted by the appointing authority in support of the proposed passover and the findings of OPM; In the case of a preference eligible with a thirty percent or more disability the function of OPM may not be delegated; and when three or more names of preference eligibles are on a reemployment list appropriate for the position a nominating or appointing authority may appoint from a register of eligibles established after examination only a qualified preference eligible under 5 U.S.C. § 2108(c)-(g).

5 U.S.C. § 3319 has been repealed by Pub. L 95-454, Title III, § 307(h)(1), Oct. 13, 1978, 92 Stat. 1149.

EXCEPTED SERVICE; GOVERNMENT OF THE DISTRICT OF COLUMBIA; SELECTION

5 U.S.C. § 33201 requires that nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from qualified applicants in the same manner and under the same conditions required for the competitive service by 5 U.S.C. §§ 3308-3320. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

PREFERENCE ELIGIBLES; TRANSFER; PHYSICAL QUALIFICATION; WAIVER

5 U.S.C. § 3351 provides that in determining the qualifications of a preference eligible for transfer to another position in the competitive service, an executive agency, or the government of the District of Columbia, OPM or other examining agency shall waive the requirements to age, height and weight unless the requirements are a bona fide occupational qualification; and shall waive physical requirements if, in the opinion of OPM or other examining authority, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position. This section shall not apply to an appointment required by Congress to be confirmed by, or with the advice and consent of the Senate.

PREFERENCE ELIGIBLES; PROMOTION; PHYSICAL QUALIFICATION; WAIVER

The provisions of 5 U.S.C. § 3363 mirror the provisions of 5 U.S.C. § 3351 except that it addresses the promotion of preference eligibles while 5 U.S.C. § 3351 addresses the transfer of preference eligibles.

RETENTION PREFERENCES, RESTORATION, AND REEMPLOYMENT

DEFINITIONS; APPLICATION

5 U.S.C. § 3501 provides the definitions for the application of this subchapter, except § 3504. (a)(1) Active Service means service on active duty; (2) "a retired member of uniformed service" means a member or former member of a uniformed service who is entitled under statute, to retired, retirement, or retainer pay on account of their service as such a member; (3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if (A) his retirement is based upon disability (I) resulting from injury or disease received in the line of duty as a direct result of armed conflict; or (ii) caused by an instrumentality of war and incurred in the line of duty during a period of war (WWII 12/7/41-12/31/1946, Korean Conflict 6/27/1950-1/31/1955, Vietnam Era 8/5/64-5/7/75,

1 See 39 U.S.C. § 1005

Persian Gulf 8/2/1990 to a time yet to be determined); (B) Service does not include twenty or more years of full time active service, regardless of when performed but not including period of active duty for training; or ^o on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter continued to be employed without a break in service for more than 30 days. (b) Except as otherwise provided by this subsection and section 3502 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by or with the advice and consent of, the Senate or to be a member of the Senior Executive Service (SES) or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

ORDER OF RETENTION

5 U.S.C. § 3502(a) mandates that OPM prescribe regulations for the releasing of competing employees in a RIF giving due effect to (1) tenure of employment; (2) military preference, subject to section 3501; (3) length of service; and (4) efficiency of service. In computing length of service, a competing employee (A) who is not a retired member of uniform service is entitled to credit for the total length of time in active service in the armed forces; (B) who is a retired member of a uniformed service is entitled to credit for (I) the time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or (ii) the total length of time in active service in the armed forces if included under section 3501(a)(3)(A), (B), or ^o of this title; and ^o is entitled to credit for (I) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agriculture Adjustment Act; and (ii) service rendered as an employee described in section 2105^o if such employee moves or has moved, on or after January 1, 1987, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or Coast guard, respectively, that is not described in section 2105(c).

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service connected disability of 30% or more and who's performance has not been rated unacceptable under a performance appraisal system under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

^o An Employee entitled to retention preference and whose performance has not been rated unacceptable under a performance rating implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(d)(1) Except as provided under subsection (e), an employee may not be released, due to reduction in force unless -

(A) Such employee and such employee's exclusive representative for collective bargaining purposes (if any) are given written notice, in conformance with the

requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the RIF would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include -

(A) the personnel action to be taken with respect to the employees involved;

(B) the effective date of the action;

□ a description of the procedures applicable in identifying employees for release;

(D) the employees ranking relative to other competing employees, and how the ranking was determined; and

(E) a description of any appeal or other rights which may be available

(3) Notice under paragraph (1)(B) -

(A) shall be given to -

(I) the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to -

(I) the number of employees to be separated from service due to RIF (broken down by geographic area or on such basis as may be required under paragraph (4);

(ii) when these separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

(4) The Office (OPM) shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to the Job Training Partnership Act.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advanced notice required under subsection (d)(1)(A) and (B), with respect to a particular RIF, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the RIF to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

TRANSFER OF FUNCTION

5 U.S.C. § 3503 provides for: (a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the

receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

**PREFERENCE ELIGIBLES; RETENTION;
PHYSICAL QUALIFICATIONS; WAIVER**

5 U.S.C. § 3504 provides: (a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the OPM or other examining agency shall waive -

(1) requirements to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of OPM or other examining agency, after considering the recommendations of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position .

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify OPM of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for determination and of the right to respond, within 15 days of the date of the notification, to OPM. OPM shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When OPM has completed its review of proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of OPM. The function of OPM under this subsection may not be delegated.

ACTIONS COVERED

5 U.S.C. 7512 Provides: This subchapter applies to -

- (1) a removal;
 - (2) a suspension for more than 14 days;
 - (3) a reduction in grade;
 - (4) a reduction in pay; and
 - (5) a furlough of 30 days or less;
- but does not apply to -

- (A) a suspension or removal under section 7532 of this title,
- (B) a RIF action under section 3502 of this title,
- © the reduction in grade of a supervisor or manager who has completed not completed the probationary period under section 3321 (a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager.
- (D) a reduction in grade or removal under section 4303 of this title, or
- (E) an action initiated under section 1215 or 7521 of this title.

APPELLATE PROCEDURE

5 U.S.C. § 7701 provides: (a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board (MSPB) from any action which is appealable to the Board under any law rule or regulation. An appellant shall have the right -

- (1) to a hearing for which a transcript will be kept; and
- (2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b)(1) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under section (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless-

- (I) The deciding official determines that the granting of such relief is not appropriate; or
- (ii) (1) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and
- (II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

(B) If an agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under section (e).

© Nothing in the provisions of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision is final.

(3) With respect to an appeal from an adverse action covered by subchapter V of chapter 75, authority to mitigate the personnel action involved shall be available, subject to the same standards as would apply in an appeal involving an action covered by subchapter II of chapter 75 with respect to which mitigation authority under this section exists.

(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision -

(A) in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a, is supported by substantial evidence; or

(B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment -

(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

© shows that the decision was not in accordance with law.

(d)(1) In any case in which-

(A) the interpretation or application of any civil service rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

(B) the Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decision making of the Merit Systems Protection Board.

(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule or regulation under the jurisdiction of the Office is at issue in any proceeding under this section.

(e)(1) Except as provided in section 7702 of this title, any decisions under subsection (b) of this section shall be final unless-

(A) a party to the appeal or the director petitions the Board for review within 30 days after the receipt of the decision; or

(B) the Board reopens and reconsiders a case on its own motion. The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administrative law judge is required to be acted upon by the Board.

(2) The Director may petition the Board for review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office.

(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may -

(1) consolidate appeals filed by two or more appellants, or

(2) join two or more appeals filed by the same appellant and hear and decide them concurrently, if the deciding official or officials hearing the case are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employees of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (e) of this section.

(I)(1) Upon submission of any appeal to the Board under this section, the board, through reference to such categories of cases, or other means, as it determines appropriate, shall establish and announce publicly the date by which it intends to complete action on the matter. Such date shall assure expeditious consideration of the appeal, consistent with the interests of fairness and other priorities of the Board. If the Board fails to complete action on the appeal by the announced date, and the expected delay will exceed 30 days, the Board shall publicly announce the new date by which it intends to complete action on the appeal.

(2) Not later than March 1 of each year, the Board shall submit to the Congress a report describing the number of appeals submitted to it during the preceding fiscal year, and the number of appeals on which it completed action during that year, and the number of instances during that year in which it failed to conclude a proceeding by the date originally announced, together with an explanation of the reasons therefor.

(3) The Board shall by rule indicate any other category of significant Board action which the Board determines should be subject to the provisions of this subsection.

(4) It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceedings under this section to expedite to the extent practicable that proceeding.

(j) In determining the appealability under this section of any case involving a removal from the service (other than the removal of a reemployed annuitant), neither an individual's status under any retirement system established by or under Federal statute nor any election made by such an individual under any such system may be taken into account.

(k) The Board may prescribe regulations to carry out the purpose of this section.

Statement by the Foreign Service Veterans Association April 30, 1995

Section 181 of PL 103-236 (the Foreign Relations Authorization Act of 1994-1995) requires that the Secretary of State issue regulations for reductions in force (RIF) in the Foreign Service. This law amends section 611 of the Foreign Service Act of 1980 and specifies that the due effect should be given to "military preference [i.e. veterans preference], subject to section (a) (3) of title 5" during the conduct of Foreign Service RIFs.

The legislative history shows that there was little discussion and no debate on this provision, which was offered as an amendment by Senator Helms on January 25, 1994. During hearings on the Act, Senator Helms said "...this amendment will give the Secretary of State the same authority over his employees that the Secretaries of every other agency or department has over his or her employees.....members of the Foreign Service should not be treated as a protected class of privileged individuals. They should be treated no differently than members of the Civil Service on this issue." The amendment was adopted as submitted by Senator Helms.

5 U.S.C. 3501 and 3502 (derived from the veterans preference act of 1944, 5 U.S.C. 861) concerns retention preference during reductions in force in the executive branch. Section 3501 (b): "except as otherwise provided by this subchapter and section 3504 of this title, this subchapter applies to each employee in or under an executive agency".

Section 3502 (a) (2) specifies that in a reduction in force due effect will be given to "military preference, subject to section 3501 (a) (3)".

It is of interest to note that the Foreign Service Authorization Act and 5 U.S.C. 3501(a) (2) use identical language regarding military preference, i.e.. "Military preference, subject to section 3501 (a) (3)". (Section 3501 (a) (3) concerns the definition of preference eligible employees who are retired military.)

The code of federal regulations (5 CFR 351.201 et seq.) provides the detailed rules and procedures to be followed regarding the application of veterans preference during RIFs. 351.202 specifies that these rules apply "to each civilian employee in the executive branch".

However, 351.201 provides that "an agency authorized to administer foreign national employees under section 408 of the Foreign Service Act of 1980 may include special plans for reductions in force in its foreign national employee programs "to take into account local labor laws". The implication is clear: the rules apply to foreign service (American) employees but not to foreign service national employees, who are subject to the laws of their country.

The Foreign Service agencies (State, USIA and AID) have written RIF regulations as required by the Foreign Relations Act of 1994-1995. (To date, only USIA's have been formally issued and approved by OPM). These regulations provide some limited preference to veterans. However, these are not uniform between the agencies and do not comply with the requirement of law in 5 U.S.C. 3502 and 5 CFR part 351.

The Foreign Service agencies are now in the process of conducting Foreign Service RIFs (USIA expects to RIF about 25 foreign service employees by May 1996; AID has announced a RIF of up to 200 FS employees in 1996). It is clear that, under the agencies' RIF regulations, which provide only a minimal "token" preference for veterans, some veterans and disabled veterans will be RIFFED this year.

The question at hand is whether the Congress and the Law clearly intend that veterans preference rules under 5 U.S.C. 3501-3502 apply to the Foreign Service in the same manner as the Civil Service. We think the law is clear on this matter. Certainly, Senator's Helms statement that Foreign Service employees "should be treated no differently than members of the Civil Service on this issue" is clear.

The Act (PL123-206) did not specify that the Foreign service RIFS be conducted in accordance with 5 U.S.C. 3501 and 3502. It only specified that the same exception to the veterans preference used in the Civil Service (i.e. concerning retired military under 3501a3) also be used in Foreign Service RIFs. It is clearly implied that the other provisions of 3501 and 3502 related to veterans preference for the Civil Service would also apply equally to the Foreign Service.

Congress did not specify this because it did not need to--5 U.S.C. 3501 (b) clearly states that these rules apply to all employees of the executive branch.

There is case law that supports this: Daub vs US ("this section applies to all civilian employees in the executive branch") and Casman v US , which confirmed that a veteran "operating under the foreign service ...was within the provision of this section" (Title 5 annotated, page 494).

In the absence of action by the Congress, the Foreign Service agencies will RIF veterans in the months to come under regulations that do not afford the same preference as Civil Service veterans receive. The Foreign Service agencies have wrongly interpreted the intent of the Foreign Relations Act to mean that they could issue RIF regulations which disregard the requirements for veterans preference as required by 5 U.S.C. 3501 and 3502.

We ask that the Congress take action to clarify its intent so that there will be no misunderstanding by the Foreign Service agencies.



DEPARTMENT OF AGRICULTURE
OFFICE OF ASSISTANT SECRETARY FOR ADMINISTRATION
WASHINGTON, D. C. 20250-0100

APR 29 1996

Mr. Michael Kirby
Professional Staff
House Committee on Government
Reform and Oversight
B-350A Rayburn Building
Washington, D. C. 20515

Dear Mr. Kirby:

The enclosure responds to your request for information concerning the provisions of how Veterans' preference is used in the Department of Agriculture (USDA) Demonstration Project.

Sincerely,

A handwritten signature in black ink that reads "Wardell C. Townsend, Jr." with a stylized flourish at the end.

Wardell C. Townsend, Jr.
Assistant Secretary
for Administration

Enclosure

The Administration's proposal for using a category rating system is based on the successful use of this process in a demonstration project at the Department of Agriculture (USDA). The USDA Demonstration Project has been tested by both the Forest Service (FS) and the Agricultural Research Service (ARS). Veterans groups have been continually briefed on the project as it affects veterans from the very beginning of the USDA project. Specific steps were included in the design of the project to assess the impact that the procedures would have on the hiring of veterans.

The results of the project to date shows actual improvements in the hiring of veterans. For example, Pennsylvania State University evaluated the USDA Demonstration Project from July 1, 1990 through November 1994. They compared sites using the governmentwide evaluation process with those following the demonstration practice of establishing quality groupings. What they found was that more persons with veterans preference were hired at the demonstration sites (i.e., 18% for demonstration sites versus 15% for the comparison sites). For ARS, this also represented a significant increase in the selection of veterans during a baseline period prior to the implementation of the Demonstration Project.

Examining on the basis of individual scores is inherently no less subjective and vague than examining on a categorical basis. Both approaches involve using relative degrees of merit. Some would argue that the individual scores produced by the current process suggests a degree of precision the examining tools do not actually possess. As an example, is a person with a score of 93 out of 100 really superior to one with a score of 92? USDA's Demonstration Project examining process is a proven method for evaluating candidates for entry into the Federal service without adverse harm to veterans preference.

STATEMENT BY
WALTER T. CHARLTON
ATTORNEY FOR A CLASS OF APPROXIMATELY 300
DISABLED VETERANS WHO WORKED OR NOW WORK
AT THE UNITED STATES
GENERAL ACCOUNTING OFFICE (GAO)

BEFORE THE
CIVIL SERVICE SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES
104TH CONGRESS

NOT FOR PUBLICATION UNTIL RELEASED BY THE HOUSE
OF REPRESENTATIVES
SUBCOMMITTEE ON CIVIL SERVICE **APRIL 30, 1996**

Mr. Chairman, members of the Committee, thank you for the opportunity to discuss the deplorable situation in the civil service pertaining to treatment of disabled veterans (DAVs). My own knowledge of this subject has been developed over a nearly 10 year time frame during which I have represented a class of disabled veterans at the United States General Accounting Office, the legislative branch's "Watchdog Agency". Recent review of a GAO report dated February 1996 on other agencies non-performance as to the treatment of DAVs gives one pause, for GAO's own sorry record was not included in that review. Asking GAO to do this work is like asking the fox to count the chickens.

The facts outlined here demonstrate, at the very least, a government wide callus disregard of the rights of these patriots who have earned a special status of gratitude for service to our country. The United States Government and in particular, the Congress has consistently recognized our veterans contributions by granting them preferences since the beginning of this Republic. Evidence at hand demonstrates that government agencies are ignoring the will of congress as to veterans preferences.

Evidence indicates that veterans and disabled veterans, notwithstanding their preference rights and abilities and accomplishments have been treated as charity cases and second class citizens to be avoided at all costs in hiring and promotion decisions.

The representations of fact made in this statement are not based upon opinions of the author, but rather represent statements based upon a solid foundation of imperial statistical and other evidence gathered in litigation, from OPM's, GAO's and other well published reports, personnel statistics and sworn testimony.

The statistical base of the statements made herein was gathered in two on-going 10 year old lawsuits against the GAO. These lawsuits serve but an example of what has been happening for the last 15 years throughout the government.

The information gathered demonstrates that:

- * The number of DAV's has dropped at GAO from 289 to 52 over the period (1980-1995). GAO has gerrymandered hiring preference rules. Standard improper practices include intentional failure to hire or promote a person who is a known disabled veteran, regardless of whether or not that veteran had superior qualifications for that job.
- * During the statistical period studied, not one DAV was ever promoted to the Senior Executive Service ranks.
- * DAV promotions to the higher grades (GS 13-15) were all but non-existent lower than that for non-veteran minorities and women and virtually non-existent for GS 15 (See table below).

- * DAV advancement rates for the years 1985-1992 were lower than GAO as a whole, when, as we all know, DAVs should have been second to none in terms of promotion opportunities.
- * Evidence of record was stipulated as correct by GAO and is contained in GAO's Exhibit 20.
- * Increases and decreases of the number of employees by group for the 12 year period shows the trends in advancing other groups at the expense of DAVs in both hiring and promotion:

<u>EMPLOYEE GROUPS</u>	<u>NO. OF EMPLOYEES 1980</u>	<u>EMPLOYEES 1992</u>	<u>PERCENTAGE OF CHANGE</u>
Women GS 7-12	827	1,279	54.7
Blacks 7-12	388	548	41.2
DAVs 7-12	95	51	(46.3)
Women GS 13-15	148	688	351.0
Blacks 13-15	51	262	413.0
DAVs 13-15	61	52	(14.8)
Women SES	2	22	1,000.0
Blacks SES	2	8	300.0
DAVs SES ^{1/}	1	0	(100.0)

- * Overall, women and minorities earnings went up, women particularly in higher grades, DAVs were "left off the table".
- * Disabled Veterans were not promoted, women and minorities were "stuffed" into higher pay categories.

^{1/} This number represent the inexorable zero as to SES promotions. There were none for the entire 12 year period for over 185 disabled veterans.

The result observed for DAVs, in terms of promotions, was that they ranked last, not first as the Congress intended. Non-veterans, in particular women received salary advancements up to 10 times higher than DAVs as the result of intentional preferences in promotions resulting from the on-going "affirmative action plan" for the women.

Improper Promotions practices Included:

- * **Withdrawing a promotion or hiring announcement once it became known that a DAV was among the "best qualified" candidates;**
- * **Always and without exception, picking a non-veteran minority or woman in preference to a veteran, and most particularly a disabled veteran from the "best qualified list". This happened because DAVs were not the subject of any affirmative action plan, also a violation of congressional intent and GAO regulations. It also should be noted that the DAV group at GAO is composed of about 50% minorities, making even more egregious the bias against DAVs.**
- * **Management cover-up and obstruction of testimony in the on-going DAV litigation which included false testimony under oath that existing damning documents did not exist.**
- * **GAO's consistent position was to the effect that under GAO regulations DAVs were not entitled to special treatment.**
- * **GAO also failed to follow its own regulations requiring statistical record-keeping of DAV comparative results and attempted to place this burden on its poor downtrodden DAVs.**
- * **Management of GAO stated under oath, the false position that GAO's shabby treatment of DAVs was mere oversight these last 15 years.**
- * **After years of expensive litigation it has now recently been discovered, that GAO was not candid with its own oversight board, the Personnel Appeals Board (The PAB).**

CONCLUSION:

All of the foregoing can be further substantiated or detailed as deemed necessary. It seems incomprehensible that Congress' own investigative, watchdog agency, can act as has been demonstrated by the foregoing facts. The wrongs outlined above should be immediately and retroactively corrected.

Should further information be deemed of value to the committee, the undersigned counsel for the disabled veterans class action at GAO will be more than pleased to cooperate with the committee.

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Respectfully submitted,



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A Not-For-Profit Veterans Service Organization Chartered by the United States Congress

STATEMENT OF
VIETNAM VETERANS OF AMERICA

Submitted by

William F. Crandell
Deputy Director,
Government Relations

To the
House Committee on
Government Reform and Oversight

Subcommittee on
Civil Service

on
Veterans Preference Reform

April 30, 1995

Introduction

Mr. Chairman and members of the Committee, Vietnam Veterans of America (VVA) appreciates the opportunity to present its views on veterans preference reform. That such hearings are needed is a sad and shocking testament to the limits on government's ability to do what it intends and promises. The welcoming parades for the Resian Gulf War veterans are over, the reenactments of the world's most terrifying war are completed, the memorials to those who fought in Korea and Vietnam have been dedicated. How is it that veterans preference in federal employment has come under attack?

A Guerrilla War

What has long been a guerrilla war is being conducted openly today by pundits and federal managers, opposed to what they term "quotas for good old boys." Critics now view veterans preference as a system of favoritism that forces the government to hire white men over more qualified women and minority job applicants. The marvel is the idea that veterans preference denies anybody jobs, when it works infrequently at best due to systematic collusion to ignore federal law in federal agencies.

Veterans preference – a system codified in 1944 in federal employment to help veterans make up for lost years and disabilities from wartime service – applies far more often to low-ranking jobs, while many "responsible positions" are filled through other means. Managers who contend that veterans preference gets in the way of hiring women and minorities often have specific applicants they want to hire, rather than the most qualified candidate. That is against the law. And thinking of veterans as "men" is one of the blindest stereotypes left, in a time when women hold key positions throughout the military.

The idea of veterans preference is a reasonable one – to reward capable veterans for military service and to make up for career time sacrificed, and sometimes to make up for service-connected disabilities. The government gains employees with training, skills and character vouched for by an honorable discharge. Only those veterans who pass a civil service test or are rated as qualified receive a 5-point boost on test rankings (10 points if disabled) and some protection – often ignored – during reductions in force (RIFs). Actually, veterans preference won't help anybody get a job he or she can't do.

Part of the Merit System

Civil service rankings can be very competitive – that was the whole idea when the system was created. Five or ten points out of perhaps seven hundred can make a difference. But to argue that the veterans preference bonus forces federal managers to hire anybody other than the most qualified applicant requires a degree of faith in the precision of civil service tests that nobody in government shares. There is no way to test for interpersonal skills, management skills, basic decency or a sense of humor, all of which can be far better indicators of the right person for the job than a few points on a federal exam.

A more likely reason why veterans hold federal jobs out of proportion to their

numbers is that, movies and television notwithstanding, for every Vietnam veteran who became a police officer or a spy, hundreds found good safe jobs in government, industry and the professions – jobs now disappearing due to base closings, plant closings and downsizing of government and industry.

A recent study by the Veterans Economic Action Coalition, in cooperation with VEAC Legal Services Fund of New York Corporation, demonstrates with Government Accounting Office (GAO) data that nearly three-quarters of a million federal positions held by veterans in 1976 were lost by 1992. That 30 percent of federal jobs held by veterans in 1990 was 50 percent just 15 years earlier. Today veterans constitute a declining 14-15 percent of the overall work force, yet an increasing 21-26 percent of all workers dislocated by plant closings, layoffs and general economic transformation. These are veterans who had good jobs and did them well.

Federal agencies admit cheating on veterans preference to hire non-veteran men and women. GAO found in 1992 that in 71 percent of the situations when a veteran was at the top of a Civil Service register, the register was returned unused and the law was circumvented. Other methods include tailoring job descriptions to fit the qualifications of particular individuals, or listing jobs as "intermittent" to discourage veteran applicants. Illegal? Sure, but there is no remedy. An unsuccessful federal applicant who suspects discrimination based on sex, race or religion can appeal to the Equal Employment Opportunity Commission (EEOC). A cheated veteran has no such recourse.

The most effective protections for veterans under veterans preference laws are primarily for job retention during reductions in force. Throughout the federal government, bureaus and offices are being "reorganized" to skirt RIF protections. The U.S. Postal Service (USPS) came to a major clash with President Clinton when it tried this on a massive scale, arguing that if the law were enforced for veterans, USPS would have to fire women and minorities. This same gimmick appears now in smaller parts of federal agencies that escape the budget-shorn efforts of OPM to make federal agencies obey federal laws.

Not a Partisan Issue

It has made little difference for veterans preference who has sat in the White House during the past two decades. Direction from presidents and their appointed officials has varied from outright hostility to malignant neglect. President Clinton's strong statements of support have been welcome, but with the exception of the Administration's reversal of USPS's bogus "reorganization" scheme two years ago, the message has still not reached the senior level civil servants who hold themselves immune to Title 5 U.S.C..

The least a president can do to have a serious impact on federal bureaucrats is to direct cabinet officials to include active veterans preference practices in performance evaluations for hiring managers. Nobody in the veterans community advocates the use of goals and timetables. But federal agencies routinely hold training to explain the rules and the point of affirmative action hiring for women and minorities, as well as on topics that

range from sexual harassment to cultural diversity in the workplace. It would harm no agency to learn the whys and hows of veterans preference.

The major difficulty in enforcing veterans preference is rooted in the current class of senior bureaucrats. A great many have disliked veterans preference throughout their careers in civil service because they did not serve in the military, and thus have had to contend for competitive positions against preference eligible veterans. They do not understand the value to either the nation or to individuals of serving in the armed forces, and see no reason to reward such service. Many are inclined to think veterans were simply too stupid to avoid wearing the uniform.

It is widely claimed among such senior bureaucrats that serious enforcement of veterans preference would harm efforts to hire, retain and promote women and minorities. This echoes a similar but fortunately much briefer period in which proponents of aggressive recruiting practices for either women or minorities warred with each other over which deserved higher priority. Just as there are minority women, there are minority veterans, women veterans and minority women veterans.

The Problem Is Enforcement

Veterans are in agreement that the heart of the problem with veterans preference is that it is not enforceable, and has not been since the creation of the Merit Systems Protection Board (MSPB) in 1978. MSPB never rules in favor of the veteran in a veterans preference case. If the case involves a job applicant, MSPB denies that it has jurisdiction, though nobody else does either. Case dismissed. Should an employee file a case, MSPB will rule that the consistency with which it has refused to enforce Title 5 U.S.C. amounts to a compelling body of case law, and will cite its own truculence as authority. Case dismissed.

There is nowhere else to go. OPM has delegated away its authority over federal personnel practices, and Congress has reinforced this by gutting OPM's budget, so that OPM could not enforce Title 5 U.S.C. if it chose to. The Court of Veterans Appeals has no jurisdiction, and has limited its legal horizons to compensation benefits awarded by the Department of Veterans Affairs.

Still, Congress by statute or the President by executive order could not only clarify MSPB's jurisdiction to make it responsible for veterans preference appeals, but lay requirements upon that body requiring MSPB to rule for veteran appellants when they have been wronged. MSPB's jurisdiction should be spelled out in bold letters to include every case in which a veteran appeals any personnel decision on grounds of a violation of veterans preference. This jurisdiction must apply to individual and class actions, and to the competitive and exempted services.

Certainly, changes will need to be made so that MSPB becomes a user-friendly and effective appeals system. Its rulings and internal papers need to be accessible to veterans

and veterans service organizations, and MSPB must be required to report periodically to Congress in a way that will allow Congress to evaluate its performance. Legislation or executive orders designed to accomplish these ends will need to be written so tightly that no federal bureaucrat can sidestep them.

Conclusion

Veterans preference is the great unfulfilled promise of the United States to those who have served in time of crisis to the detriment of their own lives and well-being. But Congress does not write laws to have them ignored. Veterans preference must have an effective enforcement mechanism.

There are no quotas in veterans preference. It is a recompense for military service that puts qualified men and women in federal jobs – a reinforcement for the merit system. Does it require hiring a man instead of a woman? Sometimes it does, and sometimes it requires hiring a minority veteran applicant instead of a white one. Sometimes veterans preference will require hiring a woman instead of a man, if she took the time and the risks involved in military service and he did not.

Mr. Chairman, this concludes our testimony.



TESTIMONY OF THE VIETNAM VETERANS INSTITUTE BEFORE
THE U.S. HOUSE OF REPRESENTATIVES CIVIL SERVICE
COMMITTEE ON GOVERNMENT OVERSIGHT

May 1996

The Vietnam Veterans Institute was organized in 1980 as a scholarly organization and "think-tank" to work on the issues of employment and business opportunities for Vietnam veterans.

According to the Department of Labor's statistics, Vietnam veterans for 10 years following the war had a significantly higher rate of unemployment in all age groups than their non-veteran peers--which included women and minorities. Paradoxically, Vietnam veterans, according to those same statistics, have a significantly higher level of formal education.

Now at a median age of 50, Vietnam veterans still suffer from resounding bias in the job market and academia; and, while the employment statistics have improved, underemployment is still a major issue. For example, some disenchanting statistics on employment were revealed to the Vietnam Veterans Institute under the Freedom of Information Act. The career set-aside senior executive positions (top managers) at the Department of Veterans Affairs (DVA) Central Office are only 1.47% of non-political senior executive positions! 1.47%! According to DVA, in a 1992 report, veterans only comprised 26.2% of the Department workforce nationwide. At this writing, less than 50% of the employees at the DVA Central Office--within which resides the offices that create policy affecting veterans' health care and benefits--are veterans, the preponderance of which are in mid to low-level career positions.

When the Vietnam Veterans Institute requested the original information, and subsequently provided it to a journalist (Sharon Churcher), a spokeswoman for the Department of Veterans Affairs denied the validity of the employment statistics. Churcher requested the same information that VVI had obtained, which confirmed the statistics that VVI reported. Churcher wrote of this in her "USA Confidential" column in Penthouse Magazine's February 1992 issue entitled, "Is the DVA Anti-Veteran?"

If we who served and those who were otherwise involved do not, through our words and deeds, challenge the revisionist history, a generation of young American fighting men will be forever denigrated and our national history will be clouded by erroneous assertions and nefarious bias.

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The Vietnam Veterans Institute was organized in 1980 to work on the issues of employment and business opportunities for Vietnam veterans and to examine the underlying causes of the bleak employment picture of those veterans. A White House initiative, headed and staffed by successful Vietnam veterans ran from 1982 through 1984 to explore the veterans economic picture and create job opportunities. U.S. Labor Department statistics for the ten years following the war revealed a national lack of commitment to Vietnam veterans. Veterans experienced a significantly higher rate of unemployment in all age groups than their non-veteran peers--including women and minorities. Paradoxically, those same statistics showed that Vietnam veterans had a significantly higher level of formal education. Now at a median age of fifty, Vietnam veterans still suffer from resounding bias in the commercial sector, government, and academia, a bias which can now be expected to be compounded by age discrimination. While the unemployment statistics have improved, underemployment is still a major issue.

As the following documentation will demonstrate, Vietnam veterans are effectively barred from the higher reaches of the civil service. Led by the Defense Department targeting the senior grades (targeting the mid-level and lower grades has been underway for some years) the affirmative action weapon is now fully aimed at men who served in the Vietnam war, if they managed to rise that high in the civil service. An investigation of federal hiring practices by the Vietnam Veterans Institute, using government statistics, revealed that Vietnam veterans are consistently disproportionately absent from senior positions. In the world of affirmative action a veteran's service and qualifications never equal being the proper sex or color. Examination of government statistics disclose that when veterans are employed it is usually in lower level jobs. Even by the leftist definition of group representation, Vietnam veterans are "underrepresented. Current policies of racial and sexual preferences can only serve to reduce their numbers. Thus the administration, led by, and filled with anti-Viet-Nam zealots of the sixties, and their confederates in the bureaucracy, carries on its crusade against those who put their country first. In their "politically correct" view those who served in Vietnam ("minorities" and women as well) were part of an evil crusade against communist purity and must be punished. Affirmative action and its "diversity" offspring is the revenge of the leftist elite on American patriots.

It is a terrible irony that as the current administration risks American lives in worldwide peacekeeping operations many of those who wore the uniform in the past can never expect to work for the government which sent them in harm's way. "Veterans Preference", Title 5 of the US Code as well as the public policy enunciated in 38 USC 42, the government's obligation to hire and promote Vietnam veterans, is routinely ignored.

Prejudice against veterans, especially those who served in and during the Vietnam War, is not a new phenomenon. A GAO report *Federal Hiring: Does Veterans Preference Need Updating?* (March, 1992) discovered a significant difference in position cancellations

between veteran and non-veteran applicants when a veteran was at the top of the selection list. As the following instances illustrate, discrimination against Vietnam veterans is forging ahead.

The Foreign Service, America's most prestigious civilian service, which represents the nation overseas through the State and Commerce departments, refuses to award veterans points until "the selection process is completed." (The 1944 Veterans Preference Act specifies adding points to any examination) On its latest written examination State did not even tell candidates their numerical score, merely if they had passed. By not awarding points in accordance with the congressional intent of Title 5, and given the vagueness the "oral assessment" procedure, a veteran can be eliminated from consideration long before the "process is completed." When asked about Title 5, the Board of Examiners replied that the policy has never been questioned. (During the Carter presidency the White House decreed that women and minorities didn't have to take the then rigorous examination, a resume would suffice. The same policy didn't apply to veterans.)

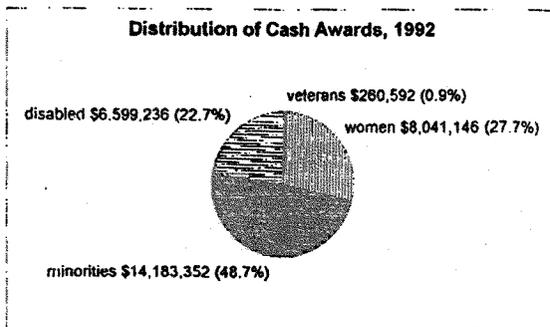
Defense Department Under Secretary for Personnel Dom declared in September 1994 that anyone seeking to promote or hire a white male for GS 13 and above had to submit the nomination for his personal review (Mike Causey, *Washington Post*). DOD later denied that Dom's scheme was an official ruling, however, the department has now instituted special management opportunities, GS 13 and above, for women and approved minorities only. Vietnam veterans were not considered, nor are there any Vietnam veterans in the top DOD slots, a direct refutation of Title 38 of the U.S Code and public policy. Mr. Dom's actions remain unquestioned and unchallenged.

Janet Reno's Justice Department launched its "diversity" program for women and approved minorities. Veterans, judging from Justice's position do not factor into the "diversity" equation; obviously sacrifice for the nation takes second place to "political correctness." The *Washington Times* exposed Reno's memo in a 1994 editorial, but the policy was created almost a year before according to a confidential source.

The Department of Energy, contrary to Title 38, does not maintain statistics on the number of disabled Vietnam veterans in its workforce. When asked for the numbers, Deputy Assistant Secretary for Human Resources Timothy Dirks replied, "no information is compiled regarding the number of Vietnam veterans. In order to provide that information, a manual search of all records would have to be done and you have to pay for that search." Energy does, however, maintain racial statistics.

The Department of Labor's Office of Federal Contract Compliance Programs is notoriously lax in enforcing legal provisions which call for the hiring of Vietnam era veterans by federal contractors. This attitude stands in contrast with the Departments enthusiasm for enforcing the law with regard to women and "minorities." In 1990 The Ohio State University only hired one veteran out of 889 new employees. Congressional pressure brought a compliance review in 1991. In a 1992 agreement the university was cited for seven violations including a lack of affirmative action for veterans and "a climate of harassment, intimidation, and coercion for veterans." It took two decades for the federal government to act. The government offered no explanation for its tardiness. Furthermore, cash awards to veterans who have suffered discrimination are a pittance compared to other groups.

3



Adding insult to injury, there is no indication that veterans are any more welcome now at the Department of Veterans Affairs than they were during Republican administrations when "political correctness" began to permeate the department. (although VA seems to be the Clinton holding pen for veterans) The agency was already notorious for an anti-veteran attitude shown by many of its professionals. For instance, at that time the public affairs department was noticeable by the paucity of veterans, Vietnam veterans particularly. One staffer had the impertinence to display a caricature of herself burning a draft card while followers waved Ho Chi Minh placards. Sources within the agency even revealed how the personnel office evaded the Veterans Readjustment Act. Damning though are the statistics. The career set-aside senior executive positions at the department central office were only 1.47 percent of non political senior executive positions. In 1992 veterans comprised only 26.2 percent of the nationwide workforce; in the policy making central office in Washington less than 50 percent are veterans, most in mid to low level career positions, far from the levers of power. Freelance journalist, Sharon Churcher discovered VA spokeswomen Donna St. John (a non-vet) denying the validity of DVAs own statistics

Discrimination is not limited to the executive branch. Congress, where a number of Vietnam veterans serve, has never displayed any great enthusiasm for Vietnam veterans. Personal staffs and committee staffs have few veterans serving on them--regardless of which party is in control.

Academia, a regular recipient of federal contracts, has shown itself viciously anti-veteran. Duke political science professor Thomas Lomperis felt the wrath of the left. When those who criticized his more traditional, i.e., non-mathematical, scholarship were beaten back when his dissertation won the American Political Science Association award for best dissertation, they resorted to underhanded tactics. Faculty at the University of Kentucky assailed Lomperis because he was a military officer in Vietnam and didn't apologize for it. Unnamed accusers tried to brand him "racist" and "sexist", a charge that could not be substantiated but which hurt his career. Lomperis was also guilty of association with Samuel Huntington, prominent scholar who supported the war.--mortal sin in the eyes of the left. Prof.

Phoebe Spinrad (an Air Force vet), of OSU's English Department found the worked "murderer" scrawled on her door. a colleague admitted to it! R.W. Trewyn, professor of medical biochemistry at Ohio State University found his funding cut when he raised the issue of veterans discrimination. Trewyn is now at another university.

The consequence of anti-veteran bigotry has had an immediate and tangible effect. Vietnam veterans are behind the power curve in earnings. Dollar for dollar their income lags significantly behind their non-veteran peers making the business of having and supporting a family more economically difficult than it ought to be. In *Military Service and civilian earnings of youths*, J.R. Crane, and D.A. Wise writing in *Public Sector Payrolls* (Univ. of Chicago, 1987) reported that veterans earned approximately 12% less than their non-veteran peers. The following chart based on a hypothetical case study is derived from information from combined sources on the economic outlook for veterans.

Effect of Military Service on Civilian Earnings				
age	nonveteran	veteran	difference	total
18	\$12,000			
19	\$12,480			
20	\$13,978			
21	\$13,486	\$12,000	\$1,486	\$1,486.00
25	\$16,791	\$14,038	\$1,753	\$3,116.00
30	\$19,212	\$17,080	\$2,132	\$17,789
40	\$28,439	\$25,282	\$3,157	\$44,618.00
50	\$42,097	\$37,424	\$4,673	\$84,037
60	\$62,313	\$55,396	\$6,917	\$142.38
65	\$75,814.00	\$67,398	\$8,416	\$181,347

This is not a racial issue, minorities who refuse to hide their service may be discriminated against by the politically correct. The perpetrators of injustice are leftist ideologues, usually white, with a visceral disdain of their own culture and those who defend it.

When bigotry against veterans is exposed for what it is -- the punishment of those who placed country before self -- "political correctness" will be unmasked as an assault on the principles of the Republic.

Testimony of John A. Marshall May 9, 1996
 Civil Service Subcommittee, Govt Reform
 Veterans' Preference Hearings 30 April 96

The Honorable John L. Mica
 Chairman, Subcommittee on Civil Service
 Washington, D.C. 20515

Dear Congressman Mica;

Thank you very much for your concern for veterans' preference in the April 30, 1996 hearings. Regarding your focused questions on possible solutions for ensuring veterans' preference is not undermined, I would like to offer additional testimony and a solution in the bigger view.

As you noted during our conversation, legislation to place a veterans' preference clause in 5 CFR 2302(b)(1) prohibited discriminations seems like a good one. However after reviewing the "*Davis V. Army*" testimony and finding common ground in "*Marshall V. Navy*", as well as the Odom and the Sgt Shaft testimony, it becomes clear that the primary reason all were present at the hearing was frivolous dismissal of cases by MSPB/OSC. The real solution would be to reinvent MSPB/OSC in a manner to protect civil servants from management abuse as intended by Congress under 5 CFR Chapter 23 Merit System Principles, in addition to a clause for veterans' preferences.

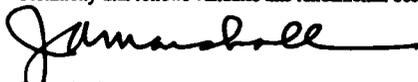
One solution addressed at the hearing was withholding of funds in cases where an agency was in violation of prohibited personnel practices (PPP), specifically veterans' preference. While this particular approach might prove untenable, from it emerged an idea regarding monetary incentive more practical. That would be to award monetary penalties in PPP cases decided in favor of the employee in *Employee V. Management* cases, with some reasonably simple legislation:

- 1) Penalty awarded would be calculated by multiplying employee high-3 pay rate from time PPP is established to adjudication. Where multiple PPPs are involved, penalty limited to x3.
- 2) Penalty so assessed would be drawn from Agency GM 15/SES Bonus pool dollars.
- 3) If bonus pool proves insufficient, add the next SES COLA differential to the penalty bank.
- 4) For MSPB judges, three dismissal decisions reversed in a one year period by Federal Court, EEOC or other Agency, means 3 strikes and judge is dismissed. Same for OSC case examiners.

With some incentive for MSPB/OSC to get out of frivolous dismissal as *modus operandi* and into checks & balances, this will end what is, in effect, a management system protection board, and office of supervisors' counsel. However outlandish be the suggestions, this begs for correction.

THE FUNDAMENTAL ISSUE IN USG REFORM IS EMPOWERING CREATIVENESS OF CIVIL SERVANTS. In the bigger view, the Reinventing Government movement must release the creativeness of civil servants at the working level. In *Davis V. Army*, *Marshall V. Navy*, *Jane Doe Thompson V. CIA*, and in the daily news, Sgt Shaft included, one can see that frivolous dismissal of cases under 5 CFR Chapter 23 Merit System Principles, results in unconstrained authority over all civil servants in all agencies, with no accountability for abuse, or motivation to abstain from same, thus unchecked oppression of creativeness of the civil servant.

The inevitable conclusion: Until the MSP "System" gets into real checks & balances, with benefit of the doubt going to the civil servant as least as frequent as management, any USG reform movement holds little hope. Congressional help is needed to reinvent Merit System Principles! Testimony that follows validates this fundamental observation.



Colonel John Marshall
 United States Marine Corps Reserve (Retired)

Copy to the Honorable Steny Hoyer, Constance Morella, and Jim Moran; Sgt Shaft; AFGE

Testimony of John A. Marshall May 9, 1996
Civil Service Subcommittee, Govt Reform
Veterans' Preference Hearings 30 April 96

WHAT HAPPENED TO 5 CFR CHAPTER 23 MERIT SYSTEM PRINCIPLES?

Regarding Chairman Mica's concern for the veterans' preference, if one retreats to the higher view, and considers MSPB/OSC the moderative agency(s) for oppressive management, MSPB/OSC must be considered derelict in duty, given the grand total of testimony concerning "*Employee V. Management*" cases heard at the Veterans' Preference Hearing.

The consistent themes of the testimony appeared to be:

- (1) Lack of clear path of appeal regarding veterans' preference problems, because there is no *veterans' preference or military status* clause in prohibited personnel practice (PPP) discrimination noted in 5 CFR 2302(b)(1) (A - E);
- (2) Veterans' Preferences cases brought before MSPB/OSC, whether it be the cause or the symptom appealed, are defeated by frivolous dismissal. *Davis/Odom V. Army, Marshall V. Navy*, and many 'Shaft' cases are germane. This allows retaliation by unconstrained authority.

Adversely mitigating this situation is growing caseloads (growth out of control?) in MSPB/OSC. Here MSPB/OSC might be viewed as a "victim" of a vicious circle of their own creation. With frivolous dismissal, the survival of the fittest in *Employee V. Management* is clear. Management has evolved as oppressive, not being held accountable for much of anything, in the few cases that go in the employee's favor. With an insensitive management, the caseload grows faster than linear, frivolous dismissal then becomes the MSPB/OSC relief valve, and "*Employee V. Management*" gets worse to the extent that MSPB/OSC becomes management system protection board/office of supervisor's counsel. The wait in the OSC queue, from filing to action, can be as much as a year. The following Statistics would be most revealing:

- 1) Percentage of *Employee V. Management* cases decided in favor of Employee.
- 2) Of cases decided in favor of Employee, % of cases where Mgt is held accountable (penalty)
- 3) Same statistical questions regarding veterans' preference cases.

In the *Davis V. Army* and *Marshall V. Navy* cases start the data base at 0/2. That *Davis V. Army* had to be taken "outside the box" to EEOC, indicates that the box is broke. In both cases, there was frivolous dismissal of the cause (veterans' preference discrimination), as well as the symptoms.

The combined testimony seems to beg for further Congressional (GAO?) Inquiry on whether MSPB/OSC is protecting civil servants from management abuse as Congress intended. This is a much bigger issue, of which veterans' preference is a subset.

In *Marshall V. Navy* the case in in OSC for the second time. First pass by OSC, and MSPB, was met with frivolous dismissal, much the same as *Davis V. Army*, with much the same result: Complete reductions of duties and reprisal. In first pass by OSC, after 127 days, MSPB Individual rights appeal was filed based on 120 day rule. MSPB dismissed on basis of non-jurisdiction, stating among other things that Appellant had not exhausted options with OSC, OSC, in turn dismissed, noting that MSPB had dismissed. A real catch-22 cooperation in the evolution of frivolous dismissal. The veterans' preference issue that met with frivolous dismissal was removal from a management position due to downsizing/organizational realignment, without consideration of veterans' preference. In filings with both MSPB & OSC, significant reduction of duties, a PPP under 5 CFR 2302(b), was pointed out as a major symptom. Both MSPB & OSC dismissed this aspect of the case, perhaps because it was not exactly focused in the language of the board, or made an up front issue. Where is the help for Appellants without counsel, presuming OSC plays that role? Worse, from the viewpoint of Appellant, legislation was passed in Oct 1994 (Public Law 103-424), making the PPP of significant reduction of duties per 5 CFR 2302(a)(2)(A)(ix) a more serious infraction. While *Marshall V. Navy* was underway, in the time

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period the legislation was passed, neither MSPB or OSC informed Appellant of this legislation, much less took up the issue.

In the only OSC statement made in *Marshall V. Navy* in Appellant's favor, regarding a Letter of Warning (LOW) "gag order" placing an indefinite prior restraint on an Acquisition Reform Beneficial Suggestion, that was extended to Appellant's USMCR and private endeavors, OSC noted: "extension of LOW to personal endeavors may be construed as a possible violation of your free speech rights. We have contacted the Agency; Agency has agreed to revise."

There was no accountability for the violation of Appellants free speech rights from the time appellant began a protest of the LOW gag order on a Beneficial Suggestion as a violation of free speech 23 Feb 93, until OSC pronouncement noted above, on 12 June 95, nor was there any accountability for resulting career damage. The follow-on by the agency was: (1) reimposition of the LOW indefinite prior restraint through punishment by a minimally successful performance appraisal, a PPP; (2) Verbal debrief of the situation as: "We are going to put the screws to you until you desert or pack your bags; (3) A Letter of Reprimand, when the speech was given "by the book" as a private citizen, as allowed by OSC and Agency Beneficial Suggestion Instructions.

The first OSC/MSPB filing was attempted without counsel, in part on the advise of many that OSC was set up to represent the employee, thus one did not need counsel. As a result of the experience, Appellant Marshall would advise no one, as in NO ONE, to proceed to MSPB/OSC without counsel. At least "*Davis V. Army*" got to a hearing.

This presents a further dilemma to the civil servant, who normally is not independently wealthy, at least wealthy enough to pay counsel in a protracted fight, until attorney's fees can be recovered; will case statistics in "favor" of appellants indicate that such a venture is correctly perceived as very risky, thus seldom tried. In the survival of the fittest, of *Employee V. Management*, it is another situation that definitely favors management. If they don't defeat you in detail, they defeat you over time.

Management makes its case with falsifications and gross misrepresentations of the truth. In *Marshall V. Navy*, this is demonstrated in the Letter of Warning that put an indefinite prior restraint "gag order" on a Beneficial Suggestion. Then management uses the falsifications to make more charges, and punish, either overtly or covertly, noted as follows: In fact the Agency Inspector General found the agency to be at fault regarding failure to evaluate the Beneficial Suggestion, but this was never corrected in the record, and Agency continued to blame the employee.

In the second OSC filing, presently under consideration by OSC, it was viewed by AFGE counsel that there was no possibility of appealing the cause, the veterans' preference issue, so the case addresses the PPP's of (1) 100% reduction of duties (Not unlike "*Davis V Army*"; (2) Violation of right to free speech and workplace protected speech, regarding a suggestion to improve effectiveness & efficiency in government, and (3) Failure of Agency to meet legal obligation of due consideration of a Beneficial Suggestion, by prompt, objective and fair evaluation. The dynamics of appealing a Letter of Reprimand in the face of falsifications and revision of history as a further defiance of OSC "advisements", continues real time.

The present merit protection "system" poses a contradiction to reform by reinventing government. Civil Servants who rise to confront management for not standing in the integrity of the system are frequently the best; in the process the "system" allows them to "trashed" the worst. What does that say to the rest of us? Be quiet; stay in your place, or you will be next. *Davis V. Army* is case in point; Edith Odom and husband were next! *Marshall V. Navy* documents in excruciating

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detail. Sgt Shaft's case file documents en masse. The result is that, lacking merit system protection, only a very few come forward to challenge the system

Translating this as cost to the taxpayer, consider the following approximation based on 100% reduction of (engineering) duties in *Marshall V. Navy*. Management puts the employee in a corner a means of forcing retirement (same as *Davis V. Army*); Pay and benefits wasted is conservatively \$100K a year for 3 years (discrimination cases dragging on for 5 years is not uncommon): \$300K down the tubes. Add \$100K for all that get involved in the appeal process: \$400K; Given that this is a creative person, who is apt to improve efficiency, double the cost to the taxpayer, for \$800K; add another \$200K for all the good ideas of others that are repressed, watching innovators taking hits.

Thus the real cost of *Employee V Management* to taxpayers approaches \$1,000,000 in such cases. Regarding the DoD Agency who just reported expending something approaching \$4 Billion Dollars, with nothing to show, a *Marshall V. Navy* question lingers: In the program which Marshall suggested a better system engineering approach, how much waste could have been avoided, with the astute system engineering beneficially suggested? And, was the real reason for the gag order on the suggestion, embarrassment over \$4 Billion Dollars worth of taxpayers' money going down the tube? ... or Just an unconstrained management exercising authority? A reasonable person would probably conclude: some of both.

Only a radical change in the system, can reverse the trashing and outflow of good people, waste of money, and the current apparently correct perception that government employment is no longer civil, nor cost/effective. (Therefore downsize and privatize) Will the population statistics of frivolous dismissal and unconstrained authority accountable to no one, validate the perception? What speaks of the "merit system" that has evolved, when *leadership* is dubbed *whistle-blowing*, and lacks the protection it deserves.

The combined testimony clearly begs Congress to take action to restore 5 CFR Chapter 23 Merit System Principles, thus to release the creativity of civil servants to reinvent government.

I very much appreciate Sgt Shaft's "counsel" and encouragement to bring this to your attention.

I also appreciate the unwavering support and backing of American Federation of Government Employees (AFGE), through AFGE 1603 Local, as a provisional member of the Union. There emerges here a more difficult challenge for the cure, but perhaps a preferable one. This is for the professionals to empower themselves, with the strength of arbitration in a union bargaining unit, or to at least vote for such a movement. For civil servants, is this not our civic duty if we are to be examples of participants in a democracy in which the citizens reinvent government?

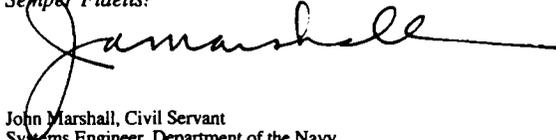
Congressman Mica, I thank you for the opportunity to give this testimony and for your consideration of it, as do my family, especially my wife Nancy; also my family in Florida, my father, Major John E. Marshall (USMCR, retired), step-mother Ann Marshall, and brothers Randy and Will Marshall, all constituents in your district. That I have had the courage and persistence to pursue this issue is a tribute to my family, especially my college mentor - my late Uncle Art Marshall, Florida Ecologist of the Decade, in the '80's, who taught me: Always keep the bigger system in view, when examining the parts; Never let the bureaucracy beat you down; they will try. Also my mother, and my grandfathers on both sides; it does take a *village*!

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This is also a tribute to the leadership of fine Marine officers I have served with, and exemplified that leadership was synonymous with integrity. . . As a Marine veteran, my testimony is response to the oath I took 33 years ago, to protect the Constitution against all enemies foreign and domestic. My 275 F-4 missions in the republic of Vietnam was the easy part, and in that case it was hard to see who was the enemy

This testimony is given on behalf of all civil servants, to whom I challenge:
Stand in the integrity of the system; Confront its absence; Make Government work better!

Semper Fidelis!

A handwritten signature in black ink that reads "J Marshall". The signature is written in a cursive style with a long horizontal line extending to the right.

John Marshall, Civil Servant
Systems Engineer, Department of the Navy
Colonel, United States Marine Corps Reserve (Retired?)
Not quite!



Non Commissioned Officers Association of the United States of America

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**STATEMENT OF
LARRY D. RHEA
DEPUTY DIRECTOR OF LEGISLATIVE AFFAIRS
AS ENDORSED BY
THE MILITARY AND VETERANS ALLIANCE
TO THE
SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND
OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
ON
VETERANS PREFERENCE**

APRIL 30, 1996

Chartered by the United States Congress

Mr. Chairman, the Non Commissioned Officers Association of the USA (NCOA) is grateful to you and the Subcommittee for the opportunity to present testimony on veterans preference. For many years, veterans preference laws served veterans, and indeed the Nation, well. NCOA appreciates today's hearing but adds that it is sad commentary that it is needed. It is a sad day for the Nation when the Federal Government has ceased to be the model employer with respect to veterans. And, that precisely is where we are today.

NCOA is pleased to report its statement has been endorsed by some member associations comprising the National Military and Veterans Alliance. The Alliance membership includes the American Military Retirees Association Inc., the American Retiree Association, Air Force Sergeants Association, the Korean War Veterans Association, the National Association of Uniformed Services, the Naval Enlisted Reserve Association, the Naval Reserve Association, the Non Commissioned Officers Association, and the Society of Military Widows. These organizations collectively represent over 500,000 members of the seven uniformed services, officer, enlisted, active-duty, reserve, retired and veteran plus their families and survivors.

In many instances, perception is often the reality Mr. Chairman. For several years now, veterans have had the impression that veterans preference laws have become meaningless and/or are routinely ignored without consequence. Even a cursory examination of veterans employment in the federal work force could lead one to easily conclude the perception has a basis in reality.

Perhaps the best example of why veterans perceive veterans preference laws are meaningless

is illustrated by the actions of the U.S. Postal Service in the last two and one-half years. Nearly 47,000 employees were displaced in management actions that the Postal Service called a "reorganization." Despite being dubbed a reorganization, the entire plan had one, and only one, overriding goal. That singular goal was to reduce costs by reducing people. Granted, some reorganization did in fact occur. But, as the old saying goes - if it walks and talks like a reduction in force - the "reorganization" was a "RIF". Consequently, veterans retention rights were avoided by one of the largest agencies of the Federal Government.

The actions by the Postal Service, actions supported by the Office of Personnel Management, cannot be tossed off as merely a perception among veterans. In NCOA's view, it was an overt attack to avoid, change and restructure veterans preference laws.

Similarly, the situation as it exists today in the United States Information Agency (USIA) is not imaginary. It is very real and deeply troubling. USIA Announcement Number 96-115, dated April 25, 1996 (Subject: Update on Foreign Service RIF Regulations), states - - "Veterans' preference will not be given for retired military." That same announcement goes on to say - - "We are pleased to announce that for non-Broadcasting USIA employees we will not use RIF procedures to achieve reductions in FY 1996." In other words, USIA is pleased to ignore veterans retention preference in force reductions.

Another inescapable and indisputable fact was provided by the General Accounting Office (GAO). GAO statistics show that 71% of certificates are returned unused to OPM when a veteran applicant tops the list. That's fact, Mr. Chairman. NCOA also suggests that the

trend toward more decentralized hiring authority and the authority to use single position competitive levels in RIF's is not serving veterans in either the spirit or intent of the law.

NCOA has listened to numerous speeches and read countless press releases on the current Administration's commitment to veterans and veterans preference. Frankly, this Association does not place any credence in the rhetoric because the ensuing actions are just the opposite. The two earlier examples underscore where the words and actions don't match. The U.S. Postal Service "reorganization" was supported by OPM. The actions taken by USIA based on OPM recommendations. If these two cases are an example of this Administration's commitment, then the commitment is completely hollow.

The fact that federal agencies and hiring officials can overtly and routinely ignore federal law with impunity is the single greatest issue on veterans preference that must be addressed in NCOA's view. It is indeed ironic that the full weight of the Federal Government can be brought to bear on a private sector employer when wrong doing is alleged but we seem unable to hold the Federal Government accountable where veterans and their preference is concerned.

Several ideas have been offered as to how accountability can be brought to the federal government and its agencies and hiring officials. NCOA believes that the proposal to treat violations or avoidance of veterans preference as a "prohibited personnel practice" should be seriously considered. Federal agencies and hiring officials must be held accountable for violations of veterans preference laws to the same degree as they would for racial or sexual

discrimination.

Making violations of veterans preference a prohibited personnel practice would be an important first step. It is equally important in NCOA's view to craft a redress system that: is easily understood by veterans, federal agencies and hiring officials; has a series of distinct steps that progress from informal to formal resolution of a complaint/violation; provides remedy for the veteran; and, contains punitive measures against agencies and officials who violate the law.

Among the several alternatives being considered, NCOA requests that the Subcommittee review Subchapter III - Procedures for Assistance, Enforcement and Investigation - - of the Uniformed Services Employment and Reemployment Rights Act, Public Law 103-353. Although USERRA is a federal law that pertains to employment/reemployment of armed forces members in the private sector and local and state government, NCOA believes that the model provided therein might be useful in structuring a redress system for veterans preference. The provisions in Subchapter III embody the concepts that NCOA espoused in the preceding paragraph. Attached to NCOA's testimony is a diagram of the redress process contained in Subchapter III.

Aside from being a relatively clear process, USERRA also contains a rather striking feature that NCOA believes should be applied to violations of veteran preference law. USERRA provides for the full force and resources of the Federal Government, through the Department of Justice, to be brought down on the private sector and local and state government. It just

seems to NCOA that accountability in the Federal Government should be no less than that demanded daily from businesses, states and municipalities all across the Nation.

In closing, NCOA again states its appreciation to the Distinguished Chairman for this hearing and for the opportunity provided to express our thoughts. The Association looks forward to a continuing dialogue on this important subject and hopes that veterans preference can be reasserted soon to its rightful and proper place in the Federal Government.

Thank you.

STATE/LOCAL/PRIVATE SECTOR PROCESS
FOR COMPLAINTS UNDER
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

1. Complaint received - case opened.
2. Investigation
 - a. Facts gathered
 - b. Statute applied
 - c. Findings compiled
3. Determine if complaint meritorious
 - a. Yes
 - (1) Seek resolution informally
 - (2) Inform claimant of findings and right to refer case to DOJ or to retain private counsel
 - (3) DOJ seeks case resolution
 - (4) DOJ approves or disapproves representation
 - (5) DOJ or private counsel takes case to District Court
 - b. No
 - (1) Claimant informed that case is not considered meritorious
 - (2) Claimant informed of right to refer to DOJ or to retain private counsel
 - (3) DOJ seeks case resolution
 - (4) DOJ approves/disapproves representation
 - (5) DOJ or private counsel takes case to District Court
4. District Court hands down determination.