

Testimony of

Rear Admiral Christopher E. Weaver

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My name is Rear Admiral Chris Weaver. I am the Commandant, Naval District Washington, and the Regional Commander for the Navy's National Capital Region. I have been a Naval Officer for 31 years and have participated in combat operations in Vietnam, as well as preparations up to the commencement of operations during the Gulf War. I have served in six ships and have commanded two. I have also commanded the Navy's largest naval station in Norfolk, Virginia. I appreciate the opportunity to provide testimony to the Committee on the views of the Department of Defense on the Feres Doctrine. The Department of Defense believes the Feres Doctrine is sound public policy and national defense policy that should not be disturbed. To begin with, I am not a lawyer. I am a surface warfare officer. My primary focus is on maintaining good order and discipline and providing support to our military members in the Washington, D.C. area and to those who are forward deployed and prosecuting the war on terrorism. This is an essential aspect of military readiness. I also want to express my condolences to the family of Kerryn O'Neill; her murder several years ago was a terrible tragedy. Our hearts continue to go out to the O'Neill family. Although I do not question their sincere desire to seek redress, I am here to testify that allowing service members to bring suits in federal court against their chain of command will interfere with mission accomplishment and adversely affect our operational readiness. With the challenges confronting our military and nation today, I respectfully submit that you preserve the Feres doctrine for the following three reasons. First, the Feres doctrine is important to maintaining good order and discipline in the military. Litigation is inherently divisive and disruptive. Absent this doctrine, opposing participants would often both be military members and include a member's commanding officer and military superiors. Military readiness and effectiveness is based on cohesiveness, trust, obedience, discipline, and putting the interest of the Service ahead of the interest of the individual. Discipline, morale, and unit cohesion are the hallmarks of an effective fighting force. Everything a commander does is designed to embed these values throughout the organization. Litigation is based on allegations, compulsory process, and aggressively asserting the interest of the individual against the Service. Because of the disruptive effect of litigation, the concept of sailors suing their fellow shipmates and their government is alien to our traditional philosophy of military discipline and U.S. jurisprudence. Good order and discipline are not mere words constituting a slogan or catch phrase in the military environment, they describe the lifeblood by which our military forces are able to successfully perform the mission and, in doing so, defend the nation at home and abroad. The military has long been recognized as a "specialized community" requiring demands and responsibilities far different from its civilian counterpart. The impact of litigation on this "specialized community" would undermine trust not only among individual service members, but also between sailors and their organization and their superiors and officers throughout the chain of command. Military members at all levels of the organization, from the youngest enlistee to the career officer and commander, are expected to adhere to a uniform code of expectations and standards and, when faced with what they believe to be substantiated failures or deficiencies, use

the chain of command and the uniform system of accountability that is attached to it.

Accountability within the military community appropriately relies upon involvement of military leaders and commanders, and includes a host of administrative, nonjudicial, and judicial courses of action to uniformly address those deficiencies and take corrective action. The inherent nature of litigation - which is intensely adversarial by design - is inherently and necessarily inimical to military discipline. Other mechanisms are available to ensure that the rights of service members are adequately protected, without resort to litigation.

Whether the complaint is brought to the attention of an Inspector General, law enforcement official, leading petty officer, or Commanding Officer, there exist available and effective avenues for proper redress based on complaints of wrongful acts, omissions, negligence, and derelictions of duty. Individual litigation in the military environment would be extraordinarily disruptive to the organization and would be ill suited to achieve the corrective measures that may be needed. Pitting one sailor against another in personalized litigation would serve to encourage military members to ignore or abandon the chain of command, and other existing judicial and nonjudicial remedies, rather than rely on their strength and uniformity to ensure good order and discipline for all.

Litigation between and among military members in a military organization, to include superior/subordinate or command relationships, could sow dissension and animus within the military organization and would undermine the need for unhesitating and decisive action by military officers and equally disciplined responses by enlisted personnel. Disruption of military operations would almost be inevitable, as service members might elect to weigh obedience to orders and compliance with directives with contemplated litigation to achieve an objective more to their liking or interests. If permitted, some may see litigation and their need to be present as an avenue to attempt to avoid a particular assignment. Again, good order and discipline and military effectiveness would be seriously undermined.

Second, the Feres Doctrine does not deprive servicemembers of a remedy since an extensive, no-fault compensation system is applicable to any disability or death incurred during military service. All State and Federal workers' compensation laws provide a no-fault compensation system as the exclusive remedy for work-related injuries. Employees may not sue the employer to seek larger recoveries, but employees will be compensated even if there was no negligence or the injured employee himself or herself was negligent. This is the rule for Federal civilian employees under the Federal Employees Compensation Act as well as for state and local government and private sector employees throughout the United States under state workers' compensation laws. The military compensation system has the same premise, except that military members are considered to be "on the job" 24-hours a day. Their no-fault compensation applies to virtually all injuries at work or at home, in the U.S. or overseas, whether nobody was at fault or everybody was at fault. The only exclusion is for injuries incurred as a result of intentional misconduct or willful neglect or during a period of unauthorized absence. As part of this comprehensive no-fault compensation system, military members, like public and private sector employees throughout the country, may not sue their employer (in this case, the United States) for any injuries.

The no-fault compensation system applicable to designated survivors of members killed during military service includes the provisions outlined in a fact sheet attached to this statement.

In summary, it includes a death gratuity, housing and relocation assistance, burial costs, Servicemen's Group Life Insurance, Dependency and Indemnity Compensation, Uniformed

Services Survivor Benefit Plan, comprehensive health care benefits, payment for unused leave, VA education benefits, Social Security, commissary and exchange privileges, and certain tax benefits. In the case of members suffering disabling injuries during military service, some of these benefits are also applicable, in addition to full, no-cost medical care and disability retirement from the military service or disability compensation from the Department of Veterans Affairs. VA also offers service-disabled veterans a comprehensive array of health care benefits and services, as well as various readjustment programs including vocational rehabilitation and assistance in purchasing specially adapted housing and motor vehicles.

To be sure, these benefits are not extravagant and they do not match the blockbuster tort recoveries we sometimes read about. But it is a comprehensive no-fault compensation system similar to Federal and State workers' compensation and applicable to all military members and families. And it's fair.

The third reason for preserving the Feres Doctrine is that it is essential to maintaining equity among military members injured or killed during military service. If the Feres Doctrine were repealed in whole or in part, some injured members or the families of some members killed would be allowed to sue the United States based on an allegation that some other military member or government employee was negligent. This could occur in relation to an automobile accident, plane crash, training mishap, household accident, and many other cases. In contrast, some or all military members injured or the families of members killed in combat or military deployments or as prisoners of war would have only the no-fault compensation system. To give another example, a civilian employee injured in the same accident that injured a military member would be limited to the no-fault compensation of the Federal Employees Compensation Act, while the military member could sue the United States. Still other disparities would arise based on many variations in State tort law, the fact that the Federal Tort Claims Act does not apply to alleged torts outside the United States, and the vagaries of liability jurisprudence. Military training will also be adversely affected if a commander must focus on varying and multiple tort issues and state laws when conducting exercises and training evolutions in various states instead of focusing on operational readiness.

The Feres decision itself was based, in part, upon the existence of Congressionally created systems of simple, certain, and uniform compensation for injuries or death of those in armed services. Under present law, compensation is awarded uniformly to all service members who are similarly situated, without regard to whether their injuries were incurred in training, in combat, or while receiving benefits. To allow one service member to receive greater compensation for his or her injuries than that provided to other service members who suffered similar injuries in combat or training would undermine the uniform nature of the compensation system and would foster dissension between similarly injured service members. The death or disabling injury of every military member is a terrible tragedy for the member and the affected family. They may result from anything from enemy action in combat to common household accidents. In establishing public policy for compensating members and families, there is no rational basis for laying as the foundation stone a pleading of negligence in some particular category of cases for which Federal court jurisdiction would be established. Such inequities could not be rationally explained to military personnel or their families and it is hard to imagine that they could be sustained as a matter of public policy or national defense policy.

In conclusion, the Feres Doctrine is an important element of public policy and national defense policy. It is a necessary component of maintaining good order and discipline in the military and of enhancing the effectiveness and operational capability of our armed forces. It is also part of a

comprehensive no-fault compensation system, which, similar to workers' compensation laws, provides the exclusive remedy for deaths and injuries during military service. Preservation of this exclusive remedy is the only way to maintain equity for all of the military members and families most burdened by the sacrifices endured for our Nation's defense.

Compensation of Survivors of U.S. Military Personnel (Applies to Retired Members only when noted)

Death Gratuity - A \$6,000 death gratuity (10 U.S.C. §§1475-1478) is intended to provide immediate cash to meet the needs of survivors.

Government Housing or Allowances and Relocation Assistance - Survivors are provided rent-free Government housing for 180 days or the tax-free allowances for housing appropriate to the member's grade for any portion of the 180 day period while not in quarters (37 U.S.C. § 403(l)). Survivors are also entitled to transportation, per diem, and shipment of household goods and baggage (37 U.S.C. § 406(f)).

Burial Costs - The Government will reimburse up to \$6,900 of expenses for the member's burial, depending on the type of arrangements and will provide travel for next-of-kin under invitational travel orders (10 U.S.C. § 1482 and ASD(FM&P) memorandum dated December 13, 2000, and 38 U.S.C. §§ 2301-2308).

Unused Leave - Payment is made to survivor for all the member's unused accrued leave (37 U.S.C. § 501).

Servicemen's Group Life Insurance (SGLI) - Service members are automatically insured for \$250,000 through the SGLI program, but may reduce or decline coverage as desired (38 U.S.C. §§ 1965-1979). Although participating members must pay premiums, SGLI is a government-sponsored insurance program that enables U. S. Service members to increase substantially the amount available to their beneficiaries in the event of their death. Without SGLI, many members could not obtain life insurance because of their age or military assignments. Some private plans may not insure persons in high-risk groups or may not pay for combat-related death. SGLI has one affordable premium rate for all Service members, giving them an opportunity to provide for their survivors in the event of their death. Costs traceable to the extra hazard of duty in the uniformed services are paid by the Military Departments whenever death rates exceed normal peacetime death rates as determined by the Secretary of Veterans' Affairs. Retirees may retain their SGLI level of coverage or less under the Veterans Group Life Insurance (VGLI) program.

Dependency and Indemnity Compensation (DIC) - The Department of Veterans' Affairs (DVA) pays a tax-free monthly amount to an unmarried surviving spouse of a Service member who dies on active duty or from a service-connected disability (38 U.S.C. §§ 1310-1318). The basic spouse DIC is a flat-rate annuity of \$935 per month (Public Law 103-418). An additional \$234 is paid for each dependent child until age 18. The law provides special additional amounts to meet specific needs. A surviving 30-year-old spouse with a life expectancy of 80 years may receive DIC benefits of more than \$500,000 based on current rates. The total could be substantially

more when young children are also eligible for benefits. This applies to retired members if the death qualifies as service-connected.

Uniformed Services Survivor Benefit Plan (SBP) - Eligible spouses and children of Service members may also be entitled to monthly payments under the SBP (10 U.S.C. §§ 1447-1460b). Effective September 10, 2001, a surviving spouse (children are entitled if there is no surviving spouse or the spouse later dies) of a member who dies on active duty is entitled to SBP. The annuity is 55% of retired pay while under age 62 and 35% while age 62 and older. The retired pay is determined as the benefit that would have been payable to the member had that member been retired on total disability on the date of death. For the surviving spouse of a retired member, the annuity amount while under age 62 is equal to 55 percent of the retired pay (or lesser-elected base). When the spouse is age 62, the benefit is reduced to 35 percent.

The law offsets a spouse's DIC entitlement from SBP. Thus, a surviving spouse may receive the full DIC plus that part of the SBP entitlement that exceeds the DIC payment. A spouse loses entitlement to SBP if remarried under age 55, but may be reinstated if that marriage ends through death or divorce.

VA Education Benefits - The surviving spouse and dependent may also qualify for up to 45 months of full-time education benefits (38 U.S.C. §§3500-3566) from the VA. Qualifying criteria should be consulted to ascertain entitlement.

Social Security - Death benefits are provided for a spouse caring for the member's dependent children under age 16, a surviving spouse during old age, and for eligible minor children of an insured Service member (26 U.S.C. §§ 3101, 3111, 3121). Benefits depend on the family status of the deceased member, and are the same as for the family of any deceased civilian worker insured under the same circumstances. Monthly entitlement is a percentage of the deceased member's "Primary Insurance Amount (PIA)". The full PIA is paid to a surviving spouse who begins payments at age 65. Reduced amounts are payable as early as age 60. The mother's/father's and children's benefit is 75 percent of the PIA, subject to a family maximum. Retired members qualify to the extent they had covered wages during their uniformed service.

Health Care - An unremarried surviving spouse and minor dependents of the member are eligible for space-available medical care at military medical facilities or are covered by TRICARE/CHAMPUS (MEDICARE after age 65). Dental insurance coverage and full TRICARE/CHAMPUS are extended for three years after the member's death. As of October 1, 2001, TRICARE will become a second-payer to MEDICARE for retirees over age 64. Beneficiaries will pay no enrollment fees, co-pays, or deductibles. A Senior Pharmacy Program has also been established by expanding the DoD mail order and network pharmacy program to cover retirees and their family members over the age of 64. (10 U.S.C. chapter 55) Families of retired members retain their medical coverage so long as a spouse has not remarried.

Commissary and Exchange Privileges - The unmarried surviving spouse and qualified unmarried dependents are eligible to shop at military commissaries and exchanges, normally providing a savings over similar goods sold in private commercial establishments (DoD Directive 1330.17, "Armed Services Commissary Regulations" and DoD Directive 1330.9, "Armed Services

Exchange Regulations"). Families of retired members retain their privileges so long as a spouse is not remarried.

Tax Benefits - The next-of-kin of a Service member whose death occurs overseas in a terrorist or military action is exempt from paying the decedent's income tax for at least the year in which the death occurred (26 U.S.C. § 692). Payments made by the VA are tax exempt (38 U.S.C. § 5301).