S. HRG. 110–310

JUSTICE DENIED: IMPLEMENTATION OF THE HOMETOWN HEROES SURVIVORS BENEFITS ACT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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THURSDAY, OCTOBER 4, 2007

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 2:41 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Schumer, Cardin, and Cornyn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good afternoon. I apologize for the voice. There are some who will probably be delighted to see it disappear. But it's allergies more than anything else.

I'm glad you're here. I know that many of you, the reasons you're here, you wish you didn't have to be. I commend your courage in being here.

In November of 2003, Congress unanimously passed the Hometown Heroes Survivors Benefits Act. This was legislation intended to improve the Public Safety Officers' Benefits program by allowing survivors of first responders who suffered fatal heart attacks or strokes while participating in non-routine physical activities to qualify for Federal survivor's benefits.

I remember that December when, with great fanfare, the President signed the legislation into law. There were a large group of firefighters and law enforcement officers. I commended him for doing that.

But unfortunately, once the TV lights turned off, cases started piling up to the Department of Justice. My frustrations, and the frustrations of the surviving families in the first responder community grew daily. We could not understand the Justice Department's glacial processing of these applications.

We're going to hear a sampling of those deep and widespread frustrations today. More than 3 years passed before the Justice Department released its final implementation rule last year. Three years. They delayed implementation a while. They actually disregarded the clear will of Congress, Republicans and Democrats alike, to grant these surviving families death benefits in a timely and fair manner.

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It is no overstatement to conclude that they worked to erect obstacles between this program and those surviving families in not trying to find a way to help them. I think the thickets of red tape are painful indignities to these heroes and their families. They are also an offense to our moral obligation.

Now, nearly 4 years after the Hometown Heroes bill became law, the Justice Department has approved only 12 Hometown Heroes claims, they denied 50 families this important benefit, and they've left 240 applications unanswered. I don't think it's any way to treat these people. It makes me think too much of what has happened to a lot of the returning soldiers from Iraq and Afghanistan and what we saw when the press looked into how they were being treated. We can have great parades for them when they go off. We ought to have some compassion when they come back.

President Lincoln spoke for the ages in his second inaugural address in 1865 in the midst of the Civil War when he called for binding up the Nation's wounds and caring for those who have borne the battle, and for their widows and orphans. This is the same moral obligation we share when it comes to the families of first responders.

The Justice Department's adjudication of claims has been nothing but bewildering, but also shocking. I'll give you one example, just one: a U.S. Forest Service firefighter in Florida. He was found dead 45 feet behind the fire line with a shovel in his hand. That's probably as far as I am from me to you, Ms. Tilton.

He was denied benefits because those managing the program in Washington, sitting in air conditioned offices, couldn't determine whether he was engaged in strenuous activity at the time of his heart attack. From that close to the fire line with a shovel in hand, I think you could make a pretty good claim that you're engaged in strenuous activity.

So the Justice Department should immediately expedite all these claims. They should revise the criteria used to evaluate claims. The burdensome information requests, 10 years' worth of records, and so on, that should stop. Don't harass these people. Remove the bureaucratic hurdles and the lengthy delays.

The bottom line is, the needs of first responders and their families simply haven't been a high enough priority. In the last hearing before the Judiciary Committee, Attorney General Gonzales agreed with me that the Justice Department was far too slow in writing regulations, and he even apologized. He assured me that it would clear up without any delays. It didn't happen. He resigned.

So, I thank Director Herraiz of the Department of Justice for being with us today, and I hope he comes in with better news. Heart attacks and strokes are a grim fact of life and death in the high-pressure jobs of police officers, fire fighters, and medics, as I saw when I was in law enforcement. Emergency first responders put their lives on the line for us. We owe their families our gratitude, our respect, and our help.

I'm glad that the families of the first responders, real people, are here. Before I introduce them, these three surviving widows who are here to share their story, I want to yield. Senator Cornyn, you're going to be ranking on this, I guess, this afternoon.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Senator CORNYN. Thank you.

Chairman LEAHY. My friend from Texas, Senator Cornyn.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman. I appreciate your holding this important hearing today and inviting these witnesses here to share with us their experiences, and particularly appreciate your inviting Jo Ann Tilton of Katy, Texas to testify.

I just received word that her claim was finally approved yesterday, two and a half years after it was filed, thanks to the attention that this hearing has brought to her case and the cases of others like her. But I think we would all agree that it should not take a congressional hearing to cut through the red tape and motivate the bureaucracy to finally act appropriately on the claim.

On October 20, 2004, volunteer fire fighter Gary Tilton died of a heart attack. Three years later, Jo Ann Tilton comes before this committee seeking answers. Ms. Tilton wrote to my Dallas office in May of 2006 about the adjudication of her husband's Public Safety Officers Benefits claim which she submitted to the Department of Justice in January of 2005.

The determination to be made was whether or not Mr. Tilton's cardiac event was actually in the line of duty. His heart attack occurred while performing his duties as a volunteer fire chief for the Katy fire department. Not only did the Department of Justice take an extraordinarily long time to process the claim, but DOJ gave Ms. Tilton different answers every time she made an inquiry, most of the time telling her nothing.

On April 24, 2007, my office received a letter from the DOJ stating that the PSOB office had completed its review of Ms. Tilton's claim and she would receive a written notification within the next 10 days. Then on September 5, 2007, my office received another letter from the DOJ stating that her husband's file had been sent to the forensic pathologist to undergo another medical review.

Mr. Chairman, Ms. Tilton has been waiting for about 3 years for a decision to be made on her claim and waiting for a straightforward answer. This is, by any measure, unacceptable. It speaks to the need to reform the tangled bureaucracy that is unable to manage in a timely, efficient way, decisions that have great personal importance to the families of our Nation's first responders.

So I hope this hearing highlights that need so that people like Ms. Tilton may receive closure on this chapter of their lives instead of facing continued confusion, frustration, and disappointment. Ms. Tilton, thank you for coming from Houston, from Katy, Texas, to share your story with the committee.

Mr. Chairman, thank you very much for allowing me to make a brief opening statement.

Chairman LEAHY. Thank you very much. I agree with what you suggested, Senator Cornyn. Sometimes these hearings focus the attention, and I'm glad it's done that.

I would welcome the witnesses today. I want to welcome the many uniformed officers and surviving widows and families and

friends who are here for the annual National Fallen Firefighters Memorial weekend in Emmitsburg, Maryland. We've actually held office retreats at that facility.

I hope my colleagues won't mind if I also mention Matt Vinci and Ben O'Brian from Vermont, who are both in the audience today Thank you, gentlemen.

I want to thank the fire and police service organizations that have been so instrumental in passage and implementation of the Hometown Heroes Act: the Congressional Fire Services Institute, the National Fallen Firefighters Foundation, International Association of Firefighters, the National Volunteer Fire Council, the International Association of Fire Chiefs, the International Fire Service Training Association, and, of course, the Fraternal Order of Police, the National Association of Police Organizations, Sergeants' Benevolence Association of New York City. Congressman Bob Ethridge, who is the author of the law in the House of Representatives, has been a great supporter for our first responders.

We'll turn to our witnesses. The first would be Athena Schwantes. I met her before, and Jo Ann Tilton, and Susan Falkouski. Ms. Falkouski, Senator Schumer is going to say more about you when we get there. I had the pleasure of meeting them and their children when they were in town last July. I would swear the girls have grown—you probably realize that—since then.

So, thank you. Thank you for coming. Ms. Schwantes, why don't we start with you?

STATEMENT OF ATHENA SCHWANTES, FAYETTEVILLE, GEORGIA

Ms. SCHWANTES. Thank you so much for allowing me to be here today. I'm Athena Schwantes, the surviving spouse of fallen firefighter Russell Schwantes from Atlanta, Georgia.

In August of this year, I received my declination letter from the Department of Justice regarding my PSOB claim. Of course, it was pretty disheartening to get the letter stating they were denying the claim. I could accept this if Russell was a 5'9", 300-pound male who suffered a heart attack while sitting in a recliner at the fire station after eating a hamburger with chili cheese fries and a Coke.

Instead, Russell was a 5'9", 195-pound male who had worked 14 hours into his shift, and apparently he felt well enough to engage in the required routine physical fitness training. But something different happened this time. A call came in during the time that he was at his heightened heart rate. He ran to answer the call and then suffered a heart attack. Sounds like line of duty to me.

Russell went to work in good health. During the days before, he performed in his family life as a husband, a father, and a brother. He played 18 holes of golf prior to his shift on Sunday. But when he went to work to perform those duties, something happened: he suffered a heart attack and died.

We all know the facts about the Hometown Heroes Survivors Act, so there's really no need for me to go over those again. But I do think it's important that you hear three profound facts that I've experienced as a result of my husband's death, however, they shouldn't be a factor in this decision, because we all know that grief is painful.

The loss of Russell has produced painful and disturbing symptoms of grief, including anxiety, yearning, depression, hopelessness, despair, crying, fatigue, and a loss of interest for life. I have questioned the value of long-term goals because I know that everything important to me can be taken away in an instant.

As for my two daughters, Holly and Morgan, losing their father has had a devastating impact on the assumptions that were previously held. Being a part of a loving family, they, like I, saw the world as somewhat of a safe and orderly place.

Regrettably, it only takes one shattering event of sufficient magnitude to change one's core belief about life, that terrible things can happen without warning. My children were left feeling unsafe and insecure.

Studies show that sudden death of a spouse or a parent has extremely negative long-term results, things like interpersonal problems, mental health problems, physical health problems, school performance problems, and substance abuse.

But I say no to all of these. I say no to all of these for not just my children, but for the other surviving families, that we will not accept these statistics for our children. Of course, no amount of money can ever compensate for the things listed above, however, saying yes can remove some of the financial burdens that could potentially reduce, if not all, maybe some of these statistics. Isn't it worth it?

Throughout this journey I've spent a lot of time asking God why. He's met me in the middle of my monumental grief, and each day I reach out my hand to Him for support and guidance. When dealing with things that were once routine that now seem so overwhelming, I ask for His counsel to ensure that I'm doing His will.

So instead of continuing to ask God why, now I'm asking myself, why don't you take where you've been and move forward. It's now time to push beyond this tremendous pain and reach out to others who might be in need and to see that Russell did not die in vain. I wish you could have known him.

If Russell could speak to us today he would say, "Please help the families of my fellow firefighters. Don't turn your backs on what we've trusted and sacrificed our lives for." He would say, "If it were your family, I'd do it for you."

So I ask, who will govern your actions today? From whom will you seek your counsel? Saying yes to this benefit will send a message to these families that losing their loved ones has been acknowledged. For us, it's another step forward in believing that you will simply do what you said and wrote into law that you would do.

[The prepared statement of Ms. Schwantes appears as a submission for the record.]

Thank you.

Chairman LEAHY. Thank you. If I might, with your permission, Holly and Morgan, your dad was a hero, but your mom is one, too. She's a good mother. You take good care of her. I know she takes good care of you.

Ms. Tilton, your husband was volunteer chief of the Katy fire department in Texas, as Senator Cornyn pointed out. I think he has

introduced you. I'm proud to have you here, and I thank you for taking the time to be here. Please go ahead, ma'am.

STATEMENT OF JO ANN TILTON, KATY, TEXAS

Ms. TILTON. Since I'm here today speaking in his honor, I think it only fitting that he be here with us.

Today I speak in honor of all fallen firefighters and their families. I would like to introduce to you one of the fallen. Chief Gary Tilton was part of that unique breed called a volunteer. His volunteer activities included membership in 43 service organizations. His involvements ranged from Rotary president, to city councilman, to church activities. But none of his activities held his heart like fire fighting. I have found that most people outside of the fire service do not understand the life of a volunteer firefighter.

Let me try to explain. Gary was a volunteer with the Katy fire department for 31 years. While we did not wear a uniform or fight a fire, my daughter and I were very much a part of Gary's fire service career. Every day of Gary's 31-year career we lived that life with him.

I learned that when you're married to a firefighter, no plans are definite. Emergencies happened night or day and Gary answered the call. Very early in Gary's career I learned how to reheat meals when we had to answer a call in the middle of dinner. I learned how to entertain a houseful of guests when Gary had a call and did not make it to his own birthday party. I learned how to be both mommy and daddy when Gary couldn't be at our daughter's activities because he was on fire call.

When the alarm went off in the middle of the night, I didn't roll over and go back to sleep when Gary left for the call. Instead, I'd listen to his monitor until I heard that everyone was back safely in the station.

My daughter and I shared Gary with the community for 31 years and we do not regret 1 minute of it. He had a passion for the fire service that you could see in his eyes and hear in his voice. We shared his excitement with so many honors over the years, such as when he was named Firefighter of the Year for the State of Texas. We were so proud when he achieved his dream of being named fire chief. Somehow, I felt when Gary was honored, my daughter and I were also being honored because we'd been so much a part of Gary's career.

Because I've been so much a part of Gary's career is one of the reasons that the delay of the DOJ has been so hard for me to handle. When the alarm went off, Gary answered the call. It didn't matter the hour, the weather, or the occasion. Someone needed help and, without asking questions or waiting until some more convenient time, Gary answered the call. He didn't wait to see why the fire started before he answered the call, he simply did what he was called to do, and that was to answer the call.

Gary answered his last call on October 20, 2004 and I stepped into a role in which I had never imagined myself. I gained a most honored title that day, but yet it is one that no woman desires. Suddenly, I was a widow and faced with challenges I could only have imagined prior to my husband's death.

When my claim was filed for benefits under the Hometown Heroes Act, I was told not to expect to hear anything for at least a year, so I put that claim in the back of my mind. During that first year there were so many challenges to be met that I literally kept a list on a yellow tablet.

As each task was completed and that obstacle was overcome, I would cross it off my list and feel a sense of relief and accomplishment. I had gone one more step on the road to building my new life. One by one, the items on that list began to be crossed off until 1 day only one item remained: the claim for benefits under the Hometown Heroes Act.

One year and 2 months after that claim was filed, I began to make inquiries to the DOJ. Periodically I would call and I would ask the same question; what is the status of my claim? I would always be given a very polite answer that basically said that either claims were not yet being processed, or my claim was in review. Time after time I called, time after time I was treated politely, but given no answers. Eventually I began e-mailing my questions to the DOJ. I received a contact e-mail each week, but no answers to my questions.

Over the past 18 months, I've had a total of 25 phone calls and 10 e-mails with the DOJ. None of those phone calls or e-mails contained answers to my questions. This has been a most painful and frustrating process. There is no way I can tell you how hard those phone calls and e-mails have been.

With every contact, another little piece of me has died because there on a piece of paper called a claim is the stark reality that my husband is not coming home. Unless you are a survivor yourself, there is no way you can understand the depth of pain of losing a spouse or a father. That pain is only made sharper by the delay in processing of the death claim.

Less than 48 hours ago, on Tuesday night as I was preparing to leave my home the next morning to come to Washington, I received a phone call from the Department of Justice. I was told that my claim had been approved that day. Two years and 10 months after this claim was filed, it has been approved for payment.

For me, it appears that the battle is over. I can only hope that the approval of this claim is an indication that the DOJ has begun to move forward in processing the many Hometown Heroes claims which have been pending for way too long. Many other families are experiencing that same pain and agony that I have felt for so long. I hope that they, too, will receive the honor that their firefighter so rightly deserves.

In 16 days, I will observe the third anniversary of my husband's death. This has been an incredibly painful process, but today I would say thank you for finally giving my husband the honor he deserves. He will always be my hero. Thank you.

[The prepared statement of Ms. Tilton appears as a submission for the record.]

Chairman LEAHY. Well, thank you, Ms. Tilton. Ms. Tilton, is this your daughter?

Ms. TILTON. This is my daughter, yes.

Chairman LEAHY. And first name?

Ms. TILTON. Laurie.

Chairman LEAHY. Laurie. I just wanted that for the record. Laurie, thank you for being here, too.

I'm going to yield to Senator Schumer to introduce our next witness.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Well, thank you, Chairman Leahy. I want to thank you and Senator Specter and Senator Cornyn for holding this very important hearing today. We also want to thank all three of our witnesses. I'm about to introduce Ms. Falkouski, who I know, but I want to thank Ms. Tilton and Ms. Schwantes for really moving, powerful testimony. I hope it melts some of the harder hearts in the Justice Department.

Now it is my honor to introduce my constituent, Susan Falkouski. She is the widow of Assistant Chief Michael Falkouski of the Rensselaer fire department. Chief Falkouski suffered a stroke and died in the line of duty after responding to a fire in the middle of a blizzard in 2005.

Over the past year, I've gotten to know Ms. Falkouski, and with her case, and I know that this is exactly the kind of tragic case that I was envisioning when I co-sponsored the bill that Senator Leahy introduced, when I voted in favor of it and pushed forward to become law.

Yet, somehow the Department of Justice has twisted congressional intent and denied the majority of the heart attack and stroke victims that it has ruled on. In fact, at the time I first became involved, not in the bill but in what had happened, they had denied 34 out of 34 cases, including two cases in the Capital Region, one of Chief Falkouski, as well as the case of Chief Kevin Shea of the Ellsmere fire department, which is also in the Capital Region near Albany in New York State.

Now, my colleagues, when you hear her story I think you'll agree with me that Chief Falkouski's case was precisely the kind of situation that we attempted to address in 2003 and that the Department of Justice is not acting in a manner we intended.

Day in and day out, our firefighters and police officers put their lives on the line to take care of us and we have to do the same for their loved ones. Congress passed this law to give families of our fallen heroes a helping hand, not show them the back of it.

In a sense, the way the Justice Department has administered this law, for many families it's worse than having no law at all. It's just so wrong and so unfair. When emergency workers' lives are interrupted by a call and suddenly they go racing to a hazardous condition, medical science will tell you it rockets the heart race and stress level on the human body.

It doesn't matter whether they're in a burning building, chasing a criminal, responding to a scene, or monitoring the situation from the street. These brave men and women put tremendous stress on their bodies, on their lives, and their lives on the line when they answer that call.

Responding to an emergency, working at the scene, and the immediate period afterwards is inherently non-routine. That is not what human beings normally do in the course of a day. Most of us

never experience that kind of stress in a year, 2 years, 3 years. Those kinds of situations, we know, place the human body under irregularly high stress levels.

I'm glad to see that, in Dr. Herraiz's testimony, he agrees with this and has issued "a binding direction to his staff" regarding these situations. That is a breakthrough, and I hope one that will not be an empty breakthrough, but one that will portend a better solution for Ms. Falkouski, Mrs. Shea, and the others who have been denied unfairly.

Firefighters like Mrs. Falkouski's husband don't sit on their hands when our families need help. The Federal Government should not sit on its hands when these families need help.

I hope stories like those of Mrs. Falkouski will continue to open the eyes of the Justice Department so it can finally understand how important the 2003 Hometown Heroes Act benefits are to families like the Falkouski family. Again, I want to thank Mrs. Falkouski for being here. I want to thank Chairman Leahy for introducing this bill and holding this hearing.

And one other note of thanks. Sitting behind Mrs. Falkouski is Steve Mann, who has worked in my capital office for 9 years. Not only is he one of the best workers I've ever had in my 33 years as an elected official, and not only are we, the people of New York, blessed to have him, but he's also an assistant chief, knew Chief Falkouski, and in fact took Chief Falkouski's spot after he passed away in the Rensselaer fire department.

Ms. Falkouski, thank you for being here.

Chairman LEAHY. Thank you, Mrs. Falkouski. Please go ahead.

STATEMENT OF SUSAN FALKOUSKI, RENSSELAER, NEW YORK

Ms. FALKOUSKI. Good afternoon. I am here today to speak to you about my husband, Michael Falkouski. Michael was a wonderful man and a terrific husband. We were married for 38 years and we raised three children. Throughout Mike's life he was driven to serve his community. He coached Little League when our children were little. He rode the volunteer ambulance. He was an elected city council member for 16 years. But most of all, he was very proud of his service as a volunteer firefighter for 37 years.

The Rensselaer fire department is made up of a combination of volunteers and career firefighters. In 1993, Mike was appointed to the volunteer position of Deputy Fire Coordinator for Rensselaer County, where he served as a liaison between the Rensselaer City Fire Department and the neighboring mutual aid departments.

In 1998, the Rensselaer City Board of Public Safety appointed Mike to be the 2nd Assistant Chief of the Rensselaer Fire Department. This made him the third highest-ranking member of the department and made him responsible for all of the firefighters under him at emergency scenes.

He worked very hard at this job and took the responsibility very seriously. In Rensselaer, the fire chiefs don't work shifts. They are always on call and they respond from their homes to emergency calls. Mike would frequently be called away from family events, dinners, or in the middle of the night to respond to a call.

In the early morning hours of Sunday, January 23, 2005, the Capital Region of New York was in the midst of a major winter

storm which would dump more than 20 inches of snow on the area. At 2:33 a.m., with the wind chill temperature at minus 11 degrees, the Rensselaer Fire Department received a call of an explosion in a quiet, residential area. The page alarm and call woke Mike up from a sound sleep, and he quickly dressed and headed out into the blizzard.

Mike's pickup truck was covered with more than a foot of snow and he rushed to clean it off as quickly as he possibly could so that he could head to the call. Other firefighters have told me how physically exhausting this was to them. While Mike was still cleaning his car, the first fire truck arrived at the scene. The firefighter driving the apparatus was Mike Mann, who was a lifelong friend of my husband's.

Firefighter Mann reported a heavy fire condition in a garage with a severely burned victim in need of treatment, and called for a second alarm for more help. As my husband made the treacherous response through the blizzard, he heard reports of a series of small explosions in the fire building, as well as frozen fire hydrants. Mike arrived a block away from the fire scene and parked his truck.

He got out of his truck and was finishing getting his gear on when an aneurysm ruptured in his brain and he fell unconscious. He was discovered by a civilian, and at 2:54 a.m. it was reported that he was down. He began receiving CPR and AED treatment by a group of firefighters and EMTs and was transported to Albany Memorial Hospital.

I was still sleeping when our dear friend, retired Fire Chief Phil Smith, called me and told me that Mike had been taken to the hospital and that he was on his way to pick me up. Despite the best efforts of the firefighters on the scene and the doctors at the hospital, the damage was too great and, as Mike wished, he was kept alive for several hours in hopes that his organs would be harvested. My husband died later that day.

In all the years that Mike served as a firefighter, he told me not to worry; if anything ever happened, I'd be taken care of. One of the firefighter told me about how Congress had added heart attack and stroke to the PSOB program, and that I would likely qualify. Sadly, both were wrong.

In March, I received a letter from Hope Janke of the Department of Justice informing me that they had denied my claim for death benefits under PSOB. The letter stated that the "act of responding at any hour of the day or night to the scene of a fire event is a routine engagement." The letter also said that the below-zero weather, high winds, and 20 inches of snow had no significance.

They failed to appreciate the added stress that the reported heavy fire, explosions, burned victim, low manpower, and frozen hydrants would have had on a chief as he made his way to the scene. He knew he was assuming responsibility for all of this chaos. I must tell you, I am not only offended, but angry at this letter. I feel that the Department of Justice trivialized my husband's service, and it seems to me it was written by someone who has no idea of what it's like to respond to an emergency.

In fact, I think it is inherently non-routine for any human being to race towards a dangerous situation at a moment's notice. The

firefighters I have spoken to agree with me, and several of the noes who were there that night tell me that fire, in particular, was the most non-routine fire that had ever been to.

I want to finish by saying that I hope you can change this thinking in the Department of Justice. If not for me, for all of the thousands of firefighters and their families out there who continue to respond at a moment's notice to dangerous situations. I am sure that most of them think, like Mike and I did, that if tragedy ever came to them their family would be taken care of. If they are not, what kind of message does that send?

I know that it's already hard enough to get people to volunteer. Mike used to talk about how hard it is to recruit and keep people who are willing to devote the time and accept the danger. If the government considers this kind of service to be routine and denies benefits in circumstances like this, I really wonder how we will convince people to keep doing it.

This is not something I would ever do in my life, to come down here and speak to you, but I feel it is that important that I have done so. Thank you.

[The prepared statement of Ms. Falkouski appears as a submission for the record.]

Chairman LEAHY. Thank you. I'm going to put into the record the letter from Chuck Canterbury, the president of the Fraternal Order of Police, who strongly supports this, and Chief Steven Westerman, the International Association of Fire Chiefs, for his letter in support of this, but also two policy memos issued by the Bureau of Justice's Assistant Director Domingo Herraiz on October 2 of this week, which I think are a step in the right direction.

Senator Schumer and I have already discussed this. We're not going to ask questions. There's nothing that could be added to what you've said. We will stand in recess for 2 minutes while the panels change and give us a chance to come down and thank you personally.

[Whereupon, at 3:19 p.m. the hearing was recessed and resumed back on the record at 3:21 p.m.]

Senator SCHUMER. Well, thank you. I want to thank Mr. Herraiz for being here. Let me introduce Domingo S. Herraiz, who is the Director of the Bureau of Justice Assistance, the BJA. Before his appointment, Mr. Herraiz served on the Governor's cabinet as Director of the Ohio Office of Criminal Justice Services. Prior to OCJS, Mr. Herraiz was the Executive Director of the Ohio Crime Prevention Association, the large State crime prevention association in the country. He also served as an executive committee chair of the Crime Prevention Coalition of America.

The entire statement of Mr. Herraiz will be read into the record. Mr. Herraiz, you may proceed with your statement. You have 5 minutes, and then answer questions.

STATEMENT OF DOMINGO S. HERRAIZ, DIRECTOR, BUREAU OF JUSTICE ASSISTANCE, OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. HERRAIZ. Chairman Schumer, distinguished Members of the Committee, thank you for the opportunity to appear today on be-

half of the Department of Justice's Office of Justice Programs. As you know, I am the Director of the Bureau of Justice Assistance.

I understand the serious issues surrounding the Public Safety Officers' Benefits Program, or PSOB, Hometown Heroes claims. I first want to underscore our commitment to the law enforcement, firefighter—

Senator SCHUMER. Could you just pull the microphone up a little so our transcriber can hear you? Thank you.

Mr. HERRAIZ. I want to underscore our commitment to the law enforcement, firefighter, and emergency responders' communities. As the son of a firefighter and the nephew of a police officer, I am concerned and committed to do everything I can do to make certain the survivors of our fallen heroes receive the benefits that they deserve.

I realize that there are several major concerns regarding Hometown Heroes claims: the delays and backlogs of Hometown Heroes claims, the interpretation of the term "non-routine", our request for medical records from survivors, the ratio of denials to approvals in the first year, and the outcome of specific cases.

On December 15, 2003, the Hometown Heroes Act expanded the PSOB program to allow certain eligible heart attacks and strokes to be considered line-of-duty deaths. Afterwards, we undertook a complete revision of the regulations which, while needed, took longer than we expected. The resulting delays were unfortunate and of great concern to the public safety community, Members of Congress, and especially the survivors who have lost loved ones.

To make the Hometown Heroes claims process run more smoothly, we have undertaken many changes. PSOB claims can now be submitted via the Internet. A new PSOB case management system is now online. This system is designed to generate monthly updates to survivors so they know the exact status of their claims. Benefit specialists, claims contractors, attorneys, hearing officers, and forensic pathologists have all been added to expedite the review process.

We have partnered with the National Fallen Firefighters Foundation and the Concerns of Police Survivors to develop what's titled the Local Assistance State Teams, the LAST teams, to work directly with survivors and agencies on their PSOB claims. The Department will issue the "Attorney General's Guide to Hometown Heroes" to provide step-by-step guidance on the application and review process.

And, perhaps most importantly, beginning this past August, each week the PSOB Office identifies the 12 oldest and most complete Hometown Heroes cases and drafts determinations for general counsel review. Having designed this strategy based on the insight from our first year of processing these claims, these changes will allow us to have 144 Hometown Heroes cases in legal or medical review in just 3 months. We are fully committed to this 12-in-a-week strategy until all claims have been processed and normalized, to about 7 new cases per month by March 2008.

Some of our stakeholders have also expressed concern that the term "non-routine" is ambiguous, and that in some cases, an activity which is regularly done by a public safety officer has been considered routine. Sharing those concerns, I ordered a complete re-

view of all Hometown Heroes denials. While "non-routine" has been referenced in determinations, thus adding to the sense that the term was used to deny cases, to date, no claim has been denied solely because the activity was deemed "routine".

Understanding this was a concern to firefighters, law enforcement, and survivors, and to ensure consistency in the future, I provided binding direction so that no activity will be considered routine simply because the officer might engage in it regularly. Additionally, this directive clarifies that emergency calls will be considered non-routine for Hometown Heroes purposes.

Another concern raised is the request that Hometown Heroes survivors provide up to 10 years of medical history. Early in the Hometown Heroes process we were advised by forensic pathologists to request these records, then quickly realized that they were not needed in many cases. As a result, we have reduced the burden on survivors by not requesting these records in most cases. I have recently provided binding direction on this issue as well, specifying that medical records will be requested only in rare circumstances where the records might serve to support the claim.

A further concern is the ratio of Hometown Heroes approvals to denials. As we continue to partner with the national stakeholders and review the wide range of cases submitted, we have discovered critical information points that can positively impact claim outcomes.

Based on our experience and increased outreach to agencies and claimants regarding the officer's activities in the 24-hour period to the heart attack or stroke, I believe we can reduce the number of claims determined and denied on incomplete evidence and, in turn, increase the number of approvals.

Finally, there are concerns about the outcomes of specific cases. While the Department cannot speak publicly regarding individual ongoing cases, I am confident that increased outreach efforts will help agencies and survivors provide all evidence needed to effectively support their claims, including those claims now on appeal.

Please be assured that the Department of Justice is committed to ensuring that all PSOB claims are administered in a compassionate, fair, and timely way. I have served the criminal justice community for over 22 years, and as BJA's Director I have never forgotten the values and the life lessons that I was taught in a public safety household.

Mr. Chairman, I'd be happy to answer your questions and I thank you for allowing me the opportunity.

[The prepared statement of Mr. Herraiz appears as a submission for the record.]

Senator SCHUMER. Well, thank you, Mr. Herraiz. I must say, your testimony gives us some hope that things are changing, and will change. I can tell you, as one of the co-sponsors of the Act, we did want these kinds of changes all along.

In fact, April of 2003, I stated very clearly that "the old standard before the Act was implemented was very narrow and ignored tremendous stress and strain that first responders are under when they respond to a call". So it seemed inherently unfair to me, Senator Leahy, Senator Specter, my colleagues who are involved in this, that the families whose loved ones died while responding to

a fire were treated differently than those who died while fighting a fire when the stress on their bodies was often quite equal.

Both represent acts of heroism, of being willing to make the ultimate sacrifice in service. Both deserve our honor in the form of compensation for their families. That's why we modified the law to cover situations when a first responder died as a result of stressful circumstances surrounding a call to action. We carefully tailored this language to avoid being too broad.

We didn't want to include situations where someone who's a first responder passes away in non-stressful situations, like sitting around the firehouse waiting for a call, or a volunteer EMT who might be waiting for a call watching television. Those are routine to anyone's daily life and not covered.

But the three cases we've heard here are not routine in the least. You know that, I know that. We all know that. So that's why there is such frustration here, because it seemed like the Justice Department was going out of its way to defy congressional intent to deny these widows, these families, their just desserts.

So when you met with my staff back in May, one of your colleagues stated it was not the position of the Justice Department to exclude all cases in which a firefighter or police officer died while responding to a call. He stated DOJ considered such activities nonroutine. That was good. Your letter seems to back that up, your testimony here, very well.

But Ms. Falkouski's denial letter flies in the face of that statement. Her letter states that "the act of responding at any hour of the day or night to the scene of a fire event is a routine engagement." There's a direct contradiction in her denial. And I don't know the letter of Mrs. Schwantes, but I am sure there are many others.

So when presented with this letter back in May, you and your colleagues assured my staff, despite the reason for denying Ms. Falkouski, this wasn't the position of the Justice Department. The new testimony makes that crystal clear. I'm very glad to hear it.

So my question to you is, first, if the new policy is the policy of the Justice Department, what are we going to do with the claims that were denied, seemingly under an old policy, if an unstated policy? And I don't want to put you in a legal box here, but I certainly want to get relief for Mrs. Falkouski, Mrs. Schwantes, and the many others who are like that.

So my question really is aimed at the future. What are we going to do to correct the situation? First, in addition to the directive, what steps have been taken to make sure that other claims are not denied due to this misinterpretation of the law?

Second, I know you can't discuss specific cases, but what are we going to do with the appeals of the claims that were initially rejected, seemingly under an interpretation of the law that the Justice Department no longer holds? Those are my two questions, and they're said with respect and appreciation for your being here and wanting to be helpful.

Mr. HERRAIZ. Thank you, Mr. Chairman. In regards to your first question and the directives, the binding directives that we've issued, it's important for me to stress how important the time period to get there really was. You had referenced the meeting in

May. We have watched these, both by working with the national organizations, even local fire and police services, to really try to figure out, what are the information points as related to the regulations? How can we get to the next step?

That's when we identified that, coming back from your staff meeting as well, to review—and I mentioned to actually go and review all of the old cases and to make sure of the determinations. We basically discovered that the terminology that we used in those letters was not the best of terminology, and that's why we went back and reviewed each one.

Then the recent decision to issue the directive so we can make it clear and build a foundation for the future, to guarantee that this will be followed in the PSOB Office from this day forward. Specifically as it relates to the claims that are still at BJA, in particular, these new directives obviously will impact those cases.

The second aspect as far as the cases that are on appeal where those individuals—approximately 26 survivors have appealed the decision of the PSOB office. Right now, those have gone to a hearing officer who will go out into the community, work with the surviving family to gather additional information. They will come back and provide a report back as the hearing officer as to new information that was found on the part of the claim.

There are two parts to the process of the appeal, the BJA Director, myself, is the final step. I'm the final, the second step, in the process. It gives me the opportunity to look at all the information in the file, which I have not yet seen on any of the cases—again, these cases I'm looking for coming back from the hearing officer. So we'll have the opportunity to implement those two directives and share those with the hearing officers because they have not reached my desk yet.

Those cases which we have denied, the PSOB Office director will personally reach out to each one of those families, the surviving families, share with them what the directive is, what it means, and give them the opportunity to figure out if, at that point, they would like to appeal to the director of BJA through the hearing process, as established in the regulations.

Senator SCHUMER. And I take it then that this new information will be looked at under the guise of this directive, the new directive, even if it's on appeal?

Mr. HERRAIZ. That's correct.

Senator SCHUMER. Okay. That is good news. Hopefully that should get us some justice for some of these families, and we'll be watching carefully. But we do, I think, speaking for myself, and I would imagine the whole committee, appreciate, shall we say, not the change in law, because I know you're bound by that, but the change in attitude of the Justice Department in this regard, and we're going to be looking very carefully to hope that that attitude shows through, not only on the new cases which are very important, but on the appeals. It would just be unfair to hold these 26 families to a different standard than the new standard that is forward.

Senator Leahy?

Chairman LEAHY. I was just going to add, I read your testimony before and was encouraged by it. I want to thank you for coming

here. You've heard some very compelling stories. But, unfortunately, there are many, many others like it. I hope you will take a look at Mrs. Schwantes and Mrs. Falkouski's files, review that in light of all this. Ms. Tilton has gotten notice that that's going to be looked at, and that's good. But there are so many others we could have had here testifying. I am encouraged, Director, very much so. I want you to know I appreciate that.

Mr. HERRAIZ. Thank you, Senator. And you have our commitment that we will absolutely look very hard at these cases and make sure, when they reach us on appeal, as well as the cases that moves forward—this is an issue that's very important to me. My brother-in-law is a current firefighter, my father's retired, and I know what it's like to stand next to a firefighter and have to go through this. I can only imagine what it would be like had I lost my father or was to lose my brother-in-law.

Chairman LEAHY. Thank you, Director.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Mr. Chairman.

Just before I call on Senator Cardin—my questions are finished—I'd just ask unanimous consent, first, to add the letter denying Ms. Falkouski's initial claim to the record, and a statement Senator Biden has submitted for the record. Without objection, they will be.

[The prepared statement of Senator Biden appears as a submission for the record.]

Senator SCHUMER. Senator Cardin?

STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Thank you, Mr. Chairman. Let me thank you for your testimony. I must tell you, as I read the material for this hearing, I was very, very concerned bout the 300 cases or applications that have been filed and so few getting positive results, and the length of time, and then realizing that each one of these cases is a family. We saw three today, and I think that helped.

I really do thank Senator Leahy for putting together that first panel, because I think it does point out that we are affecting people's lives. They've gone through enough stress, enough anxiety that they don't need to be put off as they have under the bureaucratic problems of implementing this statute. So, I thank you for your testimony.

I just want to add one more word of caution. It seems to me relatively clear that Congress intended that for our first responders who have suffered from a heart attack and died, in which it was clear that their occupation contributed to that circumstance, that they would be entitled to benefits.

I read your testimony and read some of the technical provisions and the interpretations of the technical provisions and I understand we're all bound by the law. We certainly aren't bound by this type of delay in implementing the law, but you're bound by the law. I want to make sure, at the end of the day, that the intent of Congress is, in fact, carried out.

If, in your review, there are ambiguities that continue to be used to deny benefits to families that should be receiving those benefits,

I want to know about that because I think that we want to make sure that those that are entitled to these benefits, as Congress intended, get those benefits. So I just really want to underscore that. This shouldn't be an adversarial procedure.

Obviously we have to have a review process. I'm not suggesting that we can't do this without a review process. We have to have that. But it shouldn't be an adversarial type of a process. It should be one in which, when certain standards are met, the benefits are given and it should be done in a timely way. That has not been, at least as I see it, the record to date.

I'd just add my support to the comments made by my colleagues, and again, I thank you for the commitments and statements that you've made today. Hopefully we'll be able to move forward and get the benefits to the families that are so richly deserved. Thank you.

Senator SCHUMER. Thank you. Thank you, Director Herraiz.

I want to thank, again, the families for coming, Falkouski, Tilton, and Schwantes, and all of those who came in the audience to support this good cause.

Without further ado, the hearing is adjourned.

[Whereupon, at 3:40 p.m. the hearing was adjourned.]

Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 23, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed a response to questions arising from the appearance of Director Domingo Herraiz before the Committee on October 4, 2007, at a hearing entitled "Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act".

We hope that this information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Member

"Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act"

October 4, 2007

Questions for the Hearing Record
for
Domingo Herraiz
Director
Bureau of Justice Assistance
Office of Justice Programs
United States Department of Justice

QUESTION FROM SENATOR LEAHY:

1. Director Herraiz, I appreciate that the Department is making efforts to turn around its handling of this program. On October 2, you signed two policy directives to clarify both the use of medical evidence in claims processing and what constitutes "non-routine" activity. These are encouraging developments.

a. Will the Department of Justice be applying these new policy directives to previously denied claims?

RESPONSE:

The Department of Justice will apply the two policy directives signed on October 2, 2007, ["Nonroutine Stressful or Strenuous Physical Activity"; "Competent Medical Evidence to the Contrary"] to all Hometown Heroes claims, including those where survivors have requested an appeal of the initial PSOB Office decision. In addition, as I stated in my October 4, 2007 testimony before the Senate Judiciary Committee, to ensure that every Hometown Heroes claim is given the opportunity of review under the new directives, the Bureau of Justice Assistance (BJA) is reaching out to all the primary survivors who filed Hometown Heroes claims that were subsequently denied, to update them on the directives and share details regarding how they may appeal their claims, should they wish to do so.

b. If so, what process will you undertake to review these cases? Will the Department revisit all of the claims that have been denied - regardless of whether the claimant has made a formal appeal?

RESPONSE:

The appropriate staff within BJA will personally reach out to every primary survivor who has not yet appealed his or her claim regarding the process for appealing the initial decision. For any survivors who did not request an appeal of their claims within the

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regulatory filing period, but wish to now appeal their claim, I will, as BJA's Director, grant a waiver of the filing deadline.

c. How will these new policy directives improve the Hometown Heroes claims process? Will they result in faster processing? More benefits being granted?

RESPONSE:

The new policy directives have in fact already positively affected the Hometown Heroes claims process. Based on the directives, the Hometown Heroes claims we are processing have been reviewed again to identify whether any "affirmative suggestion" exists in the claim file that something other than the line of duty may have caused the fatal heart attack or stroke. In cases where no suggestion exists, these claims have been immediately moved forward in the review process. In addition, cases involving emergency calls have been reconsidered by the PSOB Office and moved forward as meeting the definition of "nonroutine" within the meaning of the Hometown Heroes Survivors Benefits Act (Hometown Heroes Act).

2. I believe that it would be helpful for the Committee to understand what has been causing both the high rate of denials and the long delays in processing these claims. The Hometown Heroes Act expanded the Public Safety Officers' Benefits program to create a presumption that fatal heart attacks or strokes suffered in the line of duty are considered line of duty deaths. But in implementing the law, it appears the Justice Department has been holding the victims of fatal heart attacks and strokes to a different standard of proof than other line of duty deaths.

a. Please describe the policies that were being used to review and process Hometown Heroes claims prior to the policy directives issued on October 2, 2007.

RESPONSE:

The Department values the contributions of those who serve their communities in potentially dangerous circumstances, and we are committed to ensuring the success of the Hometown Heroes Act and have worked in consultation with key stakeholders. The delay in implementing this important law was due in large part to the time it took to develop the final regulations.

The Hometown Heroes Act created a mechanism conceptually unlike anything else in the PSOB Program, by establishing a statutory presumption that public safety officers who die from a heart attack or stroke following training or engagement in a situation involving nonroutine stressful or strenuous physical public safety activity, died in the line of duty for benefit purposes. The Hometown Heroes Act also states that this presumption may be overcome by "competent medical evidence to the contrary."

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In developing the regulations, the Office of Justice Programs (OJP), consulted extensively with the Armed Forces Institute of Pathology and other experts in the field of cardiovascular disease and work-life-related diseases and afflictions. OJP also considered comments from national organizations representing law enforcement and firefighters.

OJP published the proposed Hometown Heroes Act regulations in the July 26, 2005, Federal Register, with a 60-day comment period. During the comment period, OJP received comments from a number of interested parties, including national police and fire associations; municipal police, fire, and rescue departments; PSOB hearing officers; survivors of fallen public safety officers; and individual concerned citizens. OJP carefully reviewed and analyzed these comments, using them to make changes in the regulations. The new PSOB regulations, including the provisions that implement the Hometown Heroes Act, were published in the Federal Register on August 10, 2006. The final regulations went into effect on September 11, 2006.

Since then, all claims submitted under the Hometown Heroes Act have undergone an initial review by the PSOB Office, and, as I described in my October 4 testimony before the Senate Judiciary Committee, BJA continues to conduct outreach to agencies and survivors for Hometown Heroes claims that require additional information based on the documents provided with the original claim.

Prior to the directives, claims submitted for consideration under the Hometown Heroes Act underwent the following review process: the Public Safety Officers' Benefits (PSOB) Office conducted outreach and information collection regarding any 1) nonroutine; 2) stressful or strenuous; 3) physical activity at the time or in the 24 hours before the officer suffered the fatal heart attack or stroke, as well as 4) generally requesting additional medical records to assist the PSOB Office in making evaluations as to 'competent medical evidence' under the Act." Once PSOB drafted its determination, the Office of Justice Programs' Office of General Counsel reviewed each determination and provided the PSOB Office with input or edits regarding the above factors as well as any other information requested to consider eligibility of the claim. While the overall PSOB review process has not changed since October 2, the PSOB Office now looks to the BJA Director's policy memorandums regarding 1) what will be considered nonroutine for Hometown Heroes purposes; and 2) requesting limited medical records from survivors only in rare circumstances.

We have learned valuable lessons from our experience in reviewing these new claims, which we have applied to the implementation of the PSOB regulations. Ultimately after consultation with stakeholder groups, BJA made the decision to clarify the interpretation of significant terms in the Act, such as "nonroutine stressful or strenuous physical activity" and "competent medical evidence to the contrary." I am confident these policy directives will help us process claims more efficiently and effectively in the future.

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b. Has the Justice Department been following a different policy for reviewing Hometown Heroes claims than that used for other line of duty deaths?

RESPONSE:

The Department has not been following a different policy for reviewing Hometown Heroes claims versus those used for other line of duty deaths. All line-of-duty deaths submitted to the Department of Justice's Public Safety Officers' Benefits (PSOB) Office are processed in the same general way and according to the PSOB Act and regulations.

c. Are there particular identifiable aspects of the Department's review process that have caused the long delays and numerous denials? If so, please describe them.

RESPONSE:

As previously mentioned, the delay in implementing this important law was due in large part to the time it took to develop the final regulations in consultation with significant stakeholders. Beginning in January 2004, OJP set out to amend the PSOB regulations to implement the provisions of the Hometown Heroes Act. After a few months, however, it became clear that a complete overhaul of the PSOB regulations was necessary for several reasons. One of the most important reasons was that the PSOB Act itself had been amended many times since its enactment in 1976, including amendments passed by Congress and signed into law by the President on January 5, 2006, following the closing of the comment period for the proposed rule.

OJP's goal in conducting a comprehensive revision of the PSOB regulations was to avoid inconsistency within the regulatory scheme and to prevent confusion for public safety agencies and survivors. This comprehensive revision was time-consuming, leading to delays, which, while necessary, caused understandable frustrations to survivors and the field.

In addition, one of the greatest challenges facing the PSOB Office in the review of all claims, including those that may implicate the provisions of the Hometown Heroes Act, is the significant outreach required to collect information from agencies and survivors in support of their claims. This detailed information, ranging from documents to accurately identify beneficiary eligibility among spouses, children, life insurance beneficiaries, and surviving parents, to detailed statements of circumstances from agencies regarding the fallen officers' activities at the time of the traumatic injury or heart attack or stroke, is time consuming and at times also frustrating for agencies and survivors.

One of the highest priorities of the PSOB Office is to conduct early and frequent outreach to survivors and agencies throughout the claim process. To further these efforts, at the end of September BJA implemented the first phase of a PSOB case management tool. This electronic workflow will allow claims to move through each stage of the review process more expeditiously and will provide monthly updates to survivors. Our hope is

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that this outreach will help assure survivors that the claims for their loved ones are neither lost nor forgotten. Another priority is to continue our critical partnership with stakeholders, including the National Fallen Firefighters Foundation and the Concerns of Police Survivors, from the moment of the officer's death through the resolution of a claim.

Finally, for PSOB claims not approved at the initial level, it is important to note that the PSOB regulations provide two levels of *de novo* administrative appeal; the first to an independent hearing officer, and the second to the Director of BJA. This means that in every case, and at each level, the appeal involves a comprehensive review of the entire claim, including new information, as if no decision had previously been made. At each level, a survivor is encouraged by the PSOB Office to provide additional evidence and arguments in support of the claim. Our independent hearing officers, and myself as the Director, have the authority to issue subpoenas when necessary to assist claimants in obtaining new information to support their claims. Ultimately, a survivor may appeal the final agency decision to the courts.

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SUBMISSIONS FOR THE RECORD

Statement of Senator Biden

"Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act"

Thursday, October 4, 2007
Dirksen Senate Office Building Room 226

Mr. Chairman, thank you for holding this important hearing. As you know, the Public Safety Officer Benefit Program was enacted back in 1976, and the sole purpose of that bill was to recognize the sacrifices of our public safety officials. By providing a death benefit to their surviving family members we intended to help ensure that – in some small way – these brave men and women would know that their families would be assisted if they were killed in the line of duty. Over the years, we recognized the good sense of this policy and expanded this program. In 1990, we included public safety officers who were permanently disabled in the line of duty and in 1998 we expanded the program to cover educational costs of spouses and dependents.

Clearly, it has been Congress's intent to expand this program. In 2003, we took another important step by passing the Hometown Heroes Survivor's Benefits Act. Under your leadership, Mr. Chairman, we expanded the coverage of this benefit to survivors of public safety officers who suffer fatal heart attacks or strokes in the line of duty or up to 24 hours after a non-routine stressful or strenuous line-of-duty activity.

The intent of this legislation is clear and it was clearly a bi-partisan issue. In fact, then Chairman of the House Judiciary Committee, Chairman Sensenbrenner set out the intent of Congress in his floor statement on November 13th, 2003. Mr. Sensenbrenner stated that "the bill would create a presumption that an officer who died as a direct and proximate result of a heart attack or stroke died as a direct and proximate result of a personal injury sustained in the line of duty if, (1) that officer participated in a training exercise that involved non-routine stressful or strenuous physical activity or responded to a situation and such participation or response involved non-routine stressful or strenuous physical law enforce, hazardous material response, emergency medical services, prison security, fire

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suppression, rescue, disaster relief or other emergency activity; (2) that officer suffered a heart attack or stroke while engaging or within 23 hours of engaging in that physical activity; and (3) such presumption cannot be overcome by competent medical evidence." It was also pointed out that other routine activities, such as working at a computer would not be covered.

Looking at the text of the bill and the clear bi-partisan intent expressed in the Congressional record, it seems crystal clear that what Congress was trying to accomplish with this legislation. Nevertheless, it has taken the Department of Justice three years to publish 10 pages of regulations to implement a one page law. These regulations were finally completed in September of 2006. As a result, there has been incredible delay. Of the 277 claims filed to this point, only 12 of these cases have been approved, 50 have been denied, and there are 215 cases still pending.

This is simply unacceptable. Instead of following the intent of Congress it appears that the Department has created a presumption against the death benefit being paid. Based upon conversations with surviving families, they feel that the administrators at the Department of Justice are putting the burden on them to prove that they are entitled to this benefit. Indeed, I am very troubled by some of the stories that I have heard about how the families have to continue to submit medical records and continually re-count to various bureaucrats the details of how their loved-ones passed away.

Again, Mr. Chairman I want to thank you for holding this important hearing. I look forward to hearing from the Department of Justice on their explanation of how they are running the program. Based upon what I've heard, it doesn't look good, and I look forward to hearing what they have to say.

Mr. Chairman, I look forward to working with you to ensure that our public safety officers -- that serve so selflessly for the good of our nation -- are given the benefits that they have earned. In my view, it is the least we can do to honor their service. Congress has spoken clearly on this issue and it is time for the Department of Justice to get busy implementing the law and processing these claims promptly and fairly.

41157.008

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

[redacted]

MAR 14 2007

RE: *Michael David Falkouski, PSOB Claim No. 2005-148*

Dear [redacted]

This letter serves to advise you that the enclosed Public Safety Officers' Benefits (PSOB) Office Claim Determination did not approve your claim for death benefits under the PSOB Act, 42 U.S.C. §§ 3796 – 3796c.

If you wish to seek further consideration of your claim, consistent with 28 C.F.R. §§ 32.42 and 32.2 of the PSOB regulations, the PSOB Office must receive your request for a Hearing Officer determination within 33 days of the postmarked date of this letter. A request that is filed in a timely manner will be considered under subpart E, 28 C.F.R. Part 32 (Sept. 11, 2006). The PSOB Act and regulations may be found online at. http://www.ojp.usdoj.gov/ogc/PSOB_Act_and_Regulations__2006.htm.

Although the PSOB Act requires that this claim be denied, it in no way diminishes Michael Falkouski's efforts and service to his community. The entire PSOB Office staff extends our condolences to you and your family. For additional assistance, please contact Felicia Logan-Epps at 202-514-9513 or the PSOB Office, toll-free, at 1-888-744-6513

Sincerely,

Hope D. Janke
Director
Public Safety Officers' Benefits Office

Enclosure

cc: James D. Van Vorst, Jr., Fire Chief

U.S. Department o justice

Office of Justice Pro gr.ms

Bureau of Justice As. istance

Washington, D.C. 20531

PUBLIC SAFETY OFFICERS' BENEFITS OFFICE CLAIM DETERMINA' 'ION

Case Number: 2005-148

Full Name: Michael David Falkouski

Age: 59

Title: Assistant Chief

Department/Agency: City of Rensselaer Fire Department

City, State, Zip Code: Rensselaer, New York 12144

Case Summary: According to information provided to the Public Safety Officers' Benefits (PSOB) Office, including a "Statement of Circumstances" provided by the Chief of the City of Rensselaer Fire Department and the New York State Certificate of Death, at 3:45 p.m. on January 23, 2005, Assistant Chief Michael David Falkouski died of cerebral anoxia as a consequence of intracranial hemorrhage and ruptured intracranial aneurysm (stroke). At 2:33 a.m. on the same day, the City of Rensselaer Fire Department had responded to a call regarding an explosion and fire in the detached garage of a local residence. Fire suppression activities were undertaken and the property owner was treated for severe burns, even as propane tanks in the structure continued to explode.. Assistant Chief Falkouski arrived at the location in his personal vehicle at 2:52 a.m., and was seen collapsing as he exited the vehicle. Emergency responders at the scene administered CPR, and he was then transported to a medical facility where he was treated and later pronounced dead. According to the statement of Chief James Van Vorst: "The extreme weather conditions of high winds, 20 inches of snow and below zero temperatures hampered firefighting activities. We encountered frozen fire hydrants and had to call for mutual aid water tankers from surrounding communities." This explosion and fire response was the only work activity performed by Assistant Chief Falkouski in the 24 hours prior to his responding to the scene in question. Assistant Chief Falkouski lived less than a mile from the scene.

Survivors:	**Name**	**Relationship**	**Date of Birth**

Determination: Based on the information in the record, including the documents noted above, the Claim for Death Benefits submitted by his [redacted] and an analysis of the evidence presented in this case, the PSOB Office has determined that the death of Assistant Chief Michael David Falkouski **is not covered** under 42 U.S.C. § 3796-3796c (the PSOB Act).

41157.010

PSOB Claim No. 2005-148 **Assistant Chief Michael David Falkouski**

The PSOB Act covers public safety officers who die as a direct and proximate result of a personal injury sustained in the line of duty. 42 U.S.C. § 3796(a).

In cases in which a public safety officer dies as a direct and proximate result of a heart attack or stroke, 42 U.S.C. § 3796(k) provides that the officer is presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty if the following conditions are met:

(1) that officer, while on duty –

(A) engaged in a situation, and such engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

(B) participated in a training exercise, and such participation involved nonroutine stressful or strenuous physical activity;

(2) that officer died as a result of a heart attack or stroke suffered -

(A) while engaging or participating as described under paragraph (1);

(B) while still on that duty after so engaging or participating; or

(C) not later than 24 hours after so engaging or participating; and

(3) such presumption is not overcome by competent medical evidence to the contrary.

In addition, 28 C.F.R. Part 32, the regulation governing the PSOB Act, provides, at 28 C.F.R. § 32.13, the following pertinent definitions for non-training situations:

Nonroutine strenuous physical activity means line of duty activity that—

(1) Is not performed as a matter of routine; and

(2) Entails an unusually-high level of physical exertion.

Nonroutine stressful physical activity means line of duty activity that—

(1) Is not performed as a matter of routine;

(2) Entails non-negligible physical exertion; and

(3) Occurs --

41157.011

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

PUBLIC SAFETY OFFICERS' BENEFITS PROGRAM POLICY MEMORANDUM

re: "Competent Medical Evidence to the Contrary"

With respect to the Public Safety Officers' Benefits Office determination of any claim that implicates the presumption described at 42 U.S.C. § 3796(k), and pursuant to subpart B of 28 C.F.R. part 32, effective immediately the following shall be the policy and practice of the Public Safety Officers' Benefits Program, in determining whether there may be "competent medical evidence to the contrary":

1. Where there is nothing in the claim file that affirmatively suggests that something other than the line of duty may have caused the fatal heart attack or stroke, or that it was more likely than not that the heart attack or stroke was imminent, no medical-history records shall be requested of the claimant.

2. In determining what may make an affirmative suggestion described in 1, the mere presence of cardio-vascular disease/risk factors (even extremely severe) – such as might (for example) be discovered in an autopsy or mentioned in a coroner's report or death certificate – shall not be considered, unless information in the claim file itself affirmatively suggests that the claimant's decedent— (a) actually knew or should have known of such presence; and (b) appears to have worsened or aggravated the same by his own intentional and reckless behavior.

3. Any medical-history records requested of the claimant will be reviewed for mitigating evidence in favor of the claim.

Director

10/2/07
Date

U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

PUBLIC SAFETY OFFICERS' BENEFITS PROGRAM POLICY MEMORANDUM

re: "Nonroutine stressful or strenuous physical activity"

With respect to the Public Safety Officers' Benefits Office determination of any claim that implicates the presumption described at 42 U.S.C. § 3796(k), and pursuant to subpart B of 28 C.F.R. part 32, effective immediately the following shall be the policy and practice of the Public Safety Officers' Benefits Program, in determining whether there may be "nonroutine stressful or strenuous physical activity":

1. No activity shall be understood to be "performed as a matter of routine" within the meaning of such subpart solely by virtue of being described by the public safety agency as being "routine" or "ordinary."

2. The determination of an activity's "routineness" should be informed less by the frequency with which it may be performed than by its stressful or strenuous character. (For example, although "domestic disturbance" calls may occur with some frequency in the law-enforcement context, typically they occasion considerable stress, given the many and serious unknowns associated with encountering often highly-emotionally charged (and often violent) individuals, on their own territory, and under circumstances where the mere presence of law-enforcement officers well may be perceived as intrusive and insulting; similar observations (as to frequency and stress) could be made with respect to vehicular, roadside traffic stops and fire alarms. Responding to an emergency call shall presumptively be treated as non-routine.)

Director

10/2/07
Date

Testimony of Susan Falkouski
Judiciary Committee
October 4, 2007

Good Afternoon. I am here today to speak to you about my husband Michael Falkouski. Mike was a wonderful man, and a terrific husband. We were married for 38 years and together we raised three children. Throughout Mike's life he was driven to serve his community. He coached little league. He rode the volunteer ambulance. He was an elected City Councilman for 16 years. But, most of all, he was very proud of his service as a volunteer firefighter for 37 years.

The Rensselaer Fire Department is made up of a combination of volunteers and career firefighters. In 1993, Mike was appointed to the volunteer position of Deputy Fire Coordinator for Rensselaer County, where he served as a liaison between the Rensselaer City Fire Department and the neighboring mutual aid departments. In 1998, the Rensselaer City Board of Public Safety appointed Mike to be the 2nd Assistant Chief of the Rensselaer Fire Department. This made him the third highest ranking member of the department and made him responsible for all of the firefighters under him at emergency scenes.

He worked very hard at this job, and took the responsibility very seriously. In Rensselaer, the fire chiefs don't work shifts. They are always on call and they respond from their homes to emergency calls. Mike, would frequently be called away from family events, dinners, or in the middle of the night to respond to a call.

In the early morning hours of Sunday, January 23, 2005, the Capital Region of New York was in the midst of a major winter storm, which would dump more than 20 inches of snow on the area. At 2:33am, with the wind chill temperature at -11 degrees, the Rensselaer Fire Department received a call for an explosion in a quiet residential area. The page alarm and call woke Mike up from a sound sleep, and he quickly dressed and headed out into the blizzard.

Mike's pickup truck was covered with more than a foot of snow, and he rushed to clean it off as quickly as he possibly could so that he could head to the call. Other firefighters have told me how physically exhausting this was to them. While Mike was still cleaning his car, the first fire truck arrived at the scene. The firefighter driving the apparatus was Mike Mann, who was a life long friend of my husband's.

Firefighter Mann reported a heavy fire condition in a garage, with a severely burned victim in need of treatment. And, called for a second alarm for more help. As my husband made the treacherous response through the blizzard, he heard reports of a series of small explosions in the fire building, as well as frozen fire hydrants. Mike arrived a block away from the fire scene and parked his truck. He got out of his truck was finishing getting his gear on when an aneurysm ruptured in his brain and he fell unconscious. He was discovered by a civilian and at 2:54am it was reported that he was down. He began receiving CPR and AED treatment by a group of Firefighter/EMTs, and was transported to Albany Memorial Hospital.

I was still sleeping when our dear friend, retired Fire Chief Phil Smith called me and told me that Mike had been taken to the hospital and that he was on his way to pick me up. Despite the best efforts of the firefighters on the scene and the doctors at the

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hospital, the damage was too great. And, as Mike wished, his was kept alive for several hours in hopes that his organs could be harvested.

My husband died later that day.

In all the years that Mike served as a firefighter, he told me not to worry if anything ever happened to him, that I'd be taken care of. One of the firefighters told me about how Congress had added heart attack and stroke to the PSOB program, and that I would likely qualify. Sadly, both were wrong.

In March, I received a letter from Hope Janke of the Department of Justice informing me that they had denied my claim for death benefits under PSOB.
The letter stated that "the act of responding at any hour of the day or night to the scene of a fire event is a routine engagement." The letter also said that the below zero weather, high winds and 20 inches of snow had no significance. And, they failed to appreciate the added stress that the reported heavy fire, explosions, burned victim, low manpower, and frozen hydrants, would have on a chief as he made his way to the scene.....he knew he was assuming responsibility for all of this chaos.

I must tell you. I am not only offended, but angry at this letter. I feel that the Department of Justice trivialized my husband's service. And, it seems to me it was written by someone who has no idea of what it's like to respond to an emergency.
In fact, I think it is inherently non-routine for any human being to race towards a dangerous situation at a moment's notice.

The firefighters I have spoken to agree with me, and several of the ones who were there that night tell me that fire, in particular, was the most non-routine fire they had ever been to.

I want to finish by saying that I hope you can change this thinking in the Department of Justice. If not for me, for all of the thousands of firefighters and their families out there who continue to respond at a moments notice to dangerous situations. I am sure that most of them think, like Mike and I did, that if tragedy ever came to them, the family would be taken care of.

If they are not, what kind of message does that send?

I know that it's already hard enough to get people to volunteer. Mike used to talk about how hard it is to recruit and keep people who are willing to devote the time and accept the danger. If the government considers this kind of service to be routine and denies benefits in circumstances like this, I really wonder how we will convince people to keep doing it. Thank You.

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

2 October 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

I am writing on behalf of the Fraternal Order of Police to express our sincere appreciation for your decision to hold a hearing this week on the implementation of the Hometown Heroes Survivors Benefits Act of 2003 (Pub. L. No. 108-182).

The FOP was proud to have worked so long and so closely with you to develop the original legislation. Its passage in 2003 was due in no small part to your steady and forceful leadership in Committee, on the floor, and in conference. Our cooperative efforts resulted in a Federal statute that makes–or should make–a real difference in the lives of the families left behind by a law enforcement officer that dies in the line duty from a heart attack or stroke. Regrettably, the regulations promulgated pursuant to this statute have undermined the intent of Congress and have caused the rejection an overwhelming number of claims filed under the Act.

To begin with, the promulgation of these regulations governing the implementation of the law was unacceptably long. It took nearly three years for the final regulations to go into effect, allowing Bureau of Justice Assistance (BJA) staff to accumulate more than two hundred claims upon which they did not act. The regulations have been in place for more than a year now, yet only sixty-two (62) claims have been acted on by the BJA and an incredible fifty (50) claims have been denied. More than two hundred claims are still pending–that is two hundred families who lost a loved one in service to their community–but cannot get the Federal government to act on their claims. This is simply unacceptable.

The regulations themselves are inherently flawed and are not only inconsistent with the intent of Congress, they stand the law on its head. For example, the BJA is interpreting the rebuttable presumption created by the Act as not being a rebuttable presumption at all. The new regulations essentially require the survivor family members to show, by a preponderance of the evidence, that competent medical evidence indicates that the officer's on duty actions were a substantial factor in causing his fatal heart attack or stroke. This is absolutely contrary to Congressional intent! Indeed, the definitions for key terms as defined in current regulations—including "competent medical evidence to the contrary," "engagement in a situation," "nonroutine

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strenuous physical activity," "nonroutine stressful or strenuous physical activity," and "nonroutine stressful physical activity"— do not conform with either the spirit of the law or with the expressed intent of Congress

The FOP has been reluctant to advocate for additional legislation–the intent of Congress on this issue is abundantly clear. The problem is the failure to execute that intent. Given the inexcusable amount of time it took to complete the rulemaking progress, and given the rejection of many of the recommendations put forward by the FOP and other stakeholder groups, the FOP has little confidence that revisions to the existing regulations would improve them in a timeframe acceptable to the survivor families. However, the Director of the Bureau of Justice Assistance does have the authority to issue directives clarifying the interpretation of many of the law's key terms, which could be incorporated into the claim review process. Why this has not been done in the last twelve months is certainly a question the Director should answer.

In addition, the FOP is very concerned that the BJA is viewing the Hometown Heroes Act as separate and apart from the Public Safety Officers' Benefit (PSOB) claim. Indeed, on the five page "Frequently Asked Questions" paper published by the Office of Justice Programs, it refers to the "'regular' PSOB implementing provisions and those specifically implementing the Hometown Heroes Act." Mr. Chairman, the Hometown Heroes Act was an *expansion* of the PSOB program and should not be considered separate from the "regular" program. I was troubled by this when the document was published in May of this year, and remain certain that this distinction, which exists only in the minds of the leadership at the BJA, is at the root of all difficulties related to the proper implementation of this Act.

You and the Committee should be aware, however, that there have been a number of individuals within the Justice Department who have done a great deal of work in an attempt to remedy the problems experienced by survivor families. Just two weeks prior to announcing his resignation, then U.S. Attorney General Alberto R. Gonzales announced in Louisville, Kentucky, at the FOP's National Biennial Conference, that he was ordering the problems be fixed immediately. Similarly, the former Assistant Attorney General for the Office of Justice Programs, Regina B. Schofield, who was not involved with the promulgation of the flawed regulations, worked extraordinarily hard to ameliorate the situation. And, just recently, Acting U.S. Attorney General Peter D. Keisler held a conference call with the FOP and other stakeholder groups and we were very encouraged by his obvious commitment to fixing these problems.

I want to thank you for holding this hearing and for giving those families who have suffered directly an opportunity to tell their stories. We have every confidence in your leadership on this matter and I look forward to working with you and your staff to resolve the problems which exist with the implementation of this law. If I can be of any further assistance, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President

Department of Justice

STATEMENT OF

DOMINGO S. HERRAIZ
DIRECTOR
BUREAU OF JUSTICE ASSISTANCE
OFFICE OF JUSTICE PROGRAMS
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

HOMETOWN HEROES

PRESENTED

OCT. 4, 2007

Statement of
Mr. Domingo S. Herraiz
Director, Bureau of Justice Assistance
Office of Justice Programs
U.S. Department of Justice

Before the
Committee on the Judiciary
United States Senate
October 4, 2007

Chairman Leahy, Ranking Member Specter, and distinguished Members of the Committee, thank you for the opportunity to appear today on behalf of the Department of Justice's Office of Justice Programs (OJP). I am Domingo Herraiz, Director of OJP's Bureau of Justice Assistance (BJA). As you know, BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities. BJA's overall goals are to (1) reduce and prevent crime, violence, and drug abuse, and (2) improve the functioning of the criminal justice system.

I am pleased to be here today to discuss the Department of Justice's administration of the Public Safety Officers' Benefits (PSOB) Program and the implementation of the Hometown Heroes Survivors Benefits Act of 2003. BJA's PSOB Office is responsible for reviewing and processing hundreds of cases each year and works with national law enforcement, fire service, and first responder groups to educate public safety agencies regarding the program. In addition, we offer support to families and colleagues of fallen law enforcement officers, firefighters, and first responders.

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Let me begin by saying that we recognize that developing the regulations and the review process for the PSOB Hometown Heroes claims has taken longer than what was originally anticipated, and I realize that these delays are of great concern to law enforcement, firefighters, other first responders, Members of Congress, and especially claimants who have lost loved ones. As the son of a firefighter and nephew of a police officer, let me assure you that I share your concern, and we have taken and will continue to take steps to decrease the time it takes for survivors to be given an answer on their claims. We are committed to resolving these claims expeditiously while making sure that we honor those who have given their lives to keep us safe.

History of the PSOB Program

Congress passed and the President signed into law the Public Safety Officers' Benefits Act in 1976. The Act was designed to offer peace of mind to men and women seeking careers in public safety and to make a strong statement about the value that America places on the contributions of those who serve their communities in potentially dangerous circumstances. Specifically, Congress was concerned that the hazards inherent in law enforcement and fire suppression and the low level of state and local death benefits might discourage qualified individuals from seeking careers in public safety, thus hindering the ability of communities to protect themselves.

The PSOB Program is administered by BJA and operates on the premise that it is essential that all public safety agencies be prepared to effectively help the family, fellow

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officers, and community move forward in the aftermath of a line of duty tragedy. This is a responsibility that the Department of Justice takes seriously, and will continue to work with local, state, and federal public safety agencies and organizations to become involved in promoting the protection of public safety officers' survivors should tragedies occur.

The PSOB Program provides both death benefits and disability benefits to eligible claimants. Death benefits are provided in the form of a one-time financial payment to eligible survivors of public safety officers whose deaths are the direct and proximate result of a personal injury sustained in the line of duty. Disability benefits are available for public safety officers who have been permanently and totally disabled as the result of catastrophic injury sustained in the line of duty.

The PSOB Program also includes the Public Safety Officers' Educational Assistance (PSOEA) Act. This Act expands the former Federal Law Enforcement Dependents Assistance Program to provide financial assistance for higher education to the spouses and children of federal, state, and local public safety officers who have been permanently disabled or killed in the line of duty. Educational assistance through the PSOEA Program is available to the spouse or children of a public safety officer after the PSOB death or disability claim process has been completed and benefits have been provided. The educational assistance may be used to defray relevant expenses, including tuition and fees, room and board, books, supplies, and other education-related costs.

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State and local law enforcement officers and firefighters are covered for line-of-duty deaths occurring on or after September 29, 1976. Federal law enforcement officers and firefighters are covered for line-of-duty deaths occurring on or after October 12, 1984. Federal, state, and local public rescue squads and ambulance crews are covered for line-of-duty deaths occurring on or after October 15, 1986. As of October 30, 2000, employees of the Federal Emergency Management Agency (FEMA) and state, local, and tribal emergency management and civil defense agency employees working in cooperation with FEMA are considered public safety officers under the PSOB Program, provided they were performing official, hazardous duties related to a declared major disaster or emergency. Retroactive to September 11, 2001, chaplains also are included in the definition of public safety officer.

Passage of the Hometown Heroes Survivors Benefits Act of 2003

On December 15, 2003, the Hometown Heroes Act became law and expanded the PSOB Program to allow certain deaths from heart attacks and strokes to be considered line-of-duty deaths under the PSOB Program.

Beginning January 2004, OJP set out to amend the PSOB regulations to implement the provisions of the Hometown Heroes Act. After a few months, however, it became clear that a complete overhaul of the PSOB regulations was necessary for several reasons. First, the PSOB regulations had not been amended significantly in 30 years. Second, the PSOB Act itself had been amended eighteen times since its enactment in 1976, resulting in

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overlapping statutory and regulatory structures. In addition, soon after the closing of the comment period for the proposed rule, amendments to the PSOB Act were passed by Congress and were signed into law by the President on January 5, 2006. These latest changes required further revisions to the draft regulations.

OJP's goal with a top-to-bottom revision of the entire PSOB regulations was to avoid significant inconsistency within the regulatory scheme and to prevent confusion for public safety agencies and survivors. This revision was time-consuming, leading to delays, which, while necessary, have caused understandable frustrations to the field and claimants.

The Hometown Heroes Act contained a number of important terms that were not defined such as "nonroutine stressful or strenuous physical" activity, and "competent medical evidence." In drafting the regulatory definitions, OJP consulted extensively with several medical experts and focused particularly on the circumstances surrounding heart attacks and strokes among public safety officers. OJP also held several meetings with stakeholder groups to elicit input and understand any potential concerns of practitioners. On July, 26, 2005, we published the proposed Hometown Heroes regulations in the Federal Register, with a 60-day comment period.

Key to developing meaningful regulations was the consideration of the numerous comments we received from the public. During the public comment period, OJP received extensive feedback from a number of interested parties, including national police and fire associations; municipal law enforcement, fire, and rescue departments; PSOB hearing

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officers; survivors of fallen public safety officers; and concerned citizens. OJP carefully reviewed the comments, and made many substantive changes to the final regulations, which went into effect on September 11, 2006. Immediately thereafter, BJA initiated the review of any claims that may apply to the provisions of the Hometown Heroes Act. Experience is the best teacher and since then, we have learned much from our experience administering the program, and have worked to streamline our processes and clarify points of confusion.

Review of Hometown Heroes Claims

Upon enactment of the Hometown Heroes Act, the PSOB office began receiving claims. Unfortunately, the claims could not be processed until the regulations were finalized. This created the initial backlog. Each PSOB claim is unique, as it involves very different facts and circumstances surrounding the death of each public safety officer. As such, claims require different levels of review and outreach to process to their conclusion. Information specific to the fallen officer and agency is required and requested by the PSOB Office to establish the eligibility of all claims and beneficiaries according to the PSOB Act and its regulations. Most Hometown Heroes claims currently under review are waiting for additional evidence to be submitted by the agency for which the public safety officer worked. Without sufficient information, the PSOB Office cannot fully process a claim. Therefore, one of our highest priorities is conducting early and consistent outreach.

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Once the PSOB Office makes a determination, it is not necessarily the final word on the claim. The PSOB regulations provide two levels of *de novo* administrative appeal for a claimant who wishes to seek relief from an unfavorable PSOB Office determination; the first to a PSOB hearing officer, and the second to the Director of BJA. This means that in each case, the appeal involves a comprehensive review of the entire case, including new information, as if no decision had previously been rendered. At each level, a claimant may provide any additional evidence and argument in support of the claim. Ultimately, a claimant may appeal the final agency decision to the United States Court of Federal Claims.

Improving Our Process

Public safety agencies and survivors are invaluable in helping BJA collect the best evidence as quickly as possible. As a result, we are working to strengthen our practices within and outside of BJA to improve customer service by implementing a number of initiatives to streamline the review process and make the PSOB Program as a whole more efficient.

In response to a DOJ directive issued in May 2004, BJA began working toward the goal of processing claims within 90 days of receiving all necessary information from agencies and survivors. To help accomplish this goal, a virtual PSOB application system was made available in May 2006 for agencies and survivors to submit claims for benefits.

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All report and claim forms associated with the fallen law enforcement officer or firefighter can be completed and submitted online at www.psob.gov.

To further our improvement efforts, a new, far more robust, case management system and database for the PSOB Office is in place as of September 30. In addition, OJP recently hired attorneys assigned to PSOB claim reviews; added private forensic pathologists on contract; brought on additional PSOB staff and contractors; and identified two additional PSOB hearing officers for appeals.

BJA has also formed vital partnerships with national law enforcement and firefighter organizations to provide visibility and emotional support to America's public safety agencies and families. Specifically, BJA partners with the National Fallen Firefighters Foundation (NFFF) and Concerns of Police Survivors (COPS) to provide support and assistance to families and agencies filing PSOB claims. COPS provides services and assistance for families and coworkers of fallen law enforcement officers through regional training sessions, special seminars, and extended programs for spouses, siblings, and children of fallen officers. NFFF provides peer counseling, training, and a wide range of assistance for the families and coworkers of firefighters killed in the line of duty. Some of NFFF's specific initiatives include developing and disseminating publications and reference materials for survivors and senior fire department managers, creating a public awareness strategy to promote the fire service and its critical role in public safety, and developing "L.A.S.T.", or Local Assistance State Teams, for direct support to agencies and survivors when a firefighter falls. The partnerships we have

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formed with NFFF, COPS, and other national public safety partners are critical in helping BJA provide effective PSOB education and outreach to agencies and families.

To further our educational and outreach efforts, OJP hosted a Hometown Heroes Stakeholder Briefing on May 3, 2007. Representatives from national firefighter, law enforcement, and Emergency Medical Services (EMS) organizations participated in our roundtable discussion. We discussed in detail the implementation of the Hometown Heroes Act and BJA's efforts to process claims in a more effective and efficient way. At the conclusion of the meeting, we promised to host a follow-up briefing before the end of the year. During the follow up conference call, which was held on September 26, 2007, we announced the creation of the Attorney General's Guide to Hometown Heroes to offer additional assistance to families and agencies tragically faced with submitting a PSOB claim. This Guide will be written in consultation with the stakeholder groups that represent firefighters, law enforcement officers, and emergency personnel.

Additionally, based on our experience thus far, I have issued directives to my staff to address two major questions not specifically covered by the statute or regulations.

First, early in our time processing these claims we were advised by forensic pathologists to request up to 10 years of medical records. We quickly learned that these records were not needed in a large number of cases to resolve the claim. As a result, we chose to reduce the burden on claimants wherever possible, by not asking for them in most cases. I have recently provided binding direction to my staff to only request these records

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in rare circumstances. Moreover, in those cases where we do request records, we should review them for information in support of the claim.

Second, some people have expressed concern regarding our reading of the Hometown Heroes Act term "non-routine." Some have been concerned that we may have defined this term too narrowly. While we have mentioned the term "non-routine" in our written determinations, to-date no claim has been denied simply because we deemed the activity routine. However, to ensure future consistency in how we consider this term, I have recently provided binding direction to my staff regarding application of this term. Specifically, determinations as to whether an activity is "routine" will be informed less by whether the officer might engage in it frequently than by the nature of the activity itself. Instead, we will look primarily to the stress level or strenuousness associated with the physical activity. For example, this direction makes clear that all responses to emergency calls will be considered presumptively non-routine.

In closing, I would like to briefly share with you a very practical plan BJA established in coordination with OJP and the Department's leadership to expedite the processing of claims submitted for consideration under the Hometown Heroes Act. Beginning in August 2007, the PSOB Office identifies the 12 oldest—and most complete—Hometown Heroes claims each week, and drafts within that same week 12 determinations. By the close of each week, these claims are routed to OJP's Office of General Counsel (OGC) for review. Implementing this strategy of identifying 12 claims a week combined with the increase of staff, 144 Hometown Heroes claims will move from

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the general "pending" queue, to specific claim review stages in just three months, thus eliminating those cases pending over one year. We are fully committed to this "12 in a Week" strategy until all Hometown Heroes claims have been processed, and Hometown Heroes claims normalize to approximately seven new cases per month by March 31, 2008.

With the completion of the Hometown Heroes regulations and the continued refinement of the process for reviewing these claims, the entire PSOB process continues to be streamlined as similar questions and considerations arise. In turn, Hometown Heroes claims submitted in upcoming months will experience, in general, a more expedited review. Please be assured that the Department of Justice is committed to ensuring that all PSOB claims, including those under the provisions of the Hometown Heroes Act, are processed in a timely, efficient, and compassionate manner.

Chairman Leahy, Ranking Member Specter, thank you again for the opportunity to testify today. I am happy to address any questions that you or Members of the Committee may have.

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October 4, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

On behalf of the nearly 13,000 chief fire and emergency officers of the International Association of Fire Chiefs (IAFC), I would like to thank you for holding today's hearing entitled "Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act." The IAFC has been very concerned by the manner in which the Department of Justice (DOJ) has implemented the "Hometown Heroes" legislation (P.L. 108-182). Even though the bill was into law by President Bush in December 2003, the DOJ did not issue the final implementing regulations until September 11, 2006. One year later, only 12 claims have been approved, 50 have been denied and 215 remain undetermined.

One of the toughest parts of being a fire chief is arriving at a family's house early in the morning and letting them know that their loved one has died in the line of duty. It is a sobering experience to have to make the arrangements for the family; respond to the federal, state, and local investigations into the death; and deal with the effects of this tragedy on the fire department. Because we see the hardship that these families go through, America's fire chiefs find it unconscionable that the surviving families of 215 public safety officers still await closure.

The IAFC is encouraged by the Department of Justice's release of two policy memoranda dated October 2, 2007, which clarify the definitions of "nonroutine stressful or strenuous physical activity" and the use of medical-history records. However, we urge the committee to find out how these new policies will affect the 50 existing denials. The IAFC believes that all "Hometown Heroes" cases should be reviewed and adjudicated using these new directives.

The positive movement recently seen from the DOJ on this issue is in a large part due to Congressional pressure to act in the best interests of the families of America's fallen public safety officers. We encourage the Senate Judiciary Committee to continue this effort to ensure that the law's intent is met and that the surviving families are granted their rightful benefits.

Sincerely,

Chief Steven P. Westermann, CFO
President

Statement Of Senator Patrick Leahy,
Chairman, Senate Committee On The Judiciary
Hearing On "Justice Denied? Oversight On Implementation
Of The Hometown Heroes Survivors Benefits Act"
October 4, 2007

In November of 2003, Congress unanimously passed the Hometown Heroes Survivors Benefits Act. This important legislation was intended to improve the Public Safety Officers Benefits program by allowing survivors of first responders who suffer fatal heart attacks or strokes while participating in non-routine stressful or strenuous physical activities to qualify for Federal survivor benefits. That December, with great fanfare, the President signed this legislation into law before a large group of firefighters and law enforcement officers. Then, once the camera lights were turned off, the cases began piling up at the Justice Department.

My frustrations, and the frustrations of the surviving families and the first-responder community grow daily over the Justice Department's glacial processing of these applications. We will hear a sampling of those deep and widespread frustrations today. More than three years passed before the Justice Department released its final implementation rule last year – in effect, delaying implementation of the law and disregarding the clear will of Congress to grant these surviving families death benefits in a timely, fair manner. It is no overstatement to conclude that the Administration has worked to erect obstacles between this program and these surviving family members – not to find ways to help them. These thickets of red tape are a painful indignity to these heroes and their families, and they are an offense to our moral obligation to offer them our help and our thanks for all they do for us, day in and day out.

Now, nearly four years after the Hometown Heroes bill became law, the Justice Department has approved only 12 Hometown Heroes claims, all the while denying 50 families this important benefit, and leaving more than 240 applications unanswered.

Is this any way to treat our first responders, those who Congress has appropriately called our Hometown Heroes? It is disturbingly reminiscent of this administration's inexcusable neglect of the needs of those who have returned from the fighting in Iraq and Afghanistan and of our other veterans. President Lincoln's spoke for the ages in his second inaugural address in1865, in the midst of the Civil War, when he called for binding up the Nation's wounds and caring for those who have borne the battle, and for his widow, and for his orphan. This is the same moral obligation we share when it comes to caring for the families of our first responders.

The Justice Department's adjudication of claims has been nothing but bewildering. It is shocking, for instance, that a U.S. Forest Service firefighter in Florida, who was found dead 45 feet behind a fire line with a shovel in his hand, was denied benefits because those managing this program in Washington could not determine whether he was engaged in strenuous activity at the time of his heart attack.

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The Justice Department should immediately expedite all of the outstanding Hometown Heroes claims. In light of the fact that so many individuals who should have been deemed eligible were not, the Department should revise the criteria it has used to evaluate claims. The burdensome information requests made of those who file claims, such as 10 years' worth of past medical records, should stop – immediately. Instead of harassing these grieving families, the White House and the Justice Department should remove the bureaucratic hurdles, the lengthy delays, and the other obstacles that have prevented surviving families from receiving the benefits Congress intended. The bottom line is that the needs of first responders and their families simply have not been a high enough priority for this administration. We intend to make them a higher priority. Passage of the Hometown Heroes Survivors Benefits Act and this hearing are part of that effort.

At his last hearing before the Judiciary Committee, former Attorney General Gonzales agreed with me that the Justice Department was far too slow in writing regulations for the Hometown Heroes program, and even he apologized. He assured me that he would clear up the delays and the backlog. But that did not happen before he resigned.

I thank Director Herraiz of the Department of Justice for being with us today, and I am hopeful that he comes with better news, that our efforts are beginning to cut through all the red tape.

Heart attacks and strokes are a grim fact of life and death in the high-pressure jobs of police officers, firefighters and medics. These afflictions are killers that these heroes face day in and day out, like speeding bullets and burning buildings. Emergency first responders put their lives on the line for us, and we owe their families our gratitude, our respect and our help. If the Justice Department has been moved by concern from Congress and the first-responder community over the implementation of this law, and if the Department now is prepared to make the changes necessary to ensure that the law is faithfully followed, I welcome any progress we can make.

As we will see again today, the families of our first responders are real people, whose sacrifices have been enormous and who deserve better. We are honored that three surviving widows are here to share their stories with us. They speak as representative of all the families, to insist that the Justice Department end this shameful bureaucratic logjam. Before introducing them, I turn to our Ranking Member, Senator Specter, for any opening remarks he may care to make.

# # # # #

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Good afternoon,

I have the honor to speak on behalf of the National Fallen Firefighter's Foundation as the surviving spouse of Fallen Fire Fighter Russell Schwantes.

In August of this year, I received a denial letter for PSOB benefits from the Department of Justice. Their reason for the declination was: "There is no evidence that while on duty or within 24 hours of suffering the heart attack, FAO Schwantes has engaged in a situation that involved "nonroutine stressful or strenuous physical fire suppression activities or that he participated in any training exercise that involved nonroutine stressful or strenuous physical activity."

I could accept this, if Russell was a 5'9 weighing, 300 lb. male who suffered a heart attack while sitting in the recliner at the fire station after just eating a hamburger with chili cheese fries and a large coke. In that case, I would have zero expectation for benefits from the Department of Justice.

Instead, Russell was a 5'9, 195 lb. male who had worked 14 hours into his shift. Apparently he felt well enough to engage in his **required** physically fitness training. But something different happened this time. A call came in during the time he was at his heightened heart rate. He ran to answer the call, and then suffered a heart attack. Sounds like line of duty to me.

Russell went to work in good health. During the days before, he performed in his family life as husband, father and brother. He played 18 holes of golf with no problem. But when he went to work and performed those duties, something happened. He suffered a heart attack and died.

Let me give you some facts regarding the Hometown Heroes Survivors Benefits Act.

1. It has been 3-1/2 years since Congress passed this Act, which made the families of public safety officers eligible for the federal death benefit if the officers died in the line of duty from a heart attack or stroke.

2. 243 line-of-duty death cases have been filed under the Act, due to a heart attack or stroke.

3. Of the 243 claims that have been filed, only 44 have been adjudicated, and only four of those have been accepted as line-of-duty deaths.

4. Forty have been rejected and 201 are somewhere in the pipeline waiting to be decided. That is an astounding 91% rejection rate!

How can we allow this to happen?

It's important that you hear THREE profound facts I have experienced as a result of my spouse's death; however, it should not be a factor in the decision.

1. *The loss of a Russell has produced painful and disturbing symptoms of grief--including anxiety, yearning, depression, hopelessness, despair, crying, fatigue, loneliness, and loss of interest in life.*

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2. *I have questioned the value of long-term goals because I know that everything important to me can be taken away in an instant.*

3. *As for my two daughters, Holly and Morgan, losing their father has had a devastating impact on the assumptions that were previously held. Being a part of a loving family, they, like I, saw the world as a somewhat safe and orderly place. Regrettably, it only takes one shattering event of sufficient magnitude to change one's core beliefs about life...that terrible things can happen without warning and a child is left feeling unsafe and insecure.*

Studies show that the sudden, death of a spouse or parent has extremely negative long term results: Including...

1. **Interpersonal problems, problems with one's peer group**
2. **Mental health problems, like suicide**
3. **Physical health problems**
4. **School performance problems**
5. **Substance abuse**

Again the question is posed, how can we allow this to happen?

I say, "NO." We will not accept these statistics for our children. Of course, no amount of money can ever compensate for the things listed above. However, by saying, "yes," we can remove the financial burden that could potentially reduce...if not all... maybe some of these statistics...Isn't it worth it?

Throughout this grief journey I have spent a lot of time asking God, Why?

He has met me in the middle of my monumental grief, and each day I reach out my hand to Him for support and guidance.

When dealing with things that were once routine and that now seem so overwhelming, I ask for His counsel to ensure that I am doing His will.

So instead of continuing to ask God, "Why?"

Now I am asking myself--Why don't you take where you've been and go forward?

It's now time to push beyond this tremendous pain and reach out to others who might be in need, and see to it that Russell did not die in vain.

I wish you could have known him. If Russell could speak to us today, He would say, "Please help the families of my fellow firefighters. Do not turn your back on what we have trusted in and have sacrificed our lives for." He would say, "If it were your family, I would do it for you."

So I ask. Who will govern your actions today? From whom will you seek your counsel? Saying "yes" today to this benefit will send a message to these families that our losses have truly been acknowledged. For us ... it's another step forward in believing that you will simply do what you wrote into law that you would do.

Thank you.

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SERGEANTS BENEVOLENT ASSOCIATION
POLICE DEPARTMENT, CITY OF NEW YORK

35 Worth Street, New York, NY 10013
212.226.2180 FAX 212.431.4280
www.sbanyc.org

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President

Robert Ganley
Vice President

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October 12, 2007

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing on behalf of the membership of the Sergeants Benevolent Association of New York City to thank you for your continued strong leadership to ensure the proper implementation of the Hometown Heroes Survivors Benefits Act of 2003. We are extremely grateful for your decision to hold a Judiciary Committee hearing on this issue on October 4.

In 2003, your commitment to this issue and to the families of America's fallen public safety officers culminated in the enactment of the Hometown Heroes Act. It was intended to reverse the historical tendency of the Department of Justice to deny the vast majority of heart attack and stroke claims filed under the Public Safety Officers Benefits (PSOB) Program. Unfortunately, in the nearly four years since the law's enactment, the right of survivors of public safety officers to the financial assistance guaranteed by the Act and the PSOB program has been anything but assured.

Inexplicable delays in issuing implementing regulations were followed by unconscionable delays in processing claims filed under the Hometown Heroes Act. DOJ's interpretation of the Act has also led to the denial of more than three-quarters of the claims filed to date, and more than 200 claims continue to await action by the Department. Clearly, this is not what Congress or the public safety community intended in pushing for the passage of the Hometown Heroes Act, nor is it what the families of our nation's fallen police officers, firefighters and EMTs deserve.

We are hopeful that the memoranda issued by the Director of the Bureau of Justice Assistance on October 2, will lead to a reduction in the backlog of pending claims, increase the number of approved claims, and more closely align DOJ's interpretation of the Act with the intent of Congress. And we

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are confident that with your continued leadership and oversight, we can achieve these three goals.

On behalf of the more than 11,000 members of the Sergeants Benevolent Association, thank you again for your commitment to public safety officers and their families. Please do not hesitate to contact me if I can ever be of assistance.

Sincerely,

Ed Mullins

Ed Mullins
President

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In my home is a plaque that reads "Hope is a steppingstone from one day to the next." The path I am on is lined with stones of faith and hope. While my faith in my God only grows stronger each day, those stones called hope grow smaller as the path gets longer.

My journey began on October 20, 2004, when I went from being the proud wife of the Fire Chief of Katy, Texas, to being the even prouder widow of the Fire Chief. That day my husband answered his last call, and I stepped into a role in which I had never imagined myself. I gained a most honored title that day, but yet it is one that no woman desires. Suddenly, I was a widow and faced with challenges I could only have imagined prior to my husband's death.

When my claim was filed for benefits under the Hometown Heroes Act, I was told not to expect to hear anything for at least a year. So, I put that claim in the back of my mind. During that first year, there were so many challenges to be met that I literally kept a list on a yellow tablet. As each task was completed and that obstacle was overcome, I would cross it off my list and feel a sense of relief and accomplishment. I had gone one more step on the road to building my new life. One by one the items on that list began to be crossed off until one day only one item remained: the claim for benefits under the Hometown Heroes Act.

My first record of an inquiry to the DOJ was a call I made on March 21, 2006, one year and two months after the claim was filed. After that day, I began to make periodic calls. I would always ask the same question: "What is the status of my claim?" I have always been given a very polite answer that basically said that either claims were not yet being processed or my claim was in review.

Since that first phone call in March of 2006, I have had a total of 25 phone calls and 10 emails with the DOJ. I know I should call more often, but I really have to be in the right frame of mind to make the call. There is no way I can tell you how hard it is to pick up that phone to discuss your husband's death one more time. Every time I call, another little piece of me dies because there on a piece of paper called a claim is the stark reality that my husband is not coming home. And those stones called hope grow a little smaller. I have to tell you that at times the pain is so great that I don't think I can continue to pursue this claim. The emotional pain of knowing that someone is diligently working to deny

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your claim after your husband has been honored as a hero on every other front can be overwhelming.

Just when I am about to give up, throw in the towel, and say "You win, DOJ. I quit", I hear Gary's pager go off. Yes, I still have my husband's monitor. Soon I hear the sirens, and I am quickly reminded of my firefighter family and of all those firefighters who think that if they were to become one of the fallen, there are benefits available to their families. It is at that point that I pick myself up, and I fight on.

In spring of 2007 I contacted Senator John Cornyn's office asking for assistance with this claim. I received a reply from the senator's office with a letter addressed to the senator from the DOJ attached. The letter stated that the review of Mrs. Tilton's claim was complete and she would receive a written notice of the decision within 10 days.

I now had a letter in hand that told me that this claim had been completed. I anxiously went to the mailbox everyday expecting to receive that dreaded denial letter. Everyday as I took that long walk to pick up that day's mail, my heart was in my throat as I thought could today be the day? Day after day, I expected to hear from the DOJ. After all, my Senator had been told my claim was complete.

On June 5, I spoke with the claims specialist who stated that the claim was still under review. At this point I told her that I was very confused because the letter Senator Cornyn had received from the DOJ stated that the review was complete. The claims specialist seemed surprised and said that she was not aware of the letter and she would check into it.

I again spoke with the claims specialist on July 17. At that time, she told me that the claim had been sent on July 10 to a forensic pathologist for medical review. I then asked her, "Hasn't the claim been through medical and legal?" She answered me, "Yes, it has, but this is a very lengthy process. The claim is now going to a forensic pathologist for medical review and the forensic pathologist has not yet been assigned."

On July 21 I received a call from Hope Janke. She stated that the claim was now going to a forensic pathologist because it has never been to medical review. She said there is nothing in the notes in the file about me ever being told that the claim had been to medical review. She said I

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must have misunderstood. I asked her where the claim had been since Janaury if it had only been to legal review and not medical. She said it had been many places, but she could not tell me where those places are. I asked the question several times and got the same answer each time: "The claim has been many places, but I cannot tell you where those places are." I then asked her to explain why a letter stating that the claim was complete had gone to Senator Cornyn in April. She stated "We must have thought it was complete at the time." I followed up this conversation with an email to Ms. Janke asking an additional question. Why would you send a letter stating the claim is complete and 3 months later decide that same claim needs further medical review?

The following week I received a phone call from Ms. Janke stating that she was checking in but that she had no new news on my claim. Since I had not gotten an answer to my email I asked her if she had received my email and she answered "Yes, she had received it and she was preparing a draft of an email to send to me."

On August 2 I received an email containing that draft. Imagine my surprise when I read that draft that simply confirmed that I had her correct email address and that she would be communicating with me to the conclusion of my claim. I then replied to Ms. Janke's email and thanked her for the confirmation of her address, but when will I get answers to my questions?

Each Thursday since that time I receive a two line email from the DOJ basically stating: "Just checking in. There is no new news on your claim." I have replied to these emails with questions: Where are those "places" that my claim has been all this time? Why would you send a letter to Senator Cornyn in April stating that the review of the claim was complete and then 3 months later (in July) send the claim for medical review? What is the name of the forensic pathologist who is reviewing this claim? Even though I continue to send emails and to ask questions, I have not received answers. Not only have I not received answers, I have not even received acknowledgement of the emails asking the questions. And so far as the weekly updates, well, I think they can be classified more fairly as contacts. Telling me there is no news and not answering my questions can hardly be considered an update.

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I have learned many things since my husband's death. Some things I have learned have been good and some not so good. I have learned that what my husband once told me is true. He said to me, "If I should die, the firefighters will take care of you." I am so proud to say that he was so right. I am so thankful that I know that wherever I go across this nation, the firefighters are there to support me. I have also learned that as a fallen firefighter survivor, I don't have that same support from my government. That truly hurts.

In 16 days I will observe the 3rd anniversary of my husband's death. I am still walking that path lined with great stones of faith and tiny pebbles of hope. I carry my list with one unfinished item – the claim for benefits under the Hometown Heroes Act.

○