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Before the Committee on Armed Services
Subcommittee on Military Personnel
United States House of Representatives

"Feres Doctrine – A Policy in Need of Reform?"

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Madam Chair, Mr. Ranking Member, Members of the Subcommittee:

Thank you for this opportunity to share my views.

My testimony will address reasons why Congress should not alter the *Feres* Doctrine[2] — that body of law which has developed from the Supreme Court's unanimous 1950 decision in *Feres v. United States*.[3] In that opinion the Court held "the Government is not liable under the Federal Tort Claims Act for injuries which arise out of or are in the course of activity incident to service."[4] It reached that decision not as a matter of judicial fiat, but as a good faith determination of Congressional intent.[5] I will not address whether the Supreme Court correctly

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[2] Much of my testimony is based on my article, Paul Figley, *In Defense of Feres: An Unfairly Maligned Opinion*, 60 Am. U. L. Rev. 393 (2011), and my book, Paul Figley, A Guide to the Federal Tort Claims Act (ABA, 2d ed. 2018). Please see them for a more complete exposition of these points.
[3] 340 U.S. 135 (1950).
[4] Id.. at 146.
[5] *See id*. at 138 *("*No committee reports or floor debates disclose what effect the statute was designed to have on the problem before us, or that it even was in mind. Under these circumstances no conclusion can be above challenge, but if we misinterpret the Act, at least Congress possesses a ready remedy.").

interpreted Congress' intent when it decided *Feres* other than to note that, in my opinion, it clearly did.

At the outset, we can all agree that government negligence or malpractice does cause real injuries and can have a tragic impact on the lives of service-members and their families. It is understandable that such people are frustrated when they perceive that they or their loved ones are being treated unfairly. From the perspective of one injured service-member or one family, the remedy may seem simple and obvious – allow the injured party to sue in tort. From the perspective of fostering the long-term success of a critically important institution – the United States military – that remedy is mistaken. Simply put, Congress should not alter the *Feres* doctrine because such legislation is unnecessary in light of the comprehensive military compensation system (which is more favorable in scope and remedy than state workers compensation programs), and because it would disrupt the vital and unique military relationship between the government and its service-members.

This presentation will briefly review the current state of the law regarding the Federal Tort Claims Act, *Feres*, and its application to service-members. It will then address why the outcome mandated by *Feres* is correct.

I. The Federal Tort Claims Act & Service-Members

Prior to 1946 there was no general waiver of the United States' sovereign immunity for suits in tort. As a consequence, people injured by the acts of federal employees could not sue the government for those injuries.[6] They were not

[6] Lane v. Pena, 518 U.S. 187, 192 (1996) (citing United States v. Nordic Vill., Inc., 503 U.S. 30, 33-34, 37 (1992), and Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 95 (1990)); *accord* United States v. U.S. Fid. & Guar. Co., 309 U.S. 506, 514 (1940)

without a remedy. From the beginning of the Republic, individuals using their First Amendment right to petition the government for redress of grievances had sought special, private legislation granting them relief for damages caused by the government.[7] Congress sometimes granted them relief. Also since the nation's beginnings, members of Congress have recognized that legislation is a poor way to resolve private claims against the government. On February 23, 1832, John Quincy Adams wrote that deciding private claims "is judicial business, and legislative assemblies ought to have nothing to do with it."[8] Members of the congressional Claims Committees simply could not know the details of each of the thousands of claims presented in every Congress.[9] The Claims Committee process was subject to interminable delays and arbitrary actions.[10] It imposed substantial burdens on the time and attention of Congress.[11] To resolve these problems and

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("Consent alone gives jurisdiction to adjudge against a sovereign. . . . Public policy forbids the suit unless consent is given, as clearly as public policy makes jurisdiction exclusive by declaration of the legislative body.").

[7] U.S. CONST. AMEND. I; *see Hearings on H.R. 5373 and H.R. 6463 Before H. Comm. on the Judiciary*, 77th Cong, 2d Sess., at 49-55 (1942) [hereinafter *Hearings on H.R. 5373 and H.R. 6463*].

[8] *Hearings on H.R. 5373 and H.R. 6463*, at 49 (noting, "[o]ne-half of the time of Congress is consumed by it, and there is no common rule of justice for any two of the cases decided. A deliberative assembly is the worst of all tribunals for the administration of justice").

[9] *See Hearings on H.R. 5373 and H.R. 6463*, at 54 (quoting *Debates on H.R. 7236*, 86 CONG. REC. 18212 (1940)).

[10] *See id. (*statement of Rep. Luce) (noting the waste of time and inequity of procedures and stating that "nothing is so disgraceful in the conduct of the Congress of the United States as its treatment of claims").

[11] *See, e.g.*, S. REP. NO. 1400, 79th Cong., 2d Sess., at 30-31 (1946); H.R. REP. NO. 1287, 79th Cong., 1st Sess., at 2 (1945); *Hearings on H.R. 5373 and H.R. 6463*, at app. II, 49-55 ("Criticisms by Congressmen of Existing Procedure of Relief by Private Claim Bills").

to meet the need for a practical way to pay valid, run-of-the-mill tort claims against the government, the 79th Congress enacted the Federal Tort Claims Act as Title IV of the Legislative Reorganization Act of 1946.[12]

The FTCA provides a general waiver of the United States' sovereign immunity for suits in tort, subject to exclusions and exceptions. In *FDIC v. Meyer*,[13] the Court analyzed the language of the FTCA's jurisdictional grant:

> Section 1346(b) grants the federal district courts jurisdiction over a certain category of claims for which the United States has waived its sovereign immunity and "render[ed]" itself liable. *Richards v. United States*, 369 U.S. 1, 6, 82 S. Ct. 585, 589, 7 L. Ed. 2d 492 (1962). This category includes claims that are:
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> > "[1] against the United States, [2] for money damages, . . . [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b).
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> A claim comes within this jurisdictional grant—and thus is "cognizable" under § 1346(b)—if it is actionable under § 1346(b). And a claim is actionable under § 1346(b) if it alleges the six elements outlined above.[14]

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[12] Pub. L. No. 79-601, 60 Stat. 812 (codified as amended in scattered sections of 28 U.S.C.). Pertinent to the FTCA, Title I prohibited private bills in circumstances where the FTCA might provide a remedy.

[13] 510 U.S. 471 (1994).

[14] *Id.* at 477.

Thus, claims that would not lie against a private person under state law are not cognizable under the Act.[15]

The FTCA also contains a number of explicit exceptions to its waiver of sovereign immunity,[16] including two that obviously would block some suits by injured service-members. The combatant activity exception bars "[a]ny claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war."[17] The foreign tort exception bars "[a]ny claim arising in a foreign country."[18]

In *Feres*, the Supreme Court examined the FTCA and concluded that Congress had not intended to waive sovereign immunity for injuries that arise incident to the claimant's military service.[19] Whether the *Feres* doctrine applies to a particular claim turns on whether the injury arose incident to military service.[20] In determining that issue courts consider a variety of factors, with no single one being dispositive.[21] These factors include whether the injury arose while a service

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[15] *See id.* (holding that § 1346(b) does not waive sovereign immunity for constitutional tort claims because "federal law, not state law, provides the source of liability for a claim alleging the deprivation of a federal constitutional right"); *see also* United States v. Olson, 546 U.S. 43, 43 (2005) (recognizing that § 1346(b)(1) waives sovereign immunity under circumstances where the United States if a private person, rather than the United States, if a state or municipal entity, would be liable and that the Court had consistently adhered to the private person standard).

[16] *See* 28 U.S.C. § 2680 (2006).

[17] *See id.* § 2680(j).

[18] *See id.* § 2680(k).

[19] *Feres v. United States, 340 U.S. 135, 146 (1950).*

[20] United States v. Johnson, 481 U.S. 681, 686 (1987) ("This Court has never deviated from [the incident to service test] of the *Feres* bar.").

[21] Richards v. United States, 176 F.3d 652, 655 (3d Cir. 1999).

member was on active duty;[22] on a military site;[23] engaged in a military activity;[24] subject to military discipline or control;[25] or receiving a benefit conferred as a result of military service.[26] *Feres* does not bar service-members' claims that arise after one has left the service,[27] or for non-incident to service injuries to family members.[28]

II. Reasons to Keep the *Feres* Bar

A. The Military's Uniform & Comprehensive Compensation System

Workers compensation laws in every state provide fixed monetary compensation to workers who are injured in the course of employment at their workplace. Injured workers receive lost wages, medical expenses, rehabilitation, and fixed recoveries for permanent injuries. Recovery is assured, even if the employer was without fault. In exchange, the statutes prohibit injured workers from suing their employers in tort for those injuries.

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[22] *See* Kohn v. United States, 680 F.2d 922, 925 (2d Cir. 1982) (shot by fellow soldier).
[23] *See* Morey v. United States, 903 F.2d 880, 881 (1st Cir. 1990) (sailor falling off pier on return to ship).
[24] *See* Galligan v City of Phila., 156 F. Supp. 2d 467, 474 (E.D. Pa. 2001) (*Feres* barred claim of West Point cadet injured while watching Army-Navy football game).
[25] *See* Pringle v. United States, 208 F.3d 1220, 1226-27 (10th Cir. 2000) (*Feres* barred claim of soldier injured when ejected from on-base social club under the operational control of base commander).
[26] *See* Herreman v. United States, 476 F.2d 234, 237 (7th Cir. 1973) (*Feres* barred claim of soldier hitching ride on military aircraft while on leave).
[27] *See* United States v. Brown, 348 U.S. 110, 112 (1950) ("The injury was not incurred while [Brown] was on active duty or subject to military discipline. The injury occurred after his discharge, while he enjoyed a civilian status.").
[28] *See* Hicks v. United States, 368 F.2d 626, 633 (4th Cir. 1966) (serviceman may recover for wrongful death of civilian wife after treatment in military hospital).

Generally, workers compensation claims are resolved administratively, without resort to litigation. Prompt, mandatory administrative resolution saves both parties the time and expense of litigation. It also allows the plaintiff-employee to avoid the psychic and emotional burdens of litigation – the worry, loss of privacy, pressures of discovery and trial, the putting of one's life on hold, and the lost opportunity costs – that occur with any personal injury suit, regardless of the outcome.[29] With litigation, the outcome is never certain. A judge or jury may rule for the defendant-employer because negligence was not proven, causation was not proven, the plaintiff-employee was found negligent, or some other defense applies. Even with a plaintiff's victory on liability, the judgment may be disappointingly low. If plaintiff does prevail at trial, the defendant-employer may appeal – certainly delaying payment and possibly reversing the outcome.

The policies of assured, administrative, no-fault recovery that support barring employees from bringing tort suits against their employers apply with greater force in suits by service-members for injuries incurred incident to service. The "simple, certain, and uniform"[30] military compensation system covers a wider range of injuries and provides more benefits.

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[29] See Andrew F. Popper, *Rethinking Feres*, 60 B.C.L. Rev. (forthcoming 2019) (manuscript at 93) (arguing against Feres, but noting "at a personal level, litigation forces victims and alleged wrongdoers to re-live some of the worst moments of their lives. . . . No one with even a passing understanding of our legal system would look forward to the essential rigors of civil litigation.").

[30] Feres, 340 U.S. at 145.

First, civilian employees are eligible for workers compensation for injuries arising in the course of employment at the workplace. Service-members receive benefits for injuries arising during their "period of service."[31]

> A service connection for veterans' disability-compensation purposes will generally be awarded to a veteran who served on active duty during a period of war, or during a post-1946 peacetime period, for any disease or injury that was incurred in, or aggravated by, a veteran's active service . . . ."[32]

Second, the range of benefits provided by the military compensation system is substantially broader than those provided by state workers compensation laws. In *United States v. Johnson* the Supreme Court spoke to these "generous statutory disability and death benefits . . . ," and recognized that these swiftly provided benefits "compare extremely favorably" to benefits provided by most workers compensation systems.[33] It further noted:

> Servicemembers receive numerous other benefits unique to their service status. For example, members of the military and their dependents are eligible for educational benefits, extensive health benefits, home-buying loan benefits, and retirement benefits after a minimum of 20 years of service. See generally Uniformed Services Almanac (L. Sharff & S. Gordon eds. 1985).[34]

Benefits for active duty service members include free medical care, 10 U.S.C. §§ 1071 *et seq.* Survivors are entitled to death gratuity benefits, 10 U.S.C. §§ 1475 *et seq.*, and subsidized life insurance. 10 U.S.C. §§ 1447 -*et seq.*

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[31] 38 U.S.C. §§ 1110, 1131.
[32] 77 Am. Jur. 2d Veterans and Veterans Laws § 29 (2019).
[33] United States v. Johnson, 481 U.S. 681, 689-90 (1987) (citing Stencel Aero Engen. Corp. v. United States, 431 U.S. 666, 673 (1977); Feres, 340 U.S. at 145).
[34] *Id.* at 690, n.10.

Veterans have a comprehensive disability retirement system. 10 U.S.C. §§ 1201 *et seq*., and 1401 *et seq.* The Veterans Benefits Act provides compensation for Service-Connected Disability or Death, 38 U.S.C. §§ 1101 *et seq.;* Dependency and Indemnity Compensation for Service Connected Deaths, 38 U.S.C. §§ 1301 *et seq.;* Pension for Non-Service Connected Disability or Death or for Service, 38 U.S.C. §§ 1501 *et seq.;* Hospital, Nursing Home, or Domiciliary Care and Medical Treatment, 38 U.S.C. §§ 1701 *et seq.;* and National Life Insurance, 38 U.S.C. §§ 1901 *et seq.* A wide range of these and other benefits and programs are set forth in the seventy-page booklet FEDERAL BENEFITS FOR VETERANS, DEPENDENTS AND SURVIVORS.[35] The described benefits and programs include, *inter alia*, Health Care, pp. 1-13 (including Military Sexual Trauma, p. 5; Home Improvement and Structural Alterations, p. 9; and Long-term Services, p. 11), Benefits, pp. 13-61 (including Disability Compensation, p.13; Housing Grants for Disabled Veterans, p. 15; Education and Training Benefits, p. 21; and Survivors Pension, p. 55), and Burial and Memorial Benefits, pp. 61-68.

This expansive, generous military compensation system should be the exclusive remedy for service-members injured incident to their military service, just as civilian worker compensation systems are the exclusive remedy against employers for work place injuries. In *United States v. Demko*,[36] the Supreme Court held that the Prison Industries Fund is the exclusive remedy for federal

[35] U.S. Dept. of Veterans Affairs, FEDERAL BENEFITS FOR VETERANS, DEPENDENTS AND SURVIVORS (2018), available at https://www.va.gov/opa/publications/benefits_book.asp .

[36] 385 U.S. 149 (1966).

prisoners injured while working for Federal Prison Industries, Inc., even though that agency's statute does not contain exclusivity language.[37] The Court stated:

> Historically, workmen's compensation statutes were the offspring of a desire to give injured workers a quicker and more certain recovery than can be obtained from tort suits based on negligence and subject to common-law defenses to such suits. Thus compensation laws are practically always thought of as substitutes for, not supplements to, common-law tort actions . . . . [38]

The military compensation system should be the exclusive remedy for injuries incurred incident to service, just as workers compensation is the exclusive remedy for other Americans injured on the job.[39]

B. Tort Litigation Would Disrupt the Military Relationship

If Congress overturns the *Feres* doctrine, injured service-members could obtain their benefits from the military compensation system and then seek tort damages. They, or their attorneys, would argue in our adversarial court system that someone in the government was at fault for causing their injuries. Having members of the military litigate about who was at fault for a training accident, ill-fated combat mission, or surgical procedure would disrupt the relationship of mutual trust necessary to an effective fighting force.

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[37] *See id.* at 151-52. Federal Prison Industries, Inc. is the federal corporation that provides training and rehabilitation programs for prisoners. 18 U.S.C. § 4126 (2006).

[38] *Id.* at 151.

[39] *See* Lester S. Jayson & Robert C. Longstreth, Handling Federal Tort Claims § 5A.05 (2019) ("It would certainly be strange to conclude that Congress intended that servicemen, virtually alone among American workers, be given free rein to sue their employer.")

In a series of opinions, the Supreme Court has explained how the disruption to military discipline that would flow from allowing suit for injuries to service-members arising from their service. In *Stencel Aero Engineering Corp. v. United States*, the Court ruled that third-party actions against the United States arising from injuries to servicemen (there, a National Guard pilot injured by an airplane ejection system) incident to their military service are barred by *Feres*.[40] It reasoned:

> [T]he effect of the action upon military discipline is identical whether the suit is brought by the soldier directly or by a third party. . . . The trial would, in either case, involve second-guessing military orders, and would often require members of the Armed Services to testify in court as to each other's decisions and actions.[41]

In *Chappell v. Wallace*, the Supreme Court held that the policies underlying the *Feres* doctrine also bar suit by service-members against other service-members for Constitutional torts.[42] The Court declined to recognize such a cause of action, reasoning that:

> The special nature of military life -- the need for unhesitating and decisive action by military officers and equally disciplined responses by enlisted personnel -- would be undermined by a judicially created remedy exposing officers to personal liability at the hands of those they are charged to command.[43]

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[40] 431 U.S. 666 (1977).
[41] *Id*. at 673.
[42] 462 U.S. 296 (1983).
[43] *Id.* at 304.

In *United States v. Shearer*, the Supreme Court barred suit against the government for the off-base, off-duty murder of one serviceman by another.[44] It concluded that the military's allegedly negligent personnel practices relating to the murderer and its failure to warn others about him would require "the civilian court to second-guess military decisions," and "the suit might impair essential military discipline . . . ."[45] The Court ruled these claims "were the *type* of claims that, if generally permitted, would involve the judiciary in sensitive military affairs at the expense of military discipline and effectiveness."[46]

In *United States v. Johnson*, the Court held that *Feres* barred suit by members of the Coast Guard injured in a helicopter crash allegedly caused by negligence of a federal civilian employee.[47]

> In every respect the military is, as this Court has recognized, "a specialized society." *Parker v. Levy,* 417 U.S. 733, 743 (1974). "[T]o accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps." *Goldman v. Weinberger,* 475 U.S. 503, 507 (1986). Even if military negligence is not specifically alleged in a tort action, a suit based upon service-related activity necessarily implicates the military judgments and decisions that are inextricably intertwined with the conduct of the military mission. Moreover, military discipline involves not only obedience to orders, but more generally duty and loyalty to one's service and to one's country. Suits brought by service members against the Government for service-related injuries could undermine the commitment essential to effective service and thus have the potential to disrupt military discipline in the broadest sense of the word.[48]

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[44] 473 U.S. 52 (1985).
[45] *Id.* at 57 (citations omitted).
[46] *Id.* at 59 (emphasis by Court).
[47] 481 U.S. 681 (1987).
[48] *Id.* 690–91 (parallel citations and internal footnotes omitted).

In *United States v. Stanley*, the plaintiff alleged that his constitutional rights were violated when he unwittingly participated in a drug testing program during his military service.[49] In declining to recognize such a cause of action, the Court stated:

> A test for liability that depends upon the extent to which particular suits would call into question military discipline and decision making would itself require judicial inquiry into, and hence intrusion upon, military matters. Whether a case implicates those concerns would often be problematic, raising the prospect of compelled depositions and trial testimony by military officers concerning the details of their military commands. Even putting aside the risk of erroneous judicial conclusions (which would becloud military decision making), the mere process of arriving at correct conclusions would disrupt the military regime. The "incident to service" test, by contrast, provides a line that is relatively clear and that can be discerned with less extensive inquiry into military matters.[50]

The military compensation system is uniform. It treats all service-members the same. Aside from the disruption to military discipline and trust caused by litigation and the adversary process, trust and goodwill would be undermined when service-members in similar circumstances receive drastically different remedies. Because the FTCA applies the substantive tort law of the state where the negligent or wrongful act took place, absent *Feres*, some service-members might have successful state law tort claims for negligent government actions (*e.g.* negligently written instructions or badly maintained brake systems) when service-members in other states injured by the same negligent act would not. For

[49] 483 U.S. 669 (1987).
[50] 483 U.S. at 682-83.

example, some states recognize contributory negligence as a complete defense; other states have adopted comparative negligence. Indeed, given the "'distinctively federal'" relationship between the government and its service-members, "Where a service member is injured incident to service—that is, because of his military relationship with the Government—it 'makes no sense to permit the fortuity of the situs of the alleged negligence to affect the liability of the Government to [the] serviceman."[51]

Absent *Feres, s*ervice-members with identical, service-related injuries may receive disparate treatment because some claims are barred by federal defenses and others are not. The FTCA bars claims that arise in foreign countries[52] or in combatant activities.[53] If three service-member amputees share a military hospital ward, one having lost a leg when his helicopter was shot down by the Taliban, one suffering the same loss in a military transport accident in Germany, and one in a military training flight in California, each will have the full panoply of service-members' and veterans' benefits. The two who suffered their loss in combat or overseas could not sue under the FTCA because the Act's exceptions bar those claims.[54] If the one injured in California could bring an FTCA suit under California tort law he would likely recover a million dollar judgment, the others would know it, and may well feel unfairly treated.[55]

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[51] United States v. Johnson, 481 U.S. at 689 (quoting Feres, 340 U.S. at 143; Stencel Aero Eng., 431 U.S. at 672).

[52] 28 U.S.C. § 2680(k).
[53] 28 U.S.C. § 2680(j).
[54] *See* 28 U.S.C. §§ 2680(j), (k).
[55] *See* Edwin F. Hornbrook & Harold Hongju Kirschbaum*, The* Feres *Doctrine: Here Today - Gone Tomorrow?*, 33 A.F. L. REV. 1, 11 (1990) ("[A]bolishing *Feres* would

This is not an idle concern. One lesson of the September 11th Victim Compensation Fund is that providing different, individualized awards to members of a group who have suffered a similar loss can cause frustration and ill-will:

> [T]here are serious problems posed by a statutory approach mandating individualized awards for each eligible claimant. The statutory mandate of tailored awards fueled divisiveness among claimants and undercut the very cohesion and united national response reflected in the Act. The fireman's widow would complain: "Why am I receiving less money than the stockbroker's widow? My husband died a hero. Why are you demeaning the value of his life?" . . . The statutory requirement that each individual claimant's award reflect unique financial and family circumstances inevitably resulted in finger-pointing and a sense among many claimants that the life of their loved one had been demeaned and undervalued relative to others also receiving compensation from the Fund.[56]

The concern that similarly situated service-members receive uniform treatment was understood by Presidents Truman and Eisenhower. On August 2, 1946, the same day he signed the FTCA into law, President Truman vetoed a

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splinter military cohesion by creating a privileged class of claimants who could bring suit, and an underprivileged class who would still be barred by the combat, foreign country, and discretionary function exceptions."). S*ee generally* United States v. Brooks, 169 F.2d 840, 844 (4th Cir. 1948).

[56] Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001, at 82 (August 5, 2008) (noting that a better approach would have been to provide the same amount for all eligible claimants); *accord* Kenneth R. Feinberg, What is Life Worth? The Unprecedented Effort to Compensate the Victims of 9/11 71 (Public Affairs 2005) (describing his encounters with the 9/11 families at town meetings and their reactions of resentment, anger, and disbelief when faced with the "raw truth that each claimant would receive a different award depending on the economic wherewithal of the victim . . . .").

service-member's private bill because it would undermine the established uniform system for the compensation of those injured while in military service.[57] The President was typically succinct in explaining why he decided to veto the serviceman's remedy:

> Ensign Lanser was on active duty with the Navy at the time of the accident. He was hospitalized in a naval hospital and is entitled to the same rights and benefits extended to all other members of the armed forces who sustained personal injuries while in an active duty status. No reason is evident why special treatment should be accorded this officer.[58]

President Eisenhower stated in a veto message of a similar private bill, "Uniformity and equality of treatment to all who are similarly situated must be the steadfast rule if the Federal programs for veterans and their dependents are to be operated successfully."[59]

The nation has been well served by the distinctly federal relationship between the government and members of the Armed Forces,[60] with its unique disciplinary system, special and exclusive system of military justice,[61] and comprehensive compensation program.

> [C]enturies of experience has developed a hierarchical structure of discipline and obedience to command, unique in its application to the military establishment and wholly different from civilian patterns. Civilian courts must, at the very least, hesitate long before

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[57] H.R. Doc. No. 79-767, at 1-2 (1946) (returning H.R. 4660, a bill for the Relief of Mrs. Georgia Lanser and Ensign Joseph Lanser, without his approval).
[58] *Id.*
[59] H. R. Doc. No. 83-426, at 1-3 (1954) Message from the President of the United States (June 14, 1954) ((returning H.R. 3109, a bill for the Relief of Theodore W. Carlson, without his approval).
[60] United States v. Johnson, 481 U.S. at 689 (quoting Feres, 340 U.S. at 143).
[61] Chappell v. Wallace, 462 U.S. at 300.

> entertaining a suit which asks the court to tamper with the established relationship between enlisted military personnel and their superior officers; that relationship is at the heart of the necessarily unique structure of the military establishment.[62]

That relationship should not be disrupted by legislation altering the *Feres* doctrine.

[62] *Id.*