THE PERFORMANCE OF SOCIAL SECURITY ADMINISTRATION APPEALS HEARING OFFICES

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

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THE PERFORMANCE OF SOCIAL SECURITY ADMINISTRATION APPEALS HEARING OFFICES

TUESDAY, SEPTEMBER 16, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:00 a.m., in room B–318, Rayburn House Office Building, Hon. Michael R. McNulty (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE
September 09, 2008
SS–8

CONTACT: (202) 225–9263

Clearing the Disability Backlog: Subcommittee on Social Security Chairman McNulty Announces a Hearing on the Performance of Social Security Administration Appeals Hearing Offices

Congressman Michael R. McNulty (D–NY), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the performance of the Social Security Administration's (SSA's) appeals hearing offices. **The hearing will take place on Tuesday, September 16, 2008, in room B–318 Rayburn House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

BACKGROUND:

Over the past several years, SSA's disability claims backlogs have grown to unprecedented levels, with more than 1.3 million Americans currently awaiting a decision regarding their claim. Backlogs are particularly severe for the more than 765,000 Americans who have had their cases denied at an earlier stage of the process and have requested a hearing before an Administrative Law Judge (ALJ). These individuals now wait an average of 532 days for a decision on their appeal. Recognizing the central role that prolonged underfunding and staffing shortfalls have played in the development of these backlogs, in combination with rising workloads, last year Congress provided SSA with $150 million more in administrative funding than the President had requested—the first such increase in ten years.

The Subcommittee has examined the backlog crisis from a number of perspectives, including the need for more administrative funding and adequate staffing, the agency's ability to hire more ALJs to hear disability appeals, proposals to improve the disability determination process, and initiatives that SSA has undertaken to reduce the backlog. This hearing will focus on the performance of SSA's hearing offices and SSA's overall management of these offices.

SSA's hearing process is an important one for claimants, as new medical and other available evidence is added to their claim and they have the opportunity to meet face-to-face with the judge who is deciding their claim. Approximately two-thirds of those who appeal to the ALJ level are awarded benefits. However, the process is very labor intensive for SSA, typically requiring clerical staff to prepare the case file, obtain evidence and schedule the hearing with all necessary experts and other participants; ALJs to review the case, conduct the hearing, and make a decision; and attorneys or paralegals to draft the decision and accompanying legal rationale for it, based on the judge's instructions.

According to a recent report from SSA's Inspector General (IG), the productivity of SSA's hearing process has improved in recent years. In 2005, SSA produced 421

dispositions per ALJ. By 2007, productivity had increased by 13 percent, to 474 dispositions per ALJ. However, hearing office performance varies significantly between offices. The IG found that productivity was often hindered by a lack of hearing office support staff, a conclusion the IG had also reached in a March 2005 report. Interviews with ALJs and hearing office staff also identified other factors that could affect productivity, including the use of a number of techniques to promote speedier processing (such as spending less time reviewing the case and conducting the hearing). Finally, the IG found that a small number of ALJs—approximately 1 percent—processed fewer than 200 cases per year even though they were employed as full-time adjudicators. At the same time, the IG reported that some judges—about 2 percent—issued more than 1,000 decisions in a year. This could raise concerns about the quality of these decisions.

As concern about the backlog has grown, SSA has undertaken a number of initiatives to improve the productivity of its hearing offices, including hiring more ALJs and support staff; reinstituting the Senior Attorney adjudication program to allow judges to focus on more difficult cases; developing automation improvements; and asking judges to issue 500–700 decisions per year. However, concerns have been expressed that the agency's plans for hiring support staff are not sufficient to address the large hearings backlog, that planned automation improvements will not meet expectations, and that an overemphasis on speed could degrade quality or compromise program integrity.

In announcing the hearing, Chairman McNulty said, **"Earlier hearings have demonstrated that prolonged underfunding has resulted in the loss of staff needed to process disability cases at the Social Security Administration. This has led to an unprecedented backlog of unprocessed claims and untold suffering. The agency must have the resources it needs to eliminate this unconscionable backlog. At the same time, we must ensure that SSA uses these resources as effectively as possible. This hearing will examine SSA's management of its hearing offices, and explore measures that can be taken to improve productivity without compromising the right of claimants to a fair and impartial decision on their case."**

FOCUS OF THE HEARING:

The hearing will focus on the performance of SSA's hearing offices, factors that affect productivity, initiatives SSA is taking to increase efficiency and productivity, and other approaches to improving productivity without compromising the quality and impartiality of decision-making or the due process rights of claimants.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "110th Congress" from the menu entitled, "Committee Hearings" (*http://waysandmeans.house.gov/Hearings.asp?congress=18*). Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Follow the online instructions, completing all informational forms and clicking "submit" on the final page. ATTACH your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business **Tuesday, September 30, 2008**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman MCNULTY. The Subcommittee will come to order.

Before addressing the topic of today's hearing, I want to acknowledge a very sad loss for all of us. This will be the first Subcommittee hearing since the untimely passing of one of our valued Members, Congresswoman Stephanie Tubbs Jones.

Stephanie was a very active and concerned Member of this Subcommittee. The disability claims backlog in particular was an issue that she cared deeply about, and she worked tirelessly to address the problems affecting her constituents in Ohio.

I know she would have very much have wanted to be here with us today, and we will miss her greatly.

May we just have a moment of silence in memory of our dear friend, Stephanie.

[Moment of silence.]

Chairman MCNULTY. Now, I will turn to today's hearing which focuses on the performance of SSA's hearing offices. SSA's unprecedented backlog of disability claims has caused great suffering.

The waits are the longest for more than 765,000 Americans who have requested a hearing on their case. These individuals now wait an average of 532 days, almost 18 months, and some wait much longer.

I think we all agree this is completely unacceptable. Addressing the backlog has been a top priority of this Subcommittee throughout this Congress.

Our hearings have shown that the primary cause of the backlog is prolonged under funding, which has resulted in too few staff to process the claims even as workloads have increased.

Last year Congress began to reverse this trend by providing SSA with $150 million above the level of funding that the President had requested.

We must continue to provide SSA with the funding needed to completely eliminate this backlog.

We must also ensure that these resources are managed effectively. SSA's Inspector General, who will testify today, recently issued a report on ALJ Hearing Office productivity. I was pleased to learn that from fiscal year 2005 to 2007, hearing office productivity increased by 13 percent. Judges last year issued an average of 474 decisions each.

The report did find that some judges issued very few decisions. However, it turns out that most of these ALJs were in fact not assigned to adjudicate cases full time. For example, they had management responsibility or had retired during the year.

The IG did find that a few ALJs, about 1 percent, were assigned full time to adjudication duties but still had productivity rates that were far below average.

At the same time, about 2 percent of the ALJs issued dispositions at a rate so far above the national average that it could raise concerns about the quality of such decisionmaking. Both extremes are troubling.

I understand that SSA has begun to address the performance of the extremely low producing ALJs as well as those whose productivity is below average, and I am pleased to hear that these efforts have already begun to produce results.

We must be clear, however, that a small number of ALJs are not the cause of the backlog. The problem is far too large and complex to be laid at the door of a few individuals.

We must avoid the temptation to allow concern about a handful of poor performers to distract us from the issue of our primary concern, ensuring that SSA has the resources it needs and that these resources are managed effectively.

In addition, it is essential that we understand that SSA's hearing process is a team effort. SSA's ALJs must rely on staff to prepare the case before the hearing and to draft a detailed decision afterward based on the Judge's instructions.

The IG's report states that lack of staff is a key factor in reduced productivity, a problem that has been identified repeatedly by numerous sources.

I was particularly concerned to learn from the IG's report that a number of ALJs said they regularly have fewer hearings scheduled than had requested due to insufficient staff to prepare the cases.

With a backlog of more than 765,000, we absolutely cannot afford to have judges sitting idle because there are not enough staff.

Finally, as we take a closer look at SSA's management of its hearing offices and ALJs, it is critical that we remember the overriding importance of ensuring that ALJs can make decisions free from political interference.

In passing the Administrative Procedure Act, Congress sought to strike a balance between protecting the right to a fair hearing with an impartial decisionmaker and providing reasonable means of disciplining judges who exhibited unacceptable conduct.

Changing that balance risks interfering with the disability claimant's right to a fair hearing and thereby hurting the very claimants we are trying to help.

I know that SSA has undertaken a wide ranging series of initiatives to improve hearing office performance. I am pleased that we are seeing some initial signs of success.

Today we will learn more about the challenges SSA is facing. We will hear from many perspectives, including SSA, the Inspector General, the Social Security Advisory Board, those who work on the frontlines in hearing offices, and disability claimants.

I look forward to hearing their views on what can be done to improve the productivity of hearing offices without compromising claimants' essential due process rights.

At this time, I am honored to introduce the Ranking Member of the Subcommittee on Social Security, one of my heroes in life, and he always will be, who endured torture for years on behalf of our country and all of its residents, and I could not be more proud to sit next to the great Sam Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. I, too, want to recognize we are missing Stephanie Tubbs Jones on our Subcommittee. She was a strong advocate for her constituents and was tireless in her efforts to make sure the disability program in Social Security was getting its job done. She would have brought her own expertise as a judge to our hearing today and she is going to be missed by our Committee, and I thank you for the moment of silence.

I also want to thank you, Mr. Chairman, for your distinguished service to your constituents and this nation. When it comes to making sure the public receives the service they deserve from Social Security, you have been a strong Chairman as well as a passionate advocate for seniors and those with disabilities, and you have been a good friend.

It has been a pleasure and honor working with you over the years. When you pound that gavel for the last time, I wish you all the best in what will follow you. God bless you.

I also want to recognize another important occasion on behalf of all our colleagues and our guests here today, it is your birthday, and I want to wish you a happy birthday.

[Laughter.]

Mr. JOHNSON. You have to blow out the candle and make a wish.

Chairman MCNULTY. I make a wish that in the future there are more citizens of the United States of the caliber of Sam Johnson.

Mr. JOHNSON. God bless you. We have some more of those if there are any staff that wants them later.

[Laughter.]

Mr. JOHNSON. Thank you and have a happy birthday.

I want to thank you for holding this important hearing. We both share a real concern over the unprecedented backlog of disability cases that is literally affecting hundreds of thousands of people.

The fact is today Americans are waiting longer than ever, over 17 months on the average, to hear whether a judge has decided whether they are eligible for benefits or not. Worse according to a recent report by the Inspector General, some judges are processing cases at a level well below the Agency's expectations, which the Chairman mentioned.

Today, I hope we will learn more from the Inspector General about the factors that impact the performance and processing times of judges and the hearing offices where they work.

No one should have to wait months or even years longer for their hearing decision because of the office or the judge that their case is assigned to. That is just wrong.

Those who are not performing up to expectations need to be held accountable.

There is some good news to report. Last year, Chairman McNulty and I were able to work with the Congress to provide Social Security close to $150 million in additional funding over the President's budget request. As a result, the number of judges and support staff, we hope, are increasing.

Finally, Commissioner Astrue and the hard working employees of the Agency have implemented close to 40 initiatives to boost adjudication capacity, improve performance and increase efficiency through automation and process changes.

Shortly, our witnesses will tell us about the impacts of these changes and whether they are improving the hearing process for both claimants and Social Security.

All of us have a responsibility to make things right for workers who paid for and deserve far better service.

I look forward to hearing from all of our panelists about what more can be done. Thank you, Mr. Chairman.

Chairman MCNULTY. I thank the Ranking Member. Other Members of the Subcommittee will be coming in, hopefully, during the course of the hearing. We did have a procedural glitch today. There is a meeting of the Budget Committee with regard to war funding. At least three of our Members are at that. You have me and Sam.

I would like at this time to introduce our panel, all of whom I thank for making the effort to be here today and also for their advocacies.

Honorable Frank Cristaudo, Chief Administrative Law Judge of the Social Security Administration. Honorable Patrick O'Carroll, Inspector General of the Social Security Administration.

Kathy Meinhardt, Principal Executive Officer for Federal Managers Association, Chapter 275. She is from Minneapolis, Minnesota.

Sylvester Schieber, Chairman of the Social Security Advisory Board.

Ethel Zelenske, Co-Chair, Consortium for Citizens with Disabilities Social Security Task Force.

Honorable Ron Bernoski, President of the Association of Administrative Law Judges, Milwaukee, Wisconsin.

James Hill, President of Chapter 224 of the National Treasury Employees Union, Cleveland, Ohio.

We will start with Mr. Cristaudo.

STATEMENT OF THE HONORABLE FRANK A. CRISTAUDO, CHIEF ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY ADMINISTRATION

Judge CRISTAUDO. Thank you, Mr. Chairman. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity

to speak with you today about our efforts to improve service to the American people.

Before beginning, I would like to take a moment to join both the Chairman and Ranking Member in a warm tribute to Congresswoman Stephanie Tubbs Jones. A former judge herself, the Congresswoman was a strong supporter of our core mission. She will truly be missed.

Additionally, in the aftermath of Hurricane Ike, I would like to let you know that Social Security is doing all that we can to help those affected. As we have done in such emergencies in the past, we will continue to provide service to the public to ensure their Social Security needs are addressed.

We are working with Treasury and the Postal Service to have checks due on Wednesday, September 17, staged at the postal facilities and ready for delivery.

The mission of the hearing operation is to provide timely and legally sufficient hearings and decisions. We know that we are failing in our obligation to provide timely decisions to many claimants.

As a former active claimant attorney myself, I know how devastating it is for these claimants.

This is not due to a lack of diligence on the part of the judges and staff at Social Security who work incredibly hard every day to serve the American public. We simply have been underfunded and understaffed for too many years.

To understand the magnitude of the problem we face, we project an ideal pending per judge of about 360 cases. Our current pending is about 645 cases per judge.

I wish to assure Congress that driving down the disability backlog is the Agency's top priority. We are implementing our plan to eliminate the backlog and prevent its recurrence. It is an excellent plan and we are already seeing significant, positive results.

Unlike prior attempts, this plan is based on initiatives that have been proven to work and includes improvements in automation, business process, and management.

I cannot overstate the importance of sound management of the hearing operation which is a critical element of the plan.

However, for the plan to succeed, we need adequate funding to hire the people to handle the workload, to provide the facilities and equipment to allow them to do their jobs, and to fully implement the automation initiatives which will help us conserve our precious staff resources.

We have implemented a number of initiatives to use our resources as efficiently as possible without compromising our commitment to due process for claimants.

We have outlined specific expectations for the judges and staff. We have adopted revised processing time benchmarks, implemented a decision drafting template system, streamlined the process to issue fully favorable decisions, held judicial conferences for all of the judges for the first time in history, and improved our management training, among a number of other initiatives to improve service.

As a result, we have seen significant increases in productivity in this fiscal year, despite processing the more aged cases which take more time because of the complexity, transitioning to the electronic

file with the associated learning curve, and having attorney adjudicators handle the easiest cases.

We recognize that we continue to have individuals and offices who fail to meet our expectations. We will continue to explore ways to improve the service they provide.

We are concerned not only about those serving fewer claimants than expected, but also those issuing dispositions at rates well above expectations. We have begun analysis of those situations as well to determine the appropriate course.

We are firmly committed to providing the best possible service to the American people.

Fiscal year 2009 will be a pivotal year in turning the corner on the backlog, and a delay in adequate funding would seriously affect the progress we must continue to make.

Sustained funding is equally critical in future budget years to ensure that we stay on track with our goal of eliminating the backlog by 2013.

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

[The prepared statement of Honorable Frank Cristaudo follows:]

Statement of The Honorable Frank Cristaudo, Chief Administrative Law Judge, Social Security Administration

Thank you for the opportunity to speak with you today about our ongoing efforts to improve hearing office productivity. The Office of Disability Adjudication and Review (ODAR) administers hearings and appeals for the Social Security Administration (SSA). SSA's hearing and appeals operation is one of the largest administrative adjudicative systems in the world, and we are committed to providing prompt due process under the Social Security Act.

The Chief Administrative Law Judge has day-to-day oversight of the agency's hearing operation. Our nearly 1,200 Administrative Law Judges (judges), supported by more than 5,000 hearing office staff, hold hearings in our 141 hearing offices and over 150 remote hearing locations and issue more than 550,000 decisions a year. As the Commissioner has stated on numerous occasions, we want and need to improve service to the American people. We are working vigorously to do so. Improving hearing office productivity is an integral part of improving our service. We will also need to expand our presence in the areas with the largest backlogs. We have already begun the process to add new hearing offices in Florida, Ohio, Michigan, Kansas and Georgia, as well as satellite offices in Alaska and Idaho. If we receive timely and adequate support from Congress, this unprecedented expansion will help offer relief to these states.

Unlike prior efforts to improve the hearing operation, our approach is based on initiatives that have been proven to work, along with improvements in automation, business process, and management. If there is significant uncertainty about a new idea, we conduct a pilot until we are confident that it will work. Improving hearing office productivity requires four key elements. The first element is to ensure that we have a sufficient number of well-trained judges and staff. Without sufficient human resources, we can make little progress. The second element is to facilitate the many administrative tasks associated with a hearing through available and proven technology. File preparation, record-keeping, expert testimony, and even the hearing rooms themselves have changed little in many years. Prudent investments in technology can automate repetitive tasks, ease the time and expense of extensive travel, and safeguard personally identifiable information, which frees our staff and our judges to focus on processing claims. The third element is to improve leadership of our judge corps and hearing office support staff and management of the hearing office operation. The fourth element is to improve business processes in our hearing offices, such as a standardized electronic business process, in-line quality reviews, and procedures that allow us to identify and adjudicate cases that can be allowed early in the hearing process. These initiatives will improve service, and deliver the timely, legally sufficient decisions that the American people deserve.

We are implementing a comprehensive plan to eliminate the backlog of hearings. By eliminating the backlog, we will improve hearing office productivity and the

timeliness of our hearings and decisions. Long delays in processing cases not only cause hardship to the claimants waiting for a hearing, but also generate extra work for our staff who must request updated evidence and respond to multiple inquiries on case status.

We are taking assertive action in multiple areas where we know we can make an immediate difference. Our efforts this year have already yielded substantial progress—progress on which we will build as our initiatives are institutionalized and our new hires, both judges and support staff, become fully productive. However, unless we receive adequate and timely funding from Congress, we will not be able to continue on our successful path forward. Adequate funding is critical if we are to continue to implement the backlog plan.

Staffing

Our judges and staff are the heart of our operation. They have stepped forward this year to produce more dispositions than last year even as receipts are growing faster than expected and as we prepare, hear, and decide our most aged cases. We are grateful for the support provided by Congress this year. The additional funding has allowed us to hire 190 judges and over 500 support staff over the course of this fiscal year (FY). We will begin to realize the full impact of these new hires by mid-2009, when we expect the new judges and staff to reach their full production capacity.

Our present target, which we continually review based on the most current productivity and workload data, is to have a judge corps of 1,250 by the end of next year. However, in light of an unanticipated increase in filings, we are now considering whether to adjust that target upwards and will keep Congress apprised if we need to hire additional judges and support staff. We will be monitoring our workloads and receipts carefully in the coming months so that, budget permitting, we will be poised to hire as many additional judges as circumstances warrant. We lose approximately 60 judges a year to attrition, so to reach our goal of 1,250 judges, we will need to hire about 100–125 new judges in FY 2009, as well as sufficient staff to support them. Achieving these staffing levels is contingent upon our receiving adequate FY 2009 funding on a timely basis. A protracted continuing resolution that freezes our funding at this year's level will hinder our ability to hire early in the fiscal year, delay the training of these new hires, and stall the momentum we have achieved in FY 2008.

While we must maintain adequate staff support in order to maximize the efficiency of our judges, we recognize that hiring additional staff is just one part of the solution. Our numerous automation initiatives will significantly enhance the role of hearing office support staff and enable more productive workflows. For example, centralized printing and mailing of notices saves a significant amount of time in our hearing offices and frees staff to perform other critical functions.

Looking ahead, the best way to ensure that we maintain a competent and productive workforce is to hire excellent candidates with 21st century skills. Hiring such candidates remains a top priority. Although we were fortunate to select a number of excellent judge candidates in FY 2008, we need more access to candidates well-suited to our type of work—those capable of thriving under the workload demands of our high-volume, electronic hearing operation. Due to the large number of judges we need to process our workloads and our ongoing need to fill judge vacancies resulting from attrition, we need access to a broad pool of applicants.

Modern Technology Will Improve the Hearing Process

The second area of focus in improving hearing office productivity is automation, which will increase the effectiveness of the hearing operation. We must be able to manage our workloads more efficiently. One way of doing so is to rely on technology to handle more quickly the simpler tasks of preparing a case for hearing and free staff time to engage in the more dynamic tasks. Another is to provide up-to-date access to representatives to the claimant's files, to ensure that submitted evidence has been received and included. Another is to transfer workloads electronically and to make hearings more readily available to claimants across the country through video technology. As excited as we are at the possibilities technology provides, we are attentive to testing and refining any technology "fixes" through pilots before implementing a change for the entire hearing operation. The following initiatives highlight our ongoing efforts in the area of automation.

Centralized Printing and Mailing: This initiative provides high-speed, high-volume printing for all our offices. Instead of having each hearing office print and mail out notices locally, millions of pages will be sent electronically from the individual hearing offices to a print server for printing and mailing. Hearing office employees will no longer perform this arduous activity. As of August 30, 2008, all hearing of-

fices, including the National Hearings Center (NHC), can use central print for nine notices. This well-received initiative provides demonstrable work-year savings.

ePulling (Electronic File Assembly): We are developing customized software to classify, filter, and identify critical data elements from each page of evidence in electronic folders. This software will enable our support staff to "pull" cases more quickly to get the electronic folder ready for a hearing, and will make the review of electronic folders considerably easier and faster. We rolled out a pilot in the Tupelo, MS hearing offices at the end of June 2008. The rollout was then expanded in the St. Louis, MO, Mobile, AL, Minneapolis, MN, and Richmond, VA hearing offices and in the Falls Church, VA NHC. If the software lives up to expectations, we plan to roll it out nationally next year. While the learning curve on any new approach takes some time, the reaction from judges and staff who have been part of this pilot is extremely enthusiastic.

Expanded Internet Services for Claimants and Representatives: In response to the public's request for more Internet services, we have implemented processes to allow claimants who are appealing decisions on disability claims the ability to submit appeals online. So far this year, over 120,000 people have opted to utilize these services. This online process is easy for the claimant to complete and helps us in managing the workload. Our efforts in this area are in keeping with our overarching goal to transition into a more fully electronic environment while allowing claimants to continue using the paper process if they so choose.

Currently 85 percent of ODAR's pending disability workload is electronic. When a claimant's representative wants to view a claimant's folder, hearing office personnel must take the time to burn a CD of the file, package it, and then mail it to the representative. As the case moves through the hearing process, representatives frequently make requests for updated file information. At the time of hearing, we burn to a CD copies of the record for the representative and for any expert witness. By the time a case is closed, it is not uncommon for offices to have burned as many as six copies of each file. With new functionality in the Agency's Electronic Records Express website, representatives will be able to view the electronic folder through a secure website, thus eliminating the need to provide multiple copies of CDs. The Agency is currently piloting this with nine representatives and is working on authentication issues to protect the claimant's personally identifiable information.

Desktop Video Units (DVU): While traditional video conferencing equipment often consists of a large television monitor and camera situated in a hearing room, we are piloting more compact Desktop Video Units (DVUs). This equipment, which looks like a 20 inch television, can sit on the judge's desk. We conducted an initial pilot of the DVUs in four judges' offices and in the National Hearing Center. The pilot feedback was extremely positive. We are now expanding the use of this equipment to more than 20 additional locations. The pilot program will continue to evaluate the utility of DVUs to conduct hearings in both hearing rooms and in individual judges' offices. Use of video conferencing for conducting hearings saves travel time and money, and the use of DVUs in judges' offices provides additional hearing room capacity.

Representative Video Conference Equipment: Another new technology initiative allows representatives to purchase their own video conferencing equipment based on exact specifications set by SSA. These representatives will then be able to conduct hearings from their own office space, thereby providing additional hearing room capacity as well as saving time and travel costs for all participants. For claimants in rural areas, and those with certain types of disabilities, this service option should prove extremely attractive. Each representative must sign an agreement with SSA that outlines the requirements for participation in the program. The agreement requires representatives to provide video equipment that is compatible with existing equipment used by SSA and to provide due process protections to the claimants, including privacy, the ability to exchange evidence with the hearing office, and an opportunity to review the evidence in the file prior to the hearing. We have notified 30 representatives who have expressed interest in participating in hearings using representative-owned video equipment. As of last week, three representatives have responded to our notice with signed agreements. We anticipate that we will be able to begin holding hearings under this program by the end of this year.

Managing Performance

The third element of improving productivity is sound leadership and supervision of our employees and management of our work processes. For example, after successfully eliminating our 1,000 or more day-old cases in FY 2007, we focused on reducing our 900 or more day-old cases by the end of FY 2008. We pursued this initiative not only because doing so is a moral imperative, but also because a backlog of

aged cases interferes with the normal hearing office workflow that we need to re-establish. Remarkably, our productivity is up despite our concentrated efforts to reduce the most aged cases, higher receipts than expected, and the demands of providing formal training for our new judges, who are trained by some of the highest-producing judges in the corps. Specifically, we have processed even more decisions this year than last and we were able to slow substantially the increase in our pending workload. The chart displays our progress in reducing the 900 day-old cases this year.

[INSERT CHART]

[WAITING FOR RESPONSE FROM COMMITTEE]

To increase operational flexibility, we have temporarily realigned hearing office service areas to balance our workloads. We focused on targeting resources so that the most backlogged areas receive the most help, and we increased the use of video hearings. These adjustments improve service by moving work from hearing offices with higher workloads to offices that have more capacity to assist.

One of the creative ways we have been able to shift workload is through the NHC in Falls Church, VA. Using video conferencing equipment, the NHC judges are now conducting hearings for the Cleveland, OH, Atlanta, GA, and Detroit, MI hearing offices. As the workloads in these offices improve, we will begin utilizing the NHC to provide assistance to three other offices with very high backlogs, the Indianapolis, IN, Atlanta North, GA, and Flint, MI offices. We have received positive feedback from claimants utilizing the NHC, and the public's acceptance of this new way of doing business has exceeded our initial projections. Since the first hearing in December 2007, the NHC has received over 4,200 cases, held over 1,600 hearings, and processed almost 1,800 dispositions. By the end of 2008 we will have a total of 11 judges in the NHC. We are proceeding with plans to open a second center in Albuquerque, NM, in the next few months that tentatively will begin by addressing backlogs in Portland, OR and Kansas City, MO. A third NHC in Chicago, IL is scheduled to open next spring; it would be premature to predict where the offices with the greatest needs will be. As the new NHCs come on line, we will utilize them to provide assistance to the hearing offices with the highest backlogs.

At the beginning of FY 2008, we clarified our expectations regarding the service judges provide to the public. I laid out these expectations to all the judges in an October 2007 memo and re-emphasized them at the four judicial conferences we held this year throughout the country. Most notably among the expectations, we have asked the judges to issue 500 to 700 legally-sufficient decisions each year, act on a timely basis, and hold scheduled hearings unless there is a good reason to postpone or cancel.

We adopted the 500 to 700 case expectation after a thorough review of historical production data and discussions with a number of individuals including judges. We believe that this expectation is reasonable for our current process, and we are pleased to report that the proportion of judges meeting this expectation has increased. So far this year, more of our judges are on pace to issue over 500 dispositions. Presently, half of our judges are meeting the 500–700 case expectation nationally. In addition, we expect most, if not all, of our judges hired this fiscal year to reach this goal once their learning curve is over. If all judges were to meet our minimum expectation of 500 cases, we would serve approximately 60,000 more claimants annually. While we are concerned about judges serving fewer claimants than expected, we are just as concerned about judges issuing dispositions at rates well above expectations at the expense of quality. We have begun the analysis of those situations as well to determine the appropriate course to take.

In addition to the improved productivity of our judges, our attorneys and paralegals who draft decisions for the judges and other support staff have also improved their productivity. As we have done with the judges, we set clear expectations for support staff. Our Senior Attorneys have issued fully favorable decisions for more than 22,000 claimants just since November 2007, while continuing to draft many decisions for our judges.

In general, our judges and staff are highly motivated professionals working extremely hard to meet the needs of the American people. By setting clear expectations and managing our workloads, we are building on their talents and creating

a standard of exceptional service based on a culture of performance and professionalism.

Process Improvements

As we eliminate backlogged cases and utilize new technology, we are attentive to adapting our work processes to take into account the changes in the mix of work and the tools used to process the work. We are working to develop a standardized electronic business process for our hearing offices. This initiative has the potential to transform our hearing operation by improving all aspects of quality including accuracy, timeliness, productivity, cost-efficiency, and service to the public. The standardized electronic process adopts the "best practices" already in use in our hearing offices. The process is built upon analysis of management information data and input from hearing office judges and staff.

Initial testing of a draft standardized electronic business process began in the Downey, CA Hearing Office in July 2008. The Grand Rapids, MI Hearing Office begins testing this month. Based on our experiences at these offices, we will refine the standardized electronic business process and then include additional hearing offices in the pilot in FY 2009. Our goal is to roll out the electronic business process nationwide next year, provided our thorough testing yields positive results.

In conjunction with the standardized electronic business process, we are also developing a quality assurance program for the hearing process. Regional personnel will have responsibility for overseeing the in-line quality process, which will include reviews of attorney adjudicator decisions, decision drafts, case pulling, and scheduling. This program will be implemented in FY 2009 after the necessary system enhancements are put in place.

Maintaining hearing office productivity and preventing the recurrence of the backlog require continual improvement in the quality of decisions at all levels of the disability process. In this regard, we are making significant progress toward reducing the number of cases that need to be reviewed by a judge. We are relying upon a variety of tools to identify cases that do not need a judge's review or that could be allowed earlier in the process. The following list provides brief descriptions of some of our most promising improvements to the disability claim process.

Attorney Adjudicator: We reinstituted the Attorney Adjudicator program to allow our most experienced attorneys in the hearing offices to spend a portion of their time making quick, on-the-record, disability decisions in cases where enough evidence exists to issue a favorable decision without waiting for a hearing. Our quality reviews show that the accuracy of these decisions is very high.

Informal Remands: In collaboration with State Disability Determination Services (DDS), we are using the informal remand process to send cases that have been profiled as likely to be reversed but are pending at the hearing level back to the DDS level for review and possible issuance of a favorable determination. From June 2007 to the end of August 2008, more than 23,000 of these reviews have already resulted in fully favorable reversals, meaning claimants who were once waiting to have their hearings scheduled are now receiving benefits.

Medical Expert Screening: In addition, the Medical Expert Screening Process plays an important role in identifying and expediting cases that may result in an allowance, by providing medical expert input that may enable us to make an "on the record" decision. Under this process, cases are screened and forwarded to a medical expert to complete a set of interrogatories. Cases that can be allowed on the record are routed to an adjudicator for review and decision. Conversely, cases that cannot be allowed are routed to a judge for normal processing with the medical expert's input in the record.

Disability Claims Improvements: Several efforts are underway to improve the processing of disability claims and reduce the number of claims reaching the hearings level. The Quick Disability Determination (QDD) process is one of two fast-track processes that focus on initial disability claims. QDD uses a computer-based, predictive model to identify and accelerate initial disability claims for individuals who are likely to be found disabled. Our second fast-track process is the Compassionate Allowances (CAL) initiative. This initiative, which will begin soon, will identify rare diseases and other medical conditions that are invariably disabling and can be established by minimal, objective medical evidence. Finally, we expect to complete our regular updates to our listing of impairments by 2010.

Conclusion

We are firmly committed to proper leadership and management oversight of the hearing operation so that we may provide the best possible service to the American public. As we have worked to implement the different initiatives which make up the backlog reduction plan, we have surmounted many challenges, and there is no ques-

tion we will confront many more. One of the potential challenges that would be difficult to overcome is the lack of adequate resources as we strive to do all that is needed. FY 2009 will be a pivotal year, and a delay in adequate funding would seriously affect the progress we must continue to make. Sustained funding is equally critical in future budget years to ensure we stay on track with our goal of reducing the backlog by 2013. We have an excellent plan for eliminating the backlog. We are committed to improving service to the American people. With your support, we can improve the service we provide. Thank you.

Chairman MCNULTY. Thank you very much. Before we go to Mr. O'Carroll, I will just ask unanimous consent that any other opening statements that other Members of the Subcommittee may wish to submit be included for the record. Hearing no objection, so ordered.

We will continue with Mr. O'Carroll.

STATEMENT OF THE HONORABLE PATRICK O'CARROLL, INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION

Mr. O'CARROLL. Good morning, Mr. Chairman and Mr. Johnson.

Before I begin, I would like to express the condolences of my entire organization at the loss of Congresswoman Tubbs Jones. She was an ally of my office, and of all those who sought to improve Social Security for the American public.

The best way to serve her memory is by doing exactly what we are doing today.

In December, you asked us to dig deeper into the disability appeal backlog by looking at ALJ case disposition statistics, case processing times, the reasons for variances, and SSA's management of ALJ performance.

To accomplish this, we interviewed the Chief ALJ, 9 Regional Chief ALJs, 143 ALJs across the country, and 146 hearing office staff in 49 of SSA's 141 hearing offices.

I would like to briefly summarize our findings. Looking first at case dispositions and case processing time, we found that the average ALJ was processing more cases, but it took longer on average for each case to be processed.

Our work examined all ALJs who issued at least one decision in 2007, so it included some judges who were new to the job, retired during the year, worked part-time, or had valid reasons for not processing more cases.

That said, the productivity range is wide. About 90 percent of the ALJs issued between 101 and 800 dispositions in 2007. By the same token, the average processing time for about 90 percent of the ALJs ranged from 301 days to 700 days. There is definitely a wide range of productivity among ALJs, just as there is among hearing offices.

Our work, and particularly the interviews we conducted, revealed a multitude of factors behind these disparities, including work ethic and motivation.

One Regional Chief ALJ stated: "Some ALJs are not motivated to process more cases or are stuck in a time when fewer dispositions were expected." Staffing of hearing offices was another pri-

mary factor. As one high-producing ALJ stated: "It is easy to work hard when you have a great staff."

Sure enough, we found that more than half of the higher producing ALJs we interviewed were in hearing offices with staffing levels above the national average.

The number of cases an ALJ schedules is a factor closely tied to staffing. Understaffed offices cannot schedule as many hearings as ALJs request.

As a regional Chief ALJ stated: "Support staff ratios have a significant impact on productivity and processing times."

We also identified the rate of on-the-record dispositions, or OTRs, as an important element. An OTR is a favorable decision that an ALJ issues on the evidence without holding a hearing. Higher-producing ALJs make much more frequent use of OTRs.

Use of expert testimony was another important indicator. Lower producing ALJs were also more likely to obtain expert testimony, issue postponements, hold longer hearings, spend more time preparing a case, and spend more time editing decisions.

High producing ALJs were more likely to use what is referred to as the "rocket docket," in which multiple unrepresented claimants are scheduled for hearings on the same day and at the same time.

As our review did not assess the accuracy of ALJ dispositions, we are not in a position to state what impact the practices of high- and low-producing ALJs might have in that regard.

Finally, you asked that we look at the Agency's management of ALJ performance. We found that the use of management information varied, and offices where hearing office Chief ALJs were more involved in the scheduling of hearings tended to be more productive.

We also found that disciplinary actions against ALJs for performance issues are still rare, but are being addressed more frequently than in the past. Still, this remains an issue. As one Regional Chief ALJ stated: "It is a complicated process to take action against ALJs."

Of the Commissioner's management initiatives in this area, none is more important than the productivity expectation of 500 to 700 dispositions per ALJ per year.

One Hearing Office Chief ALJ told us that performance standards are "extremely valuable to compel the ALJs to meet the expectations required of them."

As of April, however, only about half of the ALJs nationwide were on track to meet this goal.

Tied closely to this initiative is the hiring of ALJs and staff, and the proper distribution of staff to hearing offices. New automation, and a proposed quality assurance program, are also important Agency initiatives.

There is no one solution but rather a need for everyone involved to work together to resolve these important issues.

I could not agree more with what we were told by one Hearing Office Chief ALJ who stated "I believe we need cooperation from all parties to serve the public, to deliver quality service."

I thank you again for your commitment, and I would be happy to answer any questions.

[The prepared statement of Honorable Patrick O'Carroll follows:]

Statement of The Honorable Patrick O'Carroll, Inspector General, Social Security Administration

Good morning, Mr. Chairman, Mr. Johnson, and Members of the Subcommittee. Before I begin, I want to express the condolences of my entire organization at the loss of Ms. Tubbs Jones. As you know, the Congresswoman had been a long-time member of this Subcommittee, and a long-time supporter and friend of the Office of the Inspector General. I met with her earlier this summer and we enjoyed a frank exchange of ideas directed toward a common goal—improving Social Security programs for her constituency and for all Americans. I've appeared before this Subcommittee many times during my tenure as Inspector General, and on almost every occasion, she held my feet to the fire, driven by her own commitment to public service and to the people who elected her. Like you, and like the people of Ohio, I lost a friend. The thoughts and prayers of all 600 employees of the Office of the Inspector General are with her loved ones.

The best way to serve her memory is by doing exactly what we're doing here today—standing together and looking under the hood of the Social Security disability appeals process to find ways to make the engine run more smoothly. The disability appeals backlog is unacceptable to the Social Security Administration (SSA), to you, and to me, just as it is unacceptable to the American public and to everyone at this witness table. This hearing by no means represents our first attempt to make the necessary repairs, nor will it be our last. I believe, however, that it represents an important step forward, as the work requested by this Subcommittee and recently completed by my office sheds some new light on the challenges confronting us.

By way of background, it is important to understand that the backlog is not the result of a lack of dedication or commitment on the part of SSA or any of its employees, nor of the Administrative Law Judge (ALJ) corps, though it falls on all of these parties to join in seeking solutions. In 2004, looking at hearing office factors that contributed to the increasing backlog, my office found that although the number of dispositions had increased—ALJs were processing more cases than ever before—the number of incoming appeals was growing even faster, leading almost inevitably to longer processing times and an increased backlog. And the phenomenon has continued. In 2001, the Office of Disability Adjudication and Review's (ODAR) average processing time for an appeal was 308 days. Now, despite all of our efforts, the average processing time is 505 days.

Earlier this year, we conducted an audit that focused specifically on ALJ productivity. While we recognized then—as we do today—that not all of the responsibility for the backlog can be laid at the feet of the ALJs, understanding the challenge and seeking a solution is not possible without understanding the role of the ALJ in the process.

We found significant discrepancies in ALJ productivity in that audit. We also found, however, that processing delays and increases in the appeals backlog were partially attributable to hearing office staffing, use of management information, and other issues not directly related to the ALJs themselves.

While we were reporting these hearing office-based findings, the Subcommittee requested that we undertake a separate study on the key role that the hearing office plays in the efficiency of the disability appeals process. Specifically, you asked that we consider ALJ case disposition statistics, but also that we examine case processing times, the reasons for variances among hearing offices and ALJs, ODAR's management of ALJ performance, and SSA's management initiatives aimed at reducing the backlog and improving processing time.

To accomplish this, we conducted the most thorough review we have ever undertaken in this area. We visited 49 of ODAR's 141 hearing offices across the country. In each of these 49 offices, we interviewed the Hearing Office Chief ALJ (HOCALJ), one high—or low-producing ALJ, a mid-producing ALJ, the Hearing Office Director, a senior attorney-advisor, and a senior case technician. We interviewed Judge Cristaudo, SSA's Chief ALJ, 9 Regional Chief ALJs, a total of 143 ALJs, and a total of 146 hearing office staff.

We looked at management tools and practices, including disciplinary actions taken against ALJs for performance issues, and we studied 37 initiatives that SSA has undertaken to reduce the backlog. Our findings, organized by the specific subject areas set out in your request, follow.

ALJ Case Disposition Statistics

To analyze ALJ case disposition data, we looked at the case disposition statistics of all ALJs who issued dispositions during the years in question. This included full-time and part-time ALJs, new ALJs, and ALJs who may have retired, separated,

resigned, or died during the year. This also included ALJs with union or management duties, of whom fewer cases might be expected, as long as they issued at least one disposition. In other words, rather than use the traditional government notion of "full-time equivalents," we looked at every ALJ who issued even one case disposition in the given year.

On the other side of the equation, we considered all case dispositions, including cases remanded to the appropriate disability determination services (DDS) office for further processing or consideration of an allowance.

Using these definitions, we found that the average number of case dispositions per year per ALJ had increased by 13 percent between fiscal year 2005 and fiscal year 2007. Specifically, the ALJ corps averaged 421 case dispositions in 2005, and improved to an average of 474 case dispositions in 2007. This 2007 average saw 1,155 ALJs issue a total of 547,951 dispositions. Discounting approximately the highest and lowest five percent of ALJs to eliminate statistical anomalies, the number of dispositions issued by the ALJs in our study (which included both fully- and partially-available adjudicators) ranged from 101 to 800 cases. Later in my statement, I address some of the reasons for this wide range.

Case Processing Time

The numbers that matter most to the public have nothing to do with ALJ productivity or hearing office practices. Rather, the understandable concern of any disability appellant is how long it will take SSA to render a decision on his or her appeal.

Looking at the same period, the average case processing time in fiscal year 2005 was 443 days. By fiscal year 2007, the average processing time had increased 16 percent, to 512 days. This, despite a 13 percent improvement in ALJ case disposition numbers. Again discounting for statistical anomalies, for ninety percent of the ALJs in our study, the average processing time per ALJ ranged from an average of 301 to 700 days.

Understandably, SSA attributes much of the increase in case processing time to increases in the numbers of appeals filed and limitations on resources necessary to process these appeals. This is true, but as you were aware when you requested this review, investment in improving this process must be made wisely and carefully. While hiring additional ALJs is a necessary component of improvement, that alone will not resolve the matter.

It is also worth noting that of ODAR's 141 hearing offices, 22 of them, or 16 percent, had average case processing times that exceeded the national average (512 days) by 100 or more days. This suggests that both ALJ productivity and hearing office practices play a role in processing delays.

Reasons for Variances Among Hearing Offices and ALJs

We identified eight major factors that contribute to the wide variances described above among hearing offices and among ALJs.

Valid and/or Immutable Factors

As stated earlier, a thorough study required that we look at all ALJs that issued dispositions in a given year. This meant that we could not take into account—in our overall analysis—ALJs with good reason for issuing relatively few dispositions. Looking beyond the initial review, however, reveals that in many cases, what appear to be lower-producing ALJs are not cause for concern.

We looked again at the 95 ALJs in our study of fiscal year 2007 who issued fewer than 200 case dispositions. We found that of these 95, one was Judge Nancy Griswold, the Deputy Chief ALJ, who certainly had other issues occupying her time. Similarly, five of these 95 ALJs were Regional Chief ALJs.

Another 13 of these 95 ALJs were new to their jobs (and thus had a significant learning curve), were part-time employees, or were on extended leave during the year. And another 54 of these ALJs either retired, separated, resigned, or passed away during fiscal year 2007. This left 22 ALJs who produced fewer than 200 dispositions. Ten of these 22 ALJs were union officials who, under the collective bargaining agreement, had officially authorized union responsibilities. We interviewed the ten union officials as part of our study.

We then interviewed the twelve remaining ALJs, each of whom issued between 150 and 200 dispositions during fiscal year 2007. The reasons they cited for their disposition numbers are incorporated in our report, and in this testimony.

Internal Factors

Through our interviews, we found that internal factors—unquantifiable factors internal to each ALJ—were significant contributors with respect to disposition productivity. In fact, our interviews with Regional Chief ALJs (RCALJ) revealed that work

ethic and motivation were one of the main factors that contributed to high or low productivity. One of these interviews even revealed an ALJ who remained unmotivated despite oral and written counseling, a written directive, and a reprimand.

One RCALJ told us *"Some ALJs process fewer cases than expected due to a lack of motivation."* Another stated that *"Some ALJs are not motivated to process more cases or are stuck in a time when fewer dispositions were expected."*

Since, however, work ethic and motivation—as well as other internal factors—are particular to each ALJ and cannot be quantified, our ability to study this factor's precise effect on processing time and on the backlog is limited.

DDS Disparities

We consistently heard from ALJs and hearing office staff that DDS disparities were a significant factor with respect to hearing office performance and processing times. As one RCALJ stated, *"Poor quality cases from the DDS level can cause some ALJs to process fewer cases."*

Staffing

The support staff in SSA hearing offices conduct initial case screening and preparation, maintain the case control system, conduct pre-hearing analysis, develop evidence, schedule ALJ hearings, prepare notices and decisions, and perform various other functions in support of the appeals process. As we recognized both in our February audit and in this one, insufficient staffing appears to be a factor in ALJ and hearing office performance and case processing times.

We found that hearing offices with a staff ratio higher than the national average of 4.46 staff per ALJ were likely to have higher-producing ALJs. Specifically, we found that more than half (52 percent) of the higher-producing ALJs we interviewed were in offices with staff ratios higher than that average, but only 17 percent of the lower-producing ALJs we interviewed were in hearing offices with above-average staffing levels. Similarly, 63 percent of the hearing offices ranked by ODAR as being in the top half nationwide for productivity had a staff ratio higher than 4.46 staff per ALJ, while only 38 percent of the hearing offices ranked in the bottom half were staffed above that level.

Our conclusion that staffing was a key factor in hearing office productivity was confirmed by the fact that all 48 hearing office directors we interviewed stated that staff ratio had a significant impact, and hearing office staff in 39 of the 49 offices we visited told us that more staff was needed.

"Support staff ratios have a significant impact on productivity and processing times," said one RCALJ. *"Hearing offices often over-burden the strongest employees which often leads to the best staff leaving the office and a demoralization of the office. Further, it is difficult to meet timeliness goals with limited staff. If one staff person is gone, there is often no backup."*

Hearing Docket

Typically, ALJs provide hearing office staff with the number of hearings the ALJ would like to have scheduled three months in advance of the period being scheduled. We found, however, that 55 percent of the lower-producing ALJs sometimes did not have as many hearings scheduled as they requested, generally due to staffing levels that were insufficient to support preparation for that many hearings. Of the ALJs who told us this, 39 percent went on to state that this was a regular occurrence. Moreover, we learned that in offices where this was a problem, most had staff ratios below the national average of 4.46 staff per ALJ.

In contrast, only 23 percent of the higher-producing ALJs told us that they regularly had fewer hearings scheduled than they requested, though they, too, pointed at insufficient staffing levels as the cause. Our interviews with hearing office directors and senior case technicians further confirmed this finding.

Said one low-producing ALJ, *"While hiring more ALJs will help with hearing cases, the hearing office needs more trained staff."*

Favorable Rates

According to our study, higher-producing ALJs issued favorable decisions (decisions in which the appellant's initial denial was reversed and the claimant was awarded benefits) in 72 percent of their dispositions, while lower-producing ALJs had a favorable rate of only 55 percent. Put another way, 65 percent of the higher-producing ALJs we studied had a favorable rate above the national average, while only 31 percent of the lower-producing ALJs had a favorable rate above the average.

This discrepancy is attributable to on-the-record decisions—cases reviewed by an ALJ in which the appellant is found to be eligible for benefits without need for a hearing. Higher-producing ALJs were more proactive in screening cases for on-the-

record decisions, with 65 percent of them stating that they regularly screened cases for possible disposition in this fashion. Only 34 percent of the lower-producing ALJs stated that they regularly screened cases for on-the-record dispositions.

As one HOCALJ pointed out, *"If goals are too high the corners get cut, and the easiest thing is to grant a case."*

Individual ALJ Preferences

We found that certain preferences of individual ALJs with respect to how cases were processed were indicators of higher or lower performance.

Case Preparation and Docketing

The amount of time spent reviewing a case prior to a hearing was a contributor to productivity: higher-producing ALJs spent an hour or less preparing a case, while lower-producing ALJs typically spent from three to eight hours.

Case docketing practices was also a factor. Higher-producing ALJs requested 10–50 hearings per week, while lower-producing ALJs requested between two and 30 hearings. Higher-producing ALJs were also more likely than lower-producing ALJs to schedule hearings before office staff prepares the file.

Length of Hearings

The length of hearings proved to be another indicator. Higher-producing ALJs stated that their hearings generally lasted less than an hour, while lower-producing ALJs stated that their hearings lasted from 30 to 90 minutes. Higher-producing ALJs also reached a decision more quickly, having reviewed the file beforehand and taken careful notes during the hearing.

Bench Decisions

Bench decisions—cases in which the ALJ rules in favor of the claimant during the hearing—are an indicator of higher ALJ performance. Only 14 percent of the lower-producing ALJs we interviewed issued bench decisions during fiscal year 2007, while 58 percent of the higher-producing ALJs utilized this practice.

Rocket Docket

By scheduling multiple cases involving unrepresented claimants for the same day and time, some hearing offices and ALJs are able to reduce their backlogs. Since cases involving unrepresented claimants are often dismissed (because the claimant does not appear) or postponed (because the claimant appears, only to decide that he or she wants representation), the rocket docket allows many hearing requests to be moved forward at the same time.

Time Spent Editing Decisions

The decision-editing process also slowed lower-producing ALJs, with 41 percent of them stating that they had substantial edits to more than half of the decisions prepared by their staff. None of the higher-producing ALJs we interviewed stated that they had such frequent edits.

Expert Testimony

In some areas, the ALJs and hearing offices do not always have control over factors that can cause delays. For example, under certain circumstances, an ALJ is required to obtain the testimony of medical or vocational experts, but in most cases, obtaining such expert testimony is discretionary. We found that 21 percent of the lower-producing ALJs used medical experts in more than half of their hearings, while only six percent of the higher producing ALJs fell into this category. Similarly, 72 percent of the lower-producing ALJs used vocational experts more than half the time, while 32 percent of the higher-producing ALJs did.

Postponements

Like the use of experts, postponement can be mandatory, but is more often discretionary. In our study, 52 percent of the lower-producing ALJs had more than one-fourth of their hearings postponed. Only 32 percent of the higher-producing ALJs did.

Management of ALJ Productivity

We looked at the use of ODAR's Case Processing and Management System (CPMS), and found that Hearing Office Chief ALJs (HOCALJ) use the system to monitor ALJ performance in varying degrees. Most of the HOCALJs we interviewed monitored the number of hearings that each ALJ in the office scheduled and met with ALJs who were scheduling low number of hearings. Five of the HOCALJs we interviewed actually approved each ALJ's schedule, and it is worth noting that four of those five offices ranked in ODAR's top 30 nationwide.

We also found, however, that fewer than half of HOCALJs were using CPMS to monitor bench decisions or on-the-record dispositions, methods described above as indicators of high ALJ productivity. The HOCALJs who did not use CPMS to monitor these types of cases stated that doing so would intrude upon an ALJ's decision-making process.

Our study also looked at disciplinary actions taken against ALJs for performance issues. Only a few of the HOCALJs we interviewed stated that they would make recommendations for disciplinary action against ALJs for performance issues like low productivity. Among the reasons they cited was that such actions are difficult and time consuming.

Almost all of the 31 disciplinary actions initiated against 30 ALJs from fiscal year 2005 through June of 2008 were for conduct, not performance (there are two performance actions before the Merit Systems Protection Board), but Regional Chief ALJs we interviewed stated that they were beginning to address performance issues more than they had in the past. Counseling on performance issues also occurs, but is not tracked; the Regional Chief ALJs we interviewed indicated, however, that these also pertain mostly to conduct issues, not performance.

Management Issues

To address productivity, backlog, and processing time issues, the Commissioner implemented a four-pronged plan, to be achieved through 37 initiatives, many directly related to the factors I've discussed today. We believe that those that may have the most impact are the following:

Productivity Expectation

This is the most direct initiative, and one which comports with our February 2008 audit on ALJ productivity. The Chief ALJ has requested that ALJs issue between 500 and 700 dispositions per year. In our February report, we stated that if ALJs were hired, and all ALJs completed 500 dispositions annually, the excess backlog would be eliminated by 2012. As of April, 49 percent of ALJs nationwide are on track to meet the Chief ALJ's goal.

Hiring ALJs and Staff

In addition to 20 ALJs hired in fiscal year 2007, SSA has hired another 189 ALJs in fiscal year 2008. Further, ODAR is filling 230 staff positions in phases to balance staffing needs in each region. During Phase One, 92 immediate hires are being allocated to ODAR regional offices; during Phase Two, 138 hires are being allocated for distribution to the regions to backfill vacancies and balance staff ratios.

New Automation: Electronic Folder

In fiscal year 2007, ODAR transitioned from paper to electronic case folders (about 73 percent of folders were electronic as of March 2008). It was anticipated that this transition would bring with it a learning curve and period of adjustment, but some ALJs continue to assert that it is easier to use paper folders, and that the electronic folder slows the process. It is too early to assess the impact of the electronic folder on case processing times.

New Automation: ePulling

ePulling refers to customized software that is designed to facilitate the process of preparing cases for hearing. ePulling is underway on a pilot basis, with national rollout scheduled for fiscal year 2009. ODAR has estimated that it takes 3.5 hours to manually prepare an electronic folder for hearing, but that with ePulling, it will take only two hours (though additional staff time will still be needed after the ePulling process). My office has begun an audit on the ePulling pilot, and we will be happy to provide you with our findings when that work is complete.

DDS Informal Remand Project

Using profiles designed by SSA's Office of Quality Performance, certain paper cases are sent back to DDS offices for a determination of whether a favorable decision can be issued without a hearing. The DDS staff, using overtime, reviews the case and if a fully favorable ruling can be issued, returns the case to SSA for processing and payment. If a favorable ruling cannot be issued, the DDS prepares the case for a priority hearing and returns it to the hearing office.

The results of this initiative are still being reviewed, and use of the same process for electronic files is also getting underway.

Quality Assurance

As part of the Commissioner's plan, SSA intends to develop and implement a quality assurance program for the hearing process. The program will be rolled out in three phases. First will come a review of attorney adjudicator decisions; second,

a review of decision drafts; and third, a review of cases with a hearing scheduled but not yet held. Reports will be issued and recommendations made based on SSA's findings.

To date, SSA has reviewed 111 senior attorney adjudicator decisions and found them to be 95 percent accurate.

Conclusion

This statement summarizes the information presented in our Congressional Response Report, *Administrative Law Judge and Hearing Office Performance*. I believe the report, which is available on our website, provides Congress and SSA with a wide range of findings that may prove useful as we continue to work to ensure that disability applicants receive timely and accurate decisions on their claims. We have other work, both planned and underway, that focuses on various aspects of this challenge, and will result in recommendations to SSA for improvement.

Clearly, the hiring of additional ALJs and hearing office staff is the single most important step forward that can be—and now has been—taken. The prudent use of those resources, however, requires studies such as this, initiatives such as those put forward by the Commissioner, the support of the Chief ALJ, and the oversight of this Subcommittee. I thank you all for your interest, your concern, and your dedication. I would be happy to answer any questions.

Chairman MCNULTY. Thank you very much. I would just advise those present that we have been joined by Congressman Sander Levin, who is a senior Member of the Committee on Ways and Means, a Member of this Subcommittee, and the former Ranking Member of this Subcommittee, and an expert on Social Security generally, and we collectively want to extend our condolences to him on the passing of Mrs. Levin.

We will now go to Ms. Zelenske.

STATEMENT OF ETHEL ZELENSKE, CO-CHAIR, CONSORTIUM FOR CITIZENS WITH DISABILITIES SOCIAL SECURITY TASK FORCE

Ms. ZELENSKE. Chairman MCNULTY, Ranking Member Johnson and Members of the Subcommittee, thank you for inviting me to testify today. I am here in my capacity as co-chair of the CCD Task Force on Social Security.

First, let me take this opportunity to join you in mourning the loss of your colleague, Representative Stephanie Tubbs Jones. She was a very strong advocate on behalf of vulnerable populations, and we will miss her very much.

We are all too familiar with the intolerably long processing times for disability claims and their disastrous impact on thousands of individuals waiting for decisions. For many, their lives have come unraveled and sadly, some have died.

We believe that the main reason for the growing backlog is the persistent under-funding of SSA over the last decade. This has had a significant impact on hearing office performance resulting in too few ALJs and support staff.

Today's witnesses will discuss the productivity of ALJs. However, the numbers alone do not tell the whole story. They should not be the impetus for lessening the protections ALJs have under the Administrative Procedure Act, given the critical role that ALJs have played in protecting the rights of claimants.

A claimant's right to a hearing before an ALJ is central to the fairness of the SSA adjudication process. ALJs are impartial and free from Agency coercion or influence.

In the eighties, the disability claims process was in turmoil for reasons very different from the problems we face today. During that period, ALJs confronted Agency policies they considered inconsistent with the Social Security Act and due process, frequently reversing denials based on these policies.

The most striking example involved the termination of benefits to nearly 500,000 severely disabled beneficiaries, and they suffered great hardships upon losing their benefits.

As a Legal Services attorney at the time, I represented numerous clients in their appeals. Many ALJs agreed that the terminations were improper and restored the benefits that were so vital to my clients' well-being.

Another example from that period involved the clandestine policy to deny and terminate benefits to tens of thousands of individuals with serious mental illness, who did not meet the then-outdated Listings of Impairments.

In cases I handled, many clients had benefits awarded or continued because the ALJs found the policy inconsistent with the law.

SSA no longer follows these policies, but these examples are a reminder of why it is critical to ensure that ALJs continue to be independent as guaranteed by the Administrative Procedure Act.

We urge extreme caution regarding any proposals to amend the Administrative Procedure Act that will lessen its protections for ALJs.

Turning to the recent Inspector General report on hearing office performance, while it focuses on ALJ productivity, it also discusses factors outside the control of ALJs that affect performance.

My written statement discusses these factors in more detail, but we believe that the most critical factor is insufficient hearing office staff to handle the workload.

We agree with the ALJs who said that a lack of support staff to prepare case files is the main reason that hearings are not timely scheduled. The delay just to schedule a hearing can be months or even years, and many hearing offices will not schedule a hearing until a case file is ready.

Sufficient staff is needed to prepare the files for hearing, and without the staff, delays will ensue.

A related problem is the failure to ensure that submitted evidence is retrieved and placed in the claimant's file. Claimants' representatives often find that evidence that has been submitted weeks if not months earlier is not in a claimant's file at the hearing. This delays the case both during and after the hearing while the ALJ spends time determining what evidence should be in the claimant's file.

Finally, I would like to take this opportunity to repeat our support for many of the Commissioner's initiatives to reduce the disability claims backlog. Overall, these initiatives, like the senior attorney program, informal remands to the state agencies, and the use of video hearings, are not controversial and we generally support them.

However, while these initiatives can help to address the backlog, we believe that hearing office performance cannot improve significantly until SSA is provided with the funds to adequately staff the Agency.

The backlog has not reached record numbers because of low productivity of a few ALJs. It would be overreaching to amend the Administrative Procedure Act for that reason, particularly because of the impact on claimants.

Thank you. I will be happy to answer any questions you have.

[The prepared statement of Ethel Zelenske follows:]

Statement of Ethel Zelenske, Co-Chair, Consortium for Citizens with Disabilities Social Security Task Force

Chairman McNulty, Ranking Member Johnson, and Members of the Subcommittee, thank you for inviting me to testify at today's hearing on the Performance of Social Security Administration Appeals Hearing Offices.

I am the Director of Government Affairs for the National Organization of Social Security Claimants' Representatives (NOSSCR). I also am a Co-Chair of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

Prior to my work with NOSSCR, I was an attorney for fourteen years at the Legal Aid Bureau, Inc. in Baltimore, Maryland, where I represented hundreds of clients in Social Security and SSI disability cases at all administrative levels and in the federal courts.

First, let me take this opportunity to join you in mourning the loss of your colleague, Rep. Stephanie Tubbs Jones. From observing her time on this Subcommittee, it was apparent that Rep. Tubbs Jones was a strong advocate on behalf of vulnerable populations, including individuals with disabilities who find it necessary to file claims for disability benefits. We will miss her very much.

As was Rep. Tubbs Jones, all of the Members of this Subcommittee have been very concerned about the intolerable processing times for disability claims. As the backlog in decisions on disability claims continues to grow, people with severe disabilities have been bearing the brunt of insufficient funding for the Social Security Administration's (SSA) administrative budget. Behind the numbers are individuals with disabilities whose lives have unraveled while waiting for decisions—families are torn apart; homes are lost; medical conditions deteriorate; once stable financial security crumbles; and many individuals die. Numerous recent media reports across the country have documented the suffering experienced by these individuals. Access to other key services, such as replacing a lost check or promptly recording earnings, also has diminished. Despite dramatically increased workloads, staffing levels throughout the agency are at the lowest level since 1972.

The primary reason for the continued and growing disability claims backlogs is that SSA has not received adequate funds for its management costs. Although Commissioner Astrue has made reduction and elimination of the disability claims backlog one of his top priorities, without adequate appropriations, the situation will deteriorate even more. As discussed below, the persistent under-funding of the agency has had a significant impact on the performance and productivity of SSA hearing offices.

Recent Congressional efforts to provide SSA with adequate funding for its administrative budget are encouraging. The final appropriation for fiscal year 2008 was $148 million above the President's request and was the first time in years that the agency has received at least the President's request. This amount allows the Commissioner to hire more than 180 new Administrative Law Judges (ALJs) and some additional support staff. However, sufficient funding to maintain an adequate number of ALJs and support staff is necessary in FY 2009 and future years to continue reducing the backlog. Statistics through August 2008 show that the number of appeals received and the average processing time continue to increase. We hope that this disturbing trend will reverse once the new ALJs are handling a full caseload later in the next fiscal year. However, if SSA funding is subject to a Continuing Resolution for part of fiscal year 2009, as looks likely, it will be a serious setback to SSA's efforts to reduce the backlog.

While the FY 2008 appropriation has allowed the agency to hire some new staff and work to reduce processing times, it is far from adequate to fully restore the agency's ability to carry out its mandated services. Between FY 2000 and 2007, Congress appropriated less than both the Commissioner of Social Security and the President requested, resulting in a total administrative budget shortfall of more

than $4 billion. The dramatic increase in the disability claims backlog coincides with this period of under-funding the agency, leaving people with severe disabilities to wait years to receive the benefits to which they are entitled.

I. THE IMPORTANCE OF MAINTAINING ALJ DECISIONAL INDEPENDENCE

A claimant's right to a *de novo* hearing before an ALJ is central to the fairness of the SSA adjudication process. This right guarantees that individuals with disabilities have a full and fair administrative hearing by an independent decision-maker who provides impartial fact-finding and adjudication, free from any agency coercion or influence. The ALJ questions and takes testimony from the claimant and other witnesses, and considers and weighs the evidence, all in accordance with relevant law and agency policy. For claimants, a fundamental principle of this right is the opportunity to present new evidence to the ALJ, testify in person before the ALJ, and receive a decision based on all available evidence.

ALJs are appointed under the Administrative Procedure Act (APA), which guarantees their independence from undue agency influence, as demonstrated by the following requirements:

- The Office of Personnel Management (OPM)—not SSA—conducts the competitive ALJ selection process. While SSA ultimately appoints ALJs, it can only do so from a list of eligible candidates created by OPM.
- ALJs can be removed only for "good cause."
- Most disciplinary actions may be taken only according to standards and procedures established by the Merit Systems Protection Board (MSPB)
- The pay classification system for ALJs is set by OPM, not by SSA, and is separate from the agency's performance rating process.

The critical role that ALJ decisional independence plays in protecting the rights of claimants cannot be underestimated. In the early to mid-1980s, the SSA disability claims adjudication process was in turmoil, for reasons very different than the problems we face today. In the most detrimental example for beneficiaries, the agency had changed its policy regarding the cessation of disability determinations. The result was that between 1981 and 1984, nearly 500,000 severely disabled beneficiaries who continued to meet the statutory eligibility requirements had their benefits terminated. Like my many colleagues nationwide, I represented numerous clients in appeals of the agency's decision to terminate their benefits because their disabilities had allegedly "ceased." Many ALJs agreed with our arguments that the agency's policy was inconsistent with the Social Security Act and due process and reversed the termination of benefits. Thus, beneficiaries were able to retain the cash and medical benefits vital to their well-being.

There are other examples from this period of ALJs confronting agency policies they considered inconsistent with the Social Security Act, including a clandestine policy to deny and terminate benefits to tens of thousands of seriously mentally ill claimants who did not meet the then-outdated Listings of Impairments. Also at that time, the agency had a policy of non-acquiescence, i.e., not following precedential decisions issued by the U.S. Courts of Appeals in subsequent individual cases. I also represented clients in many cases involving these issues and ALJs frequently reversed the lower level administrative decisions because the policies were not consistent with the Social Security Act and precedential case law.

During the same period in the mid-1980s, SSA was pressuring ALJs to reduce the rate of favorable decisions. "Bellmon Review" involved SSA targeting the performance of ALJs that it considered to have favorable decision rates that were too "high" and imposing quotas for allowances and denials. ALJs challenged the program in litigation and the agency eventually abandoned the program.[1]

SSA no longer follows these policies. However, the importance of maintaining the APA-protected ALJs in the SSA adjudication process was brought to light earlier this year regarding actions at the U.S. Department of Justice (DOJ). Some federal agencies use non-ALJs as adjudicators and their independence, as a general rule, is less protected than ALJs. One example of non-ALJ adjudicators is Immigration Judges (IJs) in the DOJ. The process for selecting IJs provides a stark contrast to that for ALJs, since, as noted in a recent report by the DOJ Office of Inspector General, the Attorney General of the United States has the authority to manage the

[1] *See, e.g., Association of Administrative Law Judges v. Heckler*, 594 F. Supp. 1132 (D.D.C. 1984).

selection process and appoint IJs.[2] The report documented an investigation by the DOJ Office of the Inspector General and the DOJ Office of Professional Responsibility regarding possible political influence in the hiring of IJs. The Offices found that certain DOJ officials "violated federal law and Department [of Justice] policy—by considering political and ideological affiliations in soliciting and selecting IJs, which are career positions protected by the civil service laws."[3]

II. FACTORS THAT AFFECT HEARING OFFICE PERFORMANCE

Merely looking at numbers regarding productivity may not necessarily tell the entire story. We cannot condone low productivity that is completely within the control of individual ALJs. Nevertheless, there are a number of factors outside their control that can significantly affect performance. The recent report on hearing office performance by the SSA Office of Inspector General (OIG), *Congressional Response Report: Administrative Law Judge and Hearing Office Performance* (OIG Report),[4] requested by Chairman McNulty and Ranking Member Johnson, discusses the impact of these factors. The OIG's findings are consistent with concerns reported to us by claimants' representatives.

A. Staffing Shortages Are the Most Critical Factor Affecting Hearing Office Performance

Over the last decade, concurrent with the marked increase in the disability claims backlog, claimants' representatives have noted the loss of ALJs and support staff in hearing offices around the country. Former Commissioner Barnhart had planned to hire an additional 100 ALJs in FY 2006 but due to cuts in the President's budget request, she was able to hire only 43. The real impact of the burden on the current ALJ corps can be seen by comparing statistics from 1998 and 2006. In FY 1998, there were 1,087 ALJs available to conduct hearings. This number dropped to 1,018 in FY 2006, while the number of pending cases more than doubled.[5]

Whether there enough ALJs may not even be the primary staffing issue in hearing offices. According to the Government Accountability Office (GAO): "By the close of fiscal year 2006, SSA saw the highest level of backlogged claims and the lowest ratio of support staff over this period [FY 1997 to FY 2006]."[6] Productivity is not related solely to the number of ALJs, but also to the number of support staff. In 2006, the actual ratio of support staff to ALJs was 4.12. SSA senior managers and ALJs recommend a staffing ratio of 5.25.[7] The actual ratio represented a significant decrease, about 25 percent, from the recommended level, at a time when the number of pending cases had increased dramatically. It is also important to note that the number of pending cases older than 270 days was much lower when the support staff to ALJ ratio was higher (FY 1999 to FY 2001).[8]

The OIG's findings are consistent with those of the GAO: "[I]t appears that staff ratios may be one factor that impacts ALJ and hearing office productivity and processing times."[9] The OIG found that ALJs with higher disposition levels were more likely to be in hearing offices with staffing ratios above the FY 2007 national average of 4.46 staff members per ALJ. The OIG found that hearing offices ranked in the top half for productivity were "much more likely to exceed the national average staff ratio than hearing offices ranked in the lower half for productivity."[10]

An inadequate number of support staff is not the only issue to consider. In addition to having enough staff, the quality and composition of staff also may impact productivity. As the OIG points out: "[A]n office may have an ideal staff ratio, but if it does not have enough writers to prepare decisions or if the writers do not prepare quality decisions, the hearing office's productivity may be impacted negatively."[11]

An ALJ working with poor decision writers should not be faulted for maintaining her/his level of expectation for quality decisions. The need for adequately written and supported decisions should not be underestimated. I review many decisions by

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[2] *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General* (July 28, 2008), p. 71. Available at http://www.usdoj.gov/oig/special/s0807/final.pdf.

[3] *Id.* at 137.

[4] No. A–07–08–28094 (Aug. 2008). The report is available at www.ssa.gov/oig/ADOBEPDF/A-07-08-28094.pdf.

[5] *Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs*, GAO–08–40 (Dec. 2007)("GAO Report"), p. 31.

[6] GAO Report, p. 32.

[7] *Id.*

[8] *Id.*

[9] OIG Report, p. 5

[10] *Id.*

[11] OIG Report, p. 6.

the Appeals Council and the federal courts and a significant percentage of remand orders are based on poorly written ALJ decisions that do not provide sufficient rationales explaining their conclusions.

B. The Impact of Staffing Shortages on Preparing Cases for Hearing

The shortage of staffing in hearing offices also contributes to other factors affecting productivity. For instance, the OIG found that one reason why some ALJs have lower disposition rates may be due to fewer hearings scheduled than requested by the ALJ. ALJs told the OIG that "the main reason not enough hearings were scheduled was because of insufficient support staff to prepare cases. Our [the OIG's] analysis of staff ratios confirmed the lack of support staff may have impacted the ability of these—hearing offices to schedule as many hearings as the ALJs requested. "[12]

Claimants' representatives across the country have similar concerns about preparation of cases for hearing. Some hearing offices do not schedule hearings until a case is "pulled," i.e., evidence is identified and placed on the Exhibit List for the record.

The most significant problem for representatives is hearing office failure to ensure that submitted evidence is placed in the claimant's file. In electronic folder cases, evidence is submitted electronically using a unique barcode, either through a dedicated fax line which scans the evidence or by uploading to the secure SSA website. Representatives are finding that evidence they have submitted, often weeks if not months before the hearing, does not appear in the exhibited file, even at the hearing. We believe that the primary reason this happens is that, due to a shortage of staff, the submitted evidence is not retrieved and associated with the exhibited file.

Another recent OIG report buttresses the concerns of ALJs and representatives. The June 2008 report found three "bottlenecks" in the hearing process, all occurring before the hearing is held: (1) Master Docket (claim information input to the case processing management system); (2) ALJ Review Pre-Hearing; and (3) Ready to Schedule (claim work-up and development completed).[13]

Scheduling cases for hearing. The OIG Report notes that SSA plans to issue proposed regulations "that SSA, rather than the individual ALJ, will set the time and place for a hearing."[14] We do not know what SSA intends to propose, but we would strongly object to any change that would interfere with an ALJ's decisional independence as guaranteed by the APA. At a minimum, we recommend that the procedures proposed by SSA include a requirement that the claimant representative's schedule is taken into account when scheduling hearings. Given the long delays, representatives do not want to be put in a position where they have to request a postponement due to a scheduling conflict. This can be avoided by contacting the representative, as some hearing offices already do. Currently, there is much variation among hearing offices whether they contact representatives prior to scheduling a hearing.

C. The Impact of Staffing Shortages on Screening Cases for On the Record Decisions

According to the OIG Report, ALJs with higher productivity tend to issue more "on the record" (OTR) decisions. OTR decisions are fully favorable to the claimant and are issued without the need for a hearing. As a result, it can take considerably less time for disposition of the claim. The OIG found that for higher producing ALJs, the average OTR rate was 35%, while for lower producing ALJs the OTR rate was 11%.[15]

The key factor, according to the OIG, seems to be that the ALJs with higher disposition rates are "more proactive in screening cases for OTR decisions than were lower producing ALJs."[16] We would agree with this assessment. In the April 23, 2008, testimony presented on behalf of the CCD Social Security Task Force,[17] we presented a number of stories about the hardships endured by claimants while wait-

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[12] OIG Report, p. 7.

[13] *Quick Response Evaluation: Timeliness of Medical Evidence at Hearing Offices* No. A–05–08–28106 (June 13, 2008), p. 6, n. 19. Available at http://www.ssa.gov/oig/ADOBEPDF/A-05-08-28106.pdf. This report concluded that data from the hearing level case processing management system did not indicate that the late submission of medical evidence was a significant reason for postponement of cases.

[14] OIG Report, page 7, n. 25.

[15] OIG Report, p. 8.

[16] OIG Report, p. 8–9.

[17] Testimony by Marty Ford, Co-Chair, CCD Social Security Task Force, Hearing on "Clearing the Disability Backlog—Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned," House Committee on Ways and Means, April 23, 2008. Available at http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=6874.

ing to have a hearing before the ALJ and to receive a decision. In many of these cases, the representative wrote letters to the ALJ, often more than one time, requesting that a decision in the case be expedited due to the claimant's "dire need" and that an OTR decision be issued.

Representatives report that some ALJs will not issue OTR decisions and insist on having an in-person hearing. We believe that this is a small minority of ALJs and, at any rate, they have the discretion to do so. However, the bigger problem is that the ALJs in some hearing offices simply are not made aware that a request for an OTR decision was submitted by the claimant's representative and there is no response to the request. At the hearing, ALJs often learn for the first time that the request was submitted. While this may be due to lack of staff, there also is no uniform procedure to bring these requests to the attention of the ALJs. We have recommended to SSA that it establish some type of notice or acknowledgment that the request was received and is under review by the ALJ.

D. The Impact of DDS Development on Productivity

The OIG found that "ALJs and Hearing Office staff at all levels stated that Disability Determination Services (DDS) allowance rates and the quality of case development from DDSs can impact ALJ and hearing office productivity and processing times."[18] Productivity is affected if ALJs need to spend more time reviewing cases prior to the hearing due to the limited development of evidence by the DDS.

We agree that the lack of development by the DDSs is a significant factor contributing to the backlog at the hearing level. Improvements at the front end of the process can have a significant beneficial impact on preventing the backlog and delays later in the appeals process. Developing the record so that relevant evidence from all sources can be considered is fundamental to full and fair adjudication of claims. The adjudicator needs to review a wide variety of evidence in a typical case to make the necessary findings and determinations under the SSA disability criteria.

There are a number of reasons why the DDSs do not develop cases adequately, including: (1) They do not request specific information tailored to the SSA disability criteria; (2) They do not explain to claimants or providers what evidence is important, necessary, and relevant for adjudication of the claim; (3) Medical providers delay or refuse to submit evidence and cases must then be decided by the DDS, based on an incomplete file, in order to meet targeted DDS processing timelines; and (4) Reimbursement rates for providers are inadequate.

Claimants' representatives are often able to ensure that the claim is properly developed. Based on the experiences and practical techniques of representatives, we have a number of recommendations that we believe could improve the development process at the DDS level:

- Provide more assistance to claimants at the application level.
- Require that DDSs obtain necessary and relevant evidence.
- Increase reimbursement rates for providers.
- Provide better explanations to medical providers.
- Provide more training and guidance to DDS adjudicators to avoid erroneous application of existing SSA policy.
- Improve use of the existing methods of expediting disability determinations such as Quick Disability Determinations, Presumptive Disability in SSI cases, and terminal illness ("TERI") cases.
- Improve the quality of consultative examinations to avoid inappropriate referrals, short perfunctory examinations, and examinations conducted in languages other than the applicant's.

III. SSA INITIATIVES TO IMPROVE HEARING OFFICE PERFORMANCE

Money alone will not solve SSA's crisis in meeting its responsibilities. Commissioner Astrue is committed to finding new ways to work better and more efficiently. CCD has numerous suggestions for improving the disability claims process for people with disabilities. Many of these recommendations have already been initiated by SSA.[19] We believe that these recommendations and agency initiatives, which overall

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[18] OIG Report, p. 5.

[19] Commissioner Astrue announced a number of initiatives to eliminate the SSA hearings backlog at a Senate Finance Committee hearing on May 23, 2007. The 18-page summary of his recommendations is available at www.senate.gov/finance/sitepages/hearing052307.htm. An update on the status of the recommendations/initiatives is the subject of the *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence*: *Semiannual Report, Fiscal Year 2008*, SSA Office of Disability Adjudication and Review ("ODAR Report"). The OIG Report also provides an update of the initiatives in Appendix H.

are not controversial and which we generally support, can go a long way towards reducing, and eventually eliminating, the disability claims backlog.

Caution Regarding the Search for Efficiencies

While we generally support the goal of achieving increased efficiency throughout the adjudicatory process, we caution that limits must be placed on the goal of administrative efficiency for efficiency's sake alone. The purposes of the Social Security and SSI programs are to provide cash benefits to those who need them and have earned them and who meet the eligibility criteria. While there may be ways to improve the decision-making process from the perspective of the adjudicators, the bottom line evaluation must be how the process affects the very claimants and beneficiaries for whom the system exists.

People who find they cannot work at a sustained and substantial level are faced with a myriad of personal, family, and financial circumstances that will have an impact on how well or efficiently they can maneuver the complex system for determining eligibility. Many claimants will not be successful in addressing all of SSA's requirements for proving eligibility until they reach a point where they request the assistance of an experienced representative. Many face educational barriers and/or significant barriers inherent in the disability itself that prevent them from understanding their role in the adjudicatory process and from efficiently and effectively assisting in gathering evidence. Still others are faced with having no "medical home" to call upon for assistance in submitting evidence, given their lack of health insurance over the course of many years. Many are experiencing extreme hardship from the loss of earned income, often living through the break-up of their family and/or becoming homeless, with few resources—financial, emotional, or otherwise—to rely upon. Still others experience all of the above limits on their abilities to participate effectively in the process.

We believe that the critical measure for assessing initiatives for achieving administrative efficiencies must be the potential impact on claimants and beneficiaries. Proposals for increasing administrative efficiencies must bend to the realities of claimants' lives and accept that people face innumerable obstacles at the time they apply for disability benefits and beyond. SSA must continue, and improve, its established role in ensuring that a claim is fully developed before a decision is made and must ensure that its rules reflect this administrative responsibility.

A. Technological Improvements

Commissioner Astrue has made a strong commitment to improve and expand the technology used in the disability determination process. CCD generally supports these efforts to improve the disability claims process, so long as they do not infringe on claimants' rights. Some of the technological improvements that we believe can help reduce the backlog include the following:

1. The electronic disability folder. The initiative to process disability claims electronically has the prospect of significantly reducing delays by eliminating lost files, reducing the time that files spend in transit, and preventing misfiled evidence. The electronic folder should reduce delays caused by the moving and handing-off of folders, allowing for immediate access by different components of SSA or the DDS.

2. Electronic Records Express (ERE). ERE is an initiative to increase the use of electronic options for submitting records to the electronic folder for disability claims. Registered claimant representatives are able to submit evidence electronically through the SSA secure website or to a dedicated fax number using a unique barcode assigned to the claim.

As discussed above, while this initiative holds great promise, significant problems with the current process exist. In many cases, all of the medical records submitted by the representative do not find their way into the exhibited list of evidence used at the hearing. This can cause significant delay during and after the hearing, which affects productivity because the hearing is longer than it needs to be, while the representative and ALJ attempt to determine what evidence is missing. If the evidence needs to be re-submitted after the hearing, it can delay the issuance of a decision by the ALJ.

3. Use of video hearings. Video hearings allow ALJs to conduct hearings without being at the same geographical site as the claimant and representative and have the potential to reduce processing times and increase productivity. We support the use of video teleconference hearings so long as the right to a full and fair hearing is adequately protected; the quality of video teleconference hearings is assured; and

the claimant retains the absolute right to have an in-person hearing as provided under current regulations.[20]

B. Other Hearing Level Initiatives

1. The Senior Attorney Program. In the 1990s, senior staff attorneys in hearing offices were given the authority to issue fully favorable decisions in cases that could be decided without a hearing (i.e. "on the record"). While the Senior Attorney Program existed, it helped to reduce the backlog by issuing approximately 200,000 decisions. We are pleased that Commissioner Astrue has decided to reinstate the program for at least the next two years[21] and has proceeded with implementation. We believe that this initiative will help to reduce the backlog of cases at the hearing level. As of April 2008, there have been more than 12,000 decisions issued by Senior Attorneys.[22]

2. Informal remands to DDSs. Under this initiative, SSA screens pending hearing level cases, according to a profile, and remands the cases to the DDSs for possible favorable decisions. Through April 2008, the DDSs have reversed their prior decisions and allowed about 33% of the remanded cases,[23] with the remainder returned to hearing offices for a hearing and decision. Claimants do not lose their place in the queue if the remanded case is sent back to the hearing office.

Generally, representatives have had favorable results with these cases. However, the procedures used by DDSs to gather updated medical information and to contact authorized representatives have not been uniform and vary from state to state. Some representatives report that they are not notified either by the hearing office or the DDS that a remand has taken place so that they can assist with development of evidence. Also, some DDSs contact claimants directly, even when a signed Appointment of Representative form is in the file. We also have received reports that representatives have difficulty reaching the DDS examiners in order to assist with evidence development.

3. Interregional transfers. SSA is transferring cases from hearing offices with large backlogs to those offices with a lower number of pending cases. The transferred cases are usually held by video hearing, although some ALJs travel to the office transferring cases. We have heard from representatives that claimants in the hearing office to which cases are transferred have problems getting hearings scheduled, with the transferred cases given priority. As a result, representatives have great difficulty explaining to their clients why their hearings are delayed due to cases transferred from another part of the country. The local clients are often in desperate circumstances, especially if they live in cities with a high cost of living.

Representatives also report significant problems with the submission of evidence and contacting the hearing office to which cases are transferred, especially if there is a three-hour time difference. For example, California hearing offices often return phone calls late in the afternoon Pacific Time but in the evening Eastern Time and do not seem to take into consideration the time difference. The difficulties contacting the hearing office become quite pronounced when there are problems with ensuring that submitted evidence is in the exhibited file and before the ALJ at the hearing

4. Findings Integrated Templates (FIT). FIT is used for ALJ decisions and integrates the ALJ's findings of fact into the body of the decision. While the FIT does not dictate the ultimate decision, it requires the ALJ to follow a series of templates to support the ultimate decision. Representatives can use the FIT template, which is available on the SSA website, to draft proposed favorable decisions. The draft proposed decision is then submitted to the ALJ, similar to attorneys drafting proposed orders in court, which assists the ALJ in making a speedier decision. The use of FIT should result in better written decisions with supported rationales, leading to fewer remands by the Appeals Council and the federal courts.

CONCLUSION

Delays in decision-making on eligibility for disability programs can have devastating effects on people already struggling with difficult situations. We believe that staffing is the key factor affecting hearing office performance. On behalf of people with disabilities, it is critical that SSA be given substantial and adequate funding to make disability decisions in a timely manner and to carry out its other mandated workloads. We appreciate your continued oversight of the administration of

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[20] 20 C.F.R. §§ 404.936 and 416.1436.

[21] The interim final rule reinstating the program was published in August 2007 and became effective on October 9, 2007. 72 Fed. Reg. 44763 (Aug. 9, 2007). The final rule was published at 73 Fed. Reg. 11349 (Mar. 3, 2008).

[22] OIG Report, p. H–1.

[23] OIG Report, p. H–2.

the Social Security programs and the manner in which those programs meet the needs of people with disabilities.

Thank you for the opportunity to testify today. I would be happy to answer questions.

ON BEHALF OF:

American Association on Intellectual and Developmental Disabilities
American Council of the Blind
American Network of Community Options and Resources
Bazelon Center for Mental Health Law
Council of State Administrators of Vocational Rehabilitation
Easter Seals, Inc.
Epilepsy Foundation
National Alliance on Mental Illness
National Association of Disability Representatives
National Disability Rights Network
National Organization of Social Security Claimants' Representatives
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
Title II Community AIDS National Network
United Cerebral Palsy
United Spinal Association

Chairman MCNULTY. Thank you very much.

We will now go to Ms. Meinhardt.

STATEMENT OF KATHY MEINHARDT, PRINCIPAL EXECUTIVE OFFICER FOR FEDERAL MANAGERS ASSOCIATION, CHAPTER 275, SOCIAL SECURITY OFFICE OF DISABILITY ADJUDICATION AND REVIEW, FEDERAL MANAGERS ASSOCIATION, MINNEAPOLIS, MICHIGAN

Ms. MEINHARDT. Chairman MCNULTY, Ranking Member Johnson and Members of the Subcommittee, my name is Kathy Meinhardt. I am here today representing the nearly 800 managers in the Social Security Administration's Office of Disability Adjudication and Review in my role as Principal Executive Officer for the Federal Managers Association, Chapter 275.

Let me join the others in expressing our sympathy in the passing of Stephanie Tubbs Jones.

We are committed to carrying out the mission of the Agency in the most efficient and effective manner. I currently serve as a hearing office director for the Minneapolis ODAR Office, a position I have held since 2000. I have worked for SSA for nearly 35 years in various capacities and offices throughout the country. Please keep in mind that I am here on my own time representing the views of FMA and do not speak for SSA.

The Social Security Administration plays a vital role in serving over 160 million American workers and their families. In February, Commissioner Astrue testified that SSA's productivity has increased over 15 percent since 2001. Considering the magnitude of its mission, SSA does a remarkable job administering critical programs.

In ODAR, however, there currently exists a backlog of over 767,000 requests for hearings. In 6 years, the number of pending hearing requests has grown by almost 300,000. It now takes over 525 days to process a typical request for a hearing and these delays

tarnish SSA's otherwise strong record of service to the American public.

As managers, we are acutely aware of the impact of this backlog. I am here to confirm what you have heard before, that the ongoing lack of adequate staffing levels and resources have contributed to this backlog. If these inadequacies continue, clearing the backlog will be impossible and the service delivery will continue to deteriorate.

We at FMA appreciate the attention the Subcommittee and the Commissioner are placing on examining the reasons for the backlog and addressing the remedies to this problem. This year, 189 administrative law judges were hired by SSA which could translate into an additional 94,000 dispositions if each ALJ issued 500 decisions per year. While this is a step in the right direction, ALJs alone will not solve the problem. Without additional staffing, the current level of prepared work would be distributed among more judges essentially resulting in the same outcome.

The report issued by the Office of Inspector General in August agrees and concludes that SSA must hire additional support staff. Accordingly, ODAR is filling 230 staff positions. We are encouraged by this, but several hundred more staff must be hired to accommodate the additional judges.

As it stands, hearing offices do not even have the staff to accommodate the current judges let alone the ability to process the over 49,000 new cases we receive each month. More than one-third of the current pending is over 365 days old. It is evident that under the best case scenario, the current staffing levels in ODAR barely maintain the status quo, which means the backlog stays the same and the processing time exceeds 500 days.

The accepted staff to ALJ ratio is roughly 4.5 production staff per judge. However, this only ensures productivity necessary to handle the incoming work. For offices with heavy backlogs, the ratio is inadequate.

SSA has undertaken 37 initiatives to achieve the four aspects of Commissioner Astrue's plan to eliminate the backlog. The National Hearing Center has the potential to greatly expand the Agency's capacity to redirect resources where the cases are. The potential for this is huge. However, we still need staff to prepare, schedule and draft decisions.

Within ODAR, most case files are now in the electronic format, which will provide a more efficient process ultimately. Much of the promise of increased efficiency is tied to the success of the e-polling initiative. A pilot is underway at five hearing offices. Minneapolis is one of them.

We are only 8 weeks into the program but the process has slowed down the staff by more than 50 percent. We understand that staffing decisions are being made considering the success of this initiative. We caution that any success in the near future is overly optimistic.

To enable SSA to meet the goals set forth in the Commissioner's approach, Congress must approve a sufficient level of funding. Without a doubt, the failure to fund in the past has had a devastating effect on our ability to deliver.

The President has requested $10.3 billion for the administrative expenses in fiscal year 2009. To remedy the unprecedented backlog, Congress should, at a minimum, pass the budget request which would allow the Agency to process 85,000 more hearings in 2009 than it did in 2008.

However, as the 110th Congress draws to a close and speculation over a long term CR begins, we once again are faced with a situation where we will be forced to take a step backward instead of moving forward.

In this era of shrinking budgets, SSA has attempted to maximize its use of scarce resources to provide the best possible service. We are struggling to handle the current workload and will be hard pressed to manage the anticipated increase in hearing requests without additional staff. We are committed to serving Americans in need, but we need your help to provide us with the necessary resources.

Thank you for your time and your consideration of our views. I am happy to answer any questions you may have.

[The prepared statement of Kathy Meinhardt follows:]

Statement of Kathy Meinhardt, Principal Executive Officer for Federal Managers Association Chapter 275, Social Security Office of Disability Adjudication and Review, Federal Managers Association, Minneapolis, Minnesota

My name is Kathy Meinhardt and I am here today representing the nearly 800 managers in the Social Security Administration's (SSA) Office of Disability Adjudication and Review (ODAR) in my role as Principle Executive Officer for the Federal Managers Association Chapter 275. Please allow me to take a moment and thank you for this opportunity to present our views before the Subcommittee. As federal managers, we are committed to carrying out the mission of our agency in the most efficient and cost effective manner while providing necessary services to millions of Americans.

I currently serve as the Hearing Office Director for the Minneapolis, Minnesota ODAR office, a position I have held since 2000. From 1991—2000, I served as the hearing office manager in the same office. I have been working for the Social Security Administration for nearly 35 years and in my years with SSA, I have supervised both claims and service units, aided in the expansion of the nationwide 1–800 number system, coordinated information technology growth, and addressed labor management relations issues. Throughout my career, I have worked in various SSA offices serving a variety of needs in Minneapolis, St. Louis, Northern Virginia, Milwaukee, Chicago and New Haven. Please keep in mind that I am here on my own time and of my own volition representing the views of FMA and do not speak on behalf of SSA.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the Federal Government. FMA was originally organized to represent the interests of civil service managers and supervisors in the Department of Defense and has since branched out to include some 35 different federal departments and agencies including many managers and supervisors within the Social Security Administration (SSA). We are a nonprofit, professional, Membership-based organization dedicated to advocating excellence in public service and committed to ensuring an efficient and effective Federal Government. As the ODAR Managers Association of the FMA, our Members and their colleagues are responsible for ensuring the successful administration of Social Security's disability determination process and providing needed services to American customers.

As you are keenly aware, the Social Security Administration plays a vital role in serving over 160 million American workers and their families. Each month, SSA pays out benefits to 48 million beneficiaries. Over seven million low-income Americans depend on the agency's Supplemental Security Income (SSI) program to stay afloat in a cost-inflating world, and nearly 7.2 million disabled Americans receive benefit payments through Social Security Disability Insurance (SSDI). At a February 28, 2008 hearing before the House Appropriations Committee, Commissioner Astrue testified that SSA's productivity has increased over 15 percent since fiscal

year 2001. Considering the magnitude of its mission, the Social Security Administration does a remarkable job administering critical programs.

In the Office of Disability Adjudication and Review, however, there currently exists a backlog of over 767,500 requests for a hearing. It now takes over 525 days to process a typical request for a hearing and these delays tarnish SSA's otherwise strong record of service to the American public. At the beginning of 2002, SSA had 468,262 pending hearing requests. In 6 years, that number increased to over 767,000, despite the fact that dispositions are at record levels. Although clericals in hearing offices prepared 472,168 cases in FY07, claimants submitted almost 580,000 new requests during the same period. The files simply awaiting preparation for review by an administrative law judge (ALJ) at the close of August 2008 totaled 450,852 cases, an increase of 12,354 cases since the beginning of fiscal year 2007. Unless something is done to reverse this trend, the number of files awaiting decisions could realistically reach one million by 2013 with the aging Baby Boom generation.

As managers and supervisors within ODAR, we are acutely aware of the impact these backlogs are having on our ability to deliver the level of service the American public deserves. I am here to confirm what you've heard several times before— that the ongoing lack of adequate staffing levels and resources have contributed to these backlogs. If these inadequacies continue, clearing the backlogs will be impossible and service delivery will continue to deteriorate.

BACKGROUND

By way of background, when a request for a hearing is received at a local Social Security office, it is automatically propagated to our computer system by a case intake employee in ODAR who adds ODAR-specific coding such as ALJ assignment, site of the hearing and the representative involved. Basic screening is done to ensure timeliness of filing, verify procedural issues are met, and determine the need for critical or expeditious handling. An acknowledgement is prepared and in some offices, a CD is burned and bar codes are prepared to send to the claimant or representative.

If staffing allows, ALJs or attorneys will screen the cases for anything that might qualify it as an "on the record" (OTR) decision. This allows for cases to be decided favorably and paid without a hearing based on the evidence in file. However, such cases are rare and if an OTR is not possible, the electronic record will await preparation for ALJ review. As noted earlier, there are almost 451,000 files in this status as of the end of August. The national average for this period of inactivity is 209 days. In the Dallas region, a file will wait only 82 days on average, but in Kansas City, the wait is an average of 301 days. In all but 71 offices, the wait for folder preparations exceeds the national average. These delays are simply due to the volume of work coming in and the lack of staff to tackle it. Additionally, receiving duplicative information from the claimant also taxes the staff. During all stages of the process, evidence is received in paper form or electronically and often times in both formats. Each piece of evidence creates workload items which must be filed and documented by ODAR staff.

Cases are generally worked in hearing request date order. Those cases deemed critical or dire in need may be given preference. The "workup" of the file involves a support person who reviews and orders the evidence, identifies each exhibit, obtains the jurisdictional documents, and provides a brief summary of the evidence in file. Currently, a pilot project dubbed ePulling is underway designed to automate this process. As a pilot office, I can tell you that at this stage, the process has more than doubled folder preparation time. However, this is not atypical for a pilot project and hopefully as the program moves forward and enhancements are made, we will see the average savings of 1.5 hours per case that our agency leadership is claiming.

Once the file is completed and the exhibit list is prepared, it is referred to an ALJ for review and scheduling instructions. It is then scheduled for hearing based on the individual ALJ instructions. Scheduling requires coordinating the schedules of the ALJ, the claimant, the representative, medical and vocational experts, a reporter and hearing room availability. The claimant and representative must be given a Notice of Hearing at least twenty days in advance of the hearing and these hearings can be done in person, by video in the local hearing office, a permanent remote site, or in a temporary remote site, such as a hotel or local government office.

After the case has been heard, the ALJ can make a decision or order supplemental records and a consultative examination if necessary. Once the ALJ has all the evidence and testimony needed to make a decision, he/she will write instructions for the decision writer. At the end of August, there were almost 25,000 cases nation-

ally in which an ALJ had made a decision but was waiting for an attorney or paralegal to draft the decision.

When the written decision is completed, it is made available for the ALJ to review, edit, return for redraft if necessary, and then electronically sign. At this point, the electronically signed case sends an alert which allows the support staff to print, mail and code the case to completion. It is my understanding that this mailing process will be shortly automated to send the decision to a central mailing site. Once the decision is mailed and the coding is complete, we have a disposition.

WHERE WE ARE TODAY

We at FMA appreciate the attention both the Subcommittee and Commissioner Astrue are placing on examining the reasons for the backlog and addressing remedies to the problem. ODAR began fiscal year 2008 with 438,498 pending cases awaiting preparation for a hearing. In all likelihood, those cases will realistically wait at least 1 year before any action is even initiated to prepare the cases for review and hearing in front of an Administrative Law Judge. In August, processing times across the nation ranged from a low of 389 days in the Boston region to a high of 712 days in the Chicago region. The American public deserves better service.

Within ODAR, production is measured by the number of dispositions completed per day by an Administrative Law Judge. In FY05 and FY06, this record-level figure was 2.2 dispositions per day per ALJ. Thus far in FY08, ALJs have gone even further and averaged 2.28 dispositions. At the end of January 2007, SSA employed 1,088 ALJs, and dispositions in FY07 totaled 547,951, 31,000 less cases than were received in the same time period. For the current fiscal year through August, receipts totaled 541,259 while only 520,408 dispositions were completed. This amounts to a net gain of over 20,000 cases.

Earlier this year, hiring letters went out to administrative law judges SSA plans to employ this fiscal year and already 189 judges have been hired in FY08. A total of 189 new ALJs could translate into an additional 94,500—132,300 dispositions if each ALJ issued 500—700 dispositions per year, as requested by the Chief ALJ in October. While this is certainly a step in the right direction, Administrative Law Judges alone will not solve the problem. Without additional staffing, the current level of prepared work would be distributed among more judges, essentially resulting in the same dispositional outcome. Without adequate support staff to prepare cases for the judges, both existing and new, we will not achieve an increase in hearing dispositions. The report issued by the SSA Office of the Inspector General in August agrees. The ALJs interviewed by the IG stated the main reason not enough hearings were scheduled was because there was insufficient support staff to prepare cases. The report also states that Hearing Office Directors believed staff ratios have a significant impact on productivity and processing times. The report concludes that SSA must hire additional staff to support the ALJs and accordingly ODAR is filling 230 staff positions. We are encouraged by this, but in order to maintain an adequate ALJ to staff ratio in each office, several hundred more staff will have to be hired.

In recent years, however, budgetary constraints have forced the agency to hire additional Administrative Law Judges without providing adequate support staff to prepare the cases for hearing. We recognize that the Commissioner is trying to address the backlog by adding these judges; however, additional ALJs without the supporting clerical staff to prepare cases in a timely manner will not solve the problem. By following in his predecessor's footsteps, Commissioner Astrue will encounter the same problems—no matter how many new judges come on board, without clerical staff to prepare cases for them and write the decisions the backlog cannot be addressed.

Undoubtedly, adequate clerical support is necessary to prepare cases for hearing, as well as staff to write a disposition after the ALJ has made his/her decision. As it stands, hearing offices do not even have the staff to accommodate the current judges, let alone enough staff to process the over 49,000 new cases the Office of Disability Adjudication and Review receives each month. If receipts remained flat, over 767,000 cases will remain pending, more than one-third of which are over 365 days old. At the beginning of FY07, ODAR had over 63,000 cases which were over 1,000 days old, a number which was both unacceptable to the agency as well as the American people it serves. Commissioner Astrue identified these cases as ODAR's number one priority and this backlog has since been eliminated. FMA applauds the Commissioner for his efforts and the new attention being paid to the 900 day old cases. ODAR began FY08 with 135,000 900 day old cases and is now down to 4,000. According to the IG, ODAR is on target to eliminate these cases by the end of the fiscal year. We are committed to working with the Commissioner as he tackles this challenge. In FY09, it is our understanding that ODAR will target the cases that will reach 850 days old within the fiscal year. There are over 191,000 cases that

meet this criteria and it is our belief these targets are indicative of a national processing time average that is unacceptable.

With the aging Baby Boom population, it is reasonable to assume that receipts will continue to out-pace dispositions. As the requests for hearings continue to rise, more is demanded from ODAR staff on all levels. The *bottom line* is that the hearing offices lack sufficient staff to process the work on hand, much less even begin to work on new cases. In fact, the IG reiterates this point several times throughout his report. It is evident that under the best case scenario, the current staffing levels in ODAR barely maintain the status quo. That means that the backlog stays the same and processing times continue at a rate which exceeds 500 days.

The accepted staff to ALJ ratio is roughly four and one half production staff per ALJ. However, this only ensures productivity necessary to handle *incoming* work, not the backlog. For offices with heavy backlogs, the four and one half to one standard is inadequate. The interviews mentioned in the IG report disclosed that quality and composition of staff also impacts productivity. Management and administrative employees should not be included in these figures, as they are not the employees performing the production work on hearing requests.

The solutions to the backlog problem start with adequate staffing levels and timely budgets which will allow us to address the pending cases. As of last month, just over 767,000 requests for a hearing were pending. However, it is worth noting that the agency can reasonably process 450,000—550,000 cases during a given fiscal year. As such, the actual "backlog" at this point is around 300,000 cases. As noted earlier, a trained, productive ALJ with adequate support staff should be able to produce about 500—700 dispositions in a given year. However, the IG reported that only 64 percent of ALJs were on track to meet this goal in FY08. The report also acknowledges that support staff ratios are a factor in ALJ productivity and processing times. Hearing Office Directors confirmed this finding. With a national average of 4.46 staff per ALJ, it is not surprising that 63 percent of the offices on the top half of the productivity scale had a staff ratio higher than the average.

Average pending cases per ALJ range from a low of 414 in the Boston region to a high of 775 in Seattle. Seven regions average over 600 pending cases per ALJ, four of which exceed 700. Individual offices range from a low of 262 pending cases per ALJ to a high of 1,528 and thirteen offices exceed 1,000 cases per ALJ. On a national level, processing times range from 389 days in Boston to 712 in Chicago. At the end of August, 24,810 decisions that have been made by the ALJs are simply waiting to be drafted by a decision writer. Decision writing pending, measured in the number of days it would take to complete the work, ranges from 8 days in Boston to 28 days in San Francisco. Fifty-five offices listed on the ranking report have less than 10 days work while 37 have more than thirty days work on hand. Greenville has 6 months of writing pending, indicating a disturbingly low number of decision writers and support staff. In my office alone, over 750 cases have been decided by the ALJs, but the decisions have yet to be written due to a lack of staff to do the work. The significant imbalances in the workload and the electronic nature of our work provide opportunities for sharing resources among offices. It is our belief that this is an underutilized resource.

MANAGEMENT INITIATIVES

SSA has undertaken 37 initiatives to achieve each of the four aspects of Commissioner Astrue's plan to eliminate the backlog. The Commissioner should be applauded for his commitment to delivering a level of service acceptable to the American public. The first of these is Compassionate Allowances, a concept that has been introduced in a variety of iterations over the years. The concept is admirable; however, we expect that this will have little impact on our pending cases.

The Commissioner also laid out a number of initiatives that are designed to Improve Performance. As already noted, there are over 191,000 cases that will age to 850 days in FY09, which means almost 33 percent of the work to be completed in FY09 will be from this very aged category and far from an acceptable processing time. Additionally, giving adjudication powers to attorney advisors has the benefit of adding to dispositions; however, it redirects the work of these very skilled attorneys from reviewing and advising ALJs on the most difficult cases and makes them unavailable for decision writing. In many instances, these employees are not replaced with others to do their original tasks and those tasks go undone or are redirected to others who are already overburdened.

The third aspect of the Commissioner's plan is to Increase Adjudicative Capacity through Streamlined Folder Assembly, which has made additional folders available for hearings as evidenced by the 21,600 cases prepared using this method between October 2007 and April 2008. It has been expanded to the electronic folder, but this

process was optional for the ALJs and requires additional review time on their part because of the "rough" nature of the preparation.

The introduction of the National Hearing Center (NHC) has the potential to greatly expand the agency's capacity to redirect the resources where the cases are. It is our understanding that installing video centers in heavily impacted parts of the country so that the claimant can go to a video center in order to have his/her case heard by the NHC or other Hearing Office via video is the goal. We believe the potential for delivery of service with this process is huge. However, we would caution that in order to hear these cases, we still need staff to prepare, schedule and draft decisions. Without adequate staff support, the NHC will have no cases to hear.

Along the same lines, additional video equipment has the potential to expand the number of video hearings. In fact, in some impacted areas, we understand that stand alone video sites are being built that will allow assistance to be provided from around the country. However, we must not forget that without adequate staff to prepare cases, additional capacity is a moot point. Furthermore, regulations allow the claimant and their representative to opt out of the process, and our business process also allows the ALJs to opt out. The process only works when you have parties that will use it.

Increasing Efficiency with Automation and Business Processes is the fourth aspect of the Commissioner's plan. There are a large number of initiatives under this aspect. The greatest percentage of case files are now in the electronic folder format. Although there remain many cultural and training challenges, we believe this will ultimately provide for an efficient process. Much of ODAR's promise of increased efficiency is tied to the success of the ePulling initiative. According to the IG report, the pilot is being expanded to five hearing offices and the NHC. Rollout to additional offices is dependent on the performance of the software at the pilot locations. Minneapolis is one of those five hearing offices. We are only 8 weeks into the pilot, but at this point, the process has been very time consuming and has slowed the staff down by more than 50 percent. We at FMA believe that many staffing decisions are being considered assuming the success of this initiative. We would caution that its success and ability to deliver significant numbers of folders for ALJ review anytime in the near future is overly optimistic. Successful implementation of eScheduling would certainly free up additional individuals whose services could be used to complete other tasks, including folder preparation. Given the complicated nature of the scheduling process which takes into account many schedules and many individual scheduling preferences, we believe this will be a difficult challenge.

The temporary service area realignments went a long way to adjusting some of the imbalances in the workloads. We believe that the electronic nature of our cases provides us with significant opportunities to expand this concept to individual work categories. Any office with excess writing or pulling capacity should have that capacity redirected to offices with significant backlogs. No office should be allowed to process their work in an average of under 300 days when there are 42 offices who are processing their work in 600 days at best.

The Electronic Records Express initiative also has significant promise and needs to be implemented as soon as practical. While representatives have the ability to submit records using this process, currently they do not have access to the files via a secure Web site. This requires the local office to provide CDs with the evidence and we believe results in significant duplicate submissions since they cannot confirm what evidence is on file.

Many reports are available to provide enhanced management information. Additionally, management training has been improved. These initiatives are certainly supported by FMA, as management of the workload is enhanced by trained employees and adequate tools. However, the critical issue once again is the lack of adequate staff to actually do the work. We know what needs to be done; we simply do not have enough people to do it. Furthermore, management is not allowed to hold employees accountable for production standards, making ongoing performance measures a challenge.

Ultimately, this is a numbers game. Should Congress define what it considers to be an adequate level of service, we believe the agency can define what we need to get there. None of the initiatives outlined above, whether alone or combined, is the silver bullet that will eliminate the backlog. We either have to slow the cases from coming in at the front end which would require significant changes in legislation, or we have to provide more capacity on the back end. The challenge is yours.

FUNDING

To enable SSA to meet the goals set forth in Commissioner Astrue's four-pronged approach to eliminating the backlog, Congress must approve a sufficient level of funding for the agency. The Continuing Resolution (CR) signed into law in March

2007 was severely inadequate to address both the staffing and backlog problem at SSA for fiscal year 2007, despite the meager increase SSA received above the fiscal year 2006 appropriation. Between 2001 and 2007, Congress has appropriated, on average, $180 million less than the President has requested each year. The value of this differential is equivalent to processing an additional 177,000 initial claims and 454,000 hearings. In the 10 years prior to fiscal year 2008, Congress has appropriated nearly $1.3 billion less than the President's request. Without a doubt, this has had a devastating effect on the services provided to the American public, as evidenced by the situation we are in today.

Recognizing the needs of SSA, Congress appropriated $150 million above the President's request for FY08 in an effort to bring down the backlog. Congress should be applauded for their commitment to serving the American people in this capacity. In fact, it is this increase which is allowing the agency to hire the additional 189 ALJs.

The President requested $10.327 billion for SSA's administrative expenses in FY09, only $100 million below Commissioner Astrue's request and 6 percent more than Congress appropriated this fiscal year. Furthermore, the House Budget Resolution (H.Con.Res. 312) recommended an additional $240 million for SSA's administrative expenses. Ultimately, the House Labor/HHS/Education Appropriations Subcommittee allocated $100 million over the President's budget for SSA's salaries and expenses, while the Senate Appropriations Committee approved only $50 million above the President's request. We applaud these efforts.

To remedy the unprecedented backlog situation, Congress should *at a minimum* pass the President's 2009 budget request of $10.327 billion for SSA's Limitation on Administrative Expenses account. Under his budget, the agency would be able to process 85,000 more hearings in FY09 than in FY08. In FY06 and FY07, SSA replaced one worker for every three that retired. The President's budget will allow for a 1 to 1 replacement ratio. While this will not allow us to eliminate the backlog immediately, we will be able to make significant strides to reducing it. However, as the 110th Congress draws to a close and speculation over a long-term CR begins, we are once again faced with a situation where we will be forced to take a step back, instead of moving forward.

In addition to having an immediate impact on the current backlog, underfunding the Social Security Administration will negatively impact every service area of the agency. Staffing at SSA will soon reach its lowest level since 1972; however, SSA today has nearly twice the number of beneficiaries it had in 1972. SSA officials estimate that more than 40 percent of its 65,000 employees will retire by 2014. Reversing this trend is a necessary step to reducing the backlog.

CONCLUSION

While the President's budget request for FY09 is a start, it is certainly not a cure all solution. Throwing money at the problem will not fully solve it without a well-trained, dedicated staff of Federal employees willing to avert a crisis in the coming years. We believe this is the workforce we have now, strengthened under the leadership of former-Commissioner Barnhart and Commissioner Astrue. By fully funding the President's request, we can continue this tradition.

In this era of shrinking budgets, SSA has attempted to maximize its use of scarce resources to provide the best possible service to the American public. The challenges faced by the managers and supervisors are not short term; they are a demographic reality. The same citizens putting stress on the Social Security trust fund because they are approaching retirement are also entering their most disability-pr1 years. ODAR is struggling to handle the current workload and will be hard pressed to manage the anticipated increase in hearing requests without additional staff.

We are the men and women who work with disabled Americans everyday. We see people of all ages come in and out of our offices seeking the services they depend on for survival from the Social Security Administration. We are committed to serving a community of Americans in need, but we need you to provide us with the necessary resources to help them. Thank you for your time and consideration of our views and I am happy to answer any questions you may have.

Chairman MCNULTY. Thank you very much. Sam and I and other Members of the Committee, Sandy and others, are attempting to address that issue. We hope to have some good news by next week.

Ms. MEINHARDT. Thank you.

Chairman MCNULTY. Mr. Schieber.

STATEMENT OF SYLVESTER J. SCHIEBER, CHAIRMAN, SOCIAL SECURITY ADVISORY BOARD

Mr. SCHIEBER. Thank you. Chairman McNulty, Mr. Johnson, Members of the Committee, I am pleased to have this opportunity to discuss ways to improve the performance of the Social Security hearing offices.

The Board also wishes to acknowledge the passing of Stephanie Tubbs Jones, who repeatedly expressed passion and concerns about the issues we are discussing today, issues we think deserve passion and concern.

About 18 months ago, I appeared before this Subcommittee to present the Social Security Advisory Board's perspective on the causes and the possible solutions to the growing disability backlogs.

At that time, the Advisory Board's perspective was things had gotten pretty much out of control. Since then, the Agency has implemented a series of initiatives that we have talked about this morning, that focus on clearing out the backlogs and they should help in the near term bring the system somewhat back into balance.

Mr. JOHNSON. Could you put the mike over closer to you? The recorder is having trouble hearing you over there. Thank you.

Mr. SCHIEBER. Are we getting there? I am not going to start over.

[Laughter.]

Mr. SCHIEBER. The backlog of cases has climbed to over 767,000, nearly 20,000 more cases now than at the start of the fiscal year. A singular focus on just one aspect of this program is not the solution to the systemic problems that exist across the whole system.

The public is entitled to timely and high quality disability decisions, but currently the Agency is forced to walk a fine line in its efforts to manage personnel and process.

Much of the context in which the hearing offices operate is a result of the 1946 Administrative Procedure Act. The Act created the position of the administrative law judge and set out a number of protections to ensure their decisional independence.

ALJs in effect have a lifetime appointment and may only be removed for cause by the Merit Systems Protection Board. They are excluded from Civil Service performance appraisal systems and newly appointed ALJs do not serve any sort of probationary period.

I note in my prepared testimony and we have heard this morning about concerns of productivity levels among the judges, about the numbers of cases that are being processed, and it is on both ends of the distribution. Some judges are hearing very few cases. There are also some judges hearing more cases than seems reasonable under any appreciation of what is involved.

There are also concerns about allowance and denial rates. Some judges seem to approve a disproportionate share of the cases that they handle and others approve very few cases that they handle. This is not a game of penny ante poker. This is a game of people who participate in a program, who apply often times in dire cir-

cumstances for benefits, in many cases, to which they are entitled, and they deserve fair consideration of their applications.

On the other hand, these benefits are quite expensive and they have to be paid for by the taxpayers. We ought not be granting benefits to people who are not qualifying for them under the rules.

By establishing clear performance expectations and measures as well as creating incentives that encourage the ALJs to achieve the goals, decisional independence can be preserved and the public's interest and a consistent and efficient hearing process can be achieved.

Furthermore, SSA needs to be able to rely on OPM to provide candidates who can meet their expectations. We strongly urge that at a minimum, OPM be required to establish a separate candidate register that emphasizes Social Security's specific needs.

Strengthening the Agency's ability to set performance expectations and changing the ALJ recruitment process addresses only part of the challenges with the hearing process.

We have heard the hiring of support staff has not kept pace with hiring of new ALJs in some cases. This lack of staff to support the hearing process properly obviously constrains productivity in some cases. However, it is not at all clear to us that either the staffing mix or the ratio of the support staff to ALJs has been adequately analyzed by the Agency.

Probably one of the most difficult jobs in SSA is that of the hearing office's Chief Judge. The Chief is responsible for managing the work of the office, but has little authority to do so effectively. It is critical that competent leadership be in place in each hearing office, but the current process has too many disincentives to attract talented managers.

SSA is committed to using technology to improve the performance, and they have made impressive strides in moving into an electronic environment. From where we sit, however, the problem is that most of the work is piece meal and lacks an over arching strategy that coordinates the projects and helps set priorities.

As the Agency continues to develop automation tools, they must ensure that the decisions being made for one part of the organization are the right decisions for the disability program as a whole.

SSA has massive administrative challenges ahead, and while there is no magic bullet, much can be accomplished through the appropriate adaptation of technology, recruiting, and retaining highly skilled staff, and instituting performance measures that ensure timely and equitable hearings is a step in the right direction.

I hope these comments are helpful to the Subcommittee as it examines SSA's management of its hearing offices, and I would be happy to answer any questions you might have.

[The prepared statement of Sylvester J. Schieber follows:]

Statement of Sylvester J. Schieber, Chairman, Social Security Advisory Board

Chairman McNulty, Mr. Johnson, Members of the Subcommittee. I am pleased to have this opportunity to appear on behalf of the Social Security Advisory Board to present the Board's view on the performance of the Social Security Administration's hearings offices.

In February 2007 I appeared before the Subcommittee to present the Social Security Advisory Board's perspectives on the causes and possible remedies for the lengthy and sometimes unconscionable delays disability applicants face in the proc-

essing of their claims. Press articles about the sky-rocketing hearings backlogs were appearing across the country; members of Congress were flooded with letters from constituents looking for relief. In the 18 months or so since then, the Social Security Administration has put into place a series of short-term initiatives designed to stop the growth in the backlog—initiatives that should provide the agency some breathing room while they develop and implement new electronic tools, simplify and unify program policies, and expand adjudicatory capacity.

The hearings process is complex and improving the performance of hearing offices is equally complex. But to truly effect change in productivity and increase efficiency in the performance of the hearings offices, we must first understand the barriers the agency must overcome before we can propose solutions.

Administrative Procedures Act: Balancing Public Interest and Decisional Independence

However, as this Subcommittee has noted, the public deserves timely and high quality disability decisions, but currently the agency must walk a fine line in its effort to manage personnel and process.

Much of the context in which the hearing offices operate is established by the 1946 Administrative Procedures Act (APA) which created the position of administrative law judge (ALJ), as well as a number of protections to ensure their independence. ALJs receive what is, in effect, a lifetime appointment. They may be removed only for cause after a formal adjudicatory hearing by the Merit Systems Protection Board. No one, including the employing agency, may approach an ALJ regarding the facts at issue in a particular case, except on the record. And, unlike almost all other Federal executive branch employees, ALJs are excluded by the Administrative Procedures Act from the civil service performance appraisal system. In addition, they are exempt from the standard requirement that new competitive service employees serve a probationary period.

There is no doubt that administrative law judges must have the independence to make decisions that are based on their best objective assessment of the facts in each case without being influenced by the need to please supervisors, to meet allowance or denial quotas, or in any way to fear that the outcome of their decisions will affect their future status with the agency. But that independence must be balanced with the public's interests and expectations.

I have done a statistical analysis of the outcomes of hearings in fiscal year 2006 to see if the data told a story, and they did. I want to caution that this analysis does not go as far as I would like but it is indicative of the issues that I believe are important. The limitations in what I have done so far are that my analysis focuses on the full duration of the fiscal year but I did not have available information on the amount of time individual ALJs actually had in service during the year. Because of illness, other leave taken, retirements and the like, not all judges worked throughout the whole year. Still, some of my results raise important concerns in my mind.

When I arrayed administrative law judges by the number of cases they disposed of in 2006 and by the outcome of those cases, I saw several things. First of all the range of cases handled and the range of allowance rates were both very wide. About a quarter of all judges disposed of fewer than 360 cases and 14 percent disposed of fewer than 240 cases. Half the ALJs disposed of between 30 and 50 cases a month during 2006 and the average for all ALJs was between 400 and 500 cases per year. And the spread also extends on the upper side with about 10 percent of ALJs handling more than 720 cases in 2006. There are some ALJs who rendered decisions at incredible rates of 1000, 1800, and even 2500.

I should note that the agency has attempted to address the situation of judges who were hearing few cases in the past by letting judges know that they want them to attempt to process up to 500 cases per year. One of the most important elements of management in any organization is setting out expectations for workers.

In terms of my analysis of what was happening in 2006, I found that the average allowance rate of all cases disposed of was about 60 percent and that is about the average for ALJs who handled 400 to 600 cases that year. Averages, however, hide the real questions about the decision making process behind them. Among judges who heard between 240 and 720 cases in 2006, the allowance rates varied from 3 percent to 99 percent. Among these judges who handled most of the caseload in 2006, 1.25 percent allowed less than 20 percent of the cases they ruled on in 2006 and 7 percent allowed more than 80 percent of their cases. I cannot believe that either the low or high allowance rates noted here are appropriate.

But judges who handle many more cases than the average tend to have significantly higher allowance rates, nearly 20 percentage points higher in the cases of those judges who dispose of more than 1000 cases per year. The raw statistics here

cry out for more scrutiny regarding how cases are being handled across the organization.

I know that there are many anecdotal reasons advanced that purport to explain apparently anomalous numbers. But, this program is too important both to the taxpayer and to the affected individuals to dismiss statistical evidence with offhand theoretical arguments. There are administrative law judges who are deciding upwards of 1000 cases with allowance rates in the mid to high 90s. And there are administrative law judges who are deciding upwards of 1000 cases with allowance rates in the mid to low 30s. This is not a penny-ante poker game where we can shrug "Them's the breaks."

There is more in play here than decisional independence. If wrong decisions are being made then we are either depriving disabled individuals of vital income support and health insurance or we are improperly imposing on taxpayers a major cost that has been estimated to have a present value of about a quarter of a million dollars per case. And the numbers I see make it look very much like we are doing both to a completely unacceptable degree.

It is possible, with an appropriate statutory change, to reconcile the interests of the public to receive an independent decision with a process that is consistent and efficient. But this process must have three key features: clear performance expectations, accurate and timely performance measures, and incentives that encourage the judges to reach the performance expectations.

Achieving the bold strokes of this new system will be very difficult given the need to walk the fine line required by the APA. Multi-dimensional performance measures are required to capture decisional accuracy and provide useful feedback on less quantitative aspects of performance such as judicial comportment and demeanor. However, such a system is precluded under the APA. We therefore recommend that Congress consider changing the law to permit better performance measurement while also protecting the ALJs' decisional independence. A key feature of a new law would be well-defined performance criteria set in advance so all parties know what it being expected of them.

In any large organization there are always the exceptional cases of "bad actors," who, despite counseling, engage in inappropriate or illegal behavior. Discipline is an option, but under the APA, action may only be taken with the prior approval of the Merit Systems Protection Board. We have been told by SSA that it can easily take a year from the time an MSPB hearing is requested until a decision is made. That initial decision can then be taken to the full Board, which takes another nine to twelve months. The disciplinary system should be changed to allow for a quicker response.

The Unique Role of SSA's Administrative Law Judges

SSA needs to have a skilled ALJ corps that is capable of managing a 500 case docket that involves the application of a large number of very complicated policy rules. This need runs counter to the OPM argument that it is in the government's best interest to have a mobile workforce of ALJs, individuals who can learn the laws and regulations of any agency and perform with equal competence wherever they are placed.

While administrative law judges are employed at 24 Cabinet-level and independent agencies, SSA employs the great majority. As of March 2008, 1,317 ALJs were employed by the Federal Government, of whom 1,066, or 81 percent of the total, worked for SSA. Like other agencies hiring ALJs, SSA reimburses OPM for its cost of administering the selection process in proportion to its share of the number of ALJs on duty. In SSA's case, it is about $1 million per year.

SSA's interest is not just a question of subject matter expertise, but of organizational and management skills to perform a significantly higher volume of work than is required in other agency settings. It is the 500+ caseloads of SSA ALJs that distinguishes their work from that done by ALJs at regulatory agencies, such as the Securities and Exchange Commission or the Federal Communications Commission, which often have much smaller caseloads. Beyond managing high caseloads, SSA ALJs are required to develop the record, represent the interests of the government and actively ensure that claimants understand the rules and their options.

In view of the fact that SSA employs more than 4 out of 5 ALJs and pays a proportional share of the costs of the selection process, it should have a process that identifies candidates that meet its unique needs. We would argue that this is a key to improving hearing office performance.

We recommend that the Congress weigh alternatives that can achieve the public's interest in fairness but will also satisfy its interest in efficiency and timeliness. There are at least three options that the Congress could consider:

- Separate SSA register: OPM could work with SSA, using data on quality and quantity of decisions of current SSA ALJs, to identify characteristics of judges with high quantity and quality of work and develop a separate selection process and separate register for SSA that uses those characteristics.
- Single register with supplemental qualifications data: OPM could continue to maintain a single register of qualified candidates but provide SSA with a greatly expanded certificate of qualified candidates, together with supplementary information on the candidates' demonstrated ability to manage a large docket and other qualifications that SSA identifies as essential for productive judges.
- Transfer management of selection process to SSA: SSA could be given authority to conduct its own merit selection process, including suitability and background checks, to meet its needs in a timely manner. Current regulations already require agencies to conduct a job analysis to identify the knowledge, skills, and abilities needed for successful employees as well as to establish the factors used in the evaluation of candidates. SSA has competent human resources professionals who are experienced in managing selection processes in a timely manner.

Hearing Office Staffing

Changing the ALJ recruitment process, hiring more judges, and strengthening the agency's ability to set performance expectations addresses only part of the challenges relative to improving the hearing process. As we have talked to staff throughout the Office of Disability Adjudication and Review (ODAR) what has become abundantly clear is that hearing office productivity has, in the end, become constrained by a lack of support personnel to organize the cases, locate old paper folders, develop new evidence, schedule medical and vocational experts, and write decisions. In 2007, there were 4.1 support staff for every ALJ; this has increased slightly to a 4.4 to 1 ratio. Maintaining sufficient levels of staff has been exacerbated by the loss of over 500 support personnel in the last two years through regular and "early out" retirement.

When ODAR was in a paper folder environment with few automated tools, we were told that the staffing ratio of support staff to ALJs should be in the 5:1 range. As they gain more experience with electronic case processing tools and eventually fold in electronic case pulling and scheduling of experts, some efficiencies should be realized. But whether or not the current ratio of 4.4:1 or some other mix is the right one, remains to be seen. We are concerned that there is not sufficient analysis going on to determine the proper staffing ratios. Moreover, now is the time to conduct in-depth analysis to determine what these jobs should look like in the future and what will be the skills sets needed for a successful employee.

While the issue of staff ratios is critical in planning stable operations we must be careful that it does not mask the fact that ODAR is falling behind in its workload and is not even close to being a stable operation. This suggests in the short run that staffing and investment in technology may need to be greater than currently planned in order to catch up.

Demands Placed on the Hearing Office Chief Judge

When the Board was conducting its research for our 2006 report on improving the hearings process, we looked very closely at how the individual hearings offices were managed; and specifically at the duties and responsibilities of the hearing office chief administrative law judge (HOCALJ), the senior official charged with overall responsibility for managing the office. The first duty listed in the official position description for the hearing office chief has to do with the responsibility for holding hearings. The second addresses the chief judge's responsibility for the overall management of the workload within the hearing office. Now, this strikes me as being a bit backward, but given this emphasis, it was not a surprise to learn that most hearing office chief judges carry full caseloads, upwards of 500 cases. In fact, they are the only management officials in the agency who are specifically charged with in-line production responsibilities. One cannot help but wonder how these individuals can effectively manage a complex organization while juggling a full caseload.

Do not get me wrong on the point I am making here. I believe that working managers are highly desirable in many in-line management positions. They often understand the nature of the work and problems associated with it better than full-time managers. I am simply saying that full case-load obligations and line-management responsibilities together may result in undesirable handling of all aspects of the assignment.

Although, on paper, the hearing office chief has managerial responsibility for all staff, in practice there are two parallel management structures. There is one chain for the administrative law judges and supervisory staff attorney who report directly

to the HOCALJ and there is another one for the non-attorney staff who report directly to the hearing office director. The office director, in turn, reports to the HOCALJ. In theory, this should work. But instead what we see is administrative and procedural guidance flowing through the organizational stovepipes. The lines of authority and communication can be confusing and at times, at cross purposes. For example, support staff often receives directions from the judges that may be at odds with the guidance received from their line supervisor. Perhaps these two structures make sense in this blended environment of attorneys and non-attorneys; however, it seems to contribute to a lack of clarity about lines of authority, dilutes accountability, and ultimately affects office performance. The current structure demands an extraordinary level of effort and a strong commitment to communicating across the divide in order to make it work.

It is crucial that competent leadership be in place in every hearing office, but the current process has too many disincentives to attract talented managers. There are a limited number of qualified individuals willing to take on these additional tasks. Turnover is high and "burn out" is not uncommon. One way to improve and make hearing offices more efficient is to improve the quality, attraction and retention of the principal leaders in the hearing office. At a minimum, the position description for the HOCALJ should emphasize that management responsibilities are first and foremost, including responsibility for ensuring that office and agency performance standards are met, initiating disciplinary actions, and counseling underperformers.

One other aspect of the HOCALJ position deserves consideration. The hearing office chief judge is not only expected to "manage" the resources under his or her domain but to carry a full case load as noted earlier. But the individuals who take on this added burden and responsibility are paid exactly the same as the other regular line judges. You might wonder why anyone would sign up for such a role if there is no added reward for doing so. Well, there is a reward of sorts. HOCALJs can apply for vacancies elsewhere around the country when positions come open and will be moved if they are selected to head up another office. It seems some judges are willing to take on this assignment because it is a way to get moved to other geographical locations that they find more attractive for personal reasons. I am not saying that a judge signing up to be a HOCALJ to increase the prospect of relocation is necessarily bad in many cases, but it strikes me as a peculiar way to compensate people for providing a valuable and necessary service to the agency and the program.

Compensation for the HOCALJs should be adjusted to reflect that they indeed do have the responsibility for assuring that the work of the office is accomplished and that they will be held accountable for its performance. Nevertheless, we recommend that the HOCALJs carry an ongoing caseload to be sure that they are current with policies, so they can provide programmatic guidance to their ALJs and staff attorneys and so they can provide regular feedback to central management on the performance of the operational system of which they are a part.

The Road Ahead

SSA has made tremendous strides in moving its work into an electronic environment. The challenge is that most of this work is piecemeal and lacks an overarching vision to facilitate coordination across the projects and to provide a guide for setting priorities.

Over the past four years they have automated the field office disability interview, provided channels for medical providers to submit evidence electronically, and created an electronic claims folder. Electronic cases now comprise over three-quarters of ODAR's workload and they are working diligently to finish the paper cases still in the pipeline.

The success of the agency's plan to reduce the hearings backlog and prevent its recurrence is highly dependent on the successful implementation and rollout of a series of streamlined and automated case tasks. This past June electronic file assembly (ePulling) was implemented in Tupelo, Mississippi and early feedback has been positive; in July a pilot to permit claimant representatives access to the electronic folder was initiated; and work continues on software that will enable the electronic scheduling of experts, hearing locations, and ALJ availability.

While each of these accomplishments taken individually represents an important achievement, their cumulative effect may be far less than what could have been possible given the resources that have been used. The lack of a unifying vision inhibits the administration's ability to identify and set developmental priorities. For example, achieving a specific task using COBOL may have short term gains but in the long run it runs counter to the agency's need to move toward more modern programming languages.

High performance requires a forward-looking and creative vision of a business process that is efficient, fosters consistent application of program policy, and is agency wide. In particular the agency needs to ensure that the decisions made to improve the hearings and appeals process are consistent with the decisions being made for the disability program as a whole.

Even with a unifying vision managing this improvement process will be hampered by the lack of meaningful performance measures. The agency needs to be able to measure the productivity and accuracy gains resulting from these new systems. This requires the ability to measure consistently performance with and without the change. Furthermore, detailed information about staffing and resource requirements for each new system is needed in order to determine what will be required to take them to scale within the agency.

Performance measurement must move away from focusing solely on decisional accuracy. Quality assurance must go beyond merely fulfilling Congressional requirements to check 50 percent of all DDS allowance determinations, but must inform the analysis of proposed legislation, program implementation and shape policy research activities. Moreover, quality management must become part of the fabric of the organization. It must be reflected in the agency's strategic plan, in its culture, and its day-to-day business.

Throughout the Board's existence, we have spent the vast majority of our time studying the disability program and how well it serves the public. In our 1999 report on how SSA can improve service to the public, we noted that SSA needed to improve the way it measures performance. This is an agency that collects a wealth of data on case characteristics, decisional outcomes, timeliness, productivity, quality, and cost. The data are tallied and put into charts and called "management information." I am not convinced that much of this is nearly as helpful as it might be. I believe that many modern organizations confuse data for information. They are not the same.

Part of the problem may be that data itself is often of little value if not refined into information and knowledge that managers on the ground can use to improve the efficiency of the units they run. For example, a raw statistic that shows that a particular ALJ may be extremely productive in terms of disposing of cases provides little value if it hides the fact that the individual's productivity is correlated (and possibly responsible) for low productivity of other ALJ's in the same unit. Statistics on gross dispositions may be misleading if they are not highly correlated with net dispositions after remands. Data on individual ALJ productivity can only be properly assessed in an analysis that controls for other environmental variables—number and characteristics of support staff, characteristics of cases being assessed, percentage of decisions being remanded and other variables that affect work flows.

SSA has the technology in place to provide it with the opportunity for immediate creation and retrieval of information, yet it seems there is little innovative analysis occurring. Strengthening management's ability to effect change is through the identification of and targeting the root causes of bottlenecks and vulnerable processes and then implementing performance measures that track outcomes. We recommend that SSA invest in better management information systems that provide a basis for concrete steps for process improvement within a unified vision for a high performing organization.

The Social Security Administration is at a crossroad in its ability to continue to fulfill the mission that was set out for it in 1935. Granted, the mission has grown and the scope of the agency's responsibilities undoubtedly far exceeds what the original framers had in mind. The SSA has always stepped up to meet every new challenge and they can do it again. But it takes adequate resources and investment in its staff. Chronic under-funding has contributed to the current crisis and has diverted the agency's attention away from long-term planning. Short term initiatives must be linked to a longer range vision for the future that, together, make a compelling case for sufficient and stable funding. SSA has massive administrative challenges ahead and while there is no magic bullet, much can be accomplished through the appropriate adaptation of technology, recruiting and retaining highly skilled staff, and instituting performance measures that ensure timely and equitable hearings is a step in the right direction.

Mr. Chairman, I hope these comments are helpful to the Subcommittee as it examines SSA's management of its hearing offices. I would be happy to provide any additional assistance you may want, and I would be happy to answer any questions you may have.

Chairman MCNULTY. Thank you very much.

Mr. Bernoski.

STATEMENT OF THE HONORABLE RON BERNOSKI, PRESIDENT, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, MILWAUKEE, WISCONSIN

Judge BERNOSKI. Mr. Chairman, thank you for inviting us to testify here today. We also mourn the death of Congresswoman Tubbs Jones.

As administrative law judges, we are keenly aware of the disability case backlog because we work with it on a daily basis.

I am happy to report that administrative law judges at Social Security are working hard and our productivity has steadily increased during the past decade. In fact, in 2007, we issued about 550,000 cases which amounts to over two cases per day per judge.

The only Agency study that we know of regarding ALJ production was part of a 1994 Agency reform effort known as a "Plan For A New Disability Claim Process." This study prepared a time line for Social Security disability cases for the entire process. At the ALJ level, it concluded that a judge could efficiently produce about 25 to 55 cases a month.

This would mean that a judge would devote about three to 7 hours to each case. The Social Security Administration has determined that each case is worth about $250,000, including Medicare.

We believe that three to 7 hours is not too much time to devote to a claim that can cost the trust fund up to a quarter of a million dollars.

Mr. Chairman, it takes a complete team to make a hearing office function. There must be a balance between judges and staff. It is clear that we need at least four and a half staff persons per judge.

The IG report correctly states that factors in the disability process impact on our productivity, and I submit to you that we have little control over most of these factors.

The case production chart in the IG report shows a bell curve with a normal distribution with most judges in the center of the curve. Most of our judges are producing in the range of 300 to 700 cases per year, which is within the reasonable limits of that Agency study I referred to. Only 22 out of 1,155 judges issued a low number of decisions.

Finally, Mr. Chairman, the IG jumps to the unsupported conclusion that varying levels of ALJ production is based on the lack of motivation and work ethic. There is a lack of evidence supporting that conclusion.

This conclusion is instead based on the comment from one regional chief judge relating to one administrative law judge. Further, the IG did no study to substantiate that conclusion.

Mr. Chairman, no group of Social Security employees is responsible for the disability backlog. In fact, a GAO report in December 2007 concluded that the backlogs were caused by: one, a substantial growth in initial applications; two, staff losses, including administrative law judges; and, finally, management weaknesses evidenced by the number of reform initiatives.

Earlier this year, Mr. Chairman, a Federal Magistrate Judge on a panel for a Federal Bar Association program in Chicago stated that based upon his experience in handling Social Security cases,

because they hear our cases on review, 700 cases is more than an administrative law judge could reasonably issue each year.

At an AALJ round table this Spring, the panel concluded that no group of employees is responsible for the backlog and it was instead a systemic problem causing systemic failures in the system.

In this regard, in January 2008, we prepared a white paper discussing the systemic problems with recommendations to address the same.

Mr. Chairman, that concludes my remarks.

[The prepared statement of Honorable Ron Bernoski follows:]

Statement of The Honorable Ron Bernoski, President, Association of Administrative Law Judges, Milwaukee, Wisconsin

Thank you for inviting us to testify at this hearing. My name is Ronald G. Bernoski. I am an administrative law judge (ALJ) who has been hearing Social Security Disability cases in Milwaukee, Wisconsin, for about 28 years. I also serve as President of the Association of Administrative Law Judges (AALJ), a position I have held for over a decade. AALJ represents the administrative law judges employed at the Social Security Administration (SSA) and some administrative law judges at the Department of Health and Human Services. One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of program entitlement disputes within the SSA and to promote judicial education for administrative law judges. The AALJ represents about 1100 of the approximately 1400 administrative law judges in the entire Federal Government.

The Association of Administrative Law Judges is most grateful for the oversight of the Social Security disability program provided by the Subcommittee. We too find it most painful that the American people, who are in the disability hearing process, have been disadvantaged by long delays in their cases.

In 1946, Congress enacted the Administrative Procedure Act to protect, inter alia, the American public by giving administrative law judges decisional independence. Under the APA's statutory scheme, the American public was ensured of receiving full and fair hearings from agencies of the United States Government. These safeguards are in addition to those set forth in the Social Security Act, which preceded the enactment of the APA. These two laws, together with the United States Constitution, impose a huge burden on administrative law judges to process cases on their dockets with the ultimate goal of seeking the truth and administering justice.

Administrative Law Judge Duties

Any discussion of ALJ productivity must begin with an understanding of the daily tasks that judges must perform in handling their dockets of cases. The labor intensive process begins in the hearing office with support staff assembling and marking exhibits and, as may be requested by the judge, obtaining current or new medical and related evidence. The judge reviews the file and determines if the case is ready to be heard or if other evidence needs to be developed. When the case is fully developed the judge then needs to determine whether a favorable decision can be made on the record presented, without a hearing. If a hearing is required, the judge evaluates the evidence to determine whether expert witnesses will be required for the hearing. After this review, the staff secures the expert witnesses and schedules the case for hearing. Once the hearing is scheduled, the judge continues to be involved with the case to review newly submitted evidence, to consider and resolve prehearing motions and issues. Typically, a day or two before the hearing, the judge will conduct another review of the file to insure familiarity with the facts and issues for the hearing. When the hearing is concluded the judge must prepare thorough decisional instructions for the writing staff, review and edit the draft decision and sign the decision. Thereafter, the staff prepares and mails the decision to the appropriate parties.

As can be readily seen from the above, measuring productivity of a judge is a difficult, if not impossible task, because there are so many variables to consider. Thus, as the Inspector General correctly notes in his report, a sufficient number of competent and well trained staff is critically important to the ability of a judge to process his or her caseload.

History and Overview of ALJ Productivity

Cases routinely handled by our judges today are far more complex than at any other time in our history. Nonetheless, in fiscal 2007, the Social Security administrative law judges heard and decided 550,000 cases. Individual administrative law judge productivity in the Social Security Administration has increased every year over the last decade and is presently at historic highs. As you noted in the Advisory for this hearing, according to the recent report of SSA's Inspector General (A–07–08–28094) (the IG Report), from FY 2005 to FY 2007 the average number of case dispositions issued per ALJ increased 13%. Specifically, in FY 2005, ALJs issued an average of 421 dispositions each, while in FY 2007, ALJs issued an annual average of 474 dispositions each. According to the IG report, 1,155 Social Security administrative law judges issued 547,951 case dispositions in FY 2007.

Because of this progress, the law of diminishing returns applies to future increases in the level of ALJ productivity. To be sure, the number of decisions issued by each judge varies, however, such variation is dependent on the factors noted above and is clearly consistent with the Agency's previous study. That study, the *Plan for a New Disability Claim Process*, conducted in 1994, projected a time line for a disability claim at all levels of the process, including the administrative law judge level. The study, based on an average month of 4.3 weeks, concluded that a reasonable disposition rate for a judge should be 25 to 55 cases per month, averaging 40 per month. The results showed that a judge should spend 3 to 7 hours of time in processing each case. In considering numerical performance it is important that the Congress understand first that a judge must carefully review the voluminous documentary evidence in the claimant's file to effectively prepare and conduct the hearing and to issue a correct decision; and second that case carries an average cost to the trust fund of $250,000. A judge hearing 40 cases per month is entrusted to correctly decide on $10,000,000 of cases per month, $120,000,000 annually. We respectfully submit that an average investment of three to seven hours per case per judge is a very reasonable cost-benefit expectation of administrative law judge productivity. I will offer the *Plan for a New Disability Claim Process* study for the record of this hearing.

As the Subcommittee is aware, the SSA disability process has historically required for maximum performance a ratio of support staff to administrative law judge of about 4.5 staff for each administrative law judge. Ideally, the complement would include 2.5 attorneys and 2 support staff persons for each administrative law judge. "Support staff" does not include managerial, supervisory or administrative personnel. Presently, the staff to administrative law judge ratio is in the 3.5 range which means the Agency needs to hire over 1000 support staff employees just to restore the *status quo*. However, restoring the *status quo* will only arrest, not eliminate, the disability back log.

The Social Security Administration's adjudication system is the Office of Disability Adjudication and Review (ODAR), formerly the Office of Hearings and Appeals (OHA). It is one of the largest adjudication systems in the world. As stated above, in FY 2007 it provided the American people with 550,000 case depositions. The Commissioner is required to provide a requested hearing to any individual who asserts, in writing, that his/hers rights may be prejudiced by any decision of the Commissioner. The Commissioner is further required to give such applicant reasonable notice and an opportunity for a hearing. If a hearing is held, the Commissioner shall, on the basis of evidence adduced at the hearing, affirm, modify or reverse the prior findings of fact and decision. [42 U.S.C. 405]

The hearing system that Congress established for the Social Security Administration is so highly regarded for the protections that it provides for the American people, that the United States Supreme Court stated that it "does not vary from" the Administrative Procedure Act and that the Administrative Procedure Act "is modeled upon the Social Security Act". [*Richardson v. Perales*, 402 U.S.]

389 (1971)] Social Security claimants are not only protected by the Social Security Act, but they are also entitled to a due process hearing under the Constitution of the United States according to the procedures established in the Administrative Procedure Act. [5 U.S.C. 554, 555 and 556] In establishing this process, "Congress intended to make hearing examiners (now administrative law judges) 'a special class of semi-independent subordinate hearing officers' by vesting control of their compensation, promotion and tenure in the Civil Service Commission (now the United States Office of Personnel Management) to a much greater extent than in the case of other federal employees". [*Ramspeck v. Federal Trial Examiners Conference*, 345 U.S. 931 (1953)] The United States Supreme Court has stated that "there can be little doubt that the role of the modern federal hearing examiner or administrative law judge within this framework is 'functionally comparable' to that of a judge. His powers are often, if not generally, comparable to those of a trial judge: He may issue

subpoenas, rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions." [*Butz v. Economy*, 438 U.S. 478 (1978), *Federal Maritime Commission v. South Carolina State Ports Authority*, 535 U.S. 743 (2002)]

This administrative hearing system provides an opportunity for a hearing to each individual requesting a hearing and it provides justice to the American people "one case at a time". Each individual who appears before an administrative law judge is entitled to a full and fair meaningful hearing after timely notice, has a right to be heard, has a right to be confronted with all adverse evidence and to cross-examine adverse witnesses, is entitled to representation, and is entitled to thoughtful and meaningful deliberation as well as receiving a well written decision that is based on evidence adduced at the hearing. [*Goldberg v. Kelly*, 397 U.S. 254 (1970)]

Federal administrative law judges play a vital role in the judicial structure of this nation. They are part of the Executive Branch of the government, but the United States Supreme Court has held that "the judicial power of the United States is not limited to the judicial power defined under Article III and may be exercised by legislative courts." [*Williams v. United States,* 289 U.S. 553 (1933)] Further, the agencies do not have the authority to withhold the powers vested in Federal administrative law judges by the Administrative Procedure Act and the United States Supreme Court has stated that its impartiality "serves as the ultimate guarantee of fair and meaningful proceedings in our constitutional regime". [*Marshall v. Jerrico*, 446 U.S. 238 (1980)]. Administrative law judges in Social Security proceedings preside over an inquisitorial rather than an adversarial system as is customary in our judicial process. The inquisitorial system relies more on the administrative law judge and places more responsibility on the judge. It is the duty of the judge to develop the facts and develop the arguments both for and against granting benefits. This is in large part required because the Social Security

Administration is not represented at the hearing. Therefore, Social Security judges are required to wear the "so-called" three hats (protect the interests of both the claimant and the trust fund and render a decision based on the evidence in the hearing record). Hearings based on this process are more time consuming and labor intensive for the judge. This of course begs the question, how much time should a Social Security judge devote to each case to provide the required fairness to both the claimant and the trust fund? One answer was presented by a Federal magistrate judge who was a presenter at a Federal Bar Association program in Chicago this spring. He said "I am required by the 7th Circuit to read the entire record to determine if the ALJ decision is supported by substantial evidence and to insure that there are logical bridges connecting the evidence and the conclusions. I don't think 500–700 dispositions a year is reasonable if one is going to read these cases as I do."

Social Security judges have worked hard to attempt to address the disability case backlog. We had an excellent relationship with former Commissioner Barnhart, and we worked hard with her to reform the hearing process. We were in strong support of the reform effort known as DSI. We still endorse the concept of a Federal Reviewing Officer or FEDRO, an attorney who reviews the claim files before they go to a judge to see if the case can be paid fully or partially on the record, to meet with the representative to narrow the issues or perhaps even reach a proposed settlement for the judge's approval, who might appear at the hearing to present the Agency's position in the case. This reform, or a similar reform, would provide a method to prevent these cases from going to an administrative law judge hearing. There are many reasons for the large disability case backlog over which judges have no control. These reasons include factors such as:

— The failure of the Congress to provide adequate funding for Social Security,
— The failure of SSA to hire adequate support staff for judges,
— The failure of SSA to hire additional administrative law judges,
— The failure of Social Security to manage and forecast the impact of increased case receipts during the mid-1990's and the failure of the Agency to implement a plan to address the same, and
— The failure of many of SSA's reform initiatives.

A United States Government Accountability Office report in December 2007 (GAO–08–40) on the Social Security disability case backlog concluded that the increases in the case backlog during the last decade were caused by:

— A substantial growth in initial applications,
— Staff losses (including administrative law judges), and
— Management weaknesses evidenced by the number of failed reform initiatives.

In January 2008 the Association of Administrative Law Judges hosted a Roundtable at the National Press Club to discuss the Social Security disability case back-

log. The distinguished panel for this Roundtable consisted of GAO Director David Walker, former Social Security Commissioners Jo Anne Barnhart and Stanford Ross, and former Social Security Advisory Board Staff Director Margaret Malone. This panel concluded that no single group of employees in Social Security is responsible for the disability case backlog; the problems instead relate to systemic failures in the system. In this regard, the Association of Administrative Law Judges prepared a white paper discussing systemic problems in the Social Security disability process with recommendations to address the same. I will offer this white paper for the record of this hearing.

Systemic Problems

The Reports of the GAO and SSA's OIG show the Social Security disability process is plagued with serious systemic problems and that "silver bullet" solutions or attempts to scapegoat one or more classes of employees will not address, let alone solve, the problems confronting the Agency.

Social Security has consistently over-estimated the benefits of technology at the administrative law judge level and has often implemented the technology before it has been ready for general use. Further, technology does little to assist the judge or reduce the time we spend doing our work. We still need to review the case before the hearing, conduct the hearing, prepare the hearing decision instructions, and edit the draft decision. The Agency is now claiming that technology will reduce the number of staff employees needed to support administrative law judges. This claim has not yet been certified therefore policy cannot be based on hoped for benefits of the new technology.

While we embrace the use of technology in the future, current Agency initiatives do little to reduce the disability case backlog. For administrative law judges, electronic files slow down the process because pages take longer to "load" and view. Electronic organizing of files has not yet been perfected. Equipment failures cause delays, some for long periods, because the system is often not strong enough to handle peak work loads. The use of desktop monitors to conduct hearings and conducting video hearings from the offices of attorneys is fraught with danger. The administrative law judge hearing is the first time in the Social Security disability process where the American citizen has a chance to meet face-to-face with a high ranking government official and be permitted to explain the elements of his/her case. A major part of due process is making the claimant feel that he/she had a day in court and received a full and fair hearing. How can this basic fairness be ensured if a government employee is not present at the hearing site? How can use of a computer monitor deliver a hearing which is full and fair to both the claimant and the trust fund?

One of the major problems and ironies in ODAR is that in addition to a chronic shortage of clerical support staff, it is "top heavy" with managers. In this time of declining resources, we recommend that the number of managers in the ODAR regional offices be reduced and instead be transferred to the hearing offices to work on disability cases. We have further recommended that the ODAR regional offices be closed and the staff personnel be transferred to the hearing offices. There is a hearing office in each regional office city and this reform will not cause significant changes of location for employees. In this electronic age, the functions of the ODAR regional offices can be more efficiently handled by the Office of the Chief Administrative Law Judge who can now easily communicate with all hearing offices without delay.

Lower Producing ALJs

The Association of Administrative Law Judges has repeatedly offered its assistance to the Social Security Administration to meet with the judges the Agency contends have the lowest case production to attempt to determine the reasons for the work production, and to attempt to address any existing problems. Further, we have long recommended that the American Bar Association's Model Code of Judicial Conduct be adopted for administrative law judges. It should be noted that the last American Bar Association model judicial code specifically included administrative law judges. The Association of Administrative Law Judges first started working on this initiative in the late 1970's. However, the

Agency has consistently declined to work with us in this effort.

The Report of SSA's OIG on ALJ and Hearing Office Performance

The recent report of SSA's OIG, *Administrative Law Judge and Hearing Office Performance* (the IG Report) is deeply flawed and does not rest on any reliable evidence. The Agency has made much of some of its conclusions, but a careful reading shows those conclusions to be unfounded. The IG Report must be read cautiously and critically.

The methodology—interviews with judges and staff who were not provided with the questions in advance—hardly meets the requirements of a scientific study. Further, it is clear that the inference the Agency wishes you to draw is that a judge's productivity is a product of a judge's motivation and work ethic, as this so-called finding is listed first among the factors that impact productivity and is repeated throughout the report. Much emphasis is also placed on a handful of judges who have low case dispositions. Yet, the conclusion regarding motivation and work ethic is unsupported by any facts and is based upon the unsupported statements of one or two managers who themselves produce few dispositions.

Other major flaws: The IG Report fails to examine whether the factors reviewed impact the legal sufficiency of decisions, it fails to take into account remand rates, and it fails to consider numbers of cases withdrawn or dismissed in reckoning the number of dispositions. These are all components of performance and productivity that cannot be ignored. Failing to take these factors into consideration creates a skewed picture of performance. Further, the IG Report relies heavily on anecdotal evidence, sometimes from just one individual, which severely undermines its reliability.

There are several fallacies implicit in this report: (1) Faster is better. (2) Shorter hearings are better. (3) Avoiding or limiting the use of expert witnesses is preferable. (4) Postponements are wasteful.

- Faster is better. The IG Report implies that spending less time in handling a claim and disposing of claims without holding hearings is a superior method of operating and that those who do so are more "productive." The IG Report shows that the number of dispositions is directly related the amount of time the ALJ spends on a claim in reviewing the file, holding the hearing, making a decision and preparing the instructions, and editing the draft. The "higher producers" spend less time on these duties. But it must be noted that the "higher producers" pay more cases. It is easier and faster to approve a claim than to deny it. Denials demand far more detailed rationale. Thus, if ALJs are required to issue more decisions, it should be expected that less time will be devoted to the work required to process cases properly, which will result in a higher number of claims incorrectly paid. The IG Report repeatedly emphasizes "fast" while ignoring the legal and ethical obligations of handling a caseload. Productivity cannot be divorced from legal sufficiency.
- Use of expert witnesses. The IG Report, pointing out that the use of experts slows the hearings and reduces the number of decisions that a judge issues, states that such use is within the judge's discretion. This is largely incorrect. Experts, particularly vocational experts, must be used under certain circumstances (such as the rulings of the Circuit Courts and the Agency's own regulations and rulings) unless the judge plans to pay the claim. Reducing the use of vocational experts will lead to greater pay rates. The use of medical expert witnesses to assess the severity of often complex medical conditions clearly is preferable to relying solely on the assessment of the judge, a medical layperson.
- The conclusion that lower producing judges postpone more hearings than the higher producing judges implies that one group—the lower producers—grant too many postponements. However, there is no evidence to back up this implication. It may well be that higher producing judges have better staff support (scheduling hearings on agreed-upon dates with the representative), work in locations where transportation is less of a problem, or are wrongfully refusing to postpone hearings. Without a study, no conclusions can be drawn.

Note that there are but 22 Judges out of 1,155—less than 2%—who issue a very low number of decisions. Note also that the number of dispositions per judge creates a bell curve, which is a normal distribution, and that most judges are in the center of the curve.

A careful reading of the IG Report establishes that the ALJ Corps is working extremely hard and is extraordinarily productive. ALJs have increased their dispositions thirteen percent from FY 2005 to FY 2007—this in spite of insufficient resources and an electronic file system that slows the processing of cases for the judges. The IG Report fails to mention that this increased productivity comes on the heels of increases in ALJ productivity for the several years prior to 2005 as well.

The IG Report and GAO Reports actually substantiate that there are a number of factors outside of the control of the judge that affect productivity: ratio of staff to judge, quality and composition of the staff, State Agency Disability Determination Service (DDS) allowance rates and quality of case development, and the availability of worked-up cases for hearings.

- Higher staff ratios allow a judge to be more productive. More cases can be scheduled for hearing in offices where there are sufficient numbers of support staff to prepare the files; there are times when ALJs do not have as many hearings scheduled as requested because there is insufficient support staff to prepare the cases. The Agency's failure to hire sufficient support staff should be strenuously questioned as this has had and continues to have the most serious direct impact on productivity and increased processing times. Over 60% of the 770,000 cases in the system awaiting hearings have not yet been seen by a judge.
- The quality of staff will affect the number of cases a judge can handle; some decision writers are attorneys and others are former clerical employees. Resources may be distributed unequally to the Judges within an office, which will impact the ability to issue decisions.
- The DDS informal remand procedure is touted as an initiative to reduce the backlog. What is missing from this IG Report is that the Agency unwisely removed the reconsideration step from the claims process in about ten states, which had the effect of helping to create the backlog. In some respects, the informal remand is merely a return to past procedures.

Much is made of Agency expectations, as if these expectations had any basis in fact. They do not. The expectation of five hundred to seven hundred dispositions per year is not based on any time study of how long it takes for a judge to handle a case.

The Agency expects writers, who perform fewer functions in processing a case than judges, to spend four hours drafting a favorable decision and eight hours to produce an unfavorable one. The current average number of decisions written by the writers is 32 per month, 384 annually. Should judges be afforded less time to handle a case?

Taking a closer look at the IG Report, the following issues are raised as to the accuracy of the findings and conclusions:

- The assertion that SSA's disability program will continue to grow at an increasing rate as "aging baby boomers reach their most disability-prone years" is not supported by any data in the IG Report. Statistical samplings in some offices have shown that the majority of claimants—sixty percent—are under fifty years of age. Planning for handling the disability workload should be based on hard statistical data.
- Table 1 Dispositions Issued in FY 2007 is misleading as it includes ALJs who were precluded from handling cases on a full time basis for reasons related to illness, leave, other assignments, or management duties.
- Despite listing motivation and work ethic as a factor in productivity and processing times, no study was done to support this contention. In fact, buried in the IG Report at page five is an admission that the impact of motivation and work ethic on productivity and processing times was not measured.

"Shortcuts" such as "Streamlined" folders and scheduling cases before they are worked up are more often counterproductive. A "streamlined" claim file is one which is not worked up, i.e., prepared for hearing. Duplicates of often hundreds of pages of exhibits are not removed. Exhibits are not identified, placed in chronological order or even numbered. This allows the support staff to spend less time in preparing a case record. However it requires that the judge, and the writer, and medical experts and the representative to spend far more time reviewing the record. Scheduling cases before work-up will not alleviate ALJs having insufficient cases for hearing. The cases will still need to be worked up before the hearing.

Another Agency initiative, the "rocket docket" changes scheduled hearings to a "cattle call" in which all unrepresented claimants are told to appear at the beginning of the day. The purpose is to determine which ones will not appear. Their claims are dismissed. Those who appear are told their hearings will be held in the near future. This discriminates against unrepresented claimants who may have to travel long distances to the hearing office on more than one occasion to have their cases heard and who may have to wait hours to be called.

While the electronic initiatives may save time for support staff and will offer other significant future benefits in storage, access etc., these changes do nothing to reduce the time spent by the judges. In fact, it takes longer to review an electronic file. Moreover, the system periodically slows down or stops working altogether. Although the IG Report appears to address this issue, it merely lists the comments of judges, some of whom do not believe that electronic files take longer to process; no study was done to determine the length of time it takes to handle electronic cases. The judges who believe that electronic files take no more time to process than paper files

may well be in offices where the electronic files, being newer, have considerably fewer medical documents than paper files.

Finally, this IG Report is disingenuous as it seeks to leave the reader with the impression that many ALJs are not very productive and that this is of their own choosing. It further implies that Judges need to be disciplined in order to increase their output. There are simply no facts to support such conclusions. Moreover, this IG Report is a grave disservice to the Judges who every day fulfill their oath of office by providing due process to every claimant. It is also a disservice to the American public, which has a right to expect that every Judge will provide a full and fair hearing, an opportunity to be heard, thoughtful and meaningful deliberation and a well-written decision.

Conclusion

Chairman McNulty and members of this subcommittee, there are just three salient points the Association of Administrative Law Judges would like to leave with you.

The most pressing need for ODAR at this time is a major addition of support staff. This has been the major contributing factor to the backlog. Virtually all the "boots on the ground"—judges, hearing office managers or hearing office chief judges—will confirm that, without a substantial infusion of additional support staff, at least 1,000, the backlog will not be substantially reduced.

No single group of employees is at fault for the backlog, certainly not the corps of administrative law judges. The undisputed facts show the judges have increased their production year after year.

The Association of Administrative Law Judges wants to work with, not joust with, Agency management as we have worked together in the past. To the extent there may be judges whose productivity is below a reasonable level, we specifically want to join with Agency management to try to work with those judges to assist them to become more productive. The judges are not part of the problem. We do want to be part of the solution.

We thank you for your consideration.

Sincerely,

Ronald Bernoski
President

Judge BERNOSKI. I offer for the record the part of the Plan For A New Disability Claims Process that I referred to, and also the AALJ white paper that I referred to. I will offer them today in paper and then I can submit electronic copies later so the staff can include them more efficiently in the record.

Chairman MCNULTY. Without objection, those documents will be included in the record.

[The information follows:]

ASSOCIATION OF ADMINISTRATIVE LAW JUDGES

RECOMMENDATIONS

ON THE

SOCIAL SECURITY DISABILITY

CASE BACKLOG

January 2008

Recommendations on the Social Security Disability Backlog

Introduction

No group is more sensitive to the crushing burden of delayed hearings on Social Security disability claimants than the men and women of the Association of Administrative Law Judges (AALJ). This paper attempts to identify problems and solutions to the growing backlog of disability cases. Though a myriad of reasons can be cited for the ever expanding backlog to this point, AALJ alerts the U.S. Congress and the American public that the Social Security Administration (SSA or the Agency) has recently turned a blind eye to realistic solutions to this crisis. Most current attempts by the Agency to address the backlog involve pressuring a dwindling workforce to increase case dispositions irrespective of quality or the negative impact on the Trust Fund. Worse yet, the backlog is being used as an excuse to strike down historic rights of disability claimants. At specific jeopardy is an in-person hearing before an independent adjudicator. To compound matters, a six year investment of millions of taxpayer dollars and countless man hours of planning on a viable long term solution, Disability Service Improvement (DSI) has, in large part, been inadvisably scrapped.

History

In 1946, the Congress enacted the Administrative Procedure Act (APA) to reform the administrative hearing process and procedures in the Federal government. The 1930s had seen a rapid growth of administrative law, with hearings being conducted by hearing examiners appointed by the agencies. Prior to enactment of the APA the tenure and status of these hearing examiners were governed by the Classification Act of 1923, as amended. Under that Act, the classification of the hearing examiners was determined by ratings given to them by the Agency and their compensation and promotion depended upon their classification. This placed the hearing examiners in a dependent status with the Agency employing them. Many complaints were voiced against this system with allegations raised that the hearing examiners were "mere tools of the Agency" and

subservient to the Agency heads when issuing proposed findings of fact and recommendations concerning disputes with the agencies.

With the adoption of the Administrative Procedure Act, Congress provided that hearing examiners (today administrative law judges) be given independence and tenure within the existing Civil Service system. Congress made hearing examiners "a special class of semi-independent subordinate hearing officers" by vesting control of their compensation, promotion and tenure in the Civil Service Commission (now the U.S. Office of Personnel Management). This change removed hearing examiners from strict compliance with the Classification Act and transferred some of the Agency controlled functions (pay, promotion and tenure) to the Civil Service Commission. This reform was made to protect the American public by giving administrative law judges decisional independence. Congress also gave the Civil Service Commission oversight authority for the hearings system set out in the Administrative Procedure Act, which included providing an annual report to Congress and appointing needed advisory committees. [See *Ramspeck v. Federal Trial Examiners Conference, 345 U.S. 128 (1953)]*

Administrative law judges hear cases under the procedure described in the Administrative Procedure Act (APA). As stated above, the APA was enacted by Congress to protect the American people by ensuring that they receive full and fair hearings from the agencies of the U.S. government. Since the Social Security hearing system pre-dated the APA and the APA was modeled on the Social Security Act [see *Richardson v. Perales, 402 US 389 (1971)]*, claimants in Social Security hearings are entitled to the protections provided by both of these acts. In a memorandum dated January 9, 2001, then-Commissioner Kenneth S. Apfel stated that "the Social Security administration (SSA) has a long tradition, since the beginning of the Social Security programs during the 1930s, of providing the full measure of due process for people who apply for or who receive Social Security benefits…SSA always has supported the APA and is proud that the SSA hearing process has become the model under which all Federal agencies that hold hearings subject to the APA operate. SSA's hearing process provides the protections set forth in

the APA, and SSA's Administrative Law Judges are appointed in compliance with the provisions of the APA."

Flawed Strategies and Failed Tactics

Now however, SSA's longstanding commitment to the APA and the rights afforded disability claimants under its provision are being threatened. As bad as the backlog has become, in the long run the American people are better off that the workload be addressed, while adhering to the principles of the APA, than to short change American citizens with a rigged system in the name of technical efficiency.

Social Security hearings are not conducted as an adversary system. Social Security administrative law judges have multiple responsibilities [see *Sims v. Apfel, 530 US 103 (2000)]*. The Social Security administrative law judge wears the proverbial "three hats" which requires the judge to develop the record for the claimant, protect the interests of the government and render a decision based on the evidence in the hearing record. These responsibilities are more demanding than those presented to a judge in an adversarial hearing. During the past 60 to 70 years, Social Security cases have become more multifaceted and the nature of the hearing has undergone significant changes. Social Security disability cases now present the judge with complicated fact situations consisting of multiple medical impairments, conflicting medical opinions and a myriad of subjective complaints. The law has also become more intricate. The Agency bears major responsibility in this regard for not aggressively seeking judicial approvals for its own disability policies. Rather, SSA has simply allowed the Social Security Act's definition of disability to drift into a much broader concept than that originally enacted by Congress. Constantly in a reactive mode, the Agency issues numerous regulatory and policy requirements which make decision writing extremely complex and time consuming if done properly. Social Security fails to request the Department of Justice to take troublesome legal decisions to the U.S. Supreme court for final resolution (such as pain evaluation and the treating physician rule).

Social Security administrative law judges have continued to work hard and are issuing decisions at record levels. Administrative law judges are at a breaking point in regard to production. In fiscal year 2006, Social Security administrative law judges heard and decided over 550,000 cases. These cases have a large collective fiscal impact on the trust fund, with each disability case having an estimated value of at least $250,000.00 when Medicare costs are included. It is vital that an adjudication system that has served America well for nearly seventy years be preserved. Unless there is a swift infusion of resources from Congress and an accompanying elimination of rampant mismanagement within SSA's Office of Disability Adjudications and Review (ODAR), an outstanding administrative adjudicatory system will deteriorate into an unfair, centrally controlled process. It would be unconscionable to allow a burgeoning backlog to be used as an excuse to water down a credible adjudication program.

The Social Security Administration has not acknowledged the changes that have evolved in its disability hearing system and made adjustments to deal with the complexities presented by the present system. Claimants are now represented in approximately 80% of the cases and the Agency annually pays about one billion dollars in attorneys fees, which money is taken from past due claimant benefits. The Agency should "turn the table" and utilize this legal talent that appears in our hearing process and place an affirmative responsibility on the attorneys to develop the record for their clients and establish a *prima facie* claim for disability. The Agency needs to formalize its relationship with these attorneys and establish Rules of Practice and Procedure. Such rules, wherein both attorney and judge understand the professional rules that guide them, would go a long way in making the hearing process more efficient. AALJ has advocated Procedural Rules for years. Workable rules have been prepared but lie dormant within the labyrinth of SSA's bureaucracy.

The Social Security Administration has the responsibility to manage one of the largest adjudication systems in the world. However, SSA's Office of Disability Adjudication and Review is administered in a most inefficient, bureaucratic manner. The Social Security administrative hearing system has too many cases going forward to an

administrative hearing. At the last AALJ annual conference, one of our speakers was a Federal district court judge. During his remarks, he stated that in the current Federal district court system about 1% of the cases that are filed proceed to a trial. This is down from about 20% of the cases going to trial in the 1930s. This must be compared to the Social Security adjudication system, where about 90% or more of the Requests for Hearing continue on to a full administrative hearing. With a case load of this size and inelastic resources, any court system will reach its breaking point. This is what is happening to the Social Security adjudication system. Social Security must correct this deep flaw in our hearing system, design a process where the cases are completely developed prior to the administrative law judge hearing and the appropriate cases are concluded by either settlement or awarding benefits without a hearing. SSA would be best served by awarding benefits for all deserving claimants at the earliest possible time.

AALJ has always been willing to advise and assist the Agency in establishing a system to address the backlog in an efficient manner that is consistent with due process and the APA. As an example, the reform plan introduced by former Commissioner Barnhart, Disability Service Improvement Plan (DSI), attempted to address this problem by eliminating the "Reconsideration" step at the state Disability Determination Service (DDS) level and replacing it with a position known as the Federal Reviewing Official (FEDRO). This position was to be filled with an attorney who had the primary responsibility of developing the record for the administrative law judge hearing or awarding benefits "on the record" where appropriate. The Association of Administrative Law Judges worked cooperatively with Commissioner Barnhart in support of the DSI plan. It appeared that SSA had finally righted itself. DSI was on the correct track. DSI was a long term solution that was fully developed for testing and a phased in implementation. However, this reform was almost immediately abandoned by her successor without an adequate "pilot" to test its effectiveness. The rejection of DSI is a severe blow to addressing the backlog and it appears personal whim scuttled a worthwhile effort to attack the backlog.

A related comprehensive model that could be employed uses a "government representative". This position would be filled by an Agency attorney who has the authority to develop the medical evidence for the administrative law judge as well as to either settle the case or award benefits when appropriate without a hearing. The government representative could also appear at the administrative law judge hearing when the claimant is represented by a private attorney in order to explain any issues that need to be resolved in deciding the claim. In unrepresented cases the government representative would assist/advise the claimant in developing his/her case.

Yet another model provides for current Social Security staff attorneys to be assigned to the case dockets of a particular judge. The staff attorney would have the responsibility to develop the medical record in the case for hearing and recommend settlement or award of benefits to the administrative law judge, on the record, in appropriate cases without a hearing. AALJ supports a close working relationship between staff attorneys and individual ALJs.

Changes, such as those suggested, are needed because the Social Security Administration can no longer afford to conduct hearings before an administrative law judge in 90% of its cases. The current Commissioner of Social Security needs to step forward and display leadership in adopting DSI, or a similar long term solution to the backlog.

In fiscal 2006, Social Security administrative law judges issued determinations in over 550,000 cases. While a long term plan needs to be adopted, a legal system of its size cannot operate on a minimal budget. In many regards we "get what we pay for". The Social Security Administration, as well as its adjudication system, has been denied adequate funding over the last 5 years. During this period Congress appropriated $900 million less than the President requested, in his status quo budgets, for this Agency. Monetary shortfalls prevented the Agency from hiring needed administrative law judges and adequate support staff. A lack of funding also restrained the Agency in implementing long term changes such as the proposed FEDRO. In the longer term, the

DSI/FEDRO model would have reduced the number of cases coming before administrative law judges for hearing and thereby reduced the case backlog.

Actuarial information available at the Social Security Administration has made the Agency aware of the potential disability case backlog problem for decades. It has long been predicted that the baby boom generation would "hit" the Agency at the turn of the century and last for at least ten years. This problem has been exacerbated by a lack of adequate funding over the past five years which has prevented the hiring of needed support staff and administrative law judges to service the growing number of case receipts. This monetary shortfall has also prevented the Agency from making necessary reforms to meet the requirements of the changing Social Security hearing environment. The problems in the Social Security hearing process have been further aggravated by a series of reform initiatives that the Agency has attempted since the early 1990s. Each reform initiative ended in failure with the disability process emerging from the reform effort in a condition poorer than prior to the reform effort. We are now at a point where the disability case backlog has reached a crisis level and we can not tolerate more failed experiments. The past major Social Security disability reform initiatives include:

a. 1994 Plan For A New Disability Claim Process: The goal of this reform was to provide "world-class service". It contained an initiative to ensure the right decision was made the first time the claim was reviewed and introduced the Disability Claim Manager, Adjudication Officer, eliminated reconsideration and revised the disability decision methodology.
b. 1996 Process Unification: An attempt to have both the DDS and administrative law judges used the same standards (law and regulations) to adjudicate Social Security disability claims.
c. 1999 Hearing Process improvement: The reform was designed to make the Office of Hearings and Appeals a more efficient and productive organization by reducing processing times, improving quality and productivity, promoting individualized case management, and increasing employee job satisfaction.
d. 2003 Disability System Improvement: The goal was to improve the accuracy, consistency and timeliness of decision making throughout the disability

> determination process. The changes were to significantly reduce average disability determination processing time, increase decisional consistency and accuracy, and ensure the right determination or decision is made as early in the disability determination process as possible. This reform plan was a well planned comprehensive effort which attempted to address the main problems confronting the Social Security disability system. However, it was abandoned for "budgetary reasons" before adequate piloting was completed.

Five years ago in a report titled *Social Security Disability: Disappointing Results From SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention* (GAO-02-322 February 2002) the Government Accountability Office, in response to a request from the Chairman of the Subcommittee on Social Security, reviewed five "initiatives to improve SSA's disability claims process":

The Disability Claim Manager Initiative – November 1999 – June 2001

The Prototype – October 1999 to present (10 states)

The Hearing Process Improvement Initiative – 1999

The Appeals Council Process Improvement Initiative – 2000

The Quality Assurance Initiative (Redesign) – 1994

The authors concluded: "As summarized [in this report], the improvements realized though their implementation have, in general, been disappointing." *Id.* page 2. Although "Immediate Action" was warranted five years ago - The results of these Initiatives today could only be categorized as, in general, very disappointing.

Numerous newspaper articles have recently been written on the Social Security disability case backlog. Many of these articles have stated that the claimants have been waiting several years for a determination from the Social Security Administration. This statement is not completely accurate. In fact, each claimant has had two prior Agency determinations on his/her claim (DDS initial determination and Reconsideration) before the case reached the administrative law judge hearing level. Tens of thousands of claimants are awarded benefits early in the process. The problem is that such decisions

are uneven and to an extent unpredictable. A better job of screening and deciding favorable claims earlier in the process is needed. Too many worthy claimants must endure the long wait for an adjudication hearing. At an administrative law judge hearing the claimant appears in person, can be represented by an attorney, presents oral testimony, introduces written evidence, rebuts Agency evidence against the claim and receives a written decision from an independent adjudicator based on the evidence in the hearing record. The administrative law judge hearing model has worked well for SSA but the administrative law judge hearing should be reserved for the truly difficult claims of disability. All too often a deserving claimant is frustrated by an intolerable wait for a hearing. The administrative law judge likewise is frustrated in rendering a favorable decision that should have been paid two or three years earlier. No one feels good under those circumstances.

Preparing a case for a disability hearing is labor intensive work; each case is assembled (pulled) by a staff person by assembling and marking the exhibits together with other administrative tasks such as arranging for witnesses and mailing the notice for hearing. An administrative law judge then hears each case, one case at a time. The steps taken by an administrative law judge in the process include: an initial review and analysis of the file; determining whether the claim can be paid on the record without a hearing; determining whether or not there is sufficient evidence and ordering additional evidence when needed; determining what expert witnesses are necessary for a hearing; reviewing any additional evidence submitted after an initial review; handling any pre-hearing issues; conducting the hearing; making a decision after the hearing; writing instructions to an attorney or paralegal; editing the draft decision; and finally signing the decision.

In a 1994 reform initiative known as the *Plan For A New Disability Claim Process,* the Agency completed a time line for a disability claim at all levels of the disability process, including the administrative law judge hearing. The study concluded that an administrative law judge could reasonably be expected to devote from 3 hours and 10 minutes to 7 hours on a case. This included time devoted by a judge from the initial pre-hearing review of the file to the final review and signing of the decision. When

considering the work time available in an average month (4 1/3 weeks), a reasonable case disposition rate for a judge, based on this Agency study, would be in the range of 24.7 to 54.7 cases per month or an average of 39.7. In FY 2006 administrative law judges at Social Security issued decisions in over 550,000 cases with an average monthly disposition rate of over 40 cases per judge. These production statistics clearly establish that the administrative law judges at Social Security are working hard and are issuing decisions at average levels which are above the Agency's own expectations. It is also important to note, that while a case may be in ODAR for a year or more, the administrative law judge probably has the case in his/her possession for a period of only 3 to 7 hours. We suggest that it is not excessive to devote up to 7 hours to a claim that may cost the Social Security trust fund an average of $250,000.00 including Medicare benefits.

ASSOCIATION OF ADMINISTRATIVE LAW JUDGES RECOMMENDATIONS

We have specific recommendations that will in our opinion assist in reducing the Social Security disability case backlog and will reduce the period of time that the American people must wait for a Social Security hearing. These recommendations are:

I. SHORT TERM:

Resources: Funding is the life blood of all programs in both the public and private sectors. During 2003-2007 the Congress has appropriated $900 million less than the President had requested in his status quo budgets for Social Security. This lack of funding has had a profound effect on the capacity of the Agency to hire sufficient numbers of administrative law judges and adequate support staff to service the increasing number of Requests for Hearings that are being filed with ODAR, the adjudication component of SSA. Further, the Agency has not been able to continue with the disability reforms begun by former Commissioner Barnhart. The disability case backlog is now at critical levels without either sufficient administrative law judges or support personnel to

meet the needs of the American people. With the disbanding of DSI, the Agency has no effective plan to address this problem and it has instead returned to using a disability process that has been troubled for 20 years. At best, current SSA efforts to address the backlog amount to "tinkering around the edges". Some much publicized "initiatives to reduce the backlog" in fact cannot have any significant effect on reducing the backlog. Nonetheless the Social Security Public Relations machine puts ample "spin" on them to convince Congress and the public that much is being done to reduce the backlog. The result continues to be long case processing times and an unnecessary hardship for those Americans who find themselves in need of disability benefits.

Additional Staff and Administrative Law Judges: To efficiently meet the needs of the present and projected Social Security disability case backlog, the Agency must first hire sufficient additional clerical staff and decision writers to support the judges in performing their judicial function. There is not a hearing office in the country that is not short of properly trained and available support staff. After that the Agency needs to hire at least 150 to 200 new administrative law judges. This is in addition to the administrative law judges needed to fill the normal attrition due to transfers, retirements, and death. This increase will bring the SSA administrative law judge Corps to strength of 1250 to 1300 judges.

Senior Judges: The Social Security Administration should use senior judges from the OPM senior judge register (5 CFR Section 930.216) to supplement its need for additional administrative law judges. Using senior judges will provide flexibility for the administrative law judge corps and the Agency can use the services of senior judges on an "as needed basis". Senior judges are already highly experienced in Social Security disability law and they are familiar with the Social Security hearing system. This will permit them to start working on disability cases without any "learning curve". Senior judges cost the Agency less money, as compared to new judges hired from the OPM register, and they are not counted against the authorized personnel total until they are assigned cases. Further, senior judges do not require personal offices in the hearing office because they can work at home. They can hear their cases at permanent remote

hearing sites and will not require the use of hearing rooms in the principal hearing office. These factors will result in cost savings for the Agency.

Organization of Support Staff: As previously indicated, the lack of funding has prevented the Agency from hiring sufficient support staff. This has created a situation where additional support staff is now desperately needed. Under the current office staff pooling system, staff employees are not responsible for the work of any particular judge (a vestige of the failed HPI initiative) and are not accountable for their work products. This creates an inefficient system in which administrative law judges are responsible for the entire hearing process but without authority to make the process function properly. We constantly see references to the productivity of administrative law judges, but reference is virtually never made to the productivity of support staff. Yet it is abundantly clear that a judge cannot be productive without efficient support staff. This deficiency can be corrected by assigning staff personnel to work directly on the cases of a particular administrative law judge. The direct assignment to a docket of cases will result in identifying the staff person responsible for the completion of case processing tasks in a timely fashion. It is the responsibility of SSA management to require staff personnel to perform all the requirements in their job descriptions as well as to provide meaningful training to improve work skills. The ratio of support staff to administrative law judge should be maintained at a level of at least 4 1/2 staff persons for each administrative law judge. The complement should include 2 1/2 attorneys and 2 staff persons for each administrative law judge.

This recommended support ratio does not include additional supervisors, administrative staff and technical support actually needed to operate each office. The number of supervisory positions in each hearing office increased with the introduction of HPI. When HPI was abandoned, the supervisory structure remained in place. During this time of scarce resources, precious personnel should not be diverted to supervisory or management positions. Personnel should instead be assigned to positions in the hearing offices that are directly related to case work and the issuing of decisions. This is the type of effort needed to reduce the case backlog. We do not need more managers for fewer employees.

Regional Offices: The Social Security Administration can no longer afford the luxury of Regional Hearing Offices within ODAR. These offices are based on an obsolete business model which is part of a past era before networked computers providing instant communication between offices. The Agency should close its ODAR Regional offices and assign the personnel from these offices to local hearing offices where they can devote their time to working on case files in support of the hearing process. In this time of very tight budgets, the Agency can not be spending its resources on functions that do not contribute directly to hearing and deciding cases. Too many precious resources are wasted as ODAR Regional Offices become bloated bureaucracies. We recommend that the responsibilities of the Office of the Chief Judge be enhanced and that the Regional Office functions be centralized and placed within the Office of the Chief Judge. With the advance of technology and electronic communications, central management authority is, in our opinion, a more efficient and effective method of managing the hearing function. This change will provide for a more efficient use of resources by mandating that most Agency adjudication component resources be used for case processing. If needed, one hearing office chief judge in each region can be elevated to the status of senior judge to serve as the representative for the Office of the Chief Judge in the region. An added benefit will be to transfer expensive brick and mortar costs to hearing facilities and staff needs.

Law School Student Interns: The critical deficiency in decision writing can be partially addressed by initiating a program to hire first and second year law students. The law student interns would be part-time during the school year and full time during the summer. This program will give Social Security a source of bright law school students who are eager to learn about the Social Security disability system. These students, with law school training, will improve the capacity of the Agency to issue legally sufficient decisions and will address some of the problems that we are currently experiencing with poor quality decision writing. The Department of Education may have programs that will pay for some of the costs of this initiative.

Poor decision writing: Administrative law judges currently devote too much time correcting poorly drafted decisions in an attempt to bring them within minimally acceptable standards. This takes time from administrative law judges that could be used for working on cases. This problem can be addressed by improving the quality of decision writing by replacing all but the most skilled paralegal writers with attorney writers. Attorneys are trained in legal writing and will prepare written decisions for administrative law judges that contain stronger legal analysis and improved legal reasoning needed to meet the requirements of the Federal courts.

Rules of Practice and Procedure: The Social Security Administration should adopt comprehensive rules of practice and procedure designed to promote efficiency in the hearing process. At our urging, the Agency adopted some procedural rules with the implementation of Disability Service Improvement, a reform plan implemented by past Commissioner Barnhart. However, we believe that additional procedural rules are necessary, except for pro se claimants, to maximize our efficiency. A Joint Rules Committee, consisting of judges from both the AALJ and the Agency, did recommend comprehensive procedural rules to the Agency, but they have not been adopted. We recommend that the Agency adopt rules which place more responsibility for the conduct of the hearing on the claimant's representative. The rules should set forth the Agency procedure for Social Security hearings. This reform will place the representative's bar on notice of the requirements of a Social Security hearing and provide tools for the administrative law judge to manage and expedite the hearing process. To implement this reform the Joint Rules Committee should be reconvened and its proposed rules prepared for Agency implementation.

Change Appeals Council's policy on "no-show" dismissals: The Social Security Administration must change the policy of Appeals Council on "no-show" dismissals. Currently, the Appeals Council does not generally support "no-show" dismissal orders issued by administrative law judges. A "no-show" dismissal order is issued by an administrative law judge when a claimant fails to appear at a scheduled hearing, without providing good cause, and after being provided notice of the time, date, and place of the

hearing. These remands by the Appeals Council result in additional work for staff to reschedule hearings, sometimes on multiple occasions. We believe that when a claimant neither appears for the hearing nor communicates an inability to appear, the case should be dismissed, absent a showing of "good cause". This change will help reduce the case backlog by not requiring cases be scheduled for hearing on multiple occasions. When a case is scheduled for hearing on multiple occasions, the additional hearing dates are taking the place of other claimants who could have had their cases heard on that day. Claimant's rights are preserved since they can file a new application for benefits and/or, when good cause is shown, seek reopening of the dismissed case.

Appeals Council review: Appeals Council review should be limited to issues raised and preserved by the claimant at the hearing. This is the customary standard used in the American legal system. It is based on the principle that the "finder of fact", at the trial level, should be given the opportunity to cure any alleged error before it is raised at the appellate level on review. Remands should be limited to legal error with full use of the "harmless error rule", i.e., do not remand if correcting the error would not affect the outcome. Further, the Appeals Council should be required to strictly follow a substantial evidence rule for review of administrative law judge cases on appeal. The Agency has the authority to make these changes by regulatory change. The Social Security Administration should adopt a policy that requires the Appeals Council to reverse cases, when appropriate, instead of remanding the case to the administrative law judge for another hearing. This change will provide an earlier decision for the claimant and will help reduce the case backlog. This policy should be used in all cases where the Appeals Council is of the opinion that the claim should be granted. Not adopting these policies will only increase the case backlog by requiring a hearing in cases where none is needed because some component of the Agency has already made a determination based on the merits of the case. Each time the Appeals Council makes a "needless remand" of a case, another case is added to our case backlog which could have been decided at the Appeal Council level and the rescheduled hearing takes the place of another claimant who would have had his/her case heard at that time.

II. LONG TERM:

The Agency must improve the fundamental structure of the Social Security disability hearing system. Former Commissioner Barnhart devoted considerable time and effort, during the course of her tenure as Commissioner, to reforming the Social Security Disability process. The proposal was known as the Disability System Improvement Plan (DSI). It was implemented by regulatory change with a pilot type "roll out" in the Boston Region (Region I). However, DSI has now been mostly abandoned, allegedly because of "budgetary considerations", without any other reform plan taking its place. This leaves us functioning under a Social Security disability process that has been discredited over the past 20 years with many failed reform efforts. However, the basic fact remains that the Social Security disability process must be reformed to address the changes that currently confront the disability hearing system. As stated hereinabove, the Social Security disability system must adapt to meet the challenges of about 80% of the claimants being represented at the hearing, increasing numbers of Requests for Hearing, more complex medical issues and a more developed body of disability law. The Social Security disability system can no longer afford the luxury of taking most of its cases to hearing. The system must provide a process in which settling cases without a hearing as is the general rule in other adjudicatory systems. Claimants' representatives should be treated as "officers of the court" and be given the responsibility of producing all evidence in the case. The administrative law judge hearing must be more structured with rules of practice and procedure to provide adequate notice to claimants and their representatives.

The long-range reform plan of the Agency should include the following elements:

Reduce the number of administrative law judge hearings: As stated hereinabove, the Social Security administrative hearing system has too many cases going to an administrative hearing. The Social Security Administration is one of the largest claims adjudication systems in the world, but it is administered like a social work Agency. In the Social Security adjudication system about 90% or more of the Requests for Hearing

continue on to an administrative hearing. Social Security must correct this serious flaw in its process and develop a system where the cases are completely developed prior to the administrative law judge hearing and the appropriate cases are concluded by either settlement or awarding benefits without a hearing.

The reform plan introduced by former Commissioner Barnhart (DSI) attempted to address this problem by eliminating "Reconsideration" at the state DDS level and replacing it with a position known as the "FEDRO". This position was to be filled with an attorney who had the primary responsibility of developing the record for the administrative law judge hearing and awarding benefit "on the record" where appropriate. However, this reform has been abandoned (allegedly because of budgetary considerations) without an adequate "pilot" to test its effectiveness. Another model could be employed which uses a "government representative". This position would be filled by an attorney who has the authority to develop the medical evidence for the record and either settle the case or award benefits when appropriate without a hearing. The government representative could also appear at the administrative law judge hearing to explain the position of the government in the case. In unrepresented cases, the government representative could advise/assist the claimant in developing his/her case for hearing. Another model could provide for staff attorneys to be assigned to the case dockets of a particular judge. The staff attorney would have the responsibility to develop the medical record in the case for hearing or recommend awarding benefits on the record. Changes such as these are needed, because the Social Security Administration can no longer afford the luxury of trying every case before an administrative law judge.

Improve the Social Security administrative law judge hearing: The administrative law judge hearing of the Social Security Administration must be improved and made more structured. This change can be accomplished by the Agency adopting rules of practice and procedure for the Social Security hearing. This change will provide both claimants and their representatives notice of the requirements of the Social Security hearing process. This change will expedite the hearing which will favorably impact the case backlog. A Joint Rules Committee (consisting of both Agency and AALJ

representatives) prepared proposed rules of procedure for the Social Security hearing. The rules were presented to the prior Commissioner for review, but the complete reform was not adopted by the Agency. Instead, some of the rules were included in the DSI reform plan and we understand that they will be retained in the Social Security regulations.

We recommend that the Joint Rules Committee be reconvened to prepare rules of practice and procedure for the Social Security hearing. These procedural rules can be completed in a relatively short time because much of the work has been done and they do not require notice and comment under the Administrative Procedure Act.

Claimants' representatives: The Agency should promulgate meaningful rules of practice for claimants' representatives. The rules should regulate conduct and ensure professional competency for the representatives. Claimants' representatives should be considered to be "officers of the court", in the manner customary in the American judicial system. The objective of the Agency should be to take advantage of this pool of skilled talent provided by claimants' representatives. In this capacity, the claimants' representatives should have the responsibility to provide all relevant and material evidence for the hearing in support of the claimant's claim. The representatives should also have the responsibility to provide evidence that is in existence for the claim and which has been requested by the administrative law judge.

Appeals Council: The Social Security Appeals Council has a history of not functioning well. In fact, several years ago the Administrative Conference of the United States (ACUS) recommended that it either be improved or abolished. We recommend that since the Agency has not improved the quality of the operations and decision making process of the Appeals Council, that it be abolished as recommended by ACUS. We recommend that the Disability Reform Board (DRB), which is part of the DSI reforms, be established to replace the Appeals Council. The DRB should have limited jurisdiction as described in the DSI reforms, with most appeals from administrative law judge decisions going directly to the Federal district courts.

Improve Agency management: The number of managers throughout ODAR should be reduced with the personnel used for positions dedicated to case processing functions. The managers that are retained need to be better trained. The obsessive requirements put on local managers to report statistical data should be reduced so their time can be devoted to training and dealing with local hearing office employee personnel issues. Too much of a local manager's time is consumed in reporting the same data on a repetitive basis throughout each month. To add insult to this absurdity, all these numbers are available to upper level management at the click of their computer.

Prospective closed periods: The Social Security Administration should amend its disability regulations to provide for prospective closed periods. This change will not affect a large number of cases, but will allow Agency adjudicators to grant a closed period of disability that is beyond the hearing date. The change will be useful in cases, such as complicated fractures, which will probably be resolved with time while the claimant meets the standard for disability at the time of the hearing. The change will provide efficiencies for the Agency, because it will permit the administrative law judge to award the disability benefits for a fixed period ending after the hearing date. At the end of the fixed period, the period of disability will automatically end and no CDR review is needed. If for some reason the disabling impairment has not improved, it will be the responsibility of the claimant to show that the period of disability continues.

AGENCY SHORT TERM PROPOSALS

The short term proposals that the Agency has announced to address the disability case backlog are not sufficient to make a significant impact on the number of pending cases.

"Streamlined" case files: This is a highly misguided proposal. It is a euphemism for producing a sloppy work product which actually is more costly to use. "Streamlined" file assembly means that the medical evidence file used at the administrative law judge hearing does not have the exhibits marked separately, duplicate and irrelevant materials

have not been removed from the file, the exhibits are not listed chronologically, and an exhibit list has not been prepared for the case. As a result, this ill-conceived proposal relieves support staff from its file preparation responsibility and transfers it to, first, the judge, then to the medical expert and later to the decision writer as each has to read through the file making notes on where to find key pages. Overall the scheme transfers the burden from one staff person to several others, all at a higher pay grade, who each have to do the work that was saved by the staff person.

In addition to inefficiencies and a defective work product, some of our judges who have experimented with using "streamlined files" have reported that, because it takes longer to review a case file in this condition, they have to schedule fewer cases for hearing which adversely affects reducing the backlog.

Other questions arise: Whether this type of file provides the claimant with adequate notice of the evidence upon which their claim was denied, as required by constitutional due process and the Administrative Procedure Act, and whether the Federal courts will accept this sloppy work product on appeal. This initiative is a prime example of a misguided, entrenched headquarters management that is disconnected from the work in the field.

Centralized printing and mailing: The Agency is suggesting that implementing a centralized printing and mailing system will result in "large work year savings". This assertion is open to considerable doubt. We know that the hearing and review component of the Social Security Administration has a long history of implementing experiments that involve centralized work systems. In the past these experiments have involved centralized "case pulling" centers and centralized decision writing pools. Each time centralized programs of this type were attempted, they resulted in complete failure. Even the centralized scheduling of administrative law judge hearings within a single hearing office has failed miserably on many occasions. With the large number of cases that we hear each year (over 550,000 cases), any plan to centralize our work by sending it outside the hearing office for clerical work is a clear plan for confusion and delay. This plan will

result in many hearings being postponed or continued because of the failure to send timely notices of hearing or for the failure to schedule needed expert witnesses. Central planning will only result in "bottlenecks" in the system and in many hearings being postponed. These postponements will cause a need for a second hearing date for each case affected, adding to the case backlog.

National Hearing Center: Establishing a large center hearing center will lead to failure for many of the same reasons past central planning by the Agency has failed (as stated above). In the past, information provided by the Agency has consistently asserted that large hearing offices (12 to 15 judges) are not as efficient as smaller hearing offices (5 judges or less). It is now reported that the Agency is planning to open a national hearing office which could contain up to 50 administrative law judges plus support staff. A hearing office of this size will require considerable floor space and will be extremely difficult to manage. Creating a hearing office of this size is contrary to the acquired knowledge of this Agency and it will result in inefficiencies, confusion and delay. In our opinion, this type of planning is not an appropriate use of public funds and it will not have any impact on reducing the case backlog.

Not much is known about the details of the National Hearing Center, but we are deeply concerned with the recent announcement of Commissioner Astrue regarding the establishment of the National Hearing Center. It appears to be based on the existing Medicare hearing system which will restrict in-person hearings for Social Security claimants. Our concern is further exacerbated by the announcement of Commissioner Astrue that he plans to close all temporary remote hearing sites with the existing service to be replaced by electronic hearings. There are approximately 200 of these sites in small cities and towns where judges have until now conducted in-person hearings near claimant's homes. Eliminating these leaves the clear implication that these hearings will be conducted by telephone because there will be no Agency video equipment in the remote area. In fact, the Social Security Administration is now, for the first time, proposing conducting telephonic hearings. 72 F.R. 61218, 61220 and 61230 (October 29, 2007) (Proposed section 404.936(c), Title 20). The language of the proposed regulation

allows for telephonic hearings "under certain extraordinary circumstances." Two conditions must be met: (i) Your appearance in person is not possible; and (ii) video teleconference is not possible. The administrative law judge may direct that all witnesses attend telephonically. The denial of an in-person hearing to Social Security claimants by substituting either video equipment or telephone raises a serious question of its legality and compatibility with the due process requirements of both the United States Constitution and the Administrative Procedure Act.

Currently, litigation brought by AARP and other parties, is pending to strike down the Medicare rules that restrict in-person hearings, *Webber v. McClellan,* (2:05-CV-04219-NVW (D.AZ)). This case was dismissed from the District Court on procedural grounds. However, the case has now been filed before the appropriate administrative Agency where the litigation is presently pending. It is unclear why, with litigation already pending regarding such hearings at Medicare, Commissioner Astrue wants to adopt telephone hearings for Social Security hearings.

Based on the significant legal questions raised by the denial of in-person hearings to Social Security claimants, we recommend Congressional hearings to allow Commissioner Astrue to explain his vision and plans for the National Hearing Center. The hearings should further investigate the legal sufficiency of this proposal, explore its impact on Social Security claimants and determine its effect on Social Security employees.

Administrative law judges issuing 500 to 700 cases a year: This is one of the most questionable of the Agency propositions. We too find it most painful that many Americans have been disadvantaged by long delays in their disability cases because of the inadequacy of Congressional funding levels, for the Agency, in prior years. On a positive note, however, we note that individual administrative law judge productivity has increased every year over the last decade and is presently at historic highs. However, that level of productivity cannot further increase indefinitely as we are producing, on average, over 2 cases per day. As discussed above, SSA's 1994 study of the time required for an administrative law judge to review, hear and decide cases revealed that an administrative

law judge would spend approximately 3 hours to 7 hours on a case and could efficiently and effectively produce from 24.7 to 54.7 cases each month or 300 to 650 cases per year an average of 475 per year, almost precisely what the administrative law judges averaged in FY 2006. The Agency's argument is that since the average number of cases produced by judges now is 480 per year it is a very short step to 500. This fails to understand the difference between average and minimum. The Agency is proposing an increase in the average from 480 to 600, an increase of twenty-five percent.

In view of the importance of these cases to the American people and the cost to the trust fund (over $250,000 per case including Medicare costs), we again respectfully submit that an average investment of 3 to 7 hours per case per judge, as the Agency itself concluded in its study, represents a reasonable cost-benefit on administrative law judge productivity. Disability hearings deal with the lives of real people, not inanimate objects on an assembly line. Each case deserves adequate time and attention.

Senior Attorney Program: The Association of Administrative Law Judges has strong concern with renewing the senior attorney program in the Social Security Administration. This program is being proposed to address the disability case backlog problem. The senior attorney program is not a new concept. It was initiated about 12 years ago to address another case backlog problem existing at that time. The experiment was not successful in that it proved to be a "one-sided" process with the only mission being to "pay cases". It also proved to be an expensive process which did not receive high accuracy ratings from the Agency's Quality Assurance Review (QAR) process.

Another fault with this process arises because no memorandum is prepared for the file to document the work performed by the attorney, no other attempt is made to record the attorney's impressions or opinions as to any aspects (strengths or weakness) of the case and no work is done to develop the case for hearing. Each of these missing elements is information and work product which the administrative law judge would use in preparing the case for hearing. Under this process then, the Agency derives no benefit from the

skilled attorney review of the case if the claim is not paid. This defect results in a loss of work hours with no value added to the case.

A third fault is that additional senior attorneys are removed from decision writing duties without being replaced by other attorney decision writers, resulting in a significant loss in the quantity of decisions and the quality of the decision received by administrative law judges. The administrative law judges will be required to devote more time to editing and writing decisions and less time to hearing cases - another adverse impact on the case backlog.

A form of the past senior attorney program already exists in the Agency's hearing offices. The only difference being, that under the current program an administrative law judge is required to sign the decision recommended by the senior attorney. This is a valuable safeguard because it provides a review and "feed back" system to check on the accuracy of the decision recommended by the senior attorney.

The AALJ recommends that the existing senior attorney program be expanded to include more attorneys and that the senior attorneys be assigned to work on cases of a specific administrative law judge. Each administrative law judge should have several senior attorneys assigned to work on the judge's case docket to develop cases for hearing, recommend cases for payment "on the record" and write a limited number of decisions. This system will take advantage of the full scope of the talent, skill and knowledge that senior attorneys have to offer and it will utilize all information ascertained by the attorney in the review of the case. Information provided by the senior attorney will be recorded and used by the administrative law judge during the course of the subsequent hearing in the case.

Office of Personnel Management: The Office of Personnel Management (OPM) has not managed and regulated the administrative law judge function in the Federal government as envisioned by the Congress when this responsibility was given to the Civil Service Commission by the enactment of the Administrative Procedure Act. The

oversight of the administrative law judge function by OPM has been in a state of decline for the past 15 years. The oversight by OPM finally "hit the bottom" when it abolished the Office of Administrative Law Judges about 6 years ago. This office had been in existence in OPM for many years and at one time was headed by an administrative law judge. It was through this office that OPM administered the administrative law judge program in the Federal government, including maintaining the hiring register. When OPM abolished this office it dispersed the responsibilities of the office throughout the Agency on a functional basis. There is now no office or person in OPM, that we know of, who is responsible for oversight of the administrative law judge function in the Federal government. This is of great importance, because the Administrative Procedure Act gave OPM an oversight and regulatory responsibility over administrative law judges that it does not have for other Federal employees. With this office abolished, there is no effective system in OPM to carry out this vital function. This responsibility was entrusted to OPM by the Congress to protect the American public by ensuring the decisional independence of administrative law judges. Congress in enacting the APA was determined to provide a full and fair hearing for the American people free from undue Agency influence over the decision maker judge. OPM has breached this trust. As an example of the importance of the OPM management of the administrative law judge process, Congress required OPM to file an annual report on the state of the administrative law judge function in the Federal government.

We agree with a statement of the Social Security Advisory Board (SSAB), that "the fact that a new ALJ register has not yet been established in and of itself raises questions about whether the ALJ recruitment process, as currently constituted, serves the best interests of the Social Security program and the public who look to the program for adjudication that is both impartial and efficient." To paraphrase another SSAB conclusion, OPM has shown that it is incapable of providing the American public with the "best qualified" administrative law judges. We recommend that this program be reformed and that the functions formerly performed by the OPM Office of Administrative Law Judges be removed from OPM and placed in a separate "Administrative Law Judge Conference of the United States" modeled after the Judicial Conference of the United States which

administers the U.S. Federal courts. Legislation providing for this change was introduced in the 106th Congress (H.R. 5177). The Administrative Law Judge Conference was to be headed by a Chief Administrative Law Judge who would administer and oversee the administrative law judge function in the Federal government. This reform is needed to properly and effectively administer the administrative law judge function in the Federal government.

We continue to pledge our full support to Commissioner Astrue in addressing the disability case backlog. We continue to offer the benefit of our many years' experience to work with him to develop programs based on sound legal principles and good public policy.

Respectfully submitted,

Ronald G. Bernoski
Association of Administrative Law Judges

Chairman MCNULTY. Thank you very much. We have been joined by Congressman Pomeroy.

Mr. Hill.

STATEMENT OF JAMES HILL, PRESIDENT, CHAPTER 224, NATIONAL TREASURY EMPLOYEES UNION, CLEVELAND, OHIO

Mr. HILL. Good morning. A familiar smiling face is missing today. Stephanie Tubbs Jones was my representative in Congress. We have all lost a friend. Please accept my deepest sympathies.

I want to thank you, Mr. Chairman, and the other Members of this Subcommittee for inviting me to testify on this very important topic.

I have worked as an attorney advisor in the Cleveland, Ohio hearing office for 25 years. I am also the President of Chapter 224 of the National Treasury Employees Union, that represents attorney advisors and other staff members in approximately 110 ODAR hearing and regional offices across the United States.

We are here today to talk about ODAR hearing offices. First, it must be understood that a vast majority of hearing office employees are very dedicated workers. These employees are not the cause of the backlog.

There are four basic causes of the backlog. One, too few employees to efficiently process the workload. Two, poor managerial decisions. Three, an inefficient adjudicatory process, and four, the misuse of skills and talents of hearing office personnel.

The solution to the first cause is obvious. Hire more employees. Specifically, ODAR must increase the number of clerical workers and attorney advisors. Without sufficient staff, hearing offices will be unable to effectively address their workload.

Unfortunately, SSA has never recognized the professionalism and competence of hearing office staff and their contribution to an efficient adjudication process.

Additionally, the Agency has a history of assuming that untried technological improvements can replace staff. SSA automation initiatives rarely if ever come in on time and even more rarely deliver what is promised.

No significant progress can be made until hearing offices are fully and properly staffed. ODAR needs to hire at least 400 new attorney advisors.

SSA has a long history of poor managerial decisions regarding the disability process. These decisions include terminating the Senior Attorney Program in 2000 which eliminated the backlog in the nineties, and the pursuit of expensive, expansive and ineffective initiatives such as the disability process redesign, HPI, DSI, and others that have cost the taxpayers millions and have produced virtually nothing of value.

Management has also instituted a number of ill conceived and ill advised quick fixes whose long term effects have been disastrous to productivity.

The inefficient adjudicatory process in today's hearing offices is primarily the result of lack of sufficient staff and the mis-use of the talents and skills of hearing office personnel.

For example, the lack of staff has resulted in eliminating or degrading pre-hearing activities such as preparing case summaries

and "pulling". While this saves clerical staff time, it significantly increases the time that the more highly paid paralegals, attorneys and ALJs must spend at later stages of the adjudication process.

The lack of a sufficient number of attorney advisors has shifted some of the pre-hearing screening and decision writing workloads to ALJs. ALJs should be permitted to perform their jobs but not required to perform everybody else's.

Finally, there is no need for ALJs to adjudicate each and every case at ODAR hearing offices. In fiscal year 2008, ODAR will process approximately 95,000 dismissals and approximately 95,000 on the record decisions. Most of the dismissals and all of the on the record decisions do not require ALJ involvement.

Commissioner Astrue has initiated a limited temporary program called the "Attorney Adjudicator Program." It should be expanded and made permanent. Despite its limited nature and less than full support by ODAR management, it has been a success and will produce approximately 25,000 on-the-record decisions this year with an accuracy rate of 95 to 97 percent.

In order to maximize adjudicatory capacity of hearing offices, the number of senior attorneys should be increased to 700. The senior attorneys can then concentrate on adjudicating cases that can be resolved on the record rather than drafting ALJ decisions. This could produce as many as 150,000 on the record decisions a year without adversely effecting ALJ productivity.

The backlog could be eliminated before the end of fiscal year 2011 and done so in a fiscally prudent manner.

Thank you.

[The prepared statement of James Hill follows:]

Statement of James Hill, President, Chapter 224, National Treasury Employees Union, Cleveland, Ohio

Good Morning Mr. Chairman and members of the subcommittee. My name is James Hill. I have worked as an Attorney-Adviser in the Office of Disability Adjudication and Review (formerly the Office of Hearings and Appeals) for over 25 years. I am also the President of Chapter 224 of the National Treasury Employees Union (NTEU) that represents Attorney-Advisers and other staff members in approximately 110 Office of Disability Adjudication and Review (ODAR) Hearing and Regional Offices across the United States.

Let me also mention that I am a resident of the 11th congressional district of Ohio. For many years I was deeply honored to be represented in Congress by the late Stephanie Tubbs Jones. She was an outstanding member of the House and ably served on this subcommittee. I, my family and the members of my union mourn her passing.

Disability adjudication at SSA has a troubled history. The backlog problems of the SSA disability program began in the early 1990s when the cases pending at the then Office of Hearings and Appeals (OHA) hearing offices rose from approximately 180,000 in 1991 to approximately 550,000 in mid-1995. At the end of FY 1999 the number of cases pending at OHA had been reduced to slightly over 311,000 primarily as the result of over 220,000 decisions issued by Senior Attorneys in addition to the then record level of productivity by ALJs. In fact by the end of FY 1999, there was no longer an appreciable backlog, since 300,000 cases was deemed to be the optimum number of pending cases for efficient adjudication.[1] The Hearings Process Improvement Plan (HPI) ended the Senior Attorney Program. The demise of the Senior Attorney Program and the rise of the backlog were not coincidental and are

[1] GAO in its report entitled *Social Security Disability, Better Planning, Management, and Evaluation Could Help Address Backlogs* dated December 7, 2007 reaffirmed that SSA's target pending at the hearings level was 300,000 cases. More recently, the Agency has increased the target pending level to 400,000 reducing the "backlog" but leaving the pending level, average processing time, average age of pending, and the poor level of service to the public unaffected.

illustrative of the management deficiencies that have plagued the disability program. Since that time the number of cases pending at ODAR has risen to over 767,000 cases.

The size of the disability backlog (now over 467,000 cases) does not in and of itself illuminate the degree of suffering endured by our claimants. Because of this enormous backlog, the average age of cases pending at the hearings level increased from approximately 160 days in FY 2000 to the current 316 days. Average processing times at the hearings level have increased from approximately 260 days at the beginning of FY 2000 to the current 532 days. Even the 532 day figure is somewhat misleading. The average processing time for a case that has an ALJ hearing is 588 days. These unconscionable numbers do not include the time the case was at the State Agency for an initial and reconsideration determination. Further darkening the picture is the specter of significantly increased receipts resulting from the aging "baby boomers" and a less than robust national economy. Currently, SSA disability adjudication is unconscionably slow causing untold harm to some of the most vulnerable members of society. Unless decisive action is taken now, the dysfunction of the disability system may lead to the public's loss of faith in Social Security.

Currently, it is in vogue to blame low producing Administrative Law Judges (ALJs) for the backlog. This is merely scapegoating. Further, given the recent statement by Office of the Inspector General (OIG) that the higher producing ALJs tend also to pay more cases, it is not unreasonable to assume that unreasonably high ALJ productivity will come at the price of stewardship of the trust fund. The Congress is also blamed for persistently underfunding the Social Security Administration as well as adding a number of non-core workloads diverting assets from its traditional programs. While SSA has been underfunded, it is under an absolute duty to use that funding as efficiently as possible. SSA has consistently failed to efficiently apply the resources it has at its command to effectively manage the disability adjudication process. The Government Accountability Office (GAO) in a report entitled *Better Planning, Management, and Evaluation Could Help Address Backlogs* published in December 2007 stated: ". . . management weaknesses as evidenced by a number of initiatives that were not successfully implemented have limited SSA's ability to remedy the backlog."

Because of a persistent lack of vision and leadership in its administration of the disability process, SSA has failed to prevent or reduce the backlog. Previous Commissioners have indulged in a number of expensive and ineffective initiatives that were intended to improve the disability system. The Disability Process Redesign of the mid-1990's never got off the ground and the Hearing Process Improvement (HPI) of the early 2000's is one of the prime causes of today's backlog. Finally, the Disability Improvement Initiative (DSI) has been suspended. While each of these programs alleged that they were correcting fundamental flaws in the adjudication process, each was more concerned with form than function. As a result each of these plans cost the taxpayers millions and produced virtually nothing of value.

The process at the hearings level is quasi-judicial, not unlike the process that prevails in modern day court houses. There are some significant differences related to the informality of the proceedings such as the inapplicability of the rules of evidence, but these aid rather than impede an efficient process. The most significant difference between the ODAR process and that of most courts is the percentage of cases that do proceed through a hearing. The Honorable Ronald G. Bernoski, President of the Association of Administrative Law Judges, has noted on numerous occasions the necessity of reducing the number of cases that proceed to an ALJ hearing. In his response to questions from the Appropriation Committee, he stated: "Social Security can no longer have over 90% of its disability cases continuing on to a full hearing before an administrative law judge." Judge Bernoski further stated "nowhere in our judicial system is a judge required to take to hearing such a high percentage of cases compared to the total docket." *NTEU absolutely concurs*.

There are a number of contributing factors to the backlog at ODAR, but its fundamental cause is an inefficient adjudicatory process. ODAR is severely understaffed at the hearing office level. There is an over-reliance on the ALJs and a failure to make effective use of the other hearing office staff. Because of the lack of adequate staffing, ALJs are now performing many of the tasks formerly done by the other staff. ALJs are the only hearing office personnel that can conduct hearings, but much of their time is spent doing tasks that can be performed as well or better and certainly in a more efficient and fiscally responsible manner by other members of the hearing office staff.

The lack of adequate staff impedes the development and preparation of a case at the pre-hearing stage and causes further delays after the hearing. ALJs are expected to do prehearing screening, review "unpulled" files, conduct hearings on cases that have not been properly prepared, adjudicate cases not requiring a hearing for

disposition, and decision writing. Primarily as a result of ill-advised short sighted fixes, ALJs have been drafted to perform many of the job duties of other staff. While in the short run these "fixes" appeared to increase productivity, in the long run they merely exacerbated the problem. The ALJs should be doing their job, not everyone else's.

Another "quick fix" in the *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence* is an initiative that ordered the remand of profiled unworked cases from the hearing office back to the state agency. The state agencies reviewed the cases, and according to OIG paid 33% of those cases. Since only paper files were involved, both the hearing office and the state agency were required to allot significant work hours to the transportation, both to and from, of these files. This work was done on overtime by the state agencies. The review could have just as easily been performed by Attorney Adjudicators in the hearing office. More to the point, the state agencies have their own workload including Continuing Disability Reviews (CDRs) that have been to a great extent sacrificed to the disability backlog. The reduction in CDRs is particularly painful since each dollar spent on CDRs saves the trust fund 10 dollars. Additionally, failure to identify those who are no longer entitled to disability benefits seriously erodes the credibility of the disability system with the general public.

Staffing shortages have also resulted in the elimination and degradation of functions performed by the support staff that are essential in an efficient adjudicatory process. Because of the failure to replace the 450 clerical workers who were promoted to the Paralegal Specialist position pursuant to HPI, the task of the then Legal Assistants to prepare a case summary for the ALJ was eliminated. This significantly increased the time an ALJ must spend reviewing a file before the hearing. The lack of sufficient clerical staff has led to the overwhelming backlog in cases to be "pulled". The current streamlined and modified pulling initiatives and the policy of encouraging ALJs to hear "unpulled" cases, instituted because of the lack of clerical staff to perform the "pulling" function, significantly increases the time much more highly paid ALJs, Attorney Advisers, and Paralegal Specialists must spend to perform their jobs. This is inefficient and fiscally irresponsible.

Because of inadequate numbers of Attorney Advisers, ALJs drafted over 91,000 decisions, about 10% of the decisions drafted in FY 2007 and FY 2008. ODAR maintains a staff of nearly 1300 Attorney Advisers and Paralegal Specialists whose primary responsibility is to prepare written draft decisions. While it is difficult to accurately quantify the amount of time ALJs devoted to decision drafting, it substantially reduced the time they could spend conducting hearings. A similar observation can be made about the overall effectiveness of having ALJs involved in early prehearing screening and adjudicating cases that do not require a hearing for disposition.

After the termination of the Senior Attorney Program in 2000, until November 2007, an Administrative Law Judge was required to adjudicate each and every case at ODAR hearing offices. During FY 2007 approximately 16% of ODAR dispositions and in FY 2008 over 18% of dispositions were dismissals. In FY 2007 over 18% of decisions and in FY 2008 over 20% of decisions were made on-the-record—without a hearing. Only an ALJ can conduct a hearing, but obviously not every case of ODAR hearing offices requires a hearing or ALJ involvement. In fact, during FY 2007 and FY 2008 nearly ⅓ of ODAR hearing office dispositions did not involve an ALJ hearing. The simple fact of the matter is that neither a hearing nor an ALJ is needed to dispose of every case. By relieving ALJs of the responsibility for adjudicating cases which do not require an ALJ, the ability of ALJs to focus on those cases requiring their expertise can be enhanced. That is the rationale behind the Attorney Adjudicator Program. The disposition of many of the dismissals and all on-the-record decisions can be accomplished without ALJ involvement, freeing the ALJs to hold more hearings and issue additional decisions.

Many cases (dismissals, fully favorable on-the-record cases, favorable requested closed period cases, and cases in which the claimant waived his/her right to a hearing) should be adjudicated without ALJ involvement. In FY 2007 84,800 decisions were issued on-the-record (without a hearing) and through the end of August 2008 88,175 on-the-record decisions have been issued. It is likely that over 95,000 on-the-record decisions will be issued in FY 2008 and over 100,000 in FY 2009. Nearly all of these decisions could have been issued by ODAR Attorney Adjudicators. With sufficient staffing to support the ALJs and an effective Attorney Adjudicator program, ODAR dispositions could easily increase by over 150,000 a year at a minimal cost.

As part of his *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence*, Commissioner Astrue has reinstituted a version of the original Senior Attorney Program that was largely responsible for eliminating the disability backlog in the 1990's. Decisional accuracy is not an issue with the Attorney Adjudicator Program.

Quality review by the Office of Quality Performance (OQP) establishes an accuracy rate beginning at 95% and subsequently rising to 97%, an extraordinarily high accuracy rate, particularly since OQP utilized a preponderance of the evidence standard (essentially substituting the judgment of the reviewer for that of the adjudicator) rather than the substantial evidence standard applied by most appellant bodies including the Appeals Council. The success of the former Senior Attorney Program in eliminating the backlog of the 1990's and the very favorable beginning of the current Attorney Adjudicator Program render arguing the merits of the concept of attorney adjudication unnecessary. The Program should be made permanent immediately.

However, the current Attorney Adjudicator Program is only temporary and too limited in scope and range to attack the backlog problem as effectively as did the original Senior Attorney Program. Additionally, inadequate staffing of Attorney Advisers and Attorney Adjudicators and a limited, haphazard, ineffective and occasionally obstructive implementation by ODAR have severely limited the effectiveness of the Attorney Adjudicator Program in terms of the number of on-the-record decisions issued. Properly administered, this program will produce over 150,000 decisions a year in addition to, and not at the expense of, the number of ALJ decisions issued. Like its predecessor Senior Attorney Program of the 1990's, the Attorney Adjudicator Program can help eliminate the current backlog and ensure that a backlog does not recur.

Nonetheless, despite the promise of the Attorney Adjudicator Program, the current crisis is of such magnitude that additional changes are required if SSA is to get control of the backlog problem within an acceptable timeframe. Recently, the Agency announced an increase in the number of Senior Attorneys to 450; a net increase of 81 positions. This is certainly a step in the right direction. However, the time allocated to case adjudication by Attorney Adjudicators is typically about one day a week. In a number of offices the initiative has never been implemented. At the current rate, the Program will have generated approximately 25,000 on-the-record decisions during FY 2008. While this reduced the rate of the increase in the pending, its long term effect, even considering the augmentation of the ALJ Corps to 1,250 ALJs, will not eliminate the backlog. Attorney Adjudicators, who in this very truncated program have produced over 22,000 on-the-record decisions so far this year with an accuracy rate of 97%, have demonstrated that fuller implementation of even this limited Attorney Adjudicator Initiative could have produced as many as 50,000 on-the-record decisions in FY 2008 thereby freeing the ALJs to hold many additional hearings. Such productivity from the Attorney Adjudicator Program requires securing sufficient decision drafting capacity to adequately support the ALJs. The productivity gains from the implementation of an expanded and comprehensive Attorney Adjudicator Program would be far greater.

ODAR can decrease its pending by well over 150,000 cases a year by promoting just 250 skilled and experienced GS–12 Attorney Advisers one grade, to the GS–13 Senior Attorney position, and allowing the Attorney Adjudicators to devote nearly all of their time to reviewing every disability case appealed to ODAR and adjudicating those cases that do not require ALJ participation (dismissals and cases in which on-the-record decisions can be issued). With unnecessary ALJ involvement, ODAR is currently generating nearly 100,000 on-the-record decisions. Given the number of receipts and the size of the backlog, the number of cases suitable for on-the-record treatment is at least 50% greater than the number of on-the-record decisions currently issued.

Because Attorney Adjudicators work on "unpulled" cases, an additional important benefit of a vigorous Attorney Adjudicator Program would be a significant decrease in the number of cases that need to be "pulled" leading to a significantly reduced average processing time. Attorney Adjudicators work on "unpulled" or "unassembled" files. Those that result in fully favorable decisions do not have to be "pulled". The benefit from not having to "pull" these cases cannot be overstated. Today there are approximately 450,000 cases pending "pulling"; a workload that will require over 200 work days to process at which time approximately 450,000 new cases will have been received that will need to be pulled. Most ALJs will not and should not hold hearings on "unpulled" cases. ODAR's inability to "pull" sufficient cases to maintain ALJ dockets is a significant factor in the creation and maintenance of the current backlog. Each disposition by an attorney adjudicator is one less case that must be "pulled" and one less case contributing to the backlog.

An extensive and intensive Attorney Adjudicator Program would involve a decrease in ALJ decision drafting capacity that must be replaced. In a Statement on Behalf of the Association of Administrative Law Judges, before the House Subcommittee on Labor, Health, and Human Services and Related Agencies of the Committee on Appropriations, Judge Bernoski stated that a judge could not perform his/

her work in isolation and the support of sufficient competent and trained staff is essential. He further indicated that adequate staff included 2.5 attorneys and 2.0 clericals for each ALJ. While NTEU believes that ratio may be too high, clearly at least 1.5 Attorney Advisers are needed for each ALJ to draft ALJ decisions.

Currently, there are 1190 ALJs available for duty (the highest number since at least 1996) and approximately 1,270 Attorney Advisers and Paralegal Specialists (decision writers). In light of the current shortfall in the number of Attorney Advisers, the replacements needed for Attorney Advisers that would be promoted to the Senior Attorney position (250), and the capacity required to replace decision drafting by ALJs, approximately 400 new Attorney Advisers should be acquired. This is slightly less than the 440 attorneys that Judge Bernoski indicates are necessary to support the new 175 ALJs. NTEU recognizes that this constitutes a major increase in staff, but given the value of the 150,000 decisions in addition to those issued by ALJs and the increase in the number of ALJ decisions that adequate levels of staffing will facilitate, the cost of the additional staff is well justified. The current backlog could be eliminated by the end of FY 2011. The backlog would never recur.

The most effective remedy for the disability backlog is to hire sufficient staff, effectively utilize the skills of the staff, and permit the ALJs to direct their attention to the tasks that only they can do. Without sufficient support staff, SSA cannot properly prepare enough cases to fill the dockets of the ALJs or timely prepare and issue the written decisions. NTEU does not have sufficient information to accurately assess the number of additional clerical employees currently required to permit an efficient hearing operation. The acquisition of sufficient support staff would facilitate developing the record, scheduling hearings, pulling cases, and the other clerical work that needs to be done to support administrative hearings. In addition, hiring 400 additional attorneys and expanding the Attorney Adjudicator Program would permit ALJs to return to the task of deciding cases that required a hearing and would provide those disabled claimants who do not require a hearing a favorable decision months, if not years, earlier than otherwise would be the case.

SSA seems unwilling to acquire sufficient staff to permit efficient hearing office operations as it apparently believes that automation will significantly increase productivity without hiring additional staff. The GAO Report of December 2007 reported that many SSA senior managers and ALJs recommended a staffing ratio of 5.25 support staff to administrative law judge. With over 767,000 cases pending and the backlog continuing to grow it would be dangerous to reduce or suppress staffing based on potential improvements from unproven and in some cases non-existent electronic automation initiatives.

Even if all of the Agency's electronic initiatives can be developed and implemented successfully there is no evidence that ODAR will require significantly less staff in light of an increasing case load and the 767,000 cases currently that have to be processed. If history is the guide, optimism is probably not justified. SSA automation initiatives rarely, if ever, come in on time, and even more rarely deliver what was promised. For example, the unjustified reliance in technology instead of professionally trained employees is demonstrated by the Agency's proposal to increase the number of decisions drafted by ALJs through automation. OIG reported that a SSA initiative involves using a FIT template to create instructions that generate the rationale for favorable decisions. I have seldom, if ever, seen instructions detailed enough to generate the rationale for a decision. These "decisions" may well be CDR proof preventing those who are no longer disabled from being removed from the rolls. It also betrays a tendency to deal with the backlog by "paying down" the backlog that winds its way throughout the *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence.*

In any event the crisis is now, and the solution should be directed toward the present. While automation may and almost certainly does hold promise for the future, ignoring the present while focusing on the future is one of the causes of the backlog. Even if the success of automation does reduce the number of employees needed, the demographics of the workforce indicate that retirement will more than eliminate any chance of excess employees.

SSA is also committing funds to establishing "National Hearing Centers". The first is already operational in Falls Church, VA; the second is in Chicago which already has four hearing offices; and a third is to be situated in Albuquerque, NM co-located with the hearing office. No operational efficiencies are achieved through the establishment of these adjudicating entities that are not already and better served at hearing offices. Certainly the capacity for conducting video-conference hearings already exists in nearly every current hearing office to facilitate conducting remote hearings and for adjudicating temporary excess workloads. We see no value in creating a duplicate hearing structure and attendant bureaucracy. The centralized nature of National Hearing Centers, which do not provide for in-person hear-

ings, will alienate the public and further damage the Agency's credibility. For more than seventy years SSA has strived to maintain face-to-face contact at the local level with the public it serves. This is one of the factors that separate SSA from the majority of federal agencies. The proliferation of National Hearing Centers will significantly weaken the bond between SSA and the public it serves while not adding value to the process. Not incidentally, National Hearings Centers significantly lessen the ability of a Member of Congress to effectively protect the rights of his/her constituents.

The advent of electronic hearing folders facilitates the movement of cases to other hearing offices as easily as to a National Hearing Center. There is no operational justification for the establishment of such centers. Moreover, their unique staffing structure emphasizes the Agency's commitment to achieving its political rather than operational goals over providing high quality service to the public. The extent and the expense to which SSA pursues the National Hearing Center concept rather than committing these assets to hearing offices should give all a reason to doubt the sincerity of the Agency to provide quality service to the public.

In order to expeditiously eliminate the backlog and prevent its recurrence NTEU recommends:

Hiring 400 additional Attorney Advisers.

Expanding and making permanent the Attorney Adjudicator Program.

Expanding the jurisdictions of Attorney Adjudicators to include dismissals and cases in which the claimant waives his/her right to a hearing.

Hiring sufficient clerical staff to adequately support the ALJs.

Ensuring that new automation processes are properly tested and viable before they are fully implemented.

Making no reduction of hearing office staff based on unproven automation initiatives.

Making no reduction in hearing office staff until the backlog is eliminated and there are no more than 300,000 cases pending at ODAR hearing offices.

Eliminating the National Hearing Centers in order to expand the local hearing offices.

Chairman MCNULTY. I want to thank all of you very much for your testimony and for your good work. We are all trying to get to the same goal here. It is just a matter of coming together and reaching agreement on how to get there.

Judge Cristaudo, Ms. Meinhardt's testimony states that on average, cases in hearing offices wait 209 days before the case can be prepared by clerical staff for review by the ALJ. She stated at the end of August 2008, there were more than 450,000 cases waiting to be prepared. That is more than half of the hearings' backlog.

I just wanted to ask you, number one, do you agree with these figures, and number two, can you give us a little bit more detail about what we are doing to fix that problem.

Judge CRISTAUDO. Thank you, Mr. Chairman. In terms of the exact numbers, Kathy is a very skilled manager. I am sure the numbers are precise. Yes, they seem accurate to me.

The issue, of course, is pretty much what everyone on the panel has talked about. We simply do not have enough people to do the work. What happens is we have cases that get added to our docket and we have not had enough judges or adjudicators to handle that workload.

Complicating matters is that in many of the situations, we have not had enough staff to get cases ready for the judges. It is natural to have a significant number of cases in that category because we need to maintain a certain number of cases pending just to be an efficient operation.

We define a backlog of cases as being above 360 cases pending per judge. With about 1,200 judges, if you multiply that by 360, any number above that product would be the backlog. There is going to be a fair number of cases in that category at any time, even without a backlog.

I certainly agree with Ms. Meinhardt that there are cases in that group that we could be getting ready for the judges to hear. Again, we need judges to hear those cases.

One of the things that we are doing, as some of the panelists have talked about, is the e-pulling initiative. E-pulling is an initiative that the Agency is looking at as something that perhaps may help some time into the future. We are piloting that in five of our offices, including in Ms. Meinhardt's office. We do not have any plans to implement that initiative completely until we know it is in fact working.

We have not made decisions based on expectations in terms of staff at this point with that initiative. If it does work as expected, it certainly would affect the number of staff that would be necessary.

Chairman MCNULTY. It all seems to get back to staff. Despite what you have just said, SSA has indicated that the Agency does not plan to hire as many hearing office support staff as some have suggested are needed because of the automation initiatives that would hopefully reduce the need for staff in the future.

Anybody on the panel, but I particularly want to hear from Ms. Meinhardt, Judge Bernoski and Mr. Hill about this, because this concerns me greatly.

As people who work on the frontlines in SSA's hearing offices, do you agree with this strategy or do you think it would be more effective to hire the needed staff now and let staffing levels shrink through attrition should the automation reduce the need for staff some time in the future?

Mr. HILL. I absolutely agree with what you just said. The crisis is now. Automation initiatives may or may not be effective. We do not know. Judge Cristaudo just indicated that. We have had a long history of anticipating these things coming out in planning.

We have 767,000 people waiting for hearings. It is 200 and some odd days pending pulling. Back in the year 2000, the number of days pending pulling was 50, not 200. That is 200 work days. That is the better part of a year.

I agree that hiring the staff now given the demographics of the workforce, attrition through retirement will handle any problem three or 4 years down the line. Deal with today's problem now and if improvements come, and there will be improvements to come, adjust to them as time goes on. There is a danger in anticipating.

Chairman MCNULTY. Judge Bernoski?

Judge BERNOSKI. Mr. Chairman, I, too, agree with what Jim Hill has said, at this point, the problem is here. We need the additional staff to address the problem at this time because we are at acritical choke point in our process.

Also, the Agency has traditionally placed an over reliance on technology and they have over promised what technology will deliver. We have no knowledge at this point, as Kathy Meinhardt said during the course of her testimony, as to what is going to hap-

pen with the e-pulling, for instance, whether it is in fact going to be successful.

Last week at one of our meetings, we were advised that the experience so far has been that e-pulling has taken about the same amount of time as manual pulling for the preparation of the file.

If that is the case, this electronic process is not going to in fact provide any benefit for us. I assume that in the future, we will get that up to speed. It is going to take some time. It is a very, very complicated system.

Also, with regard to the hiring of judges, the Agency has this year hired 189 or 190 judges, but this is not a 190 increase because we have lost probably about 60 judges since the last hiring. It is only a "plus up" of the difference between those two figures.

We also must keep in mind that the staffing and hiring are just temporary patches on the problem. The problems of the Social Security disability system are systemic in nature and there has to be a comprehensive review or overhaul of the process to have a long term reform or improvement of the system.

Chairman MCNULTY. Thank you. Ms. Meinhardt?

Ms. MEINHARDT. I definitely agree. We have to get on top of the backlog. The problem with backlogs is in and of themselves, they create work. If I am not getting to a case, the public calls. The Representative calls. You guys call.

While it sits there, the people continue to get sicker and sicker. The evidence keeps growing and growing. Instead of a file with a year's worth of medical evidence, I have a file with 2 years' worth of medical evidence. By the time I get to it, it is old. Now I have to go out and get new evidence.

It is just a problem. It is like a snowball rolling down hill. It just gets bigger and bigger.

If we do not get on top of the backlog, we are just going to be in a heap of hurt here.

I think the concept of e-polling is great and I think the potential is huge if they can actually get it to do what they anticipate it to do, which is a very clerical function. The computer should be able to say this belongs—this is a medical record, for this period of time.

If it in fact can do that so we do not manually have to intervene, it would actually return us to a position where as Mr. Hill indicated we no longer do summaries of the case record because we just cannot even get enough records polled any more, but if we could get the computer to do that, we could return to the position where the support staff would be able to do that.

I think there are fears that if you hire all these people to do the work and now what do you do with them when the work is not there any more because we have conquered the backlog. Maybe we can hire some people on a temporary basis.

The hiring allows for that kind of thing. Hire people with 2 year not to exceed so that we can get on top of the backlog and see the other side, if we still need them, we can keep them. If we do not need them any more, they go away.

The backlog is our biggest problem every single day.

Chairman MCNULTY. Thank you. Mr. Johnson may inquire.

Mr. JOHNSON. Thank you, Mr. Chairman. I am interested in opposition between one side of the table and the other.

The Inspector General, as I recall, indicated that there were some judges who did not do any cases. Is that true?

Mr. O'CARROLL. Mr. Johnson, we went out and asked the judges what they believed were the issues. We also talked to the support staff.

When we did the poll on the lower-producing judges, we asked for judges that issued one or more dispositions in a year. We had a group of judges that issued a limited number dispositions.

So, in answer to your question, yes, there were some judges that issued very, very few dispositions, in the single digits.

Mr. JOHNSON. Judge Cristaudo, you want to talk to that subject? Are we working on that and does the Union play a part in it? I was told the Union guys did not pull their load. Is that true or false? I know Judge Bernoski are Union.

Judge CRISTAUDO. Thank you. All of our judges in our hearing offices are doing cases now.

Mr. JOHNSON. She is talking about hiring lawyers or he is, to assist them. Would that cut the workload for the judge?

Judge CRISTAUDO. Certainly, if we had additional lawyers in the offices, they could do a couple of things. They certainly could write more decisions for the judges and more of our more experienced lawyers could be used to do the screening that our senior attorney adjudicators do.

Mr. JOHNSON. Can you find them at the salaries we can pay?

Judge CRISTAUDO. Yes, we certainly can find new lawyers or even experienced lawyers who could come into the offices and write decisions. We wait until our lawyers have substantial experience before we ask them to adjudicate cases, but we certainly could have our more experienced lawyers who are now simply writing decisions adjudicate more cases.

Mr. JOHNSON. What you are saying and I think others are, too, is we might not want to focus on hiring more ALJs. We might want to hire some more lawyers and support staff to help with the problem as it exists. Do you all agree with that?

Judge CRISTAUDO. The way we looked at this was to project current receipts into the future and also consider that, as Judge Bernoski pointed out, we lose 60 to 65 judges every year.

We want to make sure that we have enough judges on our rolls essentially because only judges can issue unfavorable decisions and partially favorable decisions. Judges are also the only ones who can issue dismissals.

There is a limited group of cases that the attorneys can actually do. As we know, the Agency gets a certain number of hires it can make each year. The Agency cannot hire as many people as it would like. There is a finite limit.

The Agency attempts to allocate those new full-time permanent (FTP) employees among the components to the degree that seems best in terms of all the service the Agency provides in all our offices.

The disability backlog is clearly the Agency's top priority. We have received a significant number of FTPs. I think we all agree that additional staff would clearly be helpful to us, and our judges and attorneys would actually issue more decisions. There is no question about that.

Mr. JOHNSON. Do you have any reason to believe some of the judges are awarding benefits, more benefits, just to get the cases cleared?

Judge CRISTAUDO. I do not, absolutely not. Our judges go through a very selective process in terms of their appointments as administrative law judges. I am expecting, and I believe, our judges are making the decision they think is appropriate in the individual case.

It is certainly not our position that judges should pay a case or that an attorney should pay a case that should not be paid.

As Mr. Hill pointed out, the Attorney Adjudicator Program has a 97 percent accuracy rate. What we look at is the allowance rate over the last five to seven years. It has remained consistent. It is around 61 percent. It really has not changed.

Mr. JOHNSON. Some of them, I understand, are working from home. How do you supervise those individuals?

Judge CRISTAUDO. We have a number of people working at home. The judges, the attorneys, the paralegal's, and other support staff work at home a varying number of days.

What we expect our managers to do is to make sure they know what cases the individuals are working on when they are at their homes. A log is supposed to be kept of the cases that leave the office and when people return from their homes, they are supposed to note that the cases have been returned. That is how it is supposed to be working.

Mr. JOHNSON. Do you agree with that, Mr. O'Carroll?

Mr. O'CARROLL. Yes, Mr. Johnson. We have some concern about work at home in relation to personal information and the protection of personal information.

As you are well aware, there have been releases of people's very personal information. SSA's type of information is health information, a lot of PII that is very, very important.

Our concern is regarding the transmittal of work. As long as they are using encrypted computers and SSA's network, we feel pretty good about the security of the PII.

Where we are concerned is where folders are taken home, left at home, or left in a car, situations like that.

It's important keep reminding anybody who is working at home in any of SSA's capacities to protect PII.

Mr. JOHNSON. If the computer system is functioning like it should, there should not be any folders going home, should there?

Mr. O'CARROLL. There are still a few paper folders but SSA also has the CDs of the folders that the judges and staff are working on at home. They are using SSA's computers while working at home.

Mr. JOHNSON. Do you all have any comments on those questions?

Judge BERNOSKI. Yes, I do have a comment. First of all, with relationship to the number of judges, I think the Agency is contemplating hiring—Chief Judge Cristeado probably can correct me—I think it is 1,250 administrative law judges during the completion of this round of hiring going into the next year, which is not unreasonable. We are in agreement with that.

With relationship to the backlog, it depends on how you want to look at this problem, how do you want to solve it. When the former Commissioner, Jo Anne Barnhart, was here, she developed a reform which had the so-called Federal reviewing official in it, the objective of the program was to take cases out of the system earlier in the process so that fewer cases would actually come up to the administrative law judge for a hearing.

We agree with that. It is a good approach. Or you can let all of these cases come up to the administrative law judge and in that case, you are going to need more administrative law judges, and I would submit to you it is a more expensive way to adjudicate the case because administrative law judge's salaries are higher and the case has been in the system longer. There has been more staff work, as Kathy Meinhardt said, so that is the more expensive way to handle cases.

That is a policy decision that has to be made at your side of the dias or by the Social Security Administration as to how we are going to handle this particular program with relationship to the administration of it.

With relationship to judges and working, I want to make it absolutely clear for the record, that our Association is not complacent with any type of program to not have our judges working. Our policy has always been that a judge should work and provide a full day's work for a full day's pay.

We have had several judges who have not been doing as much work as they normally would, but both of these judges, we had two, both of these judges were on assignments. One was on an Agency task force that was working on the E-systems when they were first being developed, the electronic file. He spent a considerable amount of time working on that reform.

In both of these cases, management concurred with them taking these judges off of case rotation. I can now report to you that both of these judges are back in full case rotation.

It is no different for us to have a reduced caseload as it is with management judges. For example, the chief judge, Frank is here, he is the Chief Judge, the deputy chief judge, regional chief judges, the deputy regional chief judges, none of these judges are on full case rotation.

I am not criticizing them, but this is just the way you manage a program. You have other people brought into the program to help. We do not manage anything from our side, but we offer advice to the Agency and our expertise in helping them make their decisions.

This is part of the program and the way it functions and the way it works.

Mr. JOHNSON. Thank you. My time has expired. Thank you, Mr. Chairman.

Chairman MCNULTY. Mr. Levin may inquire.

Mr. LEVIN. Thank you. I cannot count how many times we have had hearings. I think that is a tribute to our Chair and our Ranking Member that that has been accelerated.

I think what is missing here is a human face on who are these people who are waiting years. It is not easy to get there.

I just asked the chief of staff for Social Security what percentage of the claims that are filed end up receiving benefits, and she said about a third. She is so knowledgeable so I assume she is right. About two-thirds of those that go before an ALJ end up receiving benefits.

We are talking about hundreds of thousands of people who are waiting and waiting and waiting, and what has been missing, I think, is a sense of outrage.

I think under the privacy laws, there are some limits, but is it possible for the Agency to look at cases and tell us information about them, the age of people, et cetera, male, female? Anything about the disability that is being claimed? Do we know that?

Judge CRISTAUDO. Yes, we can identify that information. We have that information; yes.

WITNESS INSERT

Mr. LEVIN. I would like to see it. I think we all would like to try to get a profile of the people.

When we fought over unemployment comp, one of the problems was they were invisible because in most states, there are not offices any more. You cannot go out like we did years ago and go to the lines of people and have them tell their stories. We did a bit of that with the round table in Michigan and it was so astounding to hear the stories of those people. They had written us and what the impact was on their lives.

I think it would be helpful if you could give us as much information as you possibly can, so that when you look at a chart—and I say this only as a lesson for us, in the year 1999, there were less than 300,000 cases pending, claims pending. Now, it is over 700,000. It has been going up every year.

I do not mean to be provincial at all. It really struck home to me. This is the number of cases per ALJ as of August 29 in Michigan, in some of the offices.

In Detroit, 964. In Lansing, 1,166. In Grand Rapids, 1,221. In Oak Park, 1,269. In Flint, 1,528.

If we have tried to provide some additional money and our Chair and Ranking Member are trying to get some more money into the CR, I think if we went out and could talk to a random sample of people who have filed claims, we might reach the conclusion in some cases the claim should not be awarded, but I think in so many, many cases what we would find are people who are essentially without liveable income, and in many cases, who are losing their homes, and in many, many cases, whose health care does not exist, and who are getting more and more ill while we wait, and that makes the work of the Agency more difficult in a sense.

I think it is wise to have this hearing but we need to help develop an acknowledgement of the failure of our public system to respond and also if I might say, on behalf of these people who are waiting, a sense of despair if not outrage.

This is outrageous in this country.

I do not know what the plan is, if somebody could tell me under the present plan, in two or 3 years, what the likely caseload would be.

Judge CRISTAUDO. Yes, Mr. Congressman. You have raised a number of issues. The situation in Michigan is one of the worsT in the country in terms of the pending per judge.

We have done a number of things. The overall plan has a number of initiatives that will certainly help everywhere in the country, but Michigan in particular. We are doing a number of things, specifically in Michigan.

I do want to say I certainly agree with you. I have sat with thousands of these people in my former role as claimants' attorney. It is a very desperate situation. I know what they are going through.

What we are doing with the plan is a number of things. You mentioned how the pending started rising around 1999/2000. As Jim Hill pointed out before, that was the time that one of the prior plans to fix the hearing operation was implemented, the Hearings Process Improvement (HPI) initiative. The Agency eliminated the Senior Attorney program. HPI took hundreds of people out of our ranks that prepared cases for judges and that started us on a path to increasing backlogs.

Then we went years without being able to hire judges because of the lawsuit, and then we went a number of years without enough funding to hire people to do the work.

Mr. LEVIN. Not enough funding?

Judge CRISTAUDO. That has been the biggest part of the problem, not enough funding to have the people to do the work. Part of it also is what Jim pointed out. In the past, when people tried to fix the hearing operation, they adopted some of these ideas that were just pie in the sky: people did not know if they would work, and they became the things that the Agency was relying on.

That is one of the main differences with this current plan. This plan is based on proven techniques. We implemented the Informal Remand program last Summer and the Senior Attorney program in November. Just by implementing those two programs, 40,000 additional claimants have already received their decisions. As we go on, there will be additional people that we assist using those initiatives.

The other thing that we are doing specifically that applies to Michigan is we are moving cases from the hearing offices in Michigan and some other parts of the country, Ohio, and Kansas City, to parts of the country where we have more capacity.

The situation is bad nationally, but it is worse in Michigan, Ohio and some other places. We are having judges, for example, in the Philadelphia region, San Francisco region, and the Boston region, help out in the Michigan and Ohio areas by realigning the service areas.

This is the first time this has ever been done, where we are taking receipts and pending cases in those hearing offices and shifting them over from one region to another.

The Commissioner has also announced that our plan is subject to funding. We want to open a new office in Michigan to help that situation. In Oak Park, we are expanding that office. We had two judge vacancies there. We have filled those two spots. We have a space action there where we could expand it even further so we can add additional judges.

We are close to finishing up something called a video center that we are putting in Oak Park also. That will give us some additional capacity so judges around the country will be able to do even more cases, helping out in Michigan.

Part of this really deals with something that Ron mentioned before about what is the Agency doing in terms of maybe stopping some of these receipts that are coming into the hearing operation.

This Commissioner and the Agency are very committed to looking at what is happening at the earlier level, to see if there is anything going on there that actually we should be changing. Maybe we need to be doing some things differently there.

The Commissioner's Compassionate Allowances initiative is one where we have identified a number of impairments that in looking at the data that you are talking about, we find these people are disabled. However, because they have little known diseases or there is some other factor related to their impairment, they go through the entire system.

We are identifying those impairments so we can let the DDSs know to just take care of those cases immediately when they come into the DDSs.

We are also having our Office of Quality Performance look at cases around the country from a number of DDSs before they make their final denial decision; they look at those decisions and decide whether that decision is the appropriate decision.

They are doing that for a couple of reasons. They certainly want to prevent a bad decision. They are doing it with a sample to do some study. They are also looking at what they are finding, to see if we need to change our policies, to let the DDSs know a little bit more about certain cases that should be allowed.

It is a long answer but you raised an excellent point, and we are very, very concerned about the situation, certainly in Michigan, but certainly all over the country.

Mr. LEVIN. It is the same everywhere.

Mr. SCHIEBER. If you look at Social Security staffing levels going back 25/30 years, they have gone through a steady reduction in staff. Over the last decade or so, there has been a surge in disability applications.

When you look at what is happening, this growing pending caseload, it is pretty clear they have not had the resources given the processes that they have, to handle this workload.

We can fuss about some judges not hearing as many cases as they should be and what have you. If you look at these long term trends, I think it is one trend crashing into another that is resulting in this outcome.

If you are in a situation where you have a crushing workload coming down on you and you do not have additional resources to throw at it, you start to flail around looking for ways to deal with it. They have done a little of this and they have done a little of that.

The last time I was here I said maybe we ought to step back and we ought to look at this process from beginning to end, from the day somebody walks into a field office and says I think I have a disability, I want to apply for benefits, and it gets handed off to the DDS and then the DDS handles it for a while, and then it gets

handed off to the Office of Disability Adjudication Review, and they handle it for a long time, and maybe it gets a proper disposition and maybe it does not.

Maybe we ought to look at this as a systemic process and try to streamline this process from beginning to end and provide a capital budget to do it.

What we have been doing as we have built this electronic system at the DDS level and now we are trying to do it somewhat in the Office of Disability Adjudication and Review, we are stealing operating budget dolalrs at the time we are already drowning.

Maybe we ought to take care of the drowning with our operating budget and have somebody step back and look at this from soup to nuts and put some capital resources, not unlimited, ongoing resources, to see whether or not we can get this workload to a level where the existing resources can handle it.

If we come to the conclusion that technology is not going to resolve all the problems, then we have to have a very frank discussion about whether or not we want 200 days waiting times or 600 days waiting times. If we do not want 600 days waiting times and the processes and the budget are giving us 600 days waiting times, we have two different ways of handling it.

We learn to live with 600 days or we figure out how to fund 200 days.

Chairman MCNULTY. I have been advised that we may have a vote as early as 11:30. Since we only have three Members remaining and we are going to make sure they all have a chance to inquire, we will take a crack at trying to finish the hearing and not require the witnesses to stay here.

If we can just keep that in mind, we will try to accommodate the witnesses.

Mr. Pomeroy may inquire.

Mr. POMEROY. Thank you, Mr. Chairman.—I would like to congratulate you for the leadership you have shown for this Subcommittee, particularly relative to driving that funding issue. I think you and the Ranking Member, perhaps more than anyone else in Congress deserve credit for the fact that additional resources have been at last committed into the administration of Social Security. I think there are many problems with the administration of Social Security, but funding perhaps is the most basic and you have driven getting that funding improved, so thank you very much for your leadership.

I also want to thank Mr. Hill for mentioning our colleague Stephanie Tubbs Jones. When Mr. Levin talks about having the feeling of those caught in the system, and interminable delays in the system, and they are in desperate life circumstances, I will tell you that our colleague Stephanie Tubbs Jones never let us forget that perspective, and would often quite freely impart that perspective to witnesses also, and we so love the memory of her passion of those, and so thank you Sandy for bringing that up.

Beyond funding, I have been absolutely driven to distraction about the problem with having a functional list for the hiring of ALJs, and I have been particularly critical of OPM and what I believe has been just a complete bungling of this circumstance. Judge Cristaudo, we had talked about funding being the main thing, and

then this litigation that delayed the hiring, well I think you gave OPM a pass. There was litigation that tied things up between 1999 and 2003.

However, in 2003 that litigation was resolved and we didn't have that list opened up until 2007 when our former Ways and Means colleague Rob Portman was head of OMB and had influence with the approval of the OPM revision. They sat on this thing, they twiddled their thumbs, they diddled around, and we had report after report about this thing being opened up and it wasn't. I believe it was absolutely an astonishing lapse within the administration. It was unjustifiable, it was inexcusable, it was irresponsible. A lot of people got hurt and the disability backlog about doubled, and I think a lot of it relates to the performance of OPM.

Now if I am trying to run an agency and what I can do is link to another agency and that agency doesn't seem to treat the needs of Social Security as an urgent issue, we have a real problem. How would you assess the relationship? Do we have something structural that we need to do to address this SSA/OPM issue?

Judge CRISTAUDO. Well thank you, Congressman. We think that we need to open a dialog more with OPM so that the process that is used to appoint candidates to the ALJ register works better for Social Security. Most of the appointments off that register are appointed to Social Security. The other agencies hire a few off the register each year. Many times they essentially hire their judges out of our ranks. At the staff level we have had some discussion, certainly. At the higher levels, I am not sure there has been the kind of dialog that we really need.

I hate to say this—because most of our judges are outstanding people, outstanding judges, they do great work—but what we would like is a list that ensures that candidates that are presented to us are well suited for our work. In some of the other agencies, the judges do adversarial hearings where they do a few cases a year. Our judges are confronted with huge workloads, it is high volume adjudication.

Mr. POMEROY. I think you are exactly right. I think there is a particular type of judge you are looking for, and the fact that you are giving most of the judges of OPM means to me that there ought to be very particular consideration for the candidates that will be appropriate for SSA ALJs, especially given the 10 year delay they had in refreshing the list.

I am interested in the role of the advisory Committee. As we looked at too many issues, too little time. There are many other things I would like to inquire, but one of the things that I would like to do is see the advisory Committee act really as a kind of institutional advocacy for system functionality. From the time I have spent on the Oversight Committee looking at the role of the advisory Committee on the IRS, I think that we have gotten quite a bit of value from that advisory Committee. Is there more that can be done to basically sharpen the dialog between the advisory Committee and Congress so that we are getting kind of an arm's length view of what the system needs for optimal operations?

Mr. SCHIEBER. I believe in one of my recent testimonies up here I indicated that in my tenure on the board, which is now, I guess, I am now going into my 12th fiscal year on the board, we

have issued some, I would guess it is now 17 or 18 reports on the disability program. This goes back to 1998. The first report we issued in my tenure was on disability.

Many of the issues that we are talking about here today, this board has written about, published, has testified in front of you and your counterparts on the other side of the Capitol about. We have been talking about the lack of resources or the want for resources, we have been talking about the need for more systemic approaches to how these issues are addressed by the agency.

My concern is that no one is listening, and what ultimately happens is then we have something blow up. We have a disability caseload that blows up. There are other things that are lurking down there. The 800 number, call on any random day——

Mr. POMEROY. I was thinking about this. The advisory Committee is being, I think, more effective within the IRS because of a taxpayer advocate that basically often captures the advisory Committee work and uses it to augment her own advocacy perspective. Is there something we could add to the system that helps——

Mr. SCHIEBER. Well one of the things that I think that the IRS board does that we have not done is they actually develop an annual report around the IRS's budget.

Mr. POMEROY. Right.

Mr. SCHIEBER. You supposedly, when you set Social Security up as an independent agency, said that the Commissioner was supposed to do a Commissioner's budget, and that was to be submitted to Congress. Well that budget actually gets submitted initially to OMB, and they review it and it is input into the development of the President's budget. When the Commissioner's budget gets to you in the middle of the budget document, it is basically a number that is buried in, I don't know, thousands of pages of material.

So, one of the things we have discussed is actually putting together an annual report around the Commissioner's budget that we would make public.

Mr. POMEROY. My time has expired, Syl, but I would strongly encourage you to do that, and we in the Subcommittee ought to have more discussion with the advisory Committee on that.

When I was on the Oversight Committee, it was kind of a triggering event. You would have the report to take a look, and it caused us to read the report and get more attuned to what the advisory Committee was saying. It is kind of an annual, 'You have to pay attention to the advisory Committee,' and we don't have that with Social Security.

Also, it does highlight what has happened to the Commissioner's budget within OMB and that is also very useful. I think that would be helpful. Thank you, Syl.

I yield back.

Mr. Bernoski. Mr. Chairman, may I comment on the issue that Mr. Pomeroy raised with relation to OPM. It will only take a minute.

Chairman MCNULTY. Yes.

Mr. Bernoski. We agree with your observation completely regarding OPM. OPM has completely mismanaged the administrative law judge function of the Federal Government, and it is a substantial part of the problems that we are now laboring under.

First of all, OPM abolished the office of administrative law judges during the last several years. So, it is literally impossible to get any information or any management function from them because we are such a small group buried in a big organization and they have rendered it virtually impossible to provide any effective management of the Federal administrative law judge function in the government.

In the 106th Congress we did offer a solution, and it was introduced by Congressman Gekas, who is no longer with us, who was then chair of the Subcommittee in the Judiciary Committee on Administrative Law, which would have set up a Conference of administrative law judges which was patterned after the U.S. Conference for the Federal Courts.

What it would have done is take the Office of administrative law judges that was then existing out of OPM, and set it up as a small separate organization that would be just dedicated to managing the administrative law judge function in the Federal Government. It should not have cost any money because it involved taking an existing structure and making it freestanding. Also, the agencies pay OPM to manage the system. For example, I think in the last year, Social Security paid OPM over $1 million to manage the administrative law judge function with relationship to SSA's burden on that program for the use of the program.

In our opinion, those are things we should look at to improve the management of the Federal administrative law judge system in the Federal Government.

Chairman MCNULTY. Mr. Nunes has yielded his time to the Ranking Member who has a couple more questions, and the Ranking Member has graciously agreed to allow Mr. Becerra to go first, so Mr. Becerra may now inquire.

Mr. BECERRA. Mr. Chairman, thank you.

Mr. JOHNSON. Only for you.

[Laughter.]

Mr. BECERRA. I am afraid to ask what it is going to cost me.

[Laughter.]

Mr. BECERRA. Mr. Chairman, thank you to you and the Ranking Member for once again holding a hearing on something that is very important. We very much appreciate that you continue to keep the profile very high on this issue and we thank every one of you here on the panel for your testimony.

I have a couple of questions. I would like to first begin with the issue of the performance of the ALJs and their efficiency. Over the last couple of years, two or 3 years, we have seen their output increase. We now have some additional resources, principally due to the two gentleman to my left, that will help staff up on the ALJ and support staff side. But this call for the ALJs to produce 500 to 700 dispositions annually, very briefly, is that something, Judge, that you all think is possible? To go from the 420 or so of 2005 dispositions per year to the 470 or so that we saw last year to something between 500 to 700 dispositions annually?

Judge CRISTAUDO. Well thank you, Congressman. The 400 numbers that you are looking at are based on—unfortunately there——

Mr. BECERRA. Do me a favor. I am going to run out of 5 minutes real quickly. I am just asking, do you believe that they can get to upwards of 600 to 700 dispositions on an annual basis?

Judge CRISTAUDO. I think most judges can get to at least 500.

Mr. BECERRA. I agree with you on 500. But my understanding is you are calling for 500 to 700.

Judge CRISTAUDO. Well what we are asking the judges to try to do—we haven't mandated, we are asking—is to get to 500. The 700 was more of an indication to this other group that are doing thousands of cases that at some point there may be a limit as to how many cases a judge can actually do and still do quality work. That is what the 700 was about.

Mr. BECERRA. So, let me ask you this. If we were to try to get a sense of how many cases ALJs should be able to handle and dispose of, you are saying you believe that in the very short term we should get to 500 or so?

Judge CRISTAUDO. As long as we provide adequate staff support——

Mr. BECERRA. Yes, I understand that, but 500 is reasonable, without losing quality and so forth?

Judge CRISTAUDO. Yes, I think about 40 cases a month is a reasonable number to strive for.

Mr. BECERRA. I appreciate that.

What I think confounds me and perhaps others is that it is not as if Social Security doesn't have the money to do its work. Social Security is about the only thing in the Federal Government that isn't running in a deficit, and yet somehow the Social Security Administration never gets the money it needs to do its work. That is kind of strange. I think most Americans would think that the money they are putting in to pay for Social Security should be available to do the work. Yet here we have these massive backlogs for hundreds of thousands of people.

My sense is that we are—I want to just separate myself from this. OMB has decided to starve Social Security of receiving its own money. Now we could increase the number of ALJs, as we are doing, but you are going to need the support staff. You need someone to do the prep to get these cases ready to go, otherwise we are wasting the ALJ's time, and the lawyers, and the claimants. Also, then, after you have had the hearing, you need the support staff to issue the decisions.

Would anyone argue that today we have enough support staff to do the front-end work and the back-end work that the ALJs need to make sure a disposition occurs? I don't need commentary, I just want a yes or no, there is enough.

Mr. SCHIEBER. The evidence is clear they are not succeeding.

Mr. BECERRA. So, there is not enough support staff. So, Mr. Chairman, I think it is very clear. We need to make sure that Social Security is getting some of its own money to do what it needs to do to have the resources to hire the support staff.

Judge Cristaudo, what is the correct level of support staff per ALJ?

Judge CRISTAUDO. It varies on a number of factors. I mean, traditionally——

Mr. BECERRA. Don't go technical on me. Just give me a rough sense.

Judge CRISTAUDO. Of course part of this is——

Mr. BECERRA. Give me a rough sense.

Judge CRISTAUDO. It varies based on time, is what I am saying. Today versus next week versus——

Mr. BECERRA. We have four and half or so support staff per ALJ today.

Judge CRISTAUDO. We are little bit below that, but——

Mr. BECERRA. Okay, you a little below that. Where should you be?

Judge CRISTAUDO. Certainly I think if we were at a much higher level it would make——

Mr. BECERRA. I understand that. Where would you like to be?

Judge CRISTAUDO. I would immediately like to be at 4.5 with the understanding that as we move ahead with the automation that perhaps it would reduce that.

Mr. BECERRA. When you get to the 500 dispositions annually per ALJ, where you say we can get, what should the support staff level be at that point?

Judge CRISTAUDO. It varies by individual, certainly, but nationally it is somewhere around 4.5, maybe a little higher, maybe a little bit lower.

Mr. BECERRA. Because I want to be able to point to your testimony as the chief ALJ to say 'this is what our chief ALJ says is necessary,' so you are speaking over a thousand of your colleagues, so don't sell them short. What do you need to do your work? Because don't come back here in a year or two and say 'oh, we really need a lot more.' We are asking now. What do you need to make sure that you can get a case ready to go, and then issue your decision once you have held your hearing?

Judge CRISTAUDO. Yes, and as I have said, I think with our current process and with our current automation, I think it is around 4.5.

Mr. BECERRA. 4.5, okay. To get to 4.5 what kind of hiring would you need to do? My time has expired, so I will leave that last question. How many more support staff at the front- and back-end do you need to hire?

Judge CRISTAUDO. I would have to do the actual computations to give you a precise number. It would certainly be a few hundred more. We are hiring about 500 people this year. Most of that is offsetting attrition. But we would have to add hundreds more, certainly, to get up to that level.

Mr. BECERRA. It looks like basic math, so maybe later on after this hearing is over you can provide us a written response to what you think you need in terms of support staff.

By the way, I would urge anyone who would like to respond to that as well, I would be very interested to hear what you might have to say in terms of what you think the support staff level should be and what you would need to hire.

Mr. Chairman, I thank you very much for the time.

Chairman MCNULTY. Judge, would you later respond in more detail to the Congressman's last question?

Judge CRISTAUDO. Yes.

WITNESS INSERT

Chairman MCNULTY. Okay. The Ranking Member may inquire.

Mr. JOHNSON. Thank you Mr. Chairman.

Mr. Schieber, your testimony included discussion about the fact that there are judges who process 1,000 cases a year with allowance rates in the mid—to high-nineties, and there are those who process 1,000 cases a year with allowance rates in the mid—to low-thirties, and you say it is possible to receive an independent decision with a process that is consistent and efficient with a statutory change. Would you talk more about that and tell me what change would be?

Mr. SCHIEBER. Well one of the things we have heard here this morning on more than one occasion is that there is a bell curve around the judging process, and part of this has to do with productivity levels, through-put levels, and I have talked to the judges about it. I have probably talked to the judges in group more about productivity than, my guess is, almost anybody has. The judges who aren't doing very many cases, I am told, it is not often because they are not working hard, it is because they have difficulty getting to the point of making decisions.

It seems to me if you have some people who can't judge, then we ought to have a way to make sure that they are either not getting into the corps or a way to move them out of the corps at some juncture, because we need people. We need resources that are producing cases. That is what this is about.

On the upper end, you have some people, I believe, probably because they see the overwhelming burden that is coming in, and they are trying to be good soldiers, are handling cases very rapidly. The data that I have looked at is once you get to this 700 threshold, somewhere around there, as the caseloads go up, as the judgments go up, the approval ratings go right up with it.

Now my sense is people probably aren't spending very much time, or else maybe they are coming to the table with preconceived notions. It seems to me that if you have got these judges—throughout the corps judges, you have significant variation in terms of approval and denial rates. If you have got judges that are on one tail or the other—and you can determine this statistically. You don't have to put arbitrary numbers there, you can do it in a variety of ways—it seems to me that judges ought to go back for re-training to make sure that they understand the rules that are being applied.

Ultimately if they are going to continue to operate completely outside reasonable tails of the judgment process, there ought to be some kind of a review board that determines whether or not they are appropriately handling cases. So, you can set up a process to review cases at outliers, you can counsel these people, and ultimately if they are going to be misjudging, then it seems to me you need, again, to have a way to move them out of the corps.

Mr. JOHNSON. Anyone else want to comment on that?

Mr. Bernoski. Yes, I do.

Mr. JOHNSON. Thank you.

Mr. Bernoski. Yes, just briefly. We have long suggested that the agency adopt the model ABA code of judicial conduct. Actually, we

would rather have OPM adopt it so it would be government-wide for all administrative law judges in all agencies. This code would provide a standard, a measurement standard for many of the problems that we are talking about today, together with an implementation procedure that should be appended to the code.

This is not Earth science by any stretch of the imagination. Every bar association in this country has a code of professional conduct together with a mechanism for enforcing it. We believe that we should pattern a system after the state bar associations so we have some type of standard for regulating the system of judging within our agency and within the Federal Government.

As Mr. Schieber and Chief Judge Cristaudo said, we have a different type of program because we have a very high volume adjudication system. It requires a different type of mindset. It is hard work. Believe me, this is hard work. This is heavy lifting. When you are handling 40 cases a month, month after month after month, that is as hard as handling one big case for a year or so.

We have a different type of process. While they are all difficult, we should develop a system that recognizes these particularities within the judicial process.

Mr. JOHNSON. Well video hearing seemed to be supported by some of you and not all of you. Is that a solution to some of this?

Mr. Bernoski. Well video hearings, there are two types of video hearings.

First, the agency is experimenting with a video type hearing that would be conducted from the attorney's offices. We have a concern with that type of hearing, because we question whether or not it ceases to be a true government hearing. You probably will not have a government representative at that hearing, you don't know how the hearing is being conducted, and you don't know what the environment is in which the claimant is seated. We don't think that this is a good idea. Video hearings that are conducted from one government location to another government location is less problematic.

The real problem that we are concerned about is the credibility issue. Is it really the same when you examine a claimant on a flat screen TV as opposed to the claimant sitting right next to you? When a person is sitting three feet away from you, you make different types of observations than you do on a face on a flat screen. You see the person walk in, you see the person walk out, you see the person sit down. These are all body mechanisms that send signals to you that are not available on a TV screen.

So, we are saying proceed with caution. Proceed with caution.

Mr. JOHNSON. Thank you. I appreciate those comments.

Chairman MCNULTY. Mr. Hill?

Mr. HILL. If I may, a response to your question, the first question in particular, Mr. Johnson.

Looking at what individual judges do can be illuminating, but I think you are missing the point when we do that. It is just a simple fact, in ODAR it is easier to pay a case than to deny it. It takes less time, it takes less assets, it subjects the decisionmaker to less risk. If you deny a case, it is very likely to get appealed. If you pay a case, 14,000 a year get reviewed out of, what, 250,000 or whatever the number is.

When you start to put people under pressure to produce it is natural to think, 'Well, let me do the easy way.' It may not even be conscious. You have a system that is as tilted toward one way and production pressures that aren't associated with what you really have to do. It is just because you have to do these numbers, I think you start to run into some problems. I think that is why I have noticed that the payment rate goes up when people are pressured to produce more cases. It is just easier to do.

Ms. Zelenske. Could I say something? Just in response to Representative Johnson's questions, I just want everyone to remember what Representative Levin was talking about in terms of keeping the focus on the individuals who are waiting to get their decisions. I think that any inferences that there is improper decisionmaking going on is really unfortunate given what people are going through. I know in the CCD testimony at the April full Committee hearing, we provided page after page after page of individual stories about what people are going through, and I think it is really important to keep our focus on the individuals that are waiting for a decision.

I just wanted to say, I guess this is going back to what Mr. Schieber was talking about in terms of dealing with ALJs. There are a number of actions that the agency can take that are consistent with the Administrative Procedure Act in terms of peer counseling and quality assurance and performance goals that they can undertake to try to deal with ALJs to move them up into the range that Judge Cristaudo was talking about.

But I think, again, we need to look behind the numbers that were in the Inspector General's report because a lot depends on the staffing ratios for an ALJ in terms of what they are producing. You can have an ALJ who has been doing gangbusters in terms of getting decisions out and maybe moves to another office, and the staff isn't as good there, cases aren't getting prepared as quickly, decision writers there may not be enough, the quality may be worse, and they may see their production plummet because of that. I think it is very important to keep that in mind, that numbers are just numbers and you really have to look behind them.

Mr. SCHIEBER. I agree wholeheartedly with that. My guess is that the primary reason that the Chief Judge here had in terms of giving the precise number about how many support staff each judge needs is that they have not done nearly the systematic evaluation that they ought to do to really know that answer. This is an extremely important issue, that a judge is not necessarily a judge in an isolated, existential environment. It is a very complicated environment and we need to understand what makes all of these resources most effective.

Judge CRISTAUDO. May I?

Mr. SCHIEBER. Go ahead.

Judge CRISTAUDO. May I just comment?

Chairman MCNULTY. Yes.

Judge CRISTAUDO. Just a few of the issues. The thing about the ABA code of judicial conduct, I personally support the concept of adopting it, but it is not within the agency's authority to adopt a code like that. The Office of government Ethics has the delegated authority to make those kinds of decisions about those kinds of rules being adopted.

In terms of the high and low producers, actually, it is interesting to look at the allowance rates, the high producers and the low producers. The allowance rates actually vary. Among the high producing judges, extremely high producing judges, a number of them have high allowance rates, but there are a few of them, actually, that have very low allowance rates, which is kind of interesting, I think.

At the very low ends, there are judges that do very few cases that have high allowance rates and certainly low allowance rates. So, it varies a lot. As someone else said on the panel, we are judges, and we are looking at the facts, making decisions, and we are applying the facts. You are always going to have some discretion, essentially, in applying the law to the facts.

In terms of the video hearings, we have conducted so far about 50,000 video hearings this year of about the 400,000 hearings that we have conducted. We don't require claimants to do a video hearing. If a claimant wants to do an in-person hearing we allow them to do an in-person hearing. We send the judge to where they are or have them come into the hearing office, certainly, and we do think it provides a due process hearing.

In terms of the project of having claimants' attorneys use video equipment in their offices, that certainly increases, potentially, the video hearing capacity that we have because we have some limitation on how many hearing rooms that we have with videos. But at this point we are just testing it. We are testing it with a number of representatives. It is a test program. We have a very clear protocol that everyone needs to follow.

The claimant's representative needs to tell us who is in the room and provide other information. We are requiring that they have equipment that is just like our equipment in the sense of having the functionality that we needed to have, so the judge can pan the room and do those kinds of things that some of our judges do.

Ms. MEINHARDT. Could I offer——

Chairman MCNULTY. Mr. Becerra has an additional question, and then—Yes, you may go ahead, Ms. Meinhardt.

Ms. MEINHARDT. I would just like to make sure that everybody here understands that at the hearing offices we really do see the faces of the people. Every single day we see the people that we aren't serving, we hear from the people we aren't serving. We are trying to figure out how in the world we can handle what we handle.

You asked about staffing. If you are Santa Claus over there, shoot for five a judge, that would be very good. The problem with staffing is always that, at a national level you can say 'Well, the staffing is 4.5,' or whatever it might be, but you have an office out there that is at three and an office out there that is at—and maybe they even meet the staffing, but the balance is off. They have 4.5 per judge, but they have a lot of writers and they don't have any pullers, or they have the pullers who prepare the files, but they don't have any writers. At the end of August my office had 750 cases that had been decided that weren't written. I could meet my goal this year if I had enough people to write the cases, but I don't have enough people to write the cases. You see the ranking reports, I know you do, you can see the spread between how many cases

are waiting to be written and how many cases are waiting to be pulled. The difference is huge.

So, that is my two cents.

Chairman MCNULTY. Mr. Becerra.

Mr. BECERRA. Mr. Chairman, I think this last 20 minutes of conversation has been very illuminating because it sounds to me—and Inspector General O'Carroll, I would like to ask you a question on this.

It sounds to me like what we are finding is that we can't move toward any one size fits all characterization of what we need, but it sounded like Mr. Schieber was saying that we haven't really made a prudent assessment of what really the ratio should be, staff to ALJ, and maybe part of that is because the needs differ by office to office regionally. Is there anything you discovered in your work examining this issue that gives us a better sense of how we can make a good decision on resources to make sure that there are an appropriate number of staff people available to each ALJ as we continue to increase the number of ALJ and their productivity?

Mr. O'CARROLL. Mr. Becerra, we interviewed a number of people, and we found 80 percent of the people that we talked to said that SSA needed more staff. That is across the board.

We also took a look at what the agency called their average, which is 4.5 and we found that the higher-performing offices had either 4.5 support staff per ALJ or more, which, again, indicates you are going to be more efficient with more people.

However, the one thing that I have even underlined in my notes is that it is easy to use a number like 4.5, but in actuality you need a mix in that 4.5. You have to have the right mixin terms of the right ratio of decision writers, et cetera. That is really the important point. One of the other trends that we have, is that the office management, in terms of making sure that you have the right ratio of people, is very, very important.

That is the short synopsis to a long story. We are seeing that at 4.5 and above, the performance is higher, and the lower-performing offices usually have a lower ratio of staff to ALJs. Some offices have as low as three-to-one ratios, and usually they are under-performing.

Mr. BECERRA. Mr. Chairman, the last thing I would say on this is that I hope the managers take or can heed the call that has come out of this particular hearing that we need to hear from the managers about what their mix is and what they would like to see, because we obviously don't want to just use a wholesale approach and say 'We need to be at 4.6 and we don't care what the mix within that is.'

So, I suspect at some point soon when we follow up with another hearing, Mr. Chairman, we will probably want to hear from the managers from the various offices on what their mix is, where they are shy and where they are doing very well, and perhaps use some of the offices as good examples of getting a good mix of staff. So, that way we have a better way, Mr. Chairman, of making assessments of what ultimately we need to try to push OMB to do to fund the administration correctly.

Chairman MCNULTY. I thank the gentleman and I want to thank all of the witnesses for an outstanding hearing. I want to

thank my good friend Sam Johnson for my birthday cake. I wanted to let him know that I was provided one by the staff before the hearing started, so I am going to have a good energy level today.

[Laughter.]

Chairman MCNULTY. I want to end this hearing with a message, because I think there ought to be a message going out to across this land to the vast majority of ALJs and hearing officers and employees of the Social Security Agency, thank you for your outstanding work each and every day for the citizens of the United States of America. We have some changes that we need to make, but we have a common goal, which is to eliminate the backlog.

Sam and I have been working very hard on the CR. Hopefully we will have some additional good news for you as early as next week. But we want the vast majority of those out in the field every day working to correct this problem to know that they have our thanks and our gratitude, and that goes all the way to the top to Commission Astrue and his staff, who I know are dedicated to correcting this problem.

I also want to point out that I am retiring from Congress, and because of the schedule for the rest of the year, this is likely to be my last hearing as a member and as a Chairman of the Subcommittee, and I want to thank all the members of the Subcommittee, all the Members of the full Committee, all of my colleagues for their many kindnesses over my last 20 years in Congress, and also my family, friends, and constituents for their continuous support over my last 39 years as an elected public official.

It gives me great pleasure as I am going out the door to turn to my left and to, again, salute the person I referred to many times as one of my heroes in life because I have such tremendous respect for all of those who have served our nation in uniform. My own brother Bill made the supreme sacrifice in the Vietnam War. My buddy Sam here spent years in a prison camp enduring torture on behalf of our country, and Sam we are all deeply in our debt, and I again want to thank you for the privilege of working with you through these years. I want you to know that next year I know we are going to continue on this issue, and going to be watching C–SPAN, and I know you are going to carry on the fight.

Finally, I think it would be proper for us to adjourn this hearing in memory of both Mrs. Levin and our dear friend Stephanie Tubbs Jones. Hearing is adjourned.

[Whereupon, at 12:00 p.m., the hearing was adjourned.]

[Submissions for the Record follow:]

Statement of Disability Law Center

The Disability Law Center submits this testimony on behalf of the people we serve. The Disability Law Center (DLC) is the Protection and Advocacy agency for Massachusetts. DLC provides free legal services to people with disabilities throughout Massachusetts. A key mission of the DLC is to help ensure that people with disabilities are able to access the services they need to live and work in the community. Access to cash disability benefits from the Social Security Administration (SSA) and the associated medical coverage is crucial for many to achieve this goal—whether the benefits are needed for a year or two or longer term or episodically. I have worked in the Disability Benefit Project at DLC since 1990. Since 1983, the Disability Benefits Project (DBP) has provided technical back up and support to legal services advocates and private attorneys engaged in Social Security and SSI law practice. The DBP supports high quality representation and advocacy for those seeking Social Security Insurance and SSI benefits.

I write to support the testimony of Ethel Zelenske, Co-Chair, Consortium for Citizens with Disabilities Social Security Task Force. I agree that the over arching problem for SSA in fulfilling its mission is inadequate staffing. This is true at all levels involving service to the public. I also agree that the potential impact on claimants must be the critical measure for assessing the effectiveness of initiatives for achieving administrative efficiencies. The disability benefit programs are too important for people with disabilities who rely on them when unable to work to put these benefits at risk for the sake of misguided efforts to achieve administrative efficiency. Too many disability benefit applicants wait for far too long for their claims to be adjudicated and they and their families suffer greatly from the lack of money and health coverage. Certainly, achieving administrative efficiency is important to relieving this crisis, but it must be done carefully and thoughtfully, with close attention to the potential effect on applicants and recipients.

The problems with the disability determination process start at SSA's field offices where there are not enough claims representatives to handle all the workloads. The field offices have seen increased workloads (e.g., Medicare Part D) while losing experienced staff. I have seen accurate and timely service slip significantly for SSA's customers over the past several years, and I believe that it is due to inadequate staffing. Staff in SSA's field offices work hard but inadequate staffing still results in inadequate applications, incorrect denials, and unnecessary appeals.

The Disability Determination Services (DDS), where disability benefit applications are developed and adjudicated at the initial and reconsideration levels, also experience staffing problems, tending to have high staff turnover and high training needs. In addition, the DDSs often lack doctors of the appropriate medical specialities to review claims or perform consultative examinations. These factors result in poorly developed claims, unnecessary denials and appeals to the overburdened Administrative Law Judge (ALJ) level of appeal. It would be very efficient to make sure that disability claims were more fully developed at the front end of the disability determination process.

It was good news that SSA recently has been able to hire some additional ALJs to help work down the enormous backlog at that level of appeal and begin to relive the delays for claimants. Unfortunately, the number of ALJs hired was not enough to solve the backlog problem, especially since SSA has not been able to hire enough staff to efficiently support the ALJs. Key to good ALJ productivity is a good staff to ALJ ratio. SSA has made great strides in improving efficiencies through use of electronic case files. However, staff are still necessary to prepare the electronic files for hearing. The promise of achieving efficiencies through SSA's electronic transformation will not be fulfilled without adequate staffing. Disability Benefit Project advocates report that it is not unusual to find that relevant documents are missing from the hearing file and for medical evidence submitted electronically prior to hearing to be unavailable to the ALJ at hearing, causing delay and even the need for a supplemental hearing. In addition, requests for on the record decisions, which can save time by obviating the need for a hearing, may not be reviewed and brought to the attention of the ALJ in time to avoid an unnecessary hearing.

Neither will the promise of efficiencies through use of video teleconferenced hearings be realized without sufficient hearing office staffing. Hearing office staff must prepare the file for hearing, and assure that the claimants and representatives have timely access to the file and that new evidence can be timely submitted and made available to the ALJ. Claimants and their representatives will take advantage of time saving video teleconferenced hearings if they are well set up and supported and do not result in any diminution of the right to a full and fair hearing. Without that confidence, claimants and their representatives may be reluctant to assent to video teleconference hearings.

Statement of Frank M. Klinger

I have for years myself, along with many other Judges, presently and formerly of the Montgomery AL office who have participated in the formulation of these Ten Points, been very concerned with the issues pertaining to the disability backlog and delay and in trying to find and suggest some very clear, concise, concrete, positive and definitive steps that can be taken to eliminate this backlog and delay. I believe that that is what your Committee is interested in. We have called these suggestions the "Ten Points". I believe that our views are perfectly consistent with the presentation given to you by our National President, Ron Bernoski, who speaks for the Association as a whole, which I do not, and also with any and all Agency initiatives

to eliminate the backlog and to provide better, more efficient service. By way of background, I served in the past as both an attorney and a state court Judge in upstate New York (my wife is originally from Troy, N.Y. in Congressman McNulty's district). I have tried to "think outside the box" and to apply some well-settled legal concepts, procedures and rules that I have learned from other legal forums and proceedings to ours in order to improve our efficiency and service to the public.

Hire more support staff—much, much more.

I understand that at least in the very recent past, Social Security staff was at its lowest level since 1972. Ten years ago OHA staff was in desperate need of more staff. Since then, to my knowledge, there were essentially no new hires and for every worker who died, retired or left the system, very few were replaced. As support staff and the ratio of support staff to the Judges drastically declined, despite increasing ALJ productivity, the backlog has also steadily and proportionately increased to what it is today.

Furthermore, the computerization i.e. e-file, despite its many unquestionable benefits, has made it much harder, not easier, more time consuming, not less time consuming, for both Judges and staff. That is why in many offices, remaining staff are now not even able to work up files, mark the exhibits or do the necessary ALJ files, which makes the ALJ's job much harder and takes much longer. Also, when the DRAP recording equipment malfunctions, hearings cannot be held. When the office computer system is "down", no work can be done. Yet the HOSA position is not very well compensated and is considered by many to be a "dead end career job".

Lately staff are being hired. This is excellent. When will we have enough? The 4.5 to 1 ratio suggested in the past is reasonable. I would also say when we have reached the point that no Judge will ever again be asked to take a bunch of unorganized, unmarked and undated documents, many of which may be duplicates, missing or belong to other claimants, and do all the necessary clerical work to assemble, make sense out of and process the file (the time for which drastically decreases ALJ productivity), then, hopefully, we will be there.

Hire more ALJ*'s.*

This certainly is now being done and of course it will help enormously. But it will require a lot more support staff.

Distribute, as the APA envisions, the cases fully and properly worked up, developed, with exhibits marked and with an ALJ file to each Judge at each office, evenly, proportionately, fairly and at random and then expect each Judge to handle their caseload or to explain why they cannot . That is what I understand is essentially done in most state and federal courts. Obviously, in those Courts, some cases are far more difficult and complex than others, and some Judges have better staffs than others, yet all Judges are expected, as a general rule, to handle their caseload. Absolute "numbers" are not the best criteria (they are too easy to manipulate i.e. give the "easiest" cases to the favored Judge), but certainly it is very wrong if there are **any** Judges on active duty who receive their salary but accomplish very little or nothing unless of course there is a very good reason for it.

In our system, in all cases a Request for Hearing (RFH) is filed and eventually the case is scheduled. This is a time consuming process in which staff, on the required assumption that the claimant will appear and be ready for their hearing, has to coordinate the schedules of the Judge, the reporter, the medical expert and/or vocational expert and courtroom availability, make up a calendar, send out the appropriate notices and prepare all the necessary vouchers Yet when the claimant arrives, we are required to give them all their rights, warnings and information including phone numbers with regard to representation (even if this has previously been mailed to them) and to give them at least one adjournment to try to obtain representation. If they avail themselves of that right (which many do including, but certainly by no means limited to, "in pay status" claimants, whose payments must continue until a final decision is reached), then the experts must still be paid and, moreover, the staff must do all this all over again, taking up a slot (cases being processed from start to finish, in general, oldest first) while other claimants who are ready, willing, able and often desperate to proceed must wait and wait and wait. By contrast, in my experience in state courts, the case does not even go on the court calendar until the plaintiff files a "statement of readiness" which states that they are ready for trial. The case can then be called for trial at any time by the court and the plaintiff must immediately proceed to trial or have the case dismissed.

Why not, above the claimant's signature on the RFH, inform them at that time of all their rights and warnings and information including phone numbers pertaining to representation and inform them that their case will never be heard until they sign a "statement of readiness" (clearly "in pay status" claimants would have

to sign one within say 90 days or lose their "in pay status" or else many never would sign). The "statement of readiness" would, above their signature, state that they are ready for a full hearing, could again restate their rights, warnings, telephone numbers of representatives etc. and moreover would clearly state that if they wish to be represented, it is their responsibility to have their representative present at the hearing (any representative who has filed, or does file before the hearing is scheduled, a form 1696 would of course still have the hearing scheduled at their availability) and that if they appear at the hearing without a representative, then they must proceed with the full hearing without a representative or else have their RFH dismissed and start over again.

What this would accomplish is: No more adjournments except for medical emergency or other very compelling cause. As a precaution you could certainly provide that the ALJ may grant an adjournment to any claimant who, by reason of established mental defect, did not understand the above, although in many cases the person, claimant or helper, who figured out how to file the claim and the RFH, would be at least as likely to understand without excessive difficulty these instructions. Therefore, in any event, at least almost all of the cases will move quickly and should have only one hearing date so that other claimants will not have to wait as they do now.

Eliminate the requirement in all unfavorable decisions that the ALJ, in addition to the sequential evaluation, must specifically evaluate (twice for substance abuse cases) the claimant's functioning in a very large number of precise physical and even more mental categories (RFC and PRTF). This requirement has lead to a lot of development, the use of a lot of consultative examinations (CEs), medical and vocational experts, a lot of time spent in preparing the decision (is it any surprise that the writer alone needs an average of 8 hours to write an unfavorable decision? And that by no means guarantees that the Judge will find that the proposed decision is anywhere close to being legally sufficient) and a lot of remands, all of which would not occur except for the fact that it is required by our regulations

For example, assume a case with no physical evidence and virtually no psychological evidence. except for one psychological report finding a psychological impairment, but no RFC is provided (and DDU CE's frequently do not provide them despite the requirement that they do and of course there is nothing the ALJ can do about that except live with it or order another CE) except for the conclusion of the psychologist that "there is no reason why this person cannot work full time at whatever he is physically capable of". That case might seem to be ready for a speedy decision, but under our current rules a whole lot—much much more—needs to be done. Take another example. Congress by law has provided that substance abuse disabilities are not legally compensable. Take a case where there are only two impairments: "alcohol abuse" and "drug abuse". A simple decision? Very far from it. We must still go through the sequential evaluation process step by step and make findings with discussion on every aspect of the claimant's physical RFC and more pertinently every aspect of the claimant's mental RFC and PRTF and do all this not once but twice, once for the claimant as the claimant is with substance abuse and once for how they would be without it!!! In all cases, the failure to prove any one aspect of any of these categories to the satisfaction of the Appeals Council or the Federal Courts will often result in a remand.

In short, the burden of proof as to a number of very detailed and complex categories has been effectively shifted to the ALJ. However, in virtually any other sort of a civil action, it is sufficient enough for the finder of the facts to find, sometimes with reasons required, sometimes not (but they certainly should be required here), that the plaintiff has not met their burden of proof, Period. End of case. Do the same for our cases and it will save us an enormous amount of time that can be put into doing many more cases (although I must note parenthetically that most of us probably already do more cases than most other Judges in other systems).

I believe that the Committee is also interested in numbers of filings. Since the *Zebley* U.S. Supreme Court decision of the early 1990s, child disability claims have skyrocketed. Possibly the Agency might have the statistics broken down. I do not. I do know that very many parents have filed for all types of physical disabilities and very many mental disabilities of their children such as ADHD, personality disorders, conduct disorder, disruptive behavior disorder, oppositional defiant disorder, antisocial personality disorder, mental retardation, borderline intellectual functioning etc. etc. The problem, if there is a problem, is not in how child disability is defined nor how it is adjudicated by us or others. It is in how the process works and moreover what happens after disability is adjudicated.

Let us compare an adult with a child. An adult, to get disability, must cease all work at substantial gainful activity (SGA) level while they wait for years for the system to operate. A child, by contrast, is of course not expected to be working and

therefore the parent sacrifices nothing financially, merely a little time, hence they have nothing to lose—only a possibility of gain, when they file for disability for the child. However, the child, certainly if old enough to understand, as well as the parent, has a very definite financial incentive to demonstrate the child's disability, or the underlying behavior that has or will result in a diagnosis of the disability, at school and elsewhere, often to the detriment, disruption and displeasure of others. And of course if disability is found, then there is definitely a strong financial incentive for that disability or the behavior that is the basis for the disability to continue indefinitely so that the checks will continue indefinitely. I have personally seen a number of cases in which psychologists have commented that the parent is not at all motivated to improve the child's behavior or to cure the disability, but is merely seeking a disability check for the child.

If disability is found, the adult receives a monthly check, which is apparently some form of compensation (however inadequate in many cases) to the adult and his/her family for the wages that he/she might otherwise be earning. If the child is found to be disabled, the parents receive a monthly check for the child which is apparently some form of compensation to the family for . . . ??? . . . exactly what I am not clear. In **some** cases, the disability **is** causing substantial financial expense. Just one example: I have seen cases in which the parent of a young ADHD child was unable to work because no one would take the child. Yet, in general, the child as a child is not expected to work. In many cases, all the services that the child is receiving or would receive are provided by the public schools and other public funding.

Why not change the compensation for child disability to include all reasonable and necessary medical, psychological, counseling and all other reasonable and necessary expenses, lost wages, transportation etc. etc. (which will very probably result in substantially more money for some claimants) rather than simply a monthly check? Clearly what else this would accomplish is that it would likely very substantially reduce the caseload in that many filers whose children's alleged disabilities actually cost them very little or nothing at all will not bother to file if there is no possibility of a monthly check each and every month at the end of the process.

Abolish the "Quality Control" Program to the extent that it involves Judges.

To my knowledge, this program takes about 20 Judges for I believe 4 months at a time 3 times a year, off of hearing real cases, thereby adding enormously to the backlog, to do studies reviewing anonymously decisions previously made by other Judges. These Quality Control reviews have no affect whatsoever on any real live case. They are for bureaucratic purposes. True, they issue a lengthy report but to my knowledge many Judges don't even read it and those who do, I'm sure, say "they're talking about someone else, surely not me". State and federal courts certainly have nothing like it and do fine. The whole thing is completely unnecessary because there already exists another much better Quality Control Program. It is done on real live actual cases. It is known as the appellate process and it ought to continue as is with the Appeals Council reviewing both favorable and unfavorable decisions. I must now add that I have heard that this QC program has been suspended and is under review. If it hasn't already been, it should be abolished as it pertains to Judges.

Prison cases.

In many offices, the vast majority of the oldest cases are prison cases. That is because their lives are literally in the hands of their jailors and, sorry to say but it's true, most of the jailors could not care less whether the prisoner ever gets their disability hearing or not. Therefore their inefficiency is legendary and very often the prisoner is not made available for their phone hearing despite repeated promises that they will be. Therefore an enormous amount of staff time and taxpayer money is expended constantly scheduling and rescheduling the cases of prisoners. The solution: Find a way that an ALJ can issue an easily enforceable order (as state and federal Judges do) requiring the jailors to bring the prisoner to our hearings (which makes for a much shorter and smoother process than any phone hearing). This is done I understand to bring the prisoners to medical appointments. If this is not possible, then provide that all prisoners' hearings will be held in abeyance until their release from jail. Prisoners lose a lot of rights. I don't see why the right to a disability hearing can't be delayed until their release.

Close the record at the end of the hearing.

Provide that on appeal of any decision or dismissal (for dismissal if and only if the Hallex has been followed), no facts or issues may be raised or discussed on appeal that were not presented to the ALJ at the hearing.

Points 9 and 10 will make it a lot easier for us to decide cases much more quickly and coherently with far fewer time-consuming supplemental hearings with experts, additional development and/or remands. Therefore we can decide a lot more cases. All that these changes do procedurally is to put our proceedings on the same basis as virtually every other type of legal civil proceeding known to mankind.

In virtually every other court, administrative body or civil forum in the country and probably the world except our system at ODAR formerly OHA, when the case is called for trial or hearing, that is when the parties must be present and present all their evidence. When the hearing or trial is over, no more evidence is received. Additional evidence is not allowed to be submitted after the hearing or trial but prior to the verdict or decision, or on appeal. Isn't it amazing that the representatives, generally lawyers, in all of these other forums, when they have to comply with this rule (or face possible loss of the case and a very angry client), are quite capable of doing so?? If they were made to follow these rules in our forum, they can and would do so. In any event, in the worse case scenario, our rules already provide that a claimant may always refile and that a prior decision may be reopened for good cause.

But what about the pro se (unrepresented) claimant? Hasn't he/she gone through enough just to get their "day in court"?? Isn't it unconscionable to try to avoid the merits of their claim and defeat them with procedural legal jargon and technicalities??? It certainly is!!! But that is not what would happen. Why not?? Because, as President Bernoski explained, under the law we as ALJ's figuratively wear three hats and one of them already (although it would do no harm if it were restated somewhere) imposes upon us the absolute duty to assist the claimant. To do this, we should and do inquire of the pro se claimants, who is treating them for their impairments and then we ask our staff to obtain the evidence from these providers. Perhaps some additional exceptions to these rules might be appropriate, particularly for pro se claimants. But a means to enforce rules requiring timely submissions of everything to the ALJ in general would aid our timeliness and productivity immeasurably.

Statement of James E. Andrews

As a disabled individual with a pending disability claim with the Social Security Administration, I would like to know what you are doing to ensure that the disability claim procedure and hearings and appeals adjudication process is being administered correctly. I am specifically addressing and greatly concerned with the following:

The completeness and accuracy by the Social Security Administration in reviewing an individuals: application, forms, statements, medical records, and vocational rehabilitation records. That a fair, unbiased, and accurate decision is being rendered at each level of disability determination.

That a timely resolution is being sought regarding the backlog of pending disability claims. I have already contacted my State Senators and the Congressman from my district for an official inquiry into my disability claim. I am not asking for an inquiry from you regarding my specific claim, I am respectfully requesting answers to these questions.

As an individual with medical conditions that require constant care, I do not think that filing a disability claim should be this demoralizing. I believe the Social Security Disability Program was established as a safeguard for people unable to work because of their disabilities. I can see how a vast majority of claimants quickly become overwhelmingly frustrated and quite discouraged with the manner in which they are dealt with by the Social Security Administration.

Statement of Judge Steven A. Glaze

The Federal Administrative Law Judges Conference (FALJC), of which I am President, is a voluntary professional association, organized over 60 years ago for the purpose of improving the administrative judicial process, presenting educational programs to enhance the judicial skills of Administrative Law Judges, and representing the concerns of Federal Administrative Law Judges in matters affecting the administrative judiciary. The membership of the Conference includes Judges

from almost every administrative agency which employs Administrative Law Judges.

It has come to the attention of FALJC that Michael J. Astrue, the Commissioner of Social Security, sent you a bill proposal that would allow all agencies in certain instances to immediately "discipline" ALJs who work for them without a prior finding of good cause established by the Merit Systems Protection Board. FALJC strongly opposes this proposal.

Under the current law, Administrative Law Judges are subject to agency discipline for most conduct and productivity problems just like any other government employee. However, an action against an Administrative Law Judge leading to removal, suspension, reduction in grade, reduction in pay, or furlough of 30 days or less, may be taken by his or her agency only for good cause established and determined by the Merit Systems Protection Board (MSPB) on the record after opportunity for hearing before the Board.[1] The current law allows only three exceptions to the requirement that an agency show good cause before the MSPB before firing or otherwise disciplining an ALJ: a suspension or removal in the interests of national security under 5 U.S.C. § 7532, a reduction-in-force action under 5 U.S.C. § 3502, or any action initiated by the Special Counsel under 5 U.S.C. § 1215 for (1) committing a prohibited personnel practice, (2) violating a law, rule or regulation, or engaging in other conduct that is within the jurisdiction of the Special Counsel under 5 U.S.C. § 1216, or (3) knowingly and willfully violating an MSPB order.[2]

Commissioner Astrue proposes to upend this procedure by allowing any agency to "discipline" its ALJs *without* an MSPB finding of good cause whenever an ALJ (i) is indicted or convicted of an imprisonable crime; (ii) is disbarred or suspended from the practice of law; (iii) is found by a court or administrative tribunal "to have discriminated against an individual in a protected class, showed disrespect to an individual in a protected class, committed discriminatory physical or verbal conduct against a protected class member, or committed sexual harassment;" or (iv) "is indicted or convicted of a misdemeanor involving fraud, theft, assault, physical violence, prostitution, solicitation, sexual misconduct, or an offense involving narcotics or is found civilly liable for engaging in one or more of these activities."

Commissioner Astrue's proposal is ill-considered, unwise, irrational and unreasonably punitive. His explanatory letter offers absolutely no rational basis for it. "Reducing the disability backlog," as the Commissioner recites, is certainly no reason for it. The Social Security Administration already disciplines its Administrative Law Judges for conduct and performance infractions by a variety of methods, several of which do not require an MSPB finding of good cause, including counseling and oral and written reprimands.[3] Commissioner Astrue has offered no evidence that these methods do not work.

The proposal vaguely calls for "discipline" for certain types of offenses but does not explain what form that "discipline" may take. Presumably, that "discipline" would include the specific punishments that the current law prohibits without an MSPB finding of good cause. The proposal does not even indicate which should come first, the agency's "discipline" or an MSPB determination of good cause.

Commissioner Astrue's idea crosses the line not only by expanding what punishments may be meted out without showing good cause, but also by contracting the nature of offenses that otherwise call for due process. It calls for "discipline" without a showing of good cause upon an indictment for a crime, not just a conviction, even though indictments are not in and of themselves proof of anything. The proposal also allows for "discipline" without a showing of good cause in instances of civil liability, not just criminal liability, for which standards of proof are much lower and inappropriate for punishing egregious behavior.

As for "discipline" without a showing of good cause upon being found to have shown "disrespect" to someone or some class of individuals, Commissioner Astrue's idea goes far beyond the boundaries of good sense. Administrative Law Judges are by the very nature of their jobs susceptible to accusations of this sort in many circumstances and should not be singled out for harsh agency punishment in such cases without due process. To give one example, in Social Security cases, claimants unhappy with their case outcomes sometimes make accusations of bias and mistreatment that may be unfounded. SSA hypothetically could use such complaints to get rid of ALJs for political, case outcome, or retaliatory reasons.

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[1] 5 U.S.C. § 7521(a) (2000).

[2] 5 U.S.C. § 7521(b) (2000).

[3] See Congressional Response Report, Administrative Law Judge and Hearing Office Performance, A–07–08–28094, at 18 and App. E (August 2008), available at http://www.ssa.gov/oig/ADOBEPDF/A-07-08-28094.pdf,

Commissioner Astrue's proposal allows for "discipline" without a hearing or finding of good cause in a variety of circumstances that, if anything, should not lead to "discipline" unless there is proper notice, an opportunity for hearing, and a showing of good cause. The hallmark of "due process" is the right to a hearing on the record, which the subject proposal eliminates. Strangest of all, this proposal singles out Administrative Law Judges for a unique form of punishment from those whom the Administrative Procedure Act (APA) expressly forbids so acting—the very agencies for which ALJs are required to render independent, impartial initial decisions without regard to agency pressure or politics.[4] The proposal attempts to destroy one of the most important features of the ALJs' decisional independence in the APA: protection from agency discipline or dismissal without accountability to the MSPB.

Administrative Law Judges who are found guilty of committing the offenses that Commissioner Astrue lists in his proposal are subject to ample punishment under the laws of the United States, just as any recalcitrant public official would be. For such conduct, they are also subject to specific disciplinary actions by the Merit Systems Protection Board upon a finding of good cause. There is no need to impose a needless *in terrorem* provision on Administrative Law Judges beyond the more-than-adequate provisions of civil and criminal law.

For the foregoing reasons, FALJC respectfully opposes this measure.

Very truly yours,
Judge Steven A. Glazer
President
THE FEDERAL ADMINISTRATIVE
LAW JUDGES CONFERENCE

Cc: Ms. Rachel Shoemate
Executive Office of the President
Office of Management and Budget

Statement of Rhone Research

The Solar Energy Industries Association (SEIA) is the national trade association of solar energy manufacturers, project developers, distributors, contractors, installers, architects, consultants and financiers. Established in 1974, SEIA works to make solar energy a mainstream and significant energy source by expanding markets, strengthening the industry, and educating the public on the benefits of solar energy.

www.seia.org

Executive Summary

A new energy paradigm for our country depends on the growth and development of carbon-free energy generation. Naturally, there will be a mix of different energy sources. However, for the next ten to fifteen years, only ready-to-deploy technologies such as solar energy can fill the nation's need for pollution-free generation.

A carbon constraint, in and of itself, will not succeed in rapidly deploying solar technology at the scale necessary to begin combating the climate crisis. Any successful carbon policy must be designed to scale up the market for solar as rapidly as possible. Depending on the form of the carbon constraint this could mean allowances allocated to solar generators based on the amount of carbon-free energy produced or pools of auction proceeds that fund a solar roofs program, a renewables transmission corridor, or a loan guarantee initiative to help businesses and homeowners "go solar."

The climate crisis is the single largest problem ever faced by our country and the world at large. Solar energy is a crucial part of the solution and, as such, it must be recognized and rewarded in any climate policy.

Statement of Climate Problem

Global warming is caused by a thickening layer of carbon dioxide and other pollutants that trap heat from the sun. Global warming pollution has already caused average worldwide temperatures to increase by over 1 degree Fahrenheit over the last century. Scientists say that unless global warming emissions are reduced, average temperatures could rise another 3 to 9 degrees Fahrenheit in the United States by the end of the century, with far-reaching effects:

- Higher temperatures will worsen air pollution;

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[4] 5 U.S.C. § 554(d)(2).

- Sea levels will rise, flooding coastal areas;
- Heat waves will be more frequent and intense;
- More droughts and wildfires will occur in some regions, more heavy rains and flooding in others; and
- Species will disappear from historic ranges as habitats are lost.

Many of these changes have already begun. More carbon pollution means higher temperatures and greater dangers. If we do not begin to reduce emissions now, we will leave our children and grandchildren with an unsafe and unhealthy environment.

The window of opportunity to avoid the worst global warming impacts is closing. Carbon pollution stays in the atmosphere for more than a century and, with each passing year, emissions build up to increasingly dangerous levels. To avoid reaching levels that trigger irreversible damage, we must limit how much carbon pollution we put into the atmosphere over the next decades. This leaves us with a choice: the more carbon pollution we put in the atmosphere now, the less we'll be able to put there later. Delaying action now will only force more drastic, and more expensive, reductions in the future.

Benefits of Solar Energy

Solar technology has the highest carbon return on investment of any energy generation source. As one example, the energy lifecycle cost of photovoltaic panels is paid back in 1.5—2.5 years and the equipment will continue to generate carbon-free electricity for 25–50 years. In addition to being a zero-carbon source of energy, the solar industry also supports other public policy goals:

Energy Security

Solar helps to stabilize the grid, provide clean, reliable power, and reduce the impact of natural disasters or terrorist attacks on the nation's energy infrastructure. Producing domestic, clean solar energy will reduce our dependence on foreign sources of energy.

Peak Energy

In most of the U.S., peak electric loads occur when solar electricity is near optimal efficiency (9 a.m. to 6 p.m.). Those loads are almost exclusively served by high-cost central station gas generation, often at the least efficient plants. This makes solar the ideal technology for easing congestion on the grid when it is most necessary.

Job Creation

All segments of the solar industry require highly-skilled workers. For manufacturers, distributors, contractors, installers, architects, consultants and financiers alike, the solar energy industry will create hundreds of thousands of jobs and help put America back to work. With the passage of the 8-year extension of the Solar Investment Tax Credit (ITC), the solar energy industry is expected to support 440,000 jobs by the year 2016. Properly designed carbon legislation can increase these job and investment numbers significantly.

Clean Energy

Solar energy is the cleanest of all renewable energy sources, producing electricity and thermal energy with zero emissions, and no waste byproducts. Photovoltaic, or PV, technologies have the added benefit of no water use, which will become an even greater issue as climate change affects the nation's water supply.

State of the Solar Technologies

While the sun generates enough energy to meet the world's energy needs many times over, the challenge is to capture that power for consumer use at a reasonable cost. Today's solar energy technologies convert the sun's light to electricity, absorb its heat for heating and cooling systems or concentrate its heat to power steam turbines that produce electricity.

Solar Electric (Photovoltaic)

Photovoltaic (PV) panels generate electricity directly from sunlight via an electronic process that occurs naturally in certain materials, like silicon.

PV panels can be used to power anything from small electronics such as calculators and road signs to homes and large commercial businesses, and solar farms are capable of powering entire towns.

The U.S. is the world leader in the manufacture of both next-generation thin film technologies and the polysilicon feedstock used in most PV applications. U.S. PV manufacturing grew by 74 percent in 2007 and U.S. PV installations grew by 45 percent—both among the fastest growth rates in the world. Globally, the U.S. is the

fourth largest market for PV installations behind world leaders Germany, Japan and Spain.

Solar Thermal

Solar thermal technology harnesses the power of the sun to provide energy for solar hot water, solar space heating and cooling and solar pool heaters.

Solar Water Heating

Most solar water heating systems have two parts, a solar collector and a storage tank. The solar collector gathers the sun's energy, transforms it into heat then transfers the heat to water. The heated water is then stored in the tank for later use, with a conventional system providing additional heating as necessary. Solar water heating systems can be either active (relying on electric pumps to circulate water) or passive (relying on gravity and the tendency for water to naturally circulate when heated), but the most common type for use in commercial and residential buildings is active.

Solar Space Heating and Cooling

Active solar space heating systems collect and absorb solar energy and use electric fans or pumps to transfer and distribute the heat. These systems also contain an energy-storage system to provide heat at night or when the sun is not shining.

Passive solar space heating capitalizes on the sun's warmth through design features as well as materials in walls or floors that absorb heat during the day and release that heat at night.

Perhaps the most interesting new solar thermal technology is the absorption chiller—a closed-loop system that converts solar-heated water into air conditioning. Water heated by the sun through flat-panel collectors or evacuated tubes is subjected to a low-pressure loop with lithium bromide, a phase-change catalyst, which causes the water to reach a cool 44 degrees F. This cooled water runs through copper piping; forced air passing over the coils produces air conditioning.

Solar Pool Heating

Solar pool heating systems use the existing pool filtration system to pump the water through a solar collector and the collected heat is transferred directly to the pool water. Solar pool heating collectors typically operate at a slightly warmer temperature than the surrounding air and normally use unglazed, low-temperature collectors made from polymers.

Concentrating Solar Power

Concentrating solar power (CSP) plants are typically utility-scale generators that produce electricity by using mirrors or lenses to efficiently concentrate the sun's energy. CSP technologies include parabolic trough systems, power towers, compact linear Fresnel reflectors, and dish systems which concentrate the thermal energy of the sun to drive a conventional steam turbine.

Parabolic trough systems use parabolic curved, trough shaped reflectors to focus the sun's energy onto a receiver pipe running at the focus of the reflector. Because of their parabolic shape, troughs can focus the sun at 30 to 60 times its normal intensity on the receiver tube. The concentrated energy heats a heat transfer fluid in the tube, which is then used to generate produce steam to power a turbine which drives an electric generator, thereby producing electricity.

Power tower systems use a field of computer-controlled flat mirrors (called heliostats) to focus solar heat on a central collector tower. The high energy at this point can then be used to heat water to produce steam (and run a central generator) or it can be transferred used to heat to a heat transfer material fluid (typically liquid sodium) which can then stores the heat for later use.

The compact linear Fresnel reflectors use flat reflectors moving on a single axis while using a Fresnel lens to concentrate the solar thermal energy into collectors onto receiver tubes, as with parabolic troughs. The flat mirrors used in this system allow for a greater density of reflectors in the array, increasing the efficiency of land use.

Dish systems use a large concave dish to track the sun and focus the energy onto a high-efficiency motor, which generates electricity directly. Utility-scale solar projects will site scores of individual dishes in an array on one plot of land.

Carbon Constraint Policy and Solar Energy

The industry does not have a preference between a cap and trade system or a carbon tax. What is imperative is that the policy be optimized for the maximum deployment of solar technologies and that the policy provides a revenue stream to immediately deploy carbon-free technologies today, rather than ten years in the future.

The Myth of Benefit

There is an unfortunate and inaccurate notion that simply by implementing any type of carbon constraint, zero-emission technologies such as solar and wind energy will greatly and instantly benefit. This is not the case. Most of the climate bills which have been introduced in the last two years provide a long ramp-up period, with no immediate or near-term costs added to energy from fossil fuel generation. At the same time, these bills have placed faith and trust in new technologies still in the experimental stage that will not have results for years to come.

In order to truly benefit the growth of ready-to-deploy, carbon-smart technologies, such as solar and wind, any climate policy must explicitly be optimized to benefit these deployment-ready technologies.

The 10-Year Solar Window

Solar is ready today to deploy on a massive scale and immediately begin producing gigawatts of carbon-free electricity. While carbon capture and sequestration (CCS) may offer promise for the continued use of fossil generation in the future, the technology will be in the testing stage for years to come. Additionally, the pipeline infrastructure necessary for the broad deployment of a working CCS network will add additional years of development. Similarly, nuclear technology—which produces no carbon emissions while generating electricity—faces siting and environmental challenges which will make large scale development in the next decade difficult at best.

During this 10-year window, in order for any real progress to be made in changing the energy paradigm of this country and moving us toward a carbon-smart future, we will need to deploy solar on a massive scale. The technologies are ready today and offer unrivaled environmental benefits while creating the energy we need to feed our economy.

What Is Needed to Create Solar Wedges

Solar energy has the potential to fill a clean-energy wedge in meeting the nation's growing energy needs. This includes all forms of solar energy: photovoltaic (PV), utility-scale concentrating solar power (CSP), and solar heating and cooling.

What is needed for the vast deployment of solar energy generation:

Federal RES with Solar-Carve-Out or Set-Aside

Renewable Portfolio Standards (RPS), also referred to as Renewable Electricity Standards (RES), puts a requirement on retail electricity providers to supply a minimum percentage of their electricity from renewable sources, such as solar, wind and geothermal.

Approximately half the states have mandatory RPS programs and of those states, approximately a dozen have solar-specific designs (either a solar carve out or a multiplier). Analysis of state RPS (RES) programs has shown that, if our goal is to encourage a carbon-smart energy mix, it is imperative that a federal RPS (RES) contain a solar carve out (e.g., a minimal percentage of the renewable energy supply coming from solar electric and solar thermal sources). Without a solar carve out, any federal RES will only assist in deploying wind and biomass generation.

Additionally, any federal legislation must not preempt more ambitious state RPS (RES) programs which demand a higher percentage of electricity to come from renewable sources or a high percentage to specifically be supplied from solar sources.

Solar Roofs Program

A Ten Million Solar Roofs program, modeled on the very successful California million solar roofs initiative, will help to aggressively deploy solar throughout the country. The program would provide a rebate of $3 per watt (or thermal equivalent) for solar systems up to 4 megawatts in size.

Guaranteed Low-Interest Loans for Solar Property

A "Stafford loan" renewable energy program would allow business and home owners to receive subsidized loans to install solar thermal or solar electric equipment.

Zero-Carbon Energy Generation Access to Federal Lands

A Solar Reserves program would set-aside large swaths of federal land for utility-scale solar projects. In order to optimize the effectiveness of the program and the speed at which projects could come online, the environmental assessments should be completed on the entire reserves area.

Renewable Energy Transmission Corridors

Establish transmission corridors which give preferential treatment to renewable generation, such as utility-scale solar power plants. Policies that encourage up-

grades and build-out of the transmission grid to reach areas rich in renewable resources must also be pursued.

Increased Solar Research & Development

There needs to be massive increase in the funding for research and development for solar technologies. This is needed not only to continue to develop new polysilicon, thin film, and concentrating solar technologies, but also to lower manufacturing costs and improve techniques for deploying solar to market, such as the use of solar thermal technologies in zero- and low-energy buildings.

Solar Access Rights

It should be the recognized right of every American to be an energy patriot, creating their own clean, carbon-free energy. Necessary policies must be put in place to protect this freedom.

Net metering

Net metering programs allow customers who generate more solar energy than they consume to sell the excess electricity back to their local utility. Nearly forty states plus the District of Columbia feature some kind of net metering program, though the amount of electricity that can be sold back varies. SEIA supports a single national standard for net metering.

Interconnection

Interconnection standards dictate the administrative process and technical specifications a homeowner or installer must follow to install solar electric property (solar panels, solar hot water heater, etc.) and connect that property to the local utility's distribution system. Not only do these standards vary by state, in some cases they vary from utility to utility. Requiring a local solar installer to know and follow many sets of rules and regulations increases the cost to consumers and creates a market barrier, inhibiting widespread adoption of solar technologies. SEIA's goal is to have a single, national standard for interconnection rules, which will ensure the safe and expedient installation of solar technologies for all consumers.

Restrictive Covenants/HOA Rules

Across the country, local zoning laws and homeowners' associations (HOA) govern the approved uses of a property. While these rules are often created to ensure uniformity or uphold a community's aesthetic standard, they may unwittingly prohibit the installation of solar panels, solar water heaters or solar heating and cooling technologies.

The tide is shifting and zoning laws are now being used to protect a homeowner's right to solar access from California to Maryland. SEIA aims to eliminate zoning laws and HOA rules prohibiting the installation of solar technologies nationwide.

Conclusion

If the United States plans to combat climate change, the next decade is crucial. A carbon constraint alone is not enough. It must be optimized to deploy carbon-smart technologies that are ready today.

Solar energy has the technological and environmental benefits necessary to meet the country's increasing need for clean power, while at the same time relieving much of the concern that climate policy might hurt the economy. Solar is an economic engine capable of creating hundreds of thousands of American jobs and billions of dollars of private investment.

No one technology may be the silver bullet to solve the problem of climate change. However, if the country plans to meet its environmental, energy, and economic goals, any climate policy must promote the wide-scale deployment solar energy.

Statement of Robert Vanlangendonck

If the handling of my application for Social Security benefits and the re-deduction for Windfall Elimination Provision (WEP) is typical of the Social Security Administration (SSA), then I can understand the backlog that now occurs for disability claims before an Administrative Law Judge (ALJ).

On May 9, 2002, I applied for Social Security benefits while I was still employed. The clerk convinced me financially it would be better to start my benefits on May 9, 2002 at a reduced rate instead of on my 65th birthday. I accepted the suggestion. I continued working and decided to retire on January 3, 2005.

On November 2, 2004, I went to the local Social Security Office (SSO) stated my retirement date of January 3, 2005 from the State of Louisiana and was given a printout of my benefits with the WEP reduction. I was very vocal about this reduction and told the clerk it was a hoax and a rip-off. To pacify me, the clerk told me with the cost of living increase for the coming year, which had not been included in the calculation, my benefits would be about same as before the inclusion of WEP. I was also given form CMS–40B (1–90) Application for Enrollment in Medicare (Part B) that states effective "3 January 2005" and form CMS–L564 (4–2000) Request for Employment Information that I brought to my employer and returned the documents to the local SSO on November 5, 2004. I also received by mail a printout of my "Indexed Earnings" from the same clerk.

My point in related the above information is that the local SSO was well aware that I would be retiring on January 3, 2005.

I received a letter dated September 26, 2006 from SSA stating that my benefits were overpaid by $2,480.00; the WEP had not been deducted. On October 10, 2006, I filed a Request for Reconsideration. I received a letter dated June 6, 2007 from SSA stating my request had been denied, and I should contact the local SSO to file a formal reconsideration. In the letter, it states, "You are overpaid because you did not tell us that you started getting a pension from Louisiana State Employee Retirement System." I will not go into detail with the additional letters and documents filed, but the SSA deducted the overpayment from my benefit checks the latter part of 2007 even though I had filed a "Request For Hearing by Administrative Law Judge on August 22, 2007."

I received a letter dated July 22, 2008 for my "Notice of Hearing" to be on September 17, 2008 at 9:30 AM. On that date, I arrived at the Office of Disability Adjudication and Review about 8:20 A.M. to make copies of my exhibits that I would present at the Hearing. After copying them, I was stapling together the multiply pages when the court reporter approached me and wanted to see my exhibits. She rifled through the exhibits pulling some out and making various piles. The ones she left on the table she stated were in the record and could not be introduced. She left with the pulled documents and returned almost immediately stating the judge was ready to hear my case. I grabbed my documents and followed her to the hearing. I stated my case although not how I had planned because of the actions of the court reporter. The hearing was over before 9:00 A.M. During the hearing that included a judge, a court reporter and me, a question of procedure arose. The judge referred the question to the court reporter. It was after the hearing that I realized the court reporter was not an independent one. Although I represented myself in proper person, the court reporter had no right to do or say what she did. I only hope the judge was not involved. I do hope other cases with or without legal representation are handled fairly without SSA interference. I cringe at the thought of cases concerning disabilities are treated like mine.

One wonders if the SSA deliberately omitted my WEP deduction because of my involvement in its unfairness. In addition, is the SSA trying to swell its workload to justify a bigger budget? Regardless, when I contacted the SSA in November 2004 a simple form could have prevented all the unnecessary paperwork and wasted time, that is, if the SSA would have processed it properly.

Statement of Social Security Disability Coalition

My name is Linda Fullerton, and I have an inoperable blood clot and tumor in my brain, and suffer from several incurable autoimmune disorders that are too numerous to list, which have caused me to become permanently disabled. I currently receive Social Security Disability Insurance/SSDI and Medicare. You can get even more detailed information about my personal horror stories, which are not for the faint of heart, on my websites:

"A Bump On The Head"

http://www.frontiernet.net/~lindaf1/bump.html

Social Security Disability Nightmare—It Could Happen To You!

http://www.frontiernet.net/~lindaf1/SOCIALSECURITYDISABILITYNIGHTMARE.html

Social Security Disability is an insurance policy which was created to be a safety net for millions of disabled Americans, and for many such as myself, it has become their only lifeline for survival. I filed an SSDI claim in December 2001, was denied in March 2002 by the NYS ODTA (Office Of Temporary And Disability Assistance),

filed an appeal, and then had to wait until June 2003, due to the severe hearing backlog in the Buffalo NY Office Of Hearings & Appeals, before my SSDI claim was finally approved. It is hard enough to deal with all the illnesses that I have, but then to have my entire life destroyed with the stroke of pen by neglectful government employees, to whom I was just an SS number, is more than I can bear. So now, not only will I never recover from my illnesses, but I also will never recover from the permanent financial devastation this has had on my life. I don't know how I am going to survive without some miracle like winning the lottery. I lost all my resources, life savings, and pension money during the 1½-year wait for my SSDI claim to be processed. Due to the 24 month waiting period for Medicare, (I didn't become eligible for it until June 2004) I had to spend over half of my SSDI check each month on health insurance premiums and prescriptions, not including the additional co-pay fees on top of it. All the SSDI retro pay is gone now as well—used to pay off debts incurred while waiting for 1–1/2 years to get my benefits. I know first hand about the pain, financial, physical and emotional permanent devastation that the SSDI process can cause. My "American Dream" will never be realized. I have now been forced to live the "American Nightmare" for the rest of my days, because I happened to get sick, and file a claim for Social Security Disability benefits, a Federal insurance policy that I paid into for over 30 years. As a result, I will never be able to own a home, replace my lost financial resources, or replace my only means of transportation—a failing 11 year old car, and several other necessities. When things break down now, I cannot afford to fix or replace them and have to do without. I currently live strictly on the inadequate, monthly SSDI check I receive, always teetering on the brink of disaster. I do not qualify for any public assistance programs. I am doomed to spend what's left of my days here on earth, living in poverty, in addition to all my medical concerns. I struggle every day to pay for food, medicines, healthcare, gas etc, and this totally unbearable, continuing source of stress and frustration, along with my worsening health conditions, is killing me. I did not ask for this fate, and I tell you this not for pity or sympathy, but so you can get an accurate picture of what is really happening to disabled Americans in this country, whom you were elected to serve and protect.

Call For Open Congressional/SSA Disability Hearings

I was forced to watch this hearing on the internet, because my repeated requests over the last several years to testify in person, have been blatantly ignored. I have made it very clear in previous written testimony submitted for the hearing record, through faxes, e-mails and phone calls, to all the Congress people in my district, others on this Subcommittee, including you Congressman McNulty, Congressman Rangel, and many others in both the House and the Senate Committees that affect the Social Security Disability Program in any way, that I want to testify in person at these important hearings that directly affect me and others like myself. For some reason beyond my comprehension, you still will not let me do that. I have been following these hearings, for over five years now, and I find it deeply disturbing, and glaringly obvious, that not one panelist/witness selected to appear, has been an actual disabled American who has tried to get Social Security Disability benefits, and who has actually experienced this nightmare. Unfortunately this continues to be the case with this current hearing as well. While the witnesses you continually rely on may be very reputable in their fields, unless you personally have experienced trying to file a claim for Social Security Disability, you cannot begin to understand how bad this situation really is, and therefore are not fully qualified to be the only authority on these issues. I watched in amazement as Congressman Levin, actually mentioned that what was missing from these hearings was a "face" on this problem. This is the first time I felt that someone finally realized what I have been trying to tell you. But even this brief moment of brilliance, was quickly swept away as the hearing proceeded on like he had said nothing. Based on this apathy toward Congressman Levin's remarks, and my repeatedly denied requests to testify, it is my opinion, that you don't want to know what is REALLY going on. If you do not have to face someone such as myself, that has actually experienced this horrible nightmare, and has had their whole life permanently devastated as a result, we remain just a bunch of statistical SS numbers whose lives can be destroyed without guilt. We are in fact, your mothers, fathers, sisters, brothers, children, grandparents, friends, neighbors, and honorable veterans who have served this country.

It is my understanding that there are also those within the SSA itself, who have wanted to testify for several years, and until recently have also been shut out of these hearings as well. Something is severely wrong with this picture! How you get an accurate handle on this situation without all the facts and possible witnesses who wish to testify in person? I find it hard to believe that these hearings cannot

be scheduled in such a way that more appropriate witnesses could be chosen to testify.

I heard some of you talk about hearing waiting times 200 days vs 600 days, like it was nothing but a number to you. Everyday that a disabled American must wait for their benefits, is a day that their life hangs on by a thread, or worse yet, they do not survive. The stress from that alone is enough to kill you. Since it has been proven over the years that the average American has about two weeks worth of savings, anything over a 14 day waiting period in any phase of the SSDI process is totally unacceptable. Cutting the hearing wait time down to even 200 days, is nothing to tout as some great accomplishment on your part. If any other company or organization operated with the processing times that you still consider acceptable, they would be shut down and all the employees fired within the first 6 months of operation. Commons sense would lead you to the conclusion, that there is a strong correlation between the crisis that disabled Americans face while trying to get their benefits, and the housing, and economic meltdown this country is in the midst of. I challenge anyone of you to try and live for more than two weeks, not relying on your assets (since many SSDI applicants lose all their assets while waiting for approval) and with absolutely no income, and see how well you survive. Also keep in mind that you are not disabled on top of it, which adds its own challenges to the problem.

As an actual disabled American, I ask again as I have in the past, that in future Congressional hearings on these matters, that I be allowed to actively participate instead of being forced to always submit testimony in writing, after the main hearing takes place. I often question whether anybody even bothers to read the written testimony that is submitted when I see the results of hearings that were held in the past. I am more than willing to testify before Congress, to risk my very life for the opportunity, should I be permitted to do so. I want a major role in the Social Security Disability reformation process, since any changes that occur have a direct major impact on my own wellbeing, and that of millions of other disabled Americans just like me. Who better to give feedback at these hearings than those who are actually disabled themselves, and directly affected by the program's inadequacies! A more concerted effort needs to be utilized when scheduling future hearings, factoring in enough time to allow panelists that better represent a wider cross section of disabled Americans, to testify in person. It seems to me if this is not done, that you are not getting a total reflection of the population affected, and are making decisions on inaccurate information, which can be very detrimental to those whom you have been elected to serve. I also propose that Congress immediately set up a task force made up of SSDI claimants, such as myself, who have actually gone through the SSDI claims process, that has major input and influence before any final decisions/changes/laws are instituted by the SSA Commissioner or members of Congress. This is absolutely necessary, since nobody knows better about the flaws in the system and possible solutions to those problems, then those who are forced to go through it and deal with the consequences when it does not function properly.

Social Security Disability Claimants Face Death And Destruction When Applying For Benefits

I must report with great sadness and disgust, that all these hearings have not brought about much progress, if any at all, and things continue to worsen by the day. In our country you're required to have auto insurance in order to drive a car, you pay for health insurance, life insurance etc. If you filed a claim against any of these policies, after making your payments, and the company tried to deny you coverage when you had a legitimate claim, you would be doing whatever it took, even suing, to make them honor your policy. Yet the government is denying Americans their right to legitimate SSDI benefits everyday. This is outrageous when something this serious, and a matter of life and death, could be handled in such a poor manner. Based on my own experience, the experiences of thousands of others which have been shared with me, and current conditions, I firmly believe that the Social Security Disability program is structured to be very complicated, confusing, and with as many obstacles as possible, in order to discourage and suck the life out of claimants, hoping that they "give up or die" trying to get their SSDI benefits! The following statistics back up my statement:

During 2006 and 2007, at least 16,000 people fighting for Social Security Disability benefits died while awaiting a decision (CBS News Report—Disabled And Waiting—1/14/08). This is more than 4 times the number of Americans killed in the Iraq war since it began.

During 2007, two-thirds of all applicants that were denied—nearly a million people—simply gave up after being turned down the first time (CBS News Report—Failing The Disabled—1/15/08)

In 2007 there were 2,190,196 new applications for SSDI benefits, and as of August 2008 there have already been 1,564,160 new applications.

As of April 2008 there are about 1,327,682 total pending cases and out of that number, 154,841 are veterans.

Nationally as of August 2008, over 63% of disability cases were denied at the initial stage of the disability claims process and it took from 101.9—111 days for claimants to receive the initial decision on their claim.

If a claimant appeals the initial denial asking for reconsideration, in all but 10 test states where the reconsideration phase has been removed, 86.3% of cases were denied and the waiting time for this phase was an average of 89.6 days.

As of August 2008 there are 767,595 cases waiting for hearings with an average wait time of 532 days.

As of August 2008 over 290,840 hearings (38 %) have already been pending over a year, and there are only 962 Administrative law judges (ALJ's), to hear all those cases, with an average of 660.58 cases pending per judge nationwide.

If a claimant appeals an ALJ hearing decision to the Federal Appeals Council, the average time from request for AC/Appeals Council Review to Appeal Council's Decision is 8 months. NOTE: It is not unusual to find cases pending for up to 24 months for various reasons. Cases pending longer than 24 months are then considered for expedited processing. In 2006—71% of the 88,907 cases that were sent to the Appeals Council were denied.

In 2007—637,686 disabled Americans were forced by law to endure the mandatory 24 month waiting period for eligibility to receive much needed Medicare benefits.

Source: Social Security Administration Reports

According to Health Affairs, The Policy Journal of the Health Sphere, 2 February 2, 2005: Disability causes nearly 50% of all mortgage foreclosures, compared to 2% caused by death.

"The escalating pace of foreclosures and rising fears among some homeowners about keeping up with their mortgages are creating a range of emotional problems, mental health specialists say. Those include anxiety disorders, depression, and addictive behaviors such as alcoholism and gambling. And, in a few cases suicide.

"Historically, research shows, rates of depression and suicide tend to climb during times of economic tumult."

"Studies show a strong connection between financial distress and emotional stress, including anxiety, depression, insomnia and migraines."

Excerpts from Foreclosures Take Toll On Mental Health—Crisis Hotlines, Therapists See A Surge In Anxiety Over Housing—USA Today—Stephanie Armour—5/15/08

AARP/USA Today: Health Care To Get The Hollywood Treatment—5/28/08—"More middle-class people file for bankruptcy because of health care related expenses than for any other reason."

MarketWatch: Illness And Injury As Contributors To Bankruptcy—February 2, 2005—found that: Over half of all personal U.S. bankruptcies, affecting over 2 million people annually, were attributable to illness or medical bills. 15% of all homeowners who had taken out a second or third mortgage cited medical expenses as a reason.

According to an insurance survey, conducted by the International Communications Research of Media, PA from Jan 10-14th 2007, on behalf of the National Association of Insurance Commissioners, researchers found 56% of U.S. workers would not be able pay their bills or meet expenses if they become disabled and unable to work. 71% of the 44% who had insurance, stated it was employer provided, so if they lose or change jobs they would no longer have disability coverage.

In April 2006, Parade Magazine in an article called "Is The American Dream Still Possible?"—published the results of their survey of more than 2200 Americans who earned between $30,000 and $99,000 per year, most stating that they were in reasonably good health. 66% say they tend to live from paycheck to paycheck and nearly 83% say that there is not much money left to save after they have paid their bills.

Nearly 1 in 2 (133 million) Americans live with a chronic condition.

20.6% of the population, about 54 million people, have some level of disability

9.9% (26 million people) have a severe disability

Note: The sources for these statistics and even more information is listed here: http://www.mychronicillness.com/invisibleillness/statistics.htm

Approximately 54 million Americans, an estimated 20% of the total population, have at least one disability, making them the largest minority group in the nation, and the only group any of us can become a member of at any time. As our baby boomer population ages and more veterans return from war, this number will dou-

ble in the next 20 years. It is a diverse group, crossing lines of age, ethnicity, gender, race, sexual orientation and socioeconomic status.

Between 1990 and 2000, the number of Americans with disabilities increased 25 percent, out pacing any other subgroup of the U.S. population.

Of the 69.6 million families in the United States, more than 20 million have at least one family member with a disability.

People with disabilities are nearly twice as likely as people without disabilities to have an annual household income of $15,000 or less.

There are 133 million people in the United States living with a chronic health condition. That number is expected to increase by more than one percent a year to 150 million by 2030. 75% of people with chronic health conditions are younger than 65

Notwithstanding the strides made in disability rights in the past 25 years, the majority of people with disabilities are poor, under-employed and under-educated due largely to unequal opportunities.

The source for these statistics: Disability Stats And Facts—Disability Funders.org http://www.disabilityfunders.org/disability-stats-and-facts

52% of Americans would rather die than live with a severe disability, according to a recent national survey commissioned by Disaboom (www.disaboom.com), the premiere online community for people touched by disability.

Disaboom Press Release—July 2008

Two-thirds of those who appeal an initial rejection eventually win their cases (New York Times 12/10/07)

It is also important to mention here that I am also President/Co-Founder of the Social Security Disability Coalition, which is made up of thousands of Social Security Disability claimants and recipients from all over the nation, and our membership increases by the day. It was born out of the frustration of my own experience, and the notion that others may be dealing with that same frustration. I was proven to be totally correct in that notion beyond my wildest imagination. Our group is a very accurate reflection and microcosm of what is happening to millions of Social Security Disability applicants all over this nation. If you visit the Social Security Disability Coalition website, or the Social Security Disability Reform petition website:

Social Security Disability Coalition—offering FREE information and support with a focus on SSD reform:

http://groups.msn.com/SocialSecurityDisabilityCoalition

Sign the Social Security Disability Reform Petition—read the horror stories from all over the nation:

http://www.petitiononline.com/SSDC/petition.html

You will read over five years worth of documented horror stories on our Messageboard (over 19,000 messages), and see thousands of signatures (over 7800) and comments on our petition, from disabled Americans whose lives have been harmed by the Social Security Disability program. You cannot leave without seeing the excruciating pain and suffering that these people have been put through, just because they happened to become disabled, and went to their government to file a claim for disability insurance that they worked so very hard to pay for. I must take this opportunity to tell you how very proud I am of all our members, many like myself, whose own lives have been devastated by a system that was set up to help them. In spite of that, they are using what very little time and energy they can muster due to their own disabilities, to try and help other disabled Americans survive the nightmare of applying for Social Security Disability benefits. There is no better example of the American spirit than these extraordinary people!

This organization fills a void that is greatly lacking in the SSDI/SSI claims process. While we never represent claimants in their individual cases, we are still able to provide them with much needed support and resources to guide them through the nebulous maze that is put in front of them when applying for SSDI/SSI benefits. In spite of the fact that the current system is not conducive to case worker, client interaction other than the initial claims intake, we continue to encourage claimants to communicate as much as possible with the SSA in order to speed up the claims process, making it easier on both the SSA caseworkers and the claimants themselves. As a result we are seeing claimants getting their cases approved on their own without the need for paid attorneys, and when additional assistance is needed we connect them with FREE resources to represent them should their cases advance to the hearing phase. We also provide them with information on how to access available assistance to help them cope with every aspect of their lives, that may be affected by the enormous wait time that it currently takes to process an SSDI/SSI

claim. This includes how get Medicaid and other State/Federal programs, free/low cost healthcare, medicine, food, housing, financial assistance and too many other things to mention here. We educate them in the policies and regulations which govern the SSDI/SSI process and connects them to the answers for the many questions they have about how to access their disability benefits in a timely manner, relying heavily on the SSA website to provide this help. If we as disabled Americans, who are not able to work because we are so sick ourselves, can come together, using absolutely no money and with very little time or effort can accomplish these things, how is it that the SSA which is funded by our taxpayer dollars fails so miserably at this task

There are three key reasons why the Social Security Disability program has been broken for decades, lack of proper funding for the SSA, apathy on the part of Congress and the SSA to fix the problems, and lack of crucial oversight on all parts of the program. In order for the hearing backlog to be eliminated these problems must be addressed.

Changes/Proper Funding Necessary For SSA To Accomplish It's Goals And Properly Serve Disabled Americans

I continually hear talk at these hearings about increasing the funding for the SSA, and you asking witnesses for answers, on how much the SSA will need to fix the current problems, and prevent new ones from arising in the future. Still I see that the SSA is under funded almost every year, and there is a continued challenge to get the money that the SSA requests. All money that is taken out of American's paychecks for Social Security should not be allowed to be used for anything else other than to administer the program and pay out benefits to the American people.

Excerpt from: Social Security Administration: Inadequate Administrative Funding Contributes to the Disability Claims Backlog Crisis and Service Delivery Challenges

"Due to budget constraints in recent years the amount of administrative funding the Social Security Administration (SSA) has received through the annual appropriations process has been significantly below the level necessary to keep up with the agency's workloads. From 2001 to 2007, Congress appropriated approximately $150 million less per year for SSA's administrative funding needs than the President requested. In FY 2006 the final funding level approved by Congress was $300 million less than the President's Budget Request. In FY 2007 it was $200 million less. The FY 2008 enacted level was $148 million above the President's requested budget and it was the first time this decade that Congress has been able to provide funding above the President's request. However, the funding for Fiscal Year 2008 was $127 million less than the Conference Agreement on the FY 2008 Labor-HHS Appropriations bill would have provided. The level agreed to by Congress was reduced due to the Presidential veto of the Labor-HHS Appropriations bill."

Source: National Council of Social Security Management Associations (NCSSMA) September 17, 2008

One thing is said at the hearings, but when push comes to shove to vote for the SSA budget money, other programs or projects become higher priority, even though properly funding the SSA is literally a matter of life and death for millions of Americans. Even as I write this testimony, both the Senate and the House are voting on a continuing resolution package to provide stopgap funding for the Federal Government through March of 2009, but there are no special provisions for the SSA in this CR, which is going to make a horrendous situation even worse. Nothing is more important than the health and wellbeing of the American people, and as elected officials it is crucial that you never lose sight of that priority! SSA should not have to compete each year for funding with the Departments of Labor, HHS and Education which are highly publicized and therefore, often more popular programs. As stated in the previous testimony provided by Witlold Skierwczynski—President—National Council Of Social Security Administration Field Operation Locals to the House Ways And Means Committee on 4/23/08 it is recommended that:

Congress should enact off budget legislation including SSA administrative expenses with benefits which are already off budget. Congress should retain appropriations and oversight authority albeit unencumbered by artificial budget caps and scoring restrictions.

Congress should enact legislation requiring the Commissioner to submit the SSA appropriation request directly to Congress.

Congress should support the House Budget Committee recommendation to increase the SSA administrative budget by $240 million over the President's budget request.

Oversight is Crucial!

The SSA Commissioner Improperly Allocated ALJ's For SS Disability Hearings—Recently SSA Commissioner Michael Astrue asked Congress to approve extra funding in order to hire additional ALJ's to try and reduce the severe SS Disability hearings backlogs across the country. While I agree that the SSA does need more funding, in fact way more than was actually finally given to them in 2008, there must be some major oversight by independent entities to ensure that these funds in fact are actually used/allocated appropriately. Here is a recent example that raises a red flag for such oversight and an immediate investigation. At the link below you will find a spreadsheet that shows the locations where the newly acquired ALJ hires announced by the SSA Commissioner had been allocated:

http://www.ssa.gov/legislation/ALJAppointmentsbyState032508.xls

As you will see on this report—no ALJ's were originally allocated to the Buffalo/Rochester NY area, which is one of the worst in the nation for processing SS Disability hearings.

As of August 2008:

It took 715 days (nearly two years) for the average Western New Yorker to have their SSA case heard and processed in the Buffalo NY Office Of Hearings & Appeals. This office is the worst in NY State for SS Disability hearing backlogs and out of 147 hearing offices reporting nationwide, Buffalo ranks at #130, as one of the worst processing times in the country. It ranks at #114 out of 150 hearing offices reporting, where the average age of a case pending a hearing is 349 days. Administrative Law Judges in Buffalo have some of the largest caseloads in the country, ranking at #107, out of 137 hearing offices reporting nationwide, with an average of 796.64 cases pending before each judge.

As of July 2008:

47% (5,542) of cases in the Buffalo Hearing Office (which is higher than the national average) had been pending for over a year.

Source: Compiled from various SSA reports July and August 2008

Commissioner Astrue used the argument that there was not enough office space in the Buffalo hearing office but that was immediately refuted by Congressman Brian Higgins:

Congressman Higgins Says Lack of Space Is Poor Argument for Staffing Shortfalls in Local Social Security Disability Office—4/24/08

http://higgins.house.gov/newsroom.asp?ARTICLE3116=7715

"If the problem is office space, I would be happy to find them available space in downtown Buffalo tomorrow," Higgins added, pointing out that according to a Militello Realty report on downtown Buffalo property, as of January 779,228 square feet of Class A office space was vacant in the immediate downtown area. Congressman Higgins noted that staffing shortages aren't exclusive to the Administrative Law Judges. Staffing at Western New York field offices have decreased substantially—by approximately 170 employees—over the past 25 years, even though the need for services has increased."

It was only after heavy pressure by Congress, and major media exposure, that additional ALJ's were added to the Buffalo/Rochester NY area. How many other states is this happening to? Where is the much needed oversight to ensure that these ALJ's are properly allocated where they are needed the most?

In an editorial letter from SSA Commissioner Astrue dated 8/21/08 to the Atlanta Journal Constitution in regards to the severe hearing backlogs it was stated that "We have taken a big step toward resolving that problem by bringing onboard 175 additional administrative law judges and additional staff to support them."

In reality:

At of the end of fiscal year 2007 the amount of ALJ's available to hear cases was at 1006. That number has steadily declined over the past several months and as of August 2008 there were in fact only 962 ALJ's currently available to hear cases*. The 175 new ALJ's that the SSA Commissioner has hired, (NOTE: most of the 175 newly hired ALJ's may actually already be factored into the August 2008—962 number—the report does not distinguish) once they are fully operational. In January 2008 there were 945 ALJ's * (a significant drop) from FY 2007 and that may in fact only increase the available ALJ level to 114 judges (not 175), over the number that were available to hear cases at the end of FY 2007. Basically this is still inadequate level, since it does not account for the fact that more judges may continue to leave for various reasons (retirement etc), and that the level of disability claims continues

to increase instead of decrease, based on past history. So the likelihood of the claims backlog being resolved with this so called "current fix" is slim to none. In other words "this is like putting a band aid on a gushing wound." More investigation of this problem by Congress, the Inspector General and GAO needs to happen immediately!

*Source: Social Security Administration Reports

Horrendous Customer Service

In a January 2007 Harris poll designed to evaluate the services provided by 13 federal agencies, the public rated SSA at the bottom of the public acceptance list and it was the only agency that received an overall negative evaluation. SSA Field Offices have lost over 2,500 positions since September 2005 and nearly 1,400 positions since September 2006. In 2007 SSA Field Offices saw about 43 million visitors a week, and that number is expected to increase by over a million more in 2008. Constituents visiting these local Field Offices continue to experience lengthy waiting times and the inability to obtain assistance via the telephone.

Here is just a small sampling of some of the major problems with the current Social Security Disability program and State Disability (DDS) offices who process the initial phase/medical portion of disability claims:

Severe under staffing of SSA workers at all levels of the program Claimants waiting for weeks or months to get appointments, and hours to be seen by caseworkers at Social Security field offices Extraordinary wait times between the different phases of the disability claims process

Very little or no communication between caseworkers and claimants throughout the disability claims process before decisions are made.

Employees being rude/insensitive, not returning calls, not willing to provide information to claimants or not having the knowledge to do so

Complaints of lost files and in some states, case files being purposely thrown in the trash rather than processed properly

Security Breaches—Complaints of having other claimants information improperly filed/mixed in where it doesn't belong and other even worse breaches

Fraud on the part of DDS/OHA offices, ALJ's, IME's—purposely manipulating or ignoring information provided to deny claims, or doctors stating that they gave medical exams to claimants that they never did.

Claimants being sent to doctors that are not trained properly, or have the proper credentials in the medical field for the illnesses which claimants are being sent to them for.

Complaints of lack of attention/ignoring—medical records provided and claimants concerns by Field Officers, IME doctors and ALJ's.

Employees greatly lacking in knowledge of and in some cases purposely violating Social Security and Federal Regulations (including Freedom of Information Act and SSD Pre-Hearing review process).

Claimants cannot get through on the phone to the local SS office or 800 number (trying for hours even days)

Claimants getting conflicting/erroneous information depending on whom they happen to talk to at Social Security—causing confusion for claimants and in some cases major problems including improper payments

Proper weight not being given to claimants treating physicians according to SSA Federal Regulations when making medical disability determinations on claims.

Complaints of ALJ's "bribing" claimants to give up part of their retro pay (agreeing to manipulation of disability eligibility dates) or they will not approve their claims

Poor/little coordination of information between the different departments and phases of the disability process

Complaints of backlogs at payment processing centers once claim is approved

Federal Quality Review process adding even more wait time to claims processing, increasing backlogs, no ability to follow up on claim in this phase

NOTE: These complaints refer to all phases of the SSDI claims process including local field offices, state Disability Determinations offices, CE/IME physicians, Office of Hearings and Appeals, the Social Security main office in MD (800 number)

Excerpts from: Social Security Administration: Inadequate Administrative Funding Contributes to the Disability Claims Backlog Crisis and Service Delivery Challenges

SSA has two classes of phone service: 800 Number and Field Office. The 800 Number had a busy rate of 7.5% in FY 2007 and handled about 59 million calls through agents and automation. At the same time over 60 million phone calls are directed to SSA Field Offices each year. In FY 2007, 45% of callers who eventually reached a Field Office by telephone said that they had received a busy signal or

were told to call back at another time on an earlier call. Consequently, the actual busy rate is higher than 45%.

About 43 million people visited SSA Field Offices for assistance in 2007. SSA Field Offices continue to receive more and more customers. This year SSA Field Offices are expected to see more than a million more customers than last year. One manager stated this in a recent NCSSMA survey: "The staff usually feels overburdened with the never-ending volume of interviews. They are usually one after the other daily with no ending. They are in need of time at their desk to process the numerous listings and actions that go with them."

In a survey by the National Council of Social Security Management Associations (NCSSMA) of their members performed in May 2008, they received the following feedback:

81% stated they did not have enough staff to keep workloads current

64% stated waiting times for the public were longer than they were one year ago

65% stated the quality of their office work product has declined in recent years

45% stated they could provide prompt telephone service 0–40% of the time

49% stated their staff did not receive adequate training which was primarily due to lack of time an increasing pressure to process workloads

Source: National Council of Social Security Management Associations (NCSSMA) September 17, 200 States Of Denial—The REAL Reason Behind The Social Security Disability Hearing Backlogs

Since Social Security Disability is a Federal program, where you live should not affect your ability to obtain benefits. Sadly this is not the case. While funding is a major problem that SSA faces, the other primary reason for these hearing backlogs, continues to be ignored during these proceedings, and that is the initial phase of the disability qualification process which is handled by the individual state DDS/Disability Determination Services offices. There, the most crucial part of your disability claim, the medical portion, is reviewed by a caseworker/adjudicator and medical doctor on their staff who never sees you, and in most cases never even communicates with you at all.

Excerpts from GAO Report GAO–04–656—SSA Disability Decisions: More Effort Needed To Assess Consistency of Disability Decisions—Washington—July 2004 which can be found at:

http://www.gao.gov/new.items/d04656.pdf

"Each year, about 2.5 million people file claims with SSA for disability benefits. . . . About one-third of disability claims denied at the state level were appealed to the hearings level; of these, SSA's ALJ's have allowed over one-half, with annual allowance rates fluctuating between 58 percent and 72 percent since 1985. While it is appropriate that some appealed claims, such as those in which a claimant's impairment has worsened and prohibits work, be allowed benefits, representatives from SSA, the Congress, and interest groups have long been concerned that the high rate of claims allowed at the hearing level may indicate that the decision makers at the two levels are interpreting and applying SSA's criteria differently. If this is the case, adjudicators at the two levels may be making inconsistent decisions that result in similar cases receiving dissimilar decisions."

"Inconsistency in decisions may create several problems. . . . SSA rulings are binding only on SSA adjudicators and do not have to be followed by the courts. . . . Adjudicators currently follow a detailed set of policy and procedural guidelines, whereas ALJ's rely directly on statutes, regulations, and rulings for guidance in making disability decisions. . . . If deserving claimants must appeal to the hearings level for benefits, this situation increases the burden on claimants, who must wait on average, almost a year for a hearing decision and frequently incur extra costs to pay for legal representation. . . . SSA has good cause to focus on the consistency of decisions between adjudication levels. Incorrect denials at the initial level that are appealed increase both the time claimants must wait for decision and the cost of deciding cases. Incorrect denials that are not appealed may leave needy individuals without a financial or medical safety net. . . . An appeal adds significantly to costs associated with making a decision. According to SSA's Performance and Accountability Report for fiscal year 2001, the average cost per claim for an initial DDS disability decision was about $583, while the average cost per claim of an ALJ decision was estimated at $2,157. . . . An appeal also significantly increases the time required to reach a decision. According to SSA's Performance and Accountability Report for fiscal year 2003, the average number of days that claimants waited for an initial decision was 97 days, while the number of days they waited for an appealed decision was 344 days. . . . In addition, claimant lawsuits against three state DDS's have alleged that DDS adjudicators were not following SSA's rulings or other decision making guidance. . . . However, according to DDS stakeholder groups, SSA has not ensured that states have sufficient resources to meet

ruling requirements, which they believe may lead to inconsistency in decisions among states. Furthermore, SSA's quality assurance process does not help ensure compliance because reviewers of DDS decisions are not required to identify and return to the DDS's cases that are not fully documented in accordance with the rulings. SSA procedures require only that the reviewers return cases that have a deficiency that could result in an incorrect decision."

Excerpt from: Social Security Administration: Inadequate Administrative Funding Contributes to the Disability Claims Backlog Crisis and Service Delivery Challenges

"The Disability Determination Services (DDSs) have lost about 1,270 positions since the beginning of Fiscal Year 2006, as a result their staffing levels are down about 8.7%. The attrition rate in recent years at the DDSs has averaged 12.7 % versus 6.8% for Federal Government employees. This has forced the DDSs to invest significant resources to train new staff. The DDSs will not be able to adequately address staffing losses either."

Source: National Council of Social Security Management Associations (NCSSMA) September 17, 2008

What would be an incentive for states to deny Federal claims? Since many Social Security Disability claims are SSI or both SSI/SSDI combined claims and many states offer to supplement SSI payments at a higher benefit amount, therefore they want to keep as many off the rolls as possible so they do not have to pay out this supplement. Also since there is a different pay scale for government vs state employees who are often underpaid, lack training, are overworked, and must meet quotas of cases processed, the tendency is greater to rubber stamp denials to move claims off their desk when a case needs too much development. Thus the explanation for the fluctuation in denial/approval/backlog rates by state. Unfortunately there is very little if any training or oversight on the state DDS offices to make sure they are making the proper decisions on disability claims. This is why so many claimants appeal to the hearing level where a huge percentage of bad claims decisions are overturned and cases are finally approved. Anyone who doesn't see that a "Culture Of Denial" has become a pervasive part of an SSDI claimants encounter with the SSA, is either totally out of touch with reality or is reacting evasively to the subject.

The SSDI/SSI process is bogged down with tons of paperwork for both claimants and their treating physicians, and very little information is supplied by Social Security, as to the proper documentation needed to process a claim properly and swiftly. When you file a claim for benefits, you are not told that your illness must meet standards under the Disability Evaluation Under Social Security "Blue Book" listing of medical impairments, or about the Residual Functional Capacity standards that are used to determine how your disability prevents you from doing any sort of work in the national economy, or daily activities, when deciding whether or not you are disabled. In other words since the process is so nebulous from beginning to end, the deck is purposely stacked against a claimant from the very start. Also many times medical records submitted are lost or totally ignored. If more time and effort were put forth to communicate with claimants, and to make the proper decision at the onset, there would be no need for all these cases to be appealed to the hearings level in the first place. That in itself would be a huge factor in reducing the hearing backlogs, but again, this fact has been greatly ignored and it is a major failure on your part. Until you properly devote the time and energy to look into this crucial part of the problem, the hearing backlogs will continue to grow at an uncontrollable rate, no matter how much money you give to the SSA.

All phases of disability claims processing should be moved to and handled out of the Social Security individual field offices, including the DDS phase which is the medical determination phase currently handled by the states, and all hearing phases of the disability process. All people who process Social Security disability claims should be employees of the Federal Government to ensure accuracy and uniform processing of disability claims under Federal regulations and Social Security policies which is currently not the case. If the states are to continue to handle the DDS phase of the disability process, then all state employees handling Social Security claims should be required to receive a minimum of 3 months standardized training by the Social Security Administration, in SSA policies and Federal regulations governing SSDI/SSI claims processing.

Too much weight at the initial time of filing, is put on the independent medical examiner's and SS caseworker's opinion of a claim. The independent medical examiner only sees you for a few minutes and has no idea how a patient's medical problems affect their lives after only a brief visit with them. The caseworker at the DDS office never sees a claimant. There needs to be more oversight that disability decisions be based with controlling weight given to the claimant's own treating physicians opinions and medical records in accordance with (DI 24515.004) SSR 96–2p:

Policy Interpretation Ruling Titles II And XVI: Giving Controlling Weight To Treating Source Medical Opinions**.** Even though this policy ruling is in place, this is very often not happening. Since many times doctors, hospitals etc often do not respond to SSA requests for medical information in a timely manner, or sometimes ignore these requests entirely, ALL doctors, and medical professionals including those at the VA should be required by Federal or State law, to fill out any medical forms and submit documents requested by the SSA within strict timelines or they will not be allowed to practice medicine in this country. Also as part of their continuing education program in order to keep their licenses, doctors should also be required to attend seminars provided free of charge by the SSA, in proper procedures for writing medical reports and filling out forms for Social Security Disability and SSI claimants. More communication between caseworkers and claimants throughout all phases of the disability process. Review of records by claimant should be available at any time during all stages of the disability determination process. Before a denial is issued at any stage, the applicant should be contacted as to ALL the sources being used to make the judgment. It must be accompanied by a detailed report as to why a denial might be imminent, who made the determination and a phone number or address where they could be contacted. In case info is missing or they were given inaccurate information the applicant can provide the corrected or missing information before a determination at any level is made. This would also eliminate many cases from having to advance to the hearing or appeals phase.

Social Security Disability Program Problems—Contributing Burden Factor on Medicaid/Social Service Programs For States

There seems to be a relationship, between SSDI claims processing issues/backlogs, and the need for claimants to also apply for state funded Medicaid/Social Service programs. Many are forced to file for Medicaid, food stamps and cash assistance, another horrendous process. For example in New York State, about half the 38,000 people now waiting on disability appeals, for an average of 21 months, are receiving cash assistance from the state (New York Times 12/10/07). Those who file for these programs while waiting to get SSDI benefits, in many states, have to pay back the state out of their meager benefit checks once approved. As a result they're often kept below the poverty level, almost never able to better themselves since they can't work, and now are forced to rely on both state and federally funded programs instead of just one of them. This practice should be eliminated.

Improper CE/IME Medical Exams Ordered By Social Security Result In Higher Rate Of Denials, Hearings And Appeals

CE/IME examiners are paid a fee by Social Security for each person they see, so the more claimants they process, the more money they make. Often times they are caught saying they performed exams that they in fact never performed, make mistakes, or make false, misleading statements about claimants. Many times the DDS offices or ALJ's are sending claimants to doctors that have very limited knowledge of their specific health conditions, who are not specialists, or even the proper type of doctor, to be examining a claimant for the type of medical conditions that they have. These doctors see you once for a few minutes, and yet their opinion is given greater authority than a claimant's own treating physician who sees them in a much greater capacity? Something is way out of line with that reasoning, yet it happens every day. Even though a claimant's treating physicians are supposed to be given greater weight in decision making, this is often not the case. Whenever SSA required medical exams are necessary, they should only be performed by board certified independent doctors who are specialists in the disabling condition that a claimant has (example—Rheumatologists for autoimmune disorders, Psychologists and Psychiatrists for mental disorders). Common sense dictates that these poorly executed, and often unnecessary, medical exams result in a waste of time, money and energy, for both the claimants and the SSA, when the claimant ends up appealing a denial based on these improper SSA ordered examinations.

Utilize Hearing On The Record/Pre-Hearing Review Option To Reduce Backlogs

More emphasis and support staff need to be devoted to the pre-hearing review process which could greatly reduce the current hearing backlog. This would obviously and should require more communication between hearing office staff and claimants or their representatives to update case files. Once the files have been updated, many would be able to be decided solely on the records in the file without having a full hearing in front of an ALJ.

Streamline Social Security Disability/SSI Claims For Veteran's To Reduce Backlogs

When a veteran has a 100% disability rating, receives VA benefits approval for that rating, and it is deemed by the VA that they can no longer work at any job

under SSA Guidelines, that veteran should automatically be approved for their Social Security Disability/SSI, as long as they also meet the Non-Medical requirements for those benefits. In addition all VA doctors should be trained and required to fill out Social Security Disability forms for their patients, whose VA disability rating is less than 100%, but may still be unable to work due to their disabilities and require SSDI/SSI benefits. These claims should be processed by a special division within the SSA or the VA that is equipped to process both claims simultaneously. Congress and the SSA should designate special funding to see that this is implemented immediately for our veterans, so it moves a large group of claimants through the system faster thus reducing the backlog problem.

Regulation Is Necessary To Avoid Improper Social Security Disability Claim Filings Due To State And Private Insurance Company Policies

There is a growing number of claims being filed by people who may not actually qualify for disability benefits under Social Security guidelines, but who are being forced to file Social Security Disability/SSI claims by their private disability and state disability carriers or risk not being eligible for benefits under those programs. Recently there has been media coverage on this issue which can be found here:

Trial Against Unum Over Handling of Disability Insurance Claims Opens Today—Market Watch—PRNewswire via COMTEX—Boston—9/22/08

http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/09-22-2008/0004890097&EDATE=

Senate Asks 9 Insurers To Furnish Information—NY Times—Mary Williams Walsh—7/25/08

http://www.nytimes.com/2008/07/25/business/25insure.html?_r=2&adxnnl=1&oref=slogin&ref=business&adxnnlx=1216988114-xUJWefbXim4ZjKuyMloRVA&oref=slogin

Insurers Faulted As Overloading Social Security—NY Times—Mary Williams Walsh—4/1/08

http://www.nytimes.com/2008/04/01/business/01disabled.html

Congress and the SSA needs to look into this issue and this practice needs to be stopped immediately as this too greatly adds to the disability backlog problem.

Americans Most Sensitive Data In Jeopardy

I was very disturbed to learn as I watched this hearing, about the practice of allowing SSA employees to take work home with them. The following article discusses the SSA employee work at home situation.

Concern Over Federal Times Article: Arbitrator Tells SSA To Restore Telework, Negotiate Changes—Federal Times—Courtney Mabeus—4/16/08

http://www.federaltimes.com/index.php?S=3482166

I am very concerned with the increased possibility of identity theft if SSA employees are allowed to take work home because they are too overloaded on their jobs. Employees should never be allowed to take this sensitive data home for any reason. Sensitive data has already been compromised at the VA, and this should not be allowed to happen ever again, especially jeopardizing our most vulnerable citizens to this very real and stressful possibility. I have personally caught the SSA in some major security breaches already, and this practice will only make those incidents even more common. Every effort must be made to properly secure this most sensitive information for the American people. In order to properly protect citizen's identities ALL sensitive data should only be able to be accessed on government secure systems at the job site only. This is obviously going to require more manpower and financial resources, and Congress must make sure that the SSA has every resource it needs to protect this data, at their disposal immediately.

Put Disabled American People First—Remove Detrimental Regulations

There are some very detrimental, regulations that SSDI applicants are subject to as well, and are a great shock to them. Under Federal law, there's a five month benefit waiting period, and five months of back money withheld, which claimants will never see again. It was originally six months but Congress voted to reduce it to five. Apparently it is assumed that disabled Americans do not need that money. SSDI recipients must also wait another 24 months, in addition to the 5 month waiting period from disability date of eligibility (the date that SS determines that you were officially disabled) in order to qualify for Medicare benefits. Keep in mind that if you let any sort of health insurance policies lapse for too long, and don't maintain continuous health coverage, you may have a very difficult time getting a new insurance carrier, since they may hold your poor health against you, and consider many

things as "pre-existing conditions" so you may not be covered for those illnesses. Congress expects a population who can no longer work, to go without five months of retro pay, have no health insurance, and wait several months to several years to have their disability claims processed. In my state when a healthy person loses their job, provides the necessary documents and files for Unemployment Insurance, their payments automatically start within a few weeks. It is blatantly obvious that those who find this to be acceptable standards are totally out of touch with reality and have no regard for human life.

Permanent Devastation Resulting From The SSDI Claims Process

Unbearable stress, severe depression and suicidal thoughts are very common side effects of the SSDI/SSI claims process. Many are under the mistaken notion that when the SSDI benefit checks finally come, if one is in fact finally approved, that everything will be OK. Often the abuse and worry that applicants are forced to endure, and the devastation caused while waiting for SSDI claims to be processed, leaves permanent scars on one's health and financial wellbeing as it did for me. It causes even further irreparable damage to their already compromised health, and it is totally unacceptable. As a result use of the highly promoted SS Ticket to Work program, or any future chance of possibly getting well enough to return to the workforce, even on a part time basis, becomes totally out of the question. Then if you eventually get approved for benefits, there is always the added stress of having to deal with the SS Continuing Disability Review Process every few years, where the threat of having your benefits suddenly cut off constantly hangs over your head.

I not only have complaints which I have presented today, but also many solutions to this crisis, so I hope you will join me in my quest for total reform of this program. Please introduce/support—Fullerton—Edwards Social Security Disability Reform Act:

http://groups.msn.com/SocialSecurityDisabilityCoalition/fullertonedwardssocialsecuritydisabilityreformact.msnw

Statement of Social Security Disability Coalition

My name is Linda Fullerton, and I have an inoperable blood clot and tumor in my brain, and suffer from several incurable autoimmune disorders that are too numerous to list, which have caused me to become permanently disabled. I currently receive Social Security Disability Insurance/SSDI and Medicare. You can get even more detailed information about my personal horror stories, which are not for the faint of heart, on my websites:

"A Bump On The Head"

http://www.frontiernet.net/~lindaf1/bump.html

Social Security Disability Nightmare—It Could Happen To You!

http://www.frontiernet.net/~lindaf1/SOCIALSECURITYDISABILITYNIGHTMARE.html

Social Security Disability is an insurance policy which was created to be a safety net for millions of disabled Americans, and for many such as myself, it has become their only lifeline for survival. I filed an SSDI claim in December 2001, was denied in March 2002 by the NYS ODTA (Office Of Temporary And Disability Assistance), filed an appeal, and then had to wait until June 2003, due to the severe hearing backlog in the Buffalo NY Office Of Hearings & Appeals, before my SSDI claim was finally approved. It is hard enough to deal with all the illnesses that I have, but then to have my entire life destroyed with the stroke of pen by neglectful government employees, to whom I was just an SS number, is more than I can bear. So now, not only will I never recover from my illnesses, but I also will never recover from the permanent financial devastation this has had on my life. I don't know how I am going to survive without some miracle like winning the lottery. I lost all my resources, life savings, and pension money during the 1½-year wait for my SSDI claim to be processed. Due to the 24 month waiting period for Medicare, (I didn't become eligible for it until June 2004) I had to spend over half of my SSDI check each month on health insurance premiums and prescriptions, not including the additional co-pay fees on top of it. All the SSDI retro pay is gone now as well—used to pay off debts incurred while waiting for 1½ years to get my benefits. I know first hand about the pain, financial, physical and emotional permanent devastation

that the SSDI process can cause. My "American Dream" will never be realized. I have now been forced to live the "American Nightmare" for the rest of my days, because I happened to get sick, and file a claim for Social Security Disability benefits, a Federal insurance policy that I paid into for over 30 years. As a result, I will never be able to own a home, replace my lost financial resources, or replace my only means of transportation—a failing 11 year old car, and several other necessities. When things break down now, I cannot afford to fix or replace them and have to do without. I currently live strictly on the inadequate, monthly SSDI check I receive, always teetering on the brink of disaster. I do not qualify for any public assistance programs. I am doomed to spend what's left of my days here on earth, living in poverty, in addition to all my medical concerns. I struggle every day to pay for food, medicines, healthcare, gas etc, and this totally unbearable, continuing source of stress and frustration, along with my worsening health conditions, is killing me. I did not ask for this fate, and I tell you this not for pity or sympathy, but so you can get an accurate picture of what is really happening to disabled Americans in this country, whom you were elected to serve and protect.

Call For Open Congressional/SSA Disability Hearings

I was forced to watch this hearing on the internet, because my repeated requests over the last several years to testify in person, have been blatantly ignored. I have made it very clear in previous written testimony submitted for the hearing record, through faxes, e-mails and phone calls, to all the Congress people in my district, others on this Subcommittee, including you Congressman McNulty, Congressman Rangel, and many others in both the House and the Senate Committees that affect the Social Security Disability Program in any way, that I want to testify in person at these important hearings that directly affect me and others like myself. For some reason beyond my comprehension, you still will not let me do that. I have been following these hearings, for over five years now, and I find it deeply disturbing, and glaringly obvious, that not one panelist/witness selected to appear, has been an actual disabled American who has tried to get Social Security Disability benefits, and who has actually experienced this nightmare. Unfortunately this continues to be the case with this current hearing as well. While the witnesses you continually rely on may be very reputable in their fields, unless you personally have experienced trying to file a claim for Social Security Disability, you cannot begin to understand how bad this situation really is, and therefore are not fully qualified to be the only authority on these issues. I watched in amazement as Congressman Levin, actually mentioned that what was missing from these hearings was a "face" on this problem. This is the first time I felt that someone finally realized what I have been trying to tell you. But even this brief moment of brilliance, was quickly swept away as the hearing proceeded on like he had said nothing. Based on this apathy toward Congressman Levin's remarks, and my repeatedly denied requests to testify, it is my opinion, that you don't want to know what is REALLY going on. If you do not have to face someone such as myself, that has actually experienced this horrible nightmare, and has had their whole life permanently devastated as a result, we remain just a bunch of statistical SS numbers whose lives can be destroyed without guilt. We are in fact, your mothers, fathers, sisters, brothers, children, grandparents, friends, neighbors, and honorable veterans who have served this country.

It is my understanding that there are also those within the SSA itself, who have wanted to testify for several years, and until recently have also been shut out of these hearings as well. Something is severely wrong with this picture! How you get an accurate handle on this situation without all the facts and possible witnesses who wish to testify in person? I find it hard to believe that these hearings cannot be scheduled in such a way that more appropriate witnesses could be chosen to testify.

I heard some of you talk about hearing waiting times 200 days vs 600 days, like it was nothing but a number to you. Everyday that a disabled American must wait for their benefits, is a day that their life hangs on by a thread, or worse yet, they do not survive. The stress from that alone is enough to kill you. Since it has been proven over the years that the average American has about two weeks worth of savings, anything over a 14 day waiting period in any phase of the SSDI process is totally unacceptable. Cutting the hearing wait time down to even 200 days, is nothing to tout as some great accomplishment on your part. If any other company or organization operated with the processing times that you still consider acceptable, they would be shut down and all the employees fired within the first 6 months of operation. Commons sense would lead you to the conclusion, that there is a strong correlation between the crisis that disabled Americans face while trying to get their benefits, and the housing, and economic meltdown this country is in the midst of.

I challenge anyone of you to try and live for more than two weeks, not relying on your assets (since many SSDI applicants lose all their assets while waiting for approval) and with absolutely no income, and see how well you survive. Also keep in mind that you are not disabled on top of it, which adds its own challenges to the problem.

As an actual disabled American, I ask again as I have in the past, that in future Congressional hearings on these matters, that I be allowed to actively participate instead of being forced to always submit testimony in writing, after the main hearing takes place. I often question whether anybody even bothers to read the written testimony that is submitted when I see the results of hearings that were held in the past. I am more than willing to testify before Congress, to risk my very life for the opportunity, should I be permitted to do so. I want a major role in the Social Security Disability reformation process, since any changes that occur have a direct major impact on my own wellbeing, and that of millions of other disabled Americans just like me. Who better to give feedback at these hearings than those who are actually disabled themselves, and directly affected by the program's inadequacies! A more concerted effort needs to be utilized when scheduling future hearings, factoring in enough time to allow panelists that better represent a wider cross section of disabled Americans, to testify in person. It seems to me if this is not done, that you are not getting a total reflection of the population affected, and are making decisions on inaccurate information, which can be very detrimental to those whom you have been elected to serve. I also propose that Congress immediately set up a task force made up of SSDI claimants, such as myself, who have actually gone through the SSDI claims process, that has major input and influence before any final decisions/changes/laws are instituted by the SSA Commissioner or members of Congress. This is absolutely necessary, since nobody knows better about the flaws in the system and possible solutions to those problems, then those who are forced to go through it and deal with the consequences when it does not function properly.

Social Security Disability Claimants Face Death And Destruction When Applying For Benefits

I must report with great sadness and disgust, that all these hearings have not brought about much progress, if any at all, and things continue to worsen by the day. In our country you're required to have auto insurance in order to drive a car, you pay for health insurance, life insurance etc. If you filed a claim against any of these policies, after making your payments, and the company tried to deny you coverage when you had a legitimate claim, you would be doing whatever it took, even suing, to make them honor your policy. Yet the government is denying Americans their right to legitimate SSDI benefits everyday. This is outrageous when something this serious, and a matter of life and death, could be handled in such a poor manner. Based on my own experience, the experiences of thousands of others which have been shared with me, and current conditions, I firmly believe that the Social Security Disability program is structured to be very complicated, confusing, and with as many obstacles as possible, in order to discourage and suck the life out of claimants, hoping that they "give up or die" trying to get their SSDI benefits! The following statistics back up my statement:

During 2006 and 2007, at least 16,000 people fighting for Social Security Disability benefits died while awaiting a decision (CBS News Report—Disabled And Waiting—1/14/08). This is more than 4 times the number of Americans killed in the Iraq war since it began.

During 2007, two-thirds of all applicants that were denied—nearly a million people—simply gave up after being turned down the first time (CBS News Report—Failing The Disabled—1/15/08)

In 2007 there were 2,190,196 new applications for SSDI benefits, and as of August 2008 there have already been 1,564,160 new applications.

As of April 2008 there are about 1,327,682 total pending cases and out of that number, 154,841 are veterans.

Nationally as of August 2008, over 63% of disability cases were denied at the initial stage of the disability claims process and it took from 101.9—111 days for claimants to receive the initial decision on their claim.

If a claimant appeals the initial denial asking for reconsideration, in all but 10 test states where the reconsideration phase has been removed, 86.3% of cases were denied and the waiting time for this phase was an average of 89.6 days.

As of August 2008 there are 767,595 cases waiting for hearings with an average wait time of 532 days.

As of August 2008 over 290,840 hearings (38 %) have already been pending over a year, and there are only 962 Administrative law judges (ALJ's), to hear all those cases, with an average of 660.58 cases pending per judge nationwide.

If a claimant appeals an ALJ hearing decision to the Federal Appeals Council, the average time from request for AC/Appeals Council Review to Appeal Council's Decision is 8 months. NOTE: It is not unusual to find cases pending for up to 24 months for various reasons. Cases pending longer than 24 months are then considered for expedited processing. In 2006—71% of the 88,907 cases that were sent to the Appeals Council were denied.

In 2007—637,686 disabled Americans were forced by law to endure the mandatory 24 month waiting period for eligibility to receive much needed Medicare benefits.

Source: Social Security Administration Reports

According to Health Affairs, The Policy Journal of the Health Sphere, 2 February 2, 2005: Disability causes nearly 50% of all mortgage foreclosures, compared to 2% caused by death.

"The escalating pace of foreclosures and rising fears among some homeowners about keeping up with their mortgages are creating a range of emotional problems, mental health specialists say. Those include anxiety disorders, depression, and addictive behaviors such as alcoholism and gambling. And, in a few cases suicide.

"Historically, research shows, rates of depression and suicide tend to climb during times of economic tumult."

"Studies show a strong connection between financial distress and emotional stress, including anxiety, depression, insomnia and migraines."

Excerpts from Foreclosures Take Toll On Mental Health—Crisis Hotlines, Therapists See A Surge In Anxiety Over Housing—USA Today—Stephanie Armour—5/15/08

AARP/USA Today: Health Care To Get The Hollywood Treatment—5/28/08—"More middle-class people file for bankruptcy because of health care related expenses than for any other reason."

MarketWatch: Illness And Injury As Contributors To Bankruptcy—February 2, 2005—found that: Over half of all personal U.S. bankruptcies, affecting over 2 million people annually, were attributable to illness or medical bills. 15% of all homeowners who had taken out a second or third mortgage cited medical expenses as a reason.

According to an insurance survey, conducted by the International Communications Research of Media, PA from Jan 10-14th 2007, on behalf of the National Association of Insurance Commissioners, researchers found 56% of U.S. workers would not be able pay their bills or meet expenses if they become disabled and unable to work. 71% of the 44% who had insurance, stated it was employer provided, so if they lose or change jobs they would no longer have disability coverage.

In April 2006, Parade Magazine in an article called "Is The American Dream Still Possible?"—published the results of their survey of more than 2200 Americans who earned between $30,000 and $99,000 per year, most stating that they were in reasonably good health. 66% say they tend to live from paycheck to paycheck and nearly 83% say that there is not much money left to save after they have paid their bills.

Nearly 1 in 2 (133 million) Americans live with a chronic condition.

20.6% of the population, about 54 million people, have some level of disability

9.9% (26 million people) have a severe disability

Note: The sources for these statistics and even more information is listed here: http://www.mychronicillness.com/invisibleillness/statistics.htm

Approximately 54 million Americans, an estimated 20% of the total population, have at least one disability, making them the largest minority group in the nation, and the only group any of us can become a member of at any time. As our baby boomer population ages and more veterans return from war, this number will double in the next 20 years. It is a diverse group, crossing lines of age, ethnicity, gender, race, sexual orientation and socioeconomic status.

Between 1990 and 2000, the number of Americans with disabilities increased 25 percent, out pacing any other subgroup of the U.S. population.

Of the 69.6 million families in the United States, more than 20 million have at least one family member with a disability.

People with disabilities are nearly twice as likely as people without disabilities to have an annual household income of $15,000 or less.

There are 133 million people in the United States living with a chronic health condition. That number is expected to increase by more than one percent a year to 150 million by 2030. 75% of people with chronic health conditions are younger than 65

Notwithstanding the strides made in disability rights in the past 25 years, the majority of people with disabilities are poor, under-employed and under-educated due largely to unequal opportunities.

The source for these statistics: Disability Stats And Facts—Disability Funders.org

http://www.disabilityfunders.org/disability-stats-and-facts

52% of Americans would rather die than live with a severe disability, according to a recent national survey commissioned by Disaboom (www.disaboom.com), the premiere online community for people touched by disability.

Disaboom Press Release—July 2008

Two-thirds of those who appeal an initial rejection eventually win their cases (New York Times 12/10/07)

It is also important to mention here that I am also President/Co-Founder of the Social Security Disability Coalition, which is made up of thousands of Social Security Disability claimants and recipients from all over the nation, and our membership increases by the day. It was born out of the frustration of my own experience, and the notion that others may be dealing with that same frustration. I was proven to be totally correct in that notion beyond my wildest imagination. Our group is a very accurate reflection and microcosm of what is happening to millions of Social Security Disability applicants all over this nation. If you visit the Social Security Disability Coalition website, or the Social Security Disability Reform petition website:

Social Security Disability Coalition—offering FREE information and support with a focus on SSD reform:

http://groups.msn.com/SocialSecurityDisabilityCoalition

Sign the Social Security Disability Reform Petition—read the horror stories from all over the nation:

http://www.petitiononline.com/SSDC/petition.html

You will read over five years worth of documented horror stories on our Messageboard (over 19,000 messages), and see thousands of signatures (over 7800) and comments on our petition, from disabled Americans whose lives have been harmed by the Social Security Disability program. You cannot leave without seeing the excruciating pain and suffering that these people have been put through, just because they happened to become disabled, and went to their government to file a claim for disability insurance that they worked so very hard to pay for. I must take this opportunity to tell you how very proud I am of all our members, many like myself, whose own lives have been devastated by a system that was set up to help them. In spite of that, they are using what very little time and energy they can muster due to their own disabilities, to try and help other disabled Americans survive the nightmare of applying for Social Security Disability benefits. There is no better example of the American spirit than these extraordinary people!

This organization fills a void that is greatly lacking in the SSDI/SSI claims process. While we never represent claimants in their individual cases, we are still able to provide them with much needed support and resources to guide them through the nebulous maze that is put in front of them when applying for SSDI/SSI benefits. In spite of the fact that the current system is not conducive to case worker, client interaction other than the initial claims intake, we continue to encourage claimants to communicate as much as possible with the SSA in order to speed up the claims process, making it easier on both the SSA caseworkers and the claimants themselves. As a result we are seeing claimants getting their cases approved on their own without the need for paid attorneys, and when additional assistance is needed we connect them with FREE resources to represent them should their cases advance to the hearing phase. We also provide them with information on how to access available assistance to help them cope with every aspect of their lives, that may be affected by the enormous wait time that it currently takes to process an SSDI/SSI claim. This includes how get Medicaid and other State/Federal programs, free/low cost healthcare, medicine, food, housing, financial assistance and too many other things to mention here. We educate them in the policies and regulations which govern the SSDI/SSI process and connects them to the answers for the many questions they have about how to access their disability benefits in a timely manner, relying heavily on the SSA website to provide this help. If we as disabled Americans, who are not able to work because we are so sick ourselves, can come together, using absolutely no money and with very little time or effort can accomplish these things, how is it that the SSA which is funded by our taxpayer dollars fails so miserably at this task

There are three key reasons why the Social Security Disability program has been broken for decades, lack of proper funding for the SSA, apathy on the part of Congress and the SSA to fix the problems, and lack of crucial oversight on all parts of the program. In order for the hearing backlog to be eliminated these problems must be addressed.

Changes/Proper Funding Necessary For SSA To Accomplish It's Goals And Properly Serve Disabled Americans

I continually hear talk at these hearings about increasing the funding for the SSA, and you asking witnesses for answers, on how much the SSA will need to fix the current problems, and prevent new ones from arising in the future. Still I see that the SSA is under funded almost every year, and there is a continued challenge to get the money that the SSA requests. All money that is taken out of American's paychecks for Social Security should not be allowed to be used for anything else other than to administer the program and pay out benefits to the American people.

Excerpt from: Social Security Administration: Inadequate Administrative Funding Contributes to the Disability Claims Backlog Crisis and Service Delivery Challenges

"Due to budget constraints in recent years the amount of administrative funding the Social Security Administration (SSA) has received through the annual appropriations process has been significantly below the level necessary to keep up with the agency's workloads. From 2001 to 2007, Congress appropriated approximately $150 million less per year for SSA's administrative funding needs than the President requested. In FY 2006 the final funding level approved by Congress was $300 million less than the President's Budget Request. In FY 2007 it was $200 million less. The FY 2008 enacted level was $148 million above the President's requested budget and it was the first time this decade that Congress has been able to provide funding above the President's request. However, the funding for Fiscal Year 2008 was $127 million less than the Conference Agreement on the FY 2008 Labor-HHS Appropriations bill would have provided. The level agreed to by Congress was reduced due to the Presidential veto of the Labor-HHS Appropriations bill."

Source: National Council of Social Security Management Associations (NCSSMA) September 17, 2008

One thing is said at the hearings, but when push comes to shove to vote for the SSA budget money, other programs or projects become higher priority, even though properly funding the SSA is literally a matter of life and death for millions of Americans. Even as I write this testimony, both the Senate and the House are voting on a continuing resolution package to provide stopgap funding for the Federal Government through March of 2009, but there are no special provisions for the SSA in this CR, which is going to make a horrendous situation even worse. Nothing is more important than the health and wellbeing of the American people, and as elected officials it is crucial that you never lose sight of that priority! SSA should not have to compete each year for funding with the Departments of Labor, HHS and Education which are highly publicized and therefore, often more popular programs. As stated in the previous testimony provided by Witlold Skierwczynski—President—National Council Of Social Security Administration Field Operation Locals to the House Ways And Means Committee on 4/23/08 it is recommended that:

Congress should enact off budget legislation including SSA administrative expenses with benefits which are already off budget. Congress should retain appropriations and oversight authority albeit unencumbered by artificial budget caps and scoring restrictions.

Congress should enact legislation requiring the Commissioner to submit the SSA appropriation request directly to Congress.

Congress should support the House Budget Committee recommendation to increase the SSA administrative budget by $240 million over the President's budget request.

Oversight is Crucial!

The SSA Commissioner Improperly Allocated ALJ's For SS Disability Hearings—Recently SSA Commissioner Michael Astrue asked Congress to approve extra funding in order to hire additional ALJ's to try and reduce the severe SS Disability hearings backlogs across the country. While I agree that the SSA does need more funding, in fact way more than was actually finally given to them in 2008, there must be some major oversight by independent entities to ensure that these funds in fact are actually used/allocated appropriately. Here is a recent example that raises a red flag for such oversight and an immediate investigation. At the link below you will find a spreadsheet that shows the locations where the newly acquired ALJ hires announced by the SSA Commissioner had been allocated:

http://www.ssa.gov/legislation/ALJAppointmentsbyState032508.xls

As you will see on this report—no ALJ's were originally allocated to the Buffalo/ Rochester NY area, which is one of the worst in the nation for processing SS Disability hearings.

As of August 2008:

It took 715 days (nearly two years) for the average Western New Yorker to have their SSA case heard and processed in the Buffalo NY Office Of Hearings & Appeals. This office is the worst in NY State for SS Disability hearing backlogs and out of 147 hearing offices reporting nationwide, Buffalo ranks at #130, as one of the worst processing times in the country. It ranks at #114 out of 150 hearing offices reporting, where the average age of a case pending a hearing is 349 days. Administrative Law Judges in Buffalo have some of the largest caseloads in the country, ranking at #107, out of 137 hearing offices reporting nationwide, with an average of 796.64 cases pending before each judge.

As of July 2008:

47% (5,542) of cases in the Buffalo Hearing Office (which is higher than the national average) had been pending for over a year.

Source: Compiled from various SSA reports July and August 2008

Commissioner Astrue used the argument that there was not enough office space in the Buffalo hearing office but that was immediately refuted by Congressman Brian Higgins:

Congressman Higgins Says Lack of Space Is Poor Argument for Staffing Shortfalls in Local Social Security Disability Office—4/24/08

http://higgins.house.gov/newsroom.asp?ARTICLE3116=7715

"If the problem is office space, I would be happy to find them available space in downtown Buffalo tomorrow," Higgins added, pointing out that according to a Militello Realty report on downtown Buffalo property, as of January 779,228 square feet of Class A office space was vacant in the immediate downtown area. Congressman Higgins noted that staffing shortages aren't exclusive to the Administrative Law Judges. Staffing at Western New York field offices have decreased substantially—by approximately 170 employees—over the past 25 years, even though the need for services has increased."

It was only after heavy pressure by Congress, and major media exposure, that additional ALJ's were added to the Buffalo/Rochester NY area. How many other states is this happening to? Where is the much needed oversight to ensure that these ALJ's are properly allocated where they are needed the most?

In an editorial letter from SSA Commissioner Astrue dated 8/21/08 to the Atlanta Journal Constitution in regards to the severe hearing backlogs it was stated that "We have taken a big step toward resolving that problem by bringing onboard 175 additional administrative law judges and additional staff to support them."

In reality:

At of the end of fiscal year 2007 the amount of ALJ's available to hear cases was at 1006. That number has steadily declined over the past several months and as of August 2008 there were in fact only 962 ALJ's currently available to hear cases*. The 175 new ALJ's that the SSA Commissioner has hired, (NOTE: most of the 175 newly hired ALJ's may actually already be factored into the August 2008—962 number—the report does not distinguish) once they are fully operational. In January 2008 there were 945 ALJ's * (a significant drop) from FY 2007 and that may in fact only increase the available ALJ level to 114 judges (not 175), over the number that were available to hear cases at the end of FY 2007. Basically this is still inadequate level, since it does not account for the fact that more judges may continue to leave for various reasons (retirement etc), and that the level of disability claims continues to increase instead of decrease, based on past history. So the likelihood of the claims backlog being resolved with this so called "current fix" is slim to none. In other words "this is like putting a band aid on a gushing wound." More investigation of this problem by Congress, the Inspector General and GAO needs to happen immediately!

*Source: Social Security Administration Reports

Horrendous Customer Service

In a January 2007 Harris poll designed to evaluate the services provided by 13 federal agencies, the public rated SSA at the bottom of the public acceptance list and it was the only agency that received an overall negative evaluation. SSA Field Offices have lost over 2,500 positions since September 2005 and nearly 1,400 posi-

tions since September 2006. In 2007 SSA Field Offices saw about 43 million visitors a week, and that number is expected to increase by over a million more in 2008. Constituents visiting these local Field Offices continue to experience lengthy waiting times and the inability to obtain assistance via the telephone.

Here is just a small sampling of some of the major problems with the current Social Security Disability program and State Disability (DDS) offices who process the initial phase/medical portion of disability claims:

Severe under staffing of SSA workers at all levels of the program Claimants waiting for weeks or months to get appointments, and hours to be seen by caseworkers at Social Security field offices Extraordinary wait times between the different phases of the disability claims process

Very little or no communication between caseworkers and claimants throughout the disability claims process before decisions are made.

Employees being rude/insensitive, not returning calls, not willing to provide information to claimants or not having the knowledge to do so

Complaints of lost files and in some states, case files being purposely thrown in the trash rather than processed properly

Security Breaches—Complaints of having other claimants information improperly filed/mixed in where it doesn't belong and other even worse breaches

Fraud on the part of DDS/OHA offices, ALJ's, IME's—purposely manipulating or ignoring information provided to deny claims, or doctors stating that they gave medical exams to claimants that they never did.

Claimants being sent to doctors that are not trained properly, or have the proper credentials in the medical field for the illnesses which claimants are being sent to them for.

Complaints of lack of attention/ignoring—medical records provided and claimants concerns by Field Officers, IME doctors and ALJ's.

Employees greatly lacking in knowledge of and in some cases purposely violating Social Security and Federal Regulations (including Freedom of Information Act and SSD Pre-Hearing review process).

Claimants cannot get through on the phone to the local SS office or 800 number (trying for hours even days)

Claimants getting conflicting/erroneous information depending on whom they happen to talk to at Social Security—causing confusion for claimants and in some cases major problems including improper payments

Proper weight not being given to claimants treating physicians according to SSA Federal Regulations when making medical disability determinations on claims.

Complaints of ALJ's "bribing" claimants to give up part of their retro pay (agreeing to manipulation of disability eligibility dates) or they will not approve their claims

Poor/little coordination of information between the different departments and phases of the disability process

Complaints of backlogs at payment processing centers once claim is approved

Federal Quality Review process adding even more wait time to claims processing, increasing backlogs, no ability to follow up on claim in this phase

NOTE: These complaints refer to all phases of the SSDI claims process including local field offices, state Disability Determinations offices, CE/IME physicians, Office of Hearings and Appeals, the Social Security main office in MD (800 number)

Excerpts from: Social Security Administration: Inadequate Administrative Funding Contributes to the Disability Claims Backlog Crisis and Service Delivery Challenges

SSA has two classes of phone service: 800 Number and Field Office. The 800 Number had a busy rate of 7.5% in FY 2007 and handled about 59 million calls through agents and automation. At the same time over 60 million phone calls are directed to SSA Field Offices each year. In FY 2007, 45% of callers who eventually reached a Field Office by telephone said that they had received a busy signal or were told to call back at another time on an earlier call. Consequently, the actual busy rate is higher than 45%.

About 43 million people visited SSA Field Offices for assistance in 2007. SSA Field Offices continue to receive more and more customers. This year SSA Field Offices are expected to see more than a million more customers than last year. One manager stated this in a recent NCSSMA survey: "The staff usually feels overburdened with the never-ending volume of interviews. They are usually one after the other daily with no ending. They are in need of time at their desk to process the numerous listings and actions that go with them."

In a survey by the National Council of Social Security Management Associations (NCSSMA) of their members performed in May 2008, they received the following feedback:

81% stated they did not have enough staff to keep workloads current
64% stated waiting times for the public were longer than they were one year ago
65% stated the quality of their office work product has declined in recent years
45% stated they could provide prompt telephone service 0–40% of the time
49% stated their staff did not receive adequate training which was primarily due to lack of time an increasing pressure to process workloads

Source: National Council of Social Security Management Associations (NCSSMA) September 17, 200 States Of Denial—The REAL Reason Behind The Social Security Disability Hearing Backlogs

Since Social Security Disability is a Federal program, where you live should not affect your ability to obtain benefits. Sadly this is not the case. While funding is a major problem that SSA faces, the other primary reason for these hearing backlogs, continues to be ignored during these proceedings, and that is the initial phase of the disability qualification process which is handled by the individual state DDS/Disability Determination Services offices. There, the most crucial part of your disability claim, the medical portion, is reviewed by a caseworker/adjudicator and medical doctor on their staff who never sees you, and in most cases never even communicates with you at all.

Excerpts from GAO Report GAO–04–656—SSA Disability Decisions: More Effort Needed To Assess Consistency of Disability Decisions—Washington—July 2004 which can be found at:

http://www.gao.gov/new.items/d04656.pdf

"Each year, about 2.5 million people file claims with SSA for disability benefits. . . . About one-third of disability claims denied at the state level were appealed to the hearings level; of these, SSA's ALJ's have allowed over one-half, with annual allowance rates fluctuating between 58 percent and 72 percent since 1985. While it is appropriate that some appealed claims, such as those in which a claimant's impairment has worsened and prohibits work, be allowed benefits, representatives from SSA, the Congress, and interest groups have long been concerned that the high rate of claims allowed at the hearing level may indicate that the decision makers at the two levels are interpreting and applying SSA's criteria differently. If this is the case, adjudicators at the two levels may be making inconsistent decisions that result in similar cases receiving dissimilar decisions."

"Inconsistency in decisions may create several problems. . . . SSA rulings are binding only on SSA adjudicators and do not have to be followed by the courts. . . . Adjudicators currently follow a detailed set of policy and procedural guidelines, whereas ALJ's rely directly on statutes, regulations, and rulings for guidance in making disability decisions. . . . If deserving claimants must appeal to the hearings level for benefits, this situation increases the burden on claimants, who must wait on average, almost a year for a hearing decision and frequently incur extra costs to pay for legal representation. . . . SSA has good cause to focus on the consistency of decisions between adjudication levels. Incorrect denials at the initial level that are appealed increase both the time claimants must wait for decision and the cost of deciding cases. Incorrect denials that are not appealed may leave needy individuals without a financial or medical safety net. . . . An appeal adds significantly to costs associated with making a decision. According to SSA's Performance and Accountability Report for fiscal year 2001, the average cost per claim for an initial DDS disability decision was about $583, while the average cost per claim of an ALJ decision was estimated at $2,157. . . . An appeal also significantly increases the time required to reach a decision. According to SSA's Performance and Accountability Report for fiscal year 2003, the average number of days that claimants waited for an initial decision was 97 days, while the number of days they waited for an appealed decision was 344 days. . . . In addition, claimant lawsuits against three state DDS's have alleged that DDS adjudicators were not following SSA's rulings or other decision making guidance. . . . However, according to DDS stakeholder groups, SSA has not ensured that states have sufficient resources to meet ruling requirements, which they believe may lead to inconsistency in decisions among states. Furthermore, SSA's quality assurance process does not help ensure compliance because reviewers of DDS decisions are not required to identify and return to the DDS's cases that are not fully documented in accordance with the rulings. SSA procedures require only that the reviewers return cases that have a deficiency that could result in an incorrect decision."

Excerpt from: Social Security Administration: Inadequate Administrative Funding Contributes to the Disability Claims Backlog Crisis and Service Delivery Challenges

"The Disability Determination Services (DDSs) have lost about 1,270 positions since the beginning of Fiscal Year 2006, as a result their staffing levels are down about 8.7%. The attrition rate in recent years at the DDSs has averaged 12.7 % versus 6.8% for Federal Government employees. This has forced the DDSs to invest

significant resources to train new staff. The DDSs will not be able to adequately address staffing losses either."

Source: National Council of Social Security Management Associations (NCSSMA) September 17, 2008

What would be an incentive for states to deny Federal claims? Since many Social Security Disability claims are SSI or both SSI/SSDI combined claims and many states offer to supplement SSI payments at a higher benefit amount, therefore they want to keep as many off the rolls as possible so they do not have to pay out this supplement. Also since there is a different pay scale for government vs state employees who are often underpaid, lack training, are overworked, and must meet quotas of cases processed, the tendency is greater to rubber stamp denials to move claims off their desk when a case needs too much development. Thus the explanation for the fluctuation in denial/approval/backlog rates by state. Unfortunately there is very little if any training or oversight on the state DDS offices to make sure they are making the proper decisions on disability claims. This is why so many claimants appeal to the hearing level where a huge percentage of bad claims decisions are overturned and cases are finally approved. Anyone who doesn't see that a "Culture Of Denial" has become a pervasive part of an SSDI claimants encounter with the SSA, is either totally out of touch with reality or is reacting evasively to the subject.

The SSDI/SSI process is bogged down with tons of paperwork for both claimants and their treating physicians, and very little information is supplied by Social Security, as to the proper documentation needed to process a claim properly and swiftly. When you file a claim for benefits, you are not told that your illness must meet standards under the Disability Evaluation Under Social Security "Blue Book" listing of medical impairments, or about the Residual Functional Capacity standards that are used to determine how your disability prevents you from doing any sort of work in the national economy, or daily activities, when deciding whether or not you are disabled. In other words since the process is so nebulous from beginning to end, the deck is purposely stacked against a claimant from the very start. Also many times medical records submitted are lost or totally ignored. If more time and effort were put forth to communicate with claimants, and to make the proper decision at the onset, there would be no need for all these cases to be appealed to the hearings level in the first place. That in itself would be a huge factor in reducing the hearing backlogs, but again, this fact has been greatly ignored and it is a major failure on your part. Until you properly devote the time and energy to look into this crucial part of the problem, the hearing backlogs will continue to grow at an uncontrollable rate, no matter how much money you give to the SSA.

All phases of disability claims processing should be moved to and handled out of the Social Security individual field offices, including the DDS phase which is the medical determination phase currently handled by the states, and all hearing phases of the disability process. All people who process Social Security disability claims should be employees of the Federal Government to ensure accuracy and uniform processing of disability claims under Federal regulations and Social Security policies which is currently not the case. If the states are to continue to handle the DDS phase of the disability process, then all state employees handling Social Security claims should be required to receive a minimum of 3 months standardized training by the Social Security Administration, in SSA policies and Federal regulations governing SSDI/SSI claims processing.

Too much weight at the initial time of filing, is put on the independent medical examiner's and SS caseworker's opinion of a claim. The independent medical examiner only sees you for a few minutes and has no idea how a patient's medical problems affect their lives after only a brief visit with them. The caseworker at the DDS office never sees a claimant. There needs to be more oversight that disability decisions be based with controlling weight given to the claimant's own treating physicians opinions and medical records in accordance with (DI 24515.004) SSR 96–2p: Policy Interpretation Ruling Titles II And XVI: Giving Controlling Weight To Treating Source Medical Opinions**.** Even though this policy ruling is in place, this is very often not happening. Since many times doctors, hospitals etc often do not respond to SSA requests for medical information in a timely manner, or sometimes ignore these requests entirely, ALL doctors, and medical professionals including those at the VA should be required by Federal or State law, to fill out any medical forms and submit documents requested by the SSA within strict timelines or they will not be allowed to practice medicine in this country. Also as part of their continuing education program in order to keep their licenses, doctors should also be required to attend seminars provided free of charge by the SSA, in proper procedures for writing medical reports and filling out forms for Social Security Disability and SSI claimants. More communication between caseworkers and claimants throughout all

phases of the disability process. Review of records by claimant should be available at any time during all stages of the disability determination process. Before a denial is issued at any stage, the applicant should be contacted as to ALL the sources being used to make the judgment. It must be accompanied by a detailed report as to why a denial might be imminent, who made the determination and a phone number or address where they could be contacted. In case info is missing or they were given inaccurate information the applicant can provide the corrected or missing information before a determination at any level is made. This would also eliminate many cases from having to advance to the hearing or appeals phase.

Social Security Disability Program Problems—Contributing Burden Factor on Medicaid/Social Service Programs For States

There seems to be a relationship, between SSDI claims processing issues/backlogs, and the need for claimants to also apply for state funded Medicaid/Social Service programs. Many are forced to file for Medicaid, food stamps and cash assistance, another horrendous process. For example in New York State, about half the 38,000 people now waiting on disability appeals, for an average of 21 months, are receiving cash assistance from the state (New York Times 12/10/07). Those who file for these programs while waiting to get SSDI benefits, in many states, have to pay back the state out of their meager benefit checks once approved. As a result they're often kept below the poverty level, almost never able to better themselves since they can't work, and now are forced to rely on both state and federally funded programs instead of just one of them. This practice should be eliminated.

Improper CE/IME Medical Exams Ordered By Social Security Result In Higher Rate Of Denials, Hearings And Appeals

CE/IME examiners are paid a fee by Social Security for each person they see, so the more claimants they process, the more money they make. Often times they are caught saying they performed exams that they in fact never performed, make mistakes, or make false, misleading statements about claimants. Many times the DDS offices or ALJ's are sending claimants to doctors that have very limited knowledge of their specific health conditions, who are not specialists, or even the proper type of doctor, to be examining a claimant for the type of medical conditions that they have. These doctors see you once for a few minutes, and yet their opinion is given greater authority than a claimant's own treating physician who sees them in a much greater capacity? Something is way out of line with that reasoning, yet it happens every day. Even though a claimant's treating physicians are supposed to be given greater weight in decision making, this is often not the case. Whenever SSA required medical exams are necessary, they should only be performed by board certified independent doctors who are specialists in the disabling condition that a claimant has (example—Rheumatologists for autoimmune disorders, Psychologists and Psychiatrists for mental disorders). Common sense dictates that these poorly executed, and often unnecessary, medical exams result in a waste of time, money and energy, for both the claimants and the SSA, when the claimant ends up appealing a denial based on these improper SSA ordered examinations.

Utilize Hearing On The Record/Pre-Hearing Review Option To Reduce Backlogs

More emphasis and support staff need to be devoted to the pre-hearing review process which could greatly reduce the current hearing backlog. This would obviously and should require more communication between hearing office staff and claimants or their representatives to update case files. Once the files have been updated, many would be able to be decided solely on the records in the file without having a full hearing in front of an ALJ.

Streamline Social Security Disability/SSI Claims For Veteran's To Reduce Backlogs

When a veteran has a 100% disability rating, receives VA benefits approval for that rating, and it is deemed by the VA that they can no longer work at any job under SSA Guidelines, that veteran should automatically be approved for their Social Security Disability/SSI, as long as they also meet the Non-Medical requirements for those benefits. In addition all VA doctors should be trained and required to fill out Social Security Disability forms for their patients, whose VA disability rating is less than 100%, but may still be unable to work due to their disabilities and require SSDI/SSI benefits. These claims should be processed by a special division within the SSA or the VA that is equipped to process both claims simultaneously. Congress and the SSA should designate special funding to see that this is implemented immediately for our veterans, so it moves a large group of claimants through the system faster thus reducing the backlog problem.

Regulation Is Necessary To Avoid Improper Social Security Disability Claim Filings Due To State And Private Insurance Company Policies

There is a growing number of claims being filed by people who may not actually qualify for disability benefits under Social Security guidelines, but who are being forced to file Social Security Disability/SSI claims by their private disability and state disability carriers or risk not being eligible for benefits under those programs. Recently there has been media coverage on this issue which can be found here:

Trial Against Unum Over Handling of Disability Insurance Claims Opens Today—Market Watch—PRNewswire via COMTEX—Boston—9/22/08

http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/09-22-2008/0004890097&EDATE=

Senate Asks 9 Insurers To Furnish Information—NY Times—Mary Williams Walsh—7/25/08

http://www.nytimes.com/2008/07/25/business/25insure.html?_r=2&adxnnl=1&oref=slogin&ref=business&adxnnlx=1216988114-xUJWefbXim4ZjKuyMloRVA&oref=slogin

Insurers Faulted As Overloading Social Security—NY Times—Mary Williams Walsh—4/1/08

http://www.nytimes.com/2008/04/01/business/01disabled.html

Congress and the SSA needs to look into this issue and this practice needs to be stopped immediately as this too greatly adds to the disability backlog problem.

Americans Most Sensitive Data In Jeopardy

I was very disturbed to learn as I watched this hearing, about the practice of allowing SSA employees to take work home with them. The following article discusses the SSA employee work at home situation.

Concern Over Federal Times Article: Arbitrator Tells SSA To Restore Telework, Negotiate Changes—Federal Times—Courtney Mabeus—4/16/08

http://www.federaltimes.com/index.php?S=3482166

I am very concerned with the increased possibility of identity theft if SSA employees are allowed to take work home because they are too overloaded on their jobs. Employees should never be allowed to take this sensitive data home for any reason. Sensitive data has already been compromised at the VA, and this should not be allowed to happen ever again, especially jeopardizing our most vulnerable citizens to this very real and stressful possibility. I have personally caught the SSA in some major security breaches already, and this practice will only make those incidents even more common. Every effort must be made to properly secure this most sensitive information for the American people. In order to properly protect citizen's identities ALL sensitive data should only be able to be accessed on government secure systems at the job site only. This is obviously going to require more manpower and financial resources, and Congress must make sure that the SSA has every resource it needs to protect this data, at their disposal immediately.

Put Disabled American People First—Remove Detrimental Regulations

There are some very detrimental, regulations that SSDI applicants are subject to as well, and are a great shock to them. Under Federal law, there's a five month benefit waiting period, and five months of back money withheld, which claimants will never see again. It was originally six months but Congress voted to reduce it to five. Apparently it is assumed that disabled Americans do not need that money. SSDI recipients must also wait another 24 months, in addition to the 5 month waiting period from disability date of eligibility (the date that SS determines that you were officially disabled) in order to qualify for Medicare benefits. Keep in mind that if you let any sort of health insurance policies lapse for too long, and don't maintain continuous health coverage, you may have a very difficult time getting a new insurance carrier, since they may hold your poor health against you, and consider many things as "pre-existing conditions" so you may not be covered for those illnesses. Congress expects a population who can no longer work, to go without five months of retro pay, have no health insurance, and wait several months to several years to have their disability claims processed. In my state when a healthy person loses their job, provides the necessary documents and files for Unemployment Insurance, their payments automatically start within a few weeks. It is blatantly obvious that those who find this to be acceptable standards are totally out of touch with reality and have no regard for human life.

Permanent Devastation Resulting From The SSDI Claims Process

Unbearable stress, severe depression and suicidal thoughts are very common side effects of the SSDI/SSI claims process. Many are under the mistaken notion that when the SSDI benefit checks finally come, if one is in fact finally approved, that everything will be OK. Often the abuse and worry that applicants are forced to endure, and the devastation caused while waiting for SSDI claims to be processed, leaves permanent scars on one's health and financial wellbeing as it did for me. It causes even further irreparable damage to their already compromised health, and it is totally unacceptable. As a result use of the highly promoted SS Ticket to Work program, or any future chance of possibly getting well enough to return to the workforce, even on a part time basis, becomes totally out of the question. Then if you eventually get approved for benefits, there is always the added stress of having to deal with the SS Continuing Disability Review Process every few years, where the threat of having your benefits suddenly cut off constantly hangs over your head.

I not only have complaints which I have presented today, but also many solutions to this crisis, so I hope you will join me in my quest for total reform of this program. Please introduce/support—Fullerton—Edwards Social Security Disability Reform Act:

http://groups.msn.com/SocialSecurityDisabilityCoalition/fullertonedwardssocial securitydisabilityreformact.msnw

Statement of SSI Task Force of the National Health Care for Homeless Council

Thank you for the opportunity to submit testimony on behalf of the SSI Task Force of the National Health Care for the Homeless Council. The Council has long recognized the importance of prompt receipt of disability benefits for homeless individuals.[1]

Disability precipitates and prolongs homelessness.[2] Homeless people suffer extraordinary and well-documented health risks associated with poverty, overcrowding, and poor access to health care. People without homes are mercilessly exposed to the elements, to violence, and to communicable diseases and parasitic infestations. Circulatory, dermatological, and musculoskeletal problems are common results of excessive walking, standing, and sleeping sitting up. Homelessness and malnutrition go hand-in-hand, increasing vulnerability to acute and chronic illnesses. Stresses associated with homelessness also reduce resistance to disease and account for the emergence of some mental illnesses. Homeless people experience illnesses at three to six times the rates experienced by housed people.[3]

There is increasing awareness of the role of medical impairment and disability in precipitating and prolonging homelessness. The fact that people with disabilities constitute the "chronically homeless" population in America is extremely troubling. Any national strategy to end and prevent homelessness must include adequate financial supports to enable persons with disabilities (limiting their ability to earn sufficient incomes through employment) to secure housing and meet other basic needs, including health care.

Disability assistance can mitigate health risks associated with homelessness. Persons who qualify for SSI/SSDI are more likely than others to obtain available low-cost housing and receive priority for certain types of housing. By increasing access to housing and health care, disability benefits can help to mitigate health risks associated with homelessness, facilitate recovery, improve quality of life for many homeless people, and help them to resolve their homelessness. The timely receipt of SSI

[1] See Policy Statement on Disability Benefits and Homelessness, National Health Care for the Homeless Council, http://www.nhchc.org/Advocacy/PolicyPapers/DisabilityBenefits2008.pdf

[2] A "homeless individual" is defined in section 330(h) (5) (A) of the Public Health Service Act as "an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing." ". . . A recognition of the instability of an individual's living arrangement is critical to the definition of homelessness." (Principles of Practice for Health Care for the Homeless grantees, Bureau of Primary Health Care Program Assistance Letter 99—12, March 1, 1999)

[3] Wright JD. Poor People, Poor Health: The health status of the homeless. In: Brickner PW, Scharer LK, Conanan BA, Savarese M, Scanlan BC. *Under the Safety Net: The Health and Social Welfare of the Homeless in the United States*. New York: WW Norton & Co., 1990: 15—31

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or SSDI benefits dramatically improves access to food and stable housing. Both the Medicaid coverage that accompanies the receipt of SSI and the Medicare benefits that follow receipt of SSDI improve access to comprehensive health care, including mental health services and addiction treatment. Homeless individuals with disabilities who receive comprehensive health services, intensive case management, and the means to meet their subsistence needs are much more likely to achieve stabilization, end their homelessness, and eventually participate in gainful employment. Expedited SSI/SSDI benefits are therefore extremely important to protect and increase their economic security.

Effect of hearing delays on homeless claimants: The delay in obtaining an SSI hearing can have particularly devastating consequences for individuals coping serious disabilities without safe housing. James J. O'Connell, MD, President, Boston Health Care for the Homeless Program, writes:

As a physician engaged fulltime in the medical care of homeless persons, I have frequently accompanied my patients to these SSI hearings and have often been frustrated by the prolonged wait for this critical step the SSI process. One of my patients suffers from cirrhosis and end-stage liver disease and was denied twice because of a lack of medical evidence. I had not been aware of his application process, but I completed a letter and awaited a date for his appearance before the ALJ. As more than six months passed, his disease progressed rapidly while he lived on the streets of Boston. His emergency room visits escalated, and he was frequently admitted to our hospital for management of his ascites and encephalopathy. Of critical concern to me was our inability to obtain housing for him. Without an income, he was ineligible for many of the innovative housing programs available here in Boston. I have no doubt that we would be much better able to manage his chronic and debilitating illness with the safety and security provided by stable housing. He would be able to adhere to his complex medication regimen, and I have no doubt that his visits to the emergency rooms and hospitals would decrease significantly.

One other patient of mine with peripheral neuropathy and an affective disorder is currently in a special housing first program. He has been denied twice for his SSI and we have now been waiting over six months for a hearing date. In the interim, he has no income and cannot afford to buy enough food each week. He spends many of the days back on the streets, begging for money and living in the very areas where he has been most vulnerable. I am dismayed, especially because we were finally able to house this man after he spent over twenty years living on the streets of Boston. The irony abounds, as he has obtained the housing that is so essential to his health, but without his SSI he is more impoverished than when he lived on the streets and now risks becoming homeless once again.

Mark Dalton, Administrator, DSHS Belltown Community Services Office, Seattle, Washington, has had similar experiences on the other side of the country. He has described 5 cases of homeless claimants who wandered through the SSI maze for years without result. In one case, the claimant took over two years to get to ALJ, only to have his case dismissed because he did not have an attorney. In another, the claimant, with an attorney representative, has been told that now that he has lost his ALJ hearing, the Appeals Council may take up to three years to decide his case. *See* Attachment A. Mellani Calvin, Benefits Program Manager of B.E.S.T.(Benefits and Entitlements Specialist Team) in Portland, Oregon, describes the effect of the SSI wait on one young man:

20 years old, one of seven children. He has hemophilia and has been in the foster care system mu Mr. B is ch of his life. He has had numerous suicide attempts during his teen years. He has been homeless on and off for over fours years, at times living on the streets with his mom. Currently he does not know where his mother, father or his siblings are. Apart from his blood and mental health problems he also has had a nervous system ganglioglioma near his hypothalmus. It is believed that his has learning and cognitive deficits. He is schedule for testing in this regard. Mr.B has had another recent hospitalization and could not be discharged to the streets. He does have an existing claim for SSI pending at the hearing level. Our SOAR based B.E.S.T. program (Benefits and Entitlements Specialist Team) has signed on as his authorized representative and are working on an On-the-Record decision request to our local ODAR office. His request for hearing was filed earlier this month and it is our belief that we will be successful is waiving the two year wait for benefits as his severe conditions are such that he is at high risk of death from a medical standpoint and/or from his fragile mental health.

The average processing time for the Boston regional hearing office is 397 days, and for the Seattle regional office, it is 575 days.[4] The descriptions of what happens to homeless claimants, as provided by Dr. O'Connell, Ms. Calvin, and Mr. Dalton, are testimony to the need for reform.

Changes Necessary to hearing system: The Council endorses the comments of Citizens with Disabilities Social Security Task Force,[5] and further comments on the changes that are necessary to address the specific needs of homeless claimants.

Properly develop the claim at the DDS level: the single best reform of the hearing system would be to ensure that the claims of homeless individuals never needed to get to that level, and were developed sufficiently at the DDS level to find the individual disabled at the earliest possible level, not the latest. As described by Dr. O'Connell and Mr. Dalton, the delays at the hearing office level impose particular hardship on homeless claimants, who depend on this income to ensure access to subsidized housing and medical care. The claim of Mr. B, as described by Ms. Calvin, should have had focused attention earlier in the process—-not having to wait until the hearing stage. Efforts such as SOAR[6] , which have proven effective at getting claims of homeless individuals approved at the initial stage, must be continued and expanded.

SSA initiatives to improve hearing office performance must take into account the needs of homeless claimants: SSA has implemented numerous initiatives to reduce and then eliminate the disability claims backlog. We agree with the CCD testimony that the "critical measure for assessing initiatives for achieving administrative efficiencies must be the potential impact on claimants and beneficiaries."[7] This is particularly true with respect to the claims of homeless claimants, who already are disadvantaged by the complexity of the disability determination process. For example, Commissioner Astrue's goal of eliminating the backlog no later than FY2013, anticipates 466,000 pending cases to ensure a "sufficient 'pipeline' of cases to maximize the efficiency of our hearings process and achieves an average processing time of 270 days."[8] While taking another four fiscal years to eliminate the backlog may be a realistic assessment, it makes all the more imperative that homeless claims are as fully developed as early as possible in the process. An "average processing time of 270 days" is simply too long for the claimants described in this letter to wait, even with no hearings backlog. SSA must continue to fulfill its' statutory duty to fully the claim before a decision is made, and it must ensure that its' administrative procedures reflect this role.

Technological improvements must be accessible to homeless claimants, their medical providers and their advocates: improvements such as the electronic disability folder and the Electronic Records Express (ERE) must ensure that the needs of homeless claimants are taken into account in their design and implementation. It's not clear that many homeless claimants will know how to use the electronic folder on a CD in the hearing office. Advocates have found that medical evidence submitted through ERE may be somewhere in the electronic file, but is not listed in the hearing file. This can create confusion and delay at the hearing, and should be corrected.

Strategies to hear and decide cases must take into account the particular requirements of homeless claimants: SSA is making efforts to screen hearing requests to quickly identify possible allowances, through refining computer models and triage hearing requests.[9] To date, homeless claimants have not benefited from more refined algorithms in screening cases. Their impairments may be too complex to easily fit into a computer model. Triaging hearing requests can be a more productive tool, but is labor intensive. Informal remands to DDS, or senior attorney decision making can also be productive as long as the DDS or the senior attorney is familiar with adjudication of homeless claims. Even at the hearing level, additional development is needed to assure that SSA has a fully developed claim. Even though the claims are complex, SSA must develop strategies at the hearing offices to have homeless claims decided as soon as possible, given the importance of the decision to the individual.

Thank you again for the opportunity to submit these comments.
Respectfully submitted,

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[4] *National Ranking Report month ending 7/25/2008, Social Security Forum, Vol. 30 No. 7, p.11(NOSSCR, August 2008).*

[5] Statement of Ethel Zelenske, Co-Chair, CCD Social Security Task Force, before the Subcommittee on Social Security of the Committee on Ways and Means,(Sept. 16, 2008), http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=7387

[6] The SSI/SSDI Outreach, Access & Recovery initiative http://www.prainc.com/SOAR/

[7] *See* note 5.

[8] SSA strategic plan, Goal 1, p.8 http://www.ssa.gov/asp/StrategicGoal1.pdf

[9] *See* Note 8, at p.8.

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Examples of homeless claimants and hearing office delays

Mr. J.S. is 48 years old and has been homeless for many years in Seattle, WA. He graduated from high school and had worked as a meat cutter. He has been receiving General Assistance for Unemployable (GAU/X) benefit from 2004 to 2008 in Washington State because he cannot work due to mental illness, physical problems, and chemical dependency issues. He recently has reapplied for GAU benefit and will meet with a Social Worker at the Belltown Community Services Office. From 2004 to present, his case has been handled by five different offices and this tells you that has been moving around a lot within the four years time and has no telephone and no message phone numbers to contact. He has no stable, close friends in the area, and no relative that he can depend on.

In June, 2004, Mr. S. had filed the SSI/SSDI claim with Social Security Administration. In late July, 2004 the Division of Disability Determination Services (DDDS) denied his application based on his capacity to do substantial and gainful employment and no qualifying visual impairment. In early fall 2004 he had submitted the Reconsideration Request to DDDS because he did not agree with DDDS decision. In late October of that year his claim was denied at the Reconsideration level. Then in February 2005 he had requested for the Hearing and Appeal by Administrative Law Judge (ALJ) to hear his case. The Office of Hearings and Appeals had taken over a year to schedule the Hearing by ALJ, but the hearing did not occur because client did not attend—likely because he did not receive the notice. Therefore, by the fall of 2006 A's claim was dismissed by ALJ. Client **did not** have SSI attorney representation. An SSI Facilitator will need to assist him to file the new disability claim once he is eligible for General Assistance benefits again.

Mr. A.B. is 51 years old and has been homeless since November 2004 until now in Seattle, WA. He has been receiving General Assistance benefits since November 2004 to present. He completed 11th grade education and later on he managed to complete the GED. He had worked primarily in laboring jobs, outdoors. He was diagnosed with mental illness which prevents him from working, and substance abuse issues. He was been declared a Need Special Assistance (NSA) client because of his inability to function and take care of his own needs. Within these four years he has been moving around a lot and his General Assistance case has been handled by four different offices. He has no phone and no phone message numbers to contact. He does not know anyone and has no relative that he can depend on.

In the summer of 2004, he filed the SSI/SSDI claim with the Social Security Administration. However, in March, 2005, his claim was denied by DDDS for slight impairment-medical consideration alone, no visual impairment. In May, 2005, he filed for the Reconsideration claim to DDDS because he disagreed with DDDS decision. The DDDS disability adjudicator denied his claim for the second time late in the summer. In early fall, 2005 he filed A hearing request. In early 2006, the Office of Hearing and Appeal dismissed his claim—client did have SSI attorney representation for his case. An SSI Facilitator will need to assist client to file the new disability claim.

Mr. H.J. is 54 years old and has been homeless in Seattle, WA from 2003 to present. He has been receiving General Assistance since 2003 to present after being diagnosed with mental illness and multiple medical impairments. He completed 11th grade education and managed to earn his GED and worked short time as a laborer. In the fall of 2005 he filed an SSI claim with the Social Security Administration. In November of 2005, his SSI claim was denied because of insufficient information, no medical data furnished, no visual impairment. Early in 2006 he filed a reconsideration request with DDDS, which was accepted, but later that spring his disability claim was denied the second time. Due lost of contact, he failed to request an Appeal timely. He has no close friends or relatives in the area. He has no phone and no message phone numbers. An SSI Facilitator will need to assist him to file a new claim.

Mr. J.K. is 43 years old living in a subsidized apartment by himself, supported by his General Assistance benefits. He has been receiving General Assistance since

May 2002 to present. He received high school diploma overseas and worked short time in customer services in America. He has not been able to work because he was diagnosed with both mental illness and physical impairments. He has no close friends or relative to assist him. Late in **2002** he filed a disability claim with Social Security Administration. Early in 2003 DDDS denied his disability claim because he had failed to or refused to submit to consultative examination, no visual impairment. We continued to pursue the claim, ultimately submitting a hearing request. In mid-summer, **2005** the ALJ heard the case and gave an unfavorable decision. The SSI Facilitator at the Belltown Community Services Office has assisted client to file the new claim and as of now, his claim is now in the pending status with DDDS awaiting a decision.

Mr. G.J. has been on General Assistance since late in **1998** for mental illness & chemical dependency issues. His diagnoses are major depressive disorder, pathological gambling, drug dependence, and panic and antisocial personality D/Os. The initial SSI application was filed in the fall of **2003,** all denials were appealed, and the Hearing was lost in **March of 2007**; his attorney filed an argument in July 2007 and claim is currently pending at Appeals Council in Virginia State. Client reports that Appeals Council staff told him that it could take **another 3 years** (from initial filing until then, a total of eight years) before the claim can be decided. Client has had, and has, no means of support other than his $339 state General Assistance check.