

1 allocation but simply break those two items out specifically so
2 that there would be no question about them being provided for
3 in the Committee budget allocation report.

4 The table in the middle of the document that has the
5 little red A in the upper righthand corner, Revised Budget
6 Allocation Report, shows our suggested revisions.

7 You will have to file a new budget allocation report after
8 the Second Budget Resolution is agreed to. In the meantime, we
9 would suggest simply filing this so that the Trade Adjustment
10 Assistance bill and the windfall profits bill not be referred
11 to the Appropriations Committee.

12 You might want to note in the report that there are
13 additional amounts included in the windfall profits tax bill
14 that are not contemplated in this particular resolution and
15 that the amount that once was shown, or that will be shown for
16 revenue sharing, will in fact not be necessary on the Second
17 Budget Resolution.

18 Basically the purpose of the staff suggestion is so tht
19 the Trade Adjustment Assistance bill and the windfall profits
20 will not be referred on this technical point to the
21 Appropriations Committee.

22 Senator Talmadge: What is the only change now? Let us
23 look at it here now.

24 Mr. Stern: At this point, the Senate has already agreed
25 to the Social Services bill which has \$200 million for social

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1 services rather than \$400 million, but we would recommend that
2 you show separate lines, including refundable energy credits on
3 a separate line called Trade Adjustment Assistance so tht
4 when the Parliamentarian looks at the bill and looks at those
5 two bills and when he looks at the entitlement features of them
6 and he looks at the most recent committee budget allocation
7 report he will find that, indeed, they have been accommodated
8 in the Committee's Budget Allocation Report and therefore it
9 does not have to refer them to the Appropriations Committee.
10 It is more or less a procedural question.

11 We are not suggesting any substantive change in how the
12 Committee is actually allocating its money.

13 Senator Talmadge: What is this item of other income
14 security?

15 Mr. Stern: That is sort of a catch-all. That would
16 include whatever you do in areas of Unemployment Compensation,
17 Aid to Families with Dependent Children, Disability Insurance,
18 Social Security and so forth.

19 It is all the cash benefit programs that are handled by
20 the Finance Committee.

21 The difference there, by having saved a couple of hundred
22 million dollars in Social Services compared with your earlier
23 allocation report, \$100 million of that is allocated to Trade
24 Adjustment Assistance and the rest just comes by reducing the
25 other income security amount.

1 Senator Talmadge: Mike, I understand that this Budget
2 Resolution is still in conference. They have not yet agreed to
3 it, have they?

4 Mr. Stern: That is correct.

5 After the Second Budget Resolution is agreed to by both
6 houses of Congress, you will have to file a new Budget
7 Allocation Report. At that point, there may be some policy
8 decisions involved.

9 What we are suggesting here we do not believe involves any
10 change in any policy.

11 Senator Talmadge: Is this in contemplation that they will
12 reach agreement in accordance with what the Senate passed?

13 Mr. Stern: No, sir. This is simply a new budget
14 allocation report under the First Budget Resolution. It is a
15 procedural matter so as to avoid having the windfall profits
16 tax bill being referred to the Appropriations Committee.

17 Senator Talmadge: Any questions, gentlemen?

18 Senator Chafee?

19 Senator Chafee: No, thank you.

20 Senator Talmadge: Any objection?

21 Without objection, it is approved.

22 Mr. Stern: Mr. Chairman, that takes you back to the
23 Disability Insurance bill.

24 Senator Talmadge: You might as well start doing that. I
25 think we discussed the other day and it was laid over, was it

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1 not?

2 Mr. Stern: You had started on the portion of the bill
3 that provides the positive incentives and you had left off on
4 page 8 of the document called Social Security Act Disability
5 proposals.

6 Senator Talmadge: Page 8 of this document B you are
7 talking about now?

8 Mr. Stern: Yes, sir.

9 Senator Chafee: Mike, we had not done all of them up to
10 there, had we?

11 Mr. Stern: You had passed over the ceiling on benefits
12 and the additional --

13 Senator Chafee: What page is that?

14 Mr. Stern: Beginning on page 1 at the very bottom, you
15 had started through the provisions of the bill that deal with
16 positive incentives for disability beneficiaries and disabled
17 SSI recipients to go back to work and you had approved
18 provisions relating to re-entitlement to benefits, extension of
19 Medicare benefits and a Medicare waiting period, demonstration
20 projects and impairment related work expenses.

21 So you had more or less gone through the first five items
22 in that section. You were on item 6 on page 8 when you broke
23 up, having passed over the whole first part on the ceiling on
24 benefits.

25 Senator Talmadge: You were on item 6 on page 8?

1 Mr. Stern: Yes, sir.

2 Senator Dole: What item?

3 Mr. Stern: Item 6 on page 8 of Document B you are holding
4 in your hand. Document B? Yes.

5 We are now talking about needy disabled persons who are
6 receiving Supplemental Security Income.

7 Under present law, if an individual performs substantial
8 gainful activity, he is ineligible for SSI cash benefits and he
9 is ineligible, or may be ineligible, for Medicaid and Social
10 Services benefits.

11 There have been various proposals to deal with this
12 situation and they are described here more or less in ascending
13 order of costs. The administration proposal is simply to
14 extend Medicaid coverage for SSI recipients for an additional
15 36 months after the cash benefits and also that the provision
16 for excluding impairment-related work expenses be applied to
17 the SSI benefit computation.

18 The Committee approach that was taken last year was,
19 instead, to create a different category of individuals, namely
20 severely medical disabled individuals who would otherwise loose
21 their eligibility under these various programs because they are
22 actually performing substantial, gainful activity. It would
23 have given them a special \$10 monthly benefit.

24 But the main purpose was to retain their eligibility for
25 purposes of Medicaid and Social Services, such as attendant

1 care.

2 By creating this special category, you did not broaden the
3 eligibility for SSI disability benefits, but you did allow
4 persons who were severely medically disabled and who did wish
5 to go to work to retain indefinitely their eligibility for
6 medical care and for social services.

7 The bill that has been introduced by Senator Dole and
8 Senator Moynihan and other members of the Committee takes the
9 same approach of having created the special benefit status.

10 However, it would entitle them to the cash benefits that
11 they would be entitled to receive under the SSI program and the
12 bill that passed the House, it does something much more
13 substantial than that. It actually modifies the definition of
14 disability so you would have a different definition of
15 disability for SSI purposes than you would for disability
16 insurance benefits and it does that by changing the definition
17 of what constitutes substantial gainful activity and
18 substantially increasing that dollar amount.

19 This would make many more people eligible and would,
20 according to the Social Security Administration actuaries, have
21 a very significant cost in the disability insurance program.

22 The staff suggestion is that you adopt the approach in the
23 bill that has been introduced by a number of members of the
24 Committee that would have a relatively low cost which you can
25 see on page 10 under S. 591. The cost does not even get to \$10

1 million over the next five years. But it would retain
2 eligibility for Medicaid, medical benefits, and it would retain
3 eligibility for Social Service benefits, all placing the
4 severely medically disabled in a special, defined category.

5 The only suggestion that we would make that is different
6 from the bill is that you limit it to a three-year basis and
7 you require the Social Security administration to account
8 separately for any funds so that you could take a look at this
9 after three years to see how it has worked out.

10 The Chairman: Would you give us a little, maybe some
11 example. Try to give us an example of what the difference is
12 between the high cost of the figure recommended in H.R. 3464
13 and the lower cost which is the type thing recommended by the
14 administration?

15 Currently, the staff recommendation, it would even be a
16 lesser cost item.

17 Mr. Stern: The staff recommendation would cost a little
18 more than the administration recommendation in the first couple
19 of years, but afterwards, less.

20 The major difference between the House bill and any of
21 these other approaches deals with the question of who becomes
22 eligible for disability benefits on SSI. The House bill
23 changes the definition of disability and therefore makes a
24 significant new group of persons eligible for the first time
25 for disability benefits.

1 The Chairman: Can you give us some idea of how that works
2 out, how that would be?

3 Mr. Stern: All right.

4 Under the present Social Security procedure, a person is
5 considered to be able to engage in substantially gainful
6 activity if he cannot earn more than \$280 a month and he is
7 totally disabled.

8 In other words, they have kind of an administrative test.
9 If a person is actually earning more than \$200 a month, they
10 say, clearly you are able to engage in substantial gainful
11 activity and therefore you are not disabled. It may well be
12 that if you are earning less than \$280 a month you are still
13 considered to be disabled but that is a kind of a watershed.

14 If you are earning more than that, they say, de facto, you
15 are able to engage in substantial gainful activity.

16 The House bill changes the definition of substantial
17 gainful activity and therefore opens up who would be eligible
18 for SSI disability benefits for people who were earning more
19 than \$280 but less than, in the case of a single individual,
20 \$481 under the House bill and \$690 for an eligible couple.

21 So if you have a single individual who is earning between
22 \$280 and \$480 now, and who is disabled, he may well be eligible
23 under the House bill where he is not eligible under present law
24 and would not be eligible under any of the other proposals
25 which are named.

1 That proposal, Senator Dole, or the administration or last
2 year's committee bill all take the people who are now disabled
3 under the SSI program and say, if people in that group, if they
4 are severely medically disabled but that are able to work, but
5 that they would continue to get medical and social service
6 benefits.

7 That is why it is substantially less expensive, because it
8 is only dealing with an existing group of beneficiaries and not
9 opening up the SSI program to a new group of beneficiaries.

10 Senator Dole: If I may ask a question?

11 The Chairman: Yes.

12 Senator Dole: Mike, under the proposal the staff
13 recommendation, would the blind continue to be eligible for
14 Medicaid and Social Services on the same basis as disabled
15 beneficiaries who lose entitlement for SSI benefits solely on
16 account of earnings?

17 Mr. Stern: Yes. They would be treated the same as other
18 disabled.

19 Senator Dole: There are some questions raised by
20 representatives of the blind, so they would be included?

21 Mr. Stern: Well, if there is any question on that, we
22 will certainly make sure in the draft.

23 Senator Dole: That is the intent, that they be included?

24 Mr. Stern: Yes, sir.

25 I think the point here, this approach is consistent with

1 the kinds of things you approved on Friday, to take persons who
2 are now on the disability rolls and to provide the security
3 that they would continue to get medical support, and Social
4 Services support, in order to be able to work and this would be
5 consistent with what you have decided in the other area,
6 without, at the same time, opening up the rolls to new
7 beneficiaries.

8 It is necessary that there would be 65,000 new concurrent
9 SSI disability insurance beneficiaries under the House bill, so
10 that is quite a substantial increase.

11 Senator Durenberger: Mr. Chairman?

12 The Chairman: Yes.

13 Senator Durenberger: Just to make sure I understand the
14 distinction, first that I understand the distinction you were
15 drawing, under current law income is the determining factor,
16 \$280, if you are able, or if you actually do earn more than
17 \$280, to lose eligibility for SSI?

18 Mr. Stern: Right.

19 Senator Durenberger: The House is proposing, in effect,
20 to take that up to \$481 for a single individual and \$690 for an
21 eligible couple.

22 Mr. Stern: Correct.

23 Senator Durenberger: The Dole proposal apparently comes
24 somewhere in between there. It does not use a new or higher
25 income test.

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1 Mr. Stern: Right.

2 Senator Durenberger: Would you describe the test?

3 Mr. Stern: Instead of making individuals eligible for
4 medical care and social services, by letting them earn more and
5 still be eligible and therefore bringing in a lot of new people
6 who are also in that category, the Dole proposal says if you
7 are on the SSI rolls now and you are severely medically
8 disabled and you go out and are able to earn, then you are put
9 in a different category, a special category of people whose
10 cash benefit is probably going to be quite small.

11 But you continue to retain your eligibility to retain your
12 eligibility for medical care and for social services.

13 Senator Durenberger: Whether you are earning \$300, \$400,
14 \$500, \$600, if you still require the Medicaid or the other
15 social service benefit, you are entitled to them under the Dole
16 proposal?

17 Mr. Stern: Essentially, that is correct. The only way
18 you would come off is if there is a finding that you are
19 earning as much as you can and do not need that kind of
20 assistance any more. But basically, it would be a permanent
21 continuation of medical care and social services.

22 Senator Durenberger: What, in effect, you are doing here,
23 when you say we are doing much the same for this as we did for
24 DI, we are going along with the Social Security
25 Administration's emphasis on the administrative process dealing

1 with eligibility not just in terms of what an individual
2 demonstrates by getting a job, but improving the process of
3 determining the eligibles and the ineligibles, putting greater
4 stress on the reform of the eligibility determination.

5 Mr. Stern: I think this is consistent with that. This is
6 not an administrative question per se. This is really a
7 benefit question of continuing medical and social service
8 benefits.

9 The testimony in the hearings to some extent stress that
10 medical and social service benefits are very important to
11 disabled persons who want to go back to work and so without
12 retaining the cash benefit or without retaining substantial
13 cash benefit, it does retain those two benefits as an
14 encouragement to return to work.

15 Senator Chafee: Could you not end up with a situation
16 whereby somebody who had been disabled and then comes to work
17 under a proposal that we have here and is earning substantial
18 amounts -- I do not know what the cut-off is -- continues to
19 get his medical benefits.

20 You have somebody else who could be working side by side
21 the person who is earning exactly the same amount but would not
22 be eligible for the medical benefits because that person had
23 not been starting at a lower figure and then coming up.

24 Do you understand what I am saying?

25 Mr. Stern: Yes.

1 Senator Chafee: Is the answer yes, you could have two
2 people working side by side earning exactly the same amount but
3 one having started lower and working his way up would retain
4 his medical benefits. Would he retain anything else? Would he
5 get anything else?

6 Mr. Stern: Yes, the Social Security benefits. That might
7 be attendant care.

8 Senator Chafee: What does that mean?

9 Mr. Stern: One of the forms of assistance.

10 Senator Chafee: The answer is yes, you could have those
11 two people side by side.

12 Mr. Stern: The answer is yes. I think it is probably de
13 minimis.

14 When you are talking about severely medically disabled
15 people, you are talking about very severely medically disabled
16 people, so in your example you would have to have one person
17 who is severely medically disabled that never did go under the
18 SSI system and another who did.

19 But it is possible.

20 Senator Chafee: Is the definition of disabled pretty
21 clear, if you are disabled, yet under the very definitions we
22 are working with here, the examples, we are saying that they
23 are disabled, yet they can work?

24 Mr. Stern: That was the purpose in last year's Finance
25 Committee bill and I assume in Senator Dole's bill for creating

1 a special category. You do not undermine the concept that a
2 disabled person is unable to engage in substantial gainful
3 activity. When he does engage in substantial gainful activity
4 you say that is indeed what he is doing and what you are doing
5 is creating a different benefit, namely a continuation of
6 medical and social service benefits without saying that the
7 person is still disabled.

8 He is in a different category -- you might say an
9 ex-disability category, where because of his disability you are
10 giving him some other benefits, but you are not saying that he
11 does meet the definition of disability.

12 Senator Chfee: Has all of this been gtested and proven to
13 work? It sounds logical that you give people the right to
14 retain their social service benefits plus their medical
15 benefits, thus they will have an incentive to go out and work
16 -- SGA; substantial gainful activity.

17 Have you tested this in place?

18 Mr. Stern: I do not think so. That is one of the reasons
19 staff has suggested making it a three-year program. The theory
20 of it certainly sounds attractive and the testimony that
21 disabled individuals themselves gave was that the lack of
22 continuity in medical care, the lack of continuity of social
23 services and the difficulty of getting back on SSI and
24 disability were major disincentives to them to seek employment.

25 So this attempts to deal with that, so you can look at it

1 after a couple of years and see whether it has had the effect
2 that you hope. The test of disability is a difficult one under
3 the Social Security Act.

4 So I do not think you should look for a very high
5 percentage of the disability rolls coming under this provision.
6 It is marginal in that sense, because it is a difficult test of
7 disability and the typical disabled person under disability is
8 not a 30 year old, but it is really maybe a 55 year old with
9 stroke, something like that.

10 Senator Chafee: The trouble, Mr. Chairman, it seems to
11 me is, the shocking thing that I have found here, that those
12 charts that were shown to us by Mr. Ross when we had that
13 testimony, what is disabled seems to be very, very vague and if
14 you stick to it long enough you could be declared disabled or
15 else the original judgment that is made in disability is so
16 stern that nobody qualifies.

17 Mr. Stern: Senator Chafee in the particular case of this
18 benefit we are talking about now, it is much more specific. It
19 is people who meet the disability eligibility criteria without
20 regard to consideration of vocational factors -- that is to
21 say, people who are severely medically disabled. The gray area
22 that has come in where the courts have perhaps overstepped
23 Congressional intent of putting people on the disability rolls
24 is related to vocational factors and factors other than purely
25 medical factors and has a limitation in starting out a new

1 program like this or a new part of the program.

2 The amendment only deals with the severely medically
3 disabled which is a somewhat more objectively-related
4 criterion. *

5 Senator Chafee: What criteria were being used in those
6 charts that we saw if you went before your hearing officer
7 and only 30 percent, and then you appealed. What criteria?
8 Were those vocational criteria rather than medical.

9 Mr. Stern: Maybe Commissioner Ross would like to answer
10 that. My impression is the gray areas in determining
11 disability are usually not medical. They are usually the other
12 factors.

13 Mr. Ross: I think that is right.

14 On the other hand, roughly 75 percent of the people who go
15 on the rolls meet, or equal, the medical listings. It is about
16 25 percent where we add these vocational factors in.

17 The chief differences between the staff recommendation and
18 our recommendation are that we feel that whatever the reason
19 that the person is on the rolls, is disabled, this incentive to
20 go back to work by keeping the medical, we would apply it
21 regardless of how you got on the rolls and part of the reason
22 is that this is administratively complex by our standpoint.

23 To say that X who came on the rolls one way as opposed to
24 Y who came another way is not going to have this incentive
25 provision. It seems to us that it is complicated enough to

1 explain this to the average person, that you could simply say
2 if you are disabled and you go back to work, you could keep the
3 medical benefit for three years.

4 We could bridge the gap with the staff by taking their
5 idea that you do this in a three-year trial basis and we report
6 back. That part, I have no difficulty with, but I do find the
7 complexity of saying to different people who are already on the
8 rolls, you will get the benefit of this new work incentive, but
9 others will not.

10 I find that troublesome, even though there is that line in
11 the way that they get on the rolls.

12 The Chairman: Well, it is difficult enough to administer
13 one standard. Now the House bill will give us two standards,
14 would it not?

15 Mr. Ross: Both we and the staff are against the House
16 bill provision. We are very close together. It is not much
17 different compared to what the House bill is.

18 The Chairman: Let us see if we can agree on the points
19 where you are together, because if we can agree on that, we
20 ought to be able to simplify the points of disagreement.

21 Tell us the areas, Mr. Stern, as you understand it, where
22 we seem to be together on this -- at least where you and the
23 administration are.

24 Mr. Stern: I guess what Mr. Ross is saying, you take the
25 proposal that is S. 91, but you do not limit it only to those

1 who meet the eligibility criteria on medical grounds only. And
2 if he is right, that only three-quarters of the persons who
3 receive SSI disability receive it on purely medical grounds, I
4 guess that would add one-third to the cost.

5 Well, I guess that is the difference between the
6 administration and the proposal in Senator Dole's bill, these
7 additional people.

8 Administratively, I do not think you would make any more
9 determination. You know whether you are considering vocational
10 factors or not in any particular case.

11 Mr. Ross: I think it is a fairness thing really. All of
12 these methods are to find out if somebody is disabled within
13 the criteria of the law. Once somebody is on the rolls, it
14 seems to me you tend then to want to give them this work
15 incentive regardless of how that got on there, and I really
16 find it troublesome as you try to explain this to people and
17 use it as a work incentive to say that we have to go back.

18 You know, a lot of people may not even be highly aware of
19 what the underlying regulatory way was that they got on the
20 rolls. They know they are disabled and they know they want to
21 go back to work.

22 I find it very troublesome to have to keep tracking that
23 through the system and making that a highly relevant piece of
24 making this work incentive work. It is such a complicating
25 factor.

1 Mr. Stern: Mr. Chairman, I think the problem is this --

2 Mr. Ross: Let me just say that there is one other
3 complication which my staff points out which is, suppose
4 somebody goes on the rolls originally because of vocational
5 factors but then later could meet, or equal, the medical
6 listings. You would have to possibly retest them for the
7 purpose of this work incentive.

8 It seems to me that the amount of dollars that we are
9 talking about are relatively small. I just think that disabled
10 people on the rolls will regard themselves as discriminated
11 against a little bit because they came on through one
12 regulatory route as opposed to another.

13 Mr. Stern: Mr. Chairman, I think the reason for the
14 distinction is important for this reason, because whether a
15 person is medically disabled or not is not his own choice. The
16 question of vocational factors is a much fussier question and
17 you might be in a situation where you are giving some incentive
18 to people who want to be on the rolls for the sake of this
19 additional benefit.

20 That would not apply in the case of medical disability. To
21 the extent that nonmedical factors are a consideration, that
22 might enter into it.

23 Perhaps if you are going to do this just for three years,
24 you could start out smaller and just see in the course of the
25 time whether this is creating problems and maybe this is

1 something to consider as an expansion of three years, to start
2 off a little smaller.

3 The Chairman: I am sufficiently confused about this
4 matter. I would just prefer to pass it over and come back to
5 it later on. Maybe you could explain it to us in greater
6 detail so that we can understand it better.

7 Senator Dole: I think the staff recommendation is a good
8 one. I would not want to fuzz it up. We do have a three-year
9 limit on it. You did not have any violent opposition to the
10 staff proposal?

11 Mr. Ross: No, I would rather have that than passing it
12 over. I would just say it is a more complicated -- we are very
13 close. The difference is whether you add in that complexity of
14 only giving the work incentive here to those who came on by
15 reason of the medical listings as opposed to the vocational
16 factors, regulations, and just to state the problem is to me
17 why you do not want to create it for these few dollars which is
18 for people to have to get into and understand that in order to
19 know that there is a work incentive for them to get off the
20 rolls is almost self-defeating, in my mind.

21 I would just as soon say to somebody on the rolls, look,
22 you can keep this medical help for three years and not have to
23 retest them, because somebody is going to say, even though I
24 came on the rolls because of both factors, now that I
25 understand it all, retest me. Maybe I could do it just on the

1 medical listings today.

2 I just think that you create an administrative maze that
3 is self-defeating in terms of your overall intention and for a
4 very few dollars -- it is a couple of million dollars here,
5 more or less -- and you are really trying to do something that
6 ought to save the program great money over the long term by
7 giving somebody work incentive to get off the rolls.

8 The Chairman: It sounds to me as though, in other words,
9 as I understand it, Mr. Ross, you are speaking against sort of
10 a dual standard?

11 Mr. Ross: That is right.

12 The Chairman: I think --

13 Mr. Ross: We will be glad to accept the three-year
14 experiment part of it. That is fine.

15 Senator Dole: Why do we not just accept the compromise?

16 I have one reservation. We are getting away from
17 disability. But in other areas, we are trying to tighten up on
18 benefits here. We are giving them a little boost.

19 I think it is a three-year test. We are talking about
20 very few dollars.

21 Why do we not just do it?

22 Senator Chafee: You mean do Mr. Ross's suggestion?

23 Mr. Stern: This would be staff's suggestion with the
24 modification it would not be limited only to medical.

25' Senator Chafee: I think that is good.

1 The Chairman: Without objection then, we will agree to
2 that.

3 All right. What is the next item?

4 Mr. Stern: The next item, Mr. Chairman, is a series of
5 proposals that relate to the administration of the program and
6 they start on the top of page 11.

7 Item number 1 relates to administration by state agencies
8 and there are a series of provisions that originated with the
9 administration, incorporated in the House bill, basically,
10 instead of the law saying that disability determinations would
11 be made by state agencies under an agreement negotiated by the
12 state and the Secretary of HEW, the disability determinations
13 would be made by state agencies according to regulations and
14 other guidelines of the Secretary. They would be much more
15 directly under HEW and it requires the Secretary to issue
16 regulations specifying performance and other administrative
17 requirements and procedure to be resolved.

18 Furthermore, if the Department of HEW finds that the state
19 agency is failing to make the determinations consistent with
20 its regulations, then he can terminate the state administration
21 and HEW would make the determinations themselves, instead of
22 using the state agencies.

23 And by the same token, the state can also decide if it
24 wants to terminate performing that administrative functions.

25 Those are the revisions for the House bill.

1 Senator Dole: This is the administration's proposal?

2 Mr. Ross: Yes, sir.

3 The problem under existing law that we have 21 contracts
4 in one form with certain states. I guess we deal totally with
5 51 jurisdictions, 30 of a different form but 21 were a new
6 form. Now that some signed, they want to go back to the
7 old form, others want a different form and the contract mode
8 is not a good way to operate a 100 percent Federally-financed
9 program.

10 The contract method really means that our people wind up
11 telling the state agency people practically put your
12 typewriters here, and they go too much to how you do your
13 business instead of what you want as a result of the business,
14 which is accuracy, good processing time and certain
15 cost-effectiveness standards.

16 We would like to put in regulations which will go through
17 rule-making processes where we are working with the states
18 closely, the result of which will be that there will be
19 criteria that are the same in every state and then each state
20 can do it the way they want, provided that they meet these
21 performance standards.

22 I think the state people will ultimately feel that this is
23 a better regime than the contract regime, as this has been out
24 there for discussion since the House moved on it. I think
25 people are becoming more comfortable with the idea that it is

1 the way to go.

2 Senator Dole: I move it be adopted?

3 The Chairman: All in favor, say aye.

4 (A chorus of ayes)

5 The Chairman: Opposed, no?

6 (No response)

7 Mr. Stern: The next item relates to Federal review of
8 state agency determinations.

9 Up until 1972, the Department of HEW used to review state
10 disability allowances before they paid benefits and that
11 procedure was abandoned about seven years ago.

12 The House bill requires that before the benefits are paid,
13 the Federal government review at least 15 percent of the
14 allowances in fiscal year 1980, 35 percent in 1981 and that
15 establishes a permanent level of 65 percent beginning in 1982.

16 The administration, basically, has two recommendations.

17 One, to stretch out the procedure a little bit more, start
18 it in 1981 and get up to the 65 percent level by 1985 instead
19 of '82.

20 The second thing is that the House bill relates only to
21 reviewing applications that have been allowed and the
22 administration proposes that the same percentage of denials be
23 reviewed as allowances.

24 We would suggest that you agree to postpone the starting
25 date of the Federal review, but we do think that you should get

1 the full implementation by the end of 1982 because very
2 substantial savings are related to this Federal review and we
3 also would agree, if you are going to have the Federal
4 government review allowances, in fairness, they should review
5 denials as well.

6 Senator Dole: Mr. Chairman?

7 The Chairman: Yes, sir.

8 Senator Dole: I think Senator Bellmon has suggested where
9 states are doing a good job, it would make a great deal of
10 sense to have that many reviews, to have fewer reviews in
11 states where they have lower error rates.

12 Is that cranked into this? Is there any way to do that?

13 Mr. Stern: The percentages are overall rather than state
14 by state.

15 Senator Dole: Would that be the practice, where you would
16 have more reviews in states in a high error rate?

17 Mr. Stern: I would think the administration would have
18 more reviews.

19 Mr. Ross: Yes, I think that this is the total and you
20 would tend to put more effort into the places where there are
21 problems than where there were not.

22 We think that generally, too, where we would tend to come
23 back to the Congress particularly the appropriations
24 committees, with some judgments about the cost-effectiveness of
25 reviews at this level because I do not think that anybody wants

1 to inflex it when there is 65 percent, when there is no greater
2 payoff in reaching* 65 percent.

3 We discussed in the House subcommittee for the need for
4 some flexibility and this implementation schedule is for
5 built-in flexibility because as you build up, you will learn
6 more, and if your targets are unrealistic or not needed,
7 presumably we could come back and correct the course along the
8 way.

9 I assume when the staff says review denials as well as
10 allowances, they mean that we can reverse it, too, so that we
11 get the right answer in both kinds of cases.

12 Mr. Stern: Right.

13 The range in fiscal year 1978 in terms of allowances as a
14 percentage of determination vary from 22 percent to 53 percent.
15 That is in the lowest state, only 22 percent of determinations
16 were allowances, and a higher one, 53 percent. So that I would
17 think the administration would, whatever the percentages, tend
18 to concentrate on the states with a relatively higher level.

19 Senator Dole: Senator Bellmon is a member of the
20 Appropriations Committee. That is probably where he focused on
21 this.

22 As long as it is understood -- and maybe it can be
23 indicated in the report somewhere.

24 Mr. Stern: Perhaps we could include reference in the
25 Committee report that this is not intended to be on a state by

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1 state basis but rather a roll with particular emphasis in
2 states where the number of allowances are high.

3 The Chairman: Let me see if I understand this, Mr. Ross.
4 A state agency looks at the applicant and either decides either
5 recommend or do not recommend him.

6 Would you review it in either case?

7 Mr. Ross: Yes, sir.

8 The Chairman: So whether they recommend that he be
9 granted a disability or not granted one, you would still think
10 that it should be reviewed?

11 Mr. Ross: That is right.

12 If you just review the ones there were allowances, it
13 looks like that it is very one-sided because that is really
14 like indicating to the state agencies. we do not care about the
15 quality of the denials. You really would expect that what you
16 are trying to do is to make sure that the documentation
17 justified the decision, and the application of the standards
18 are correct, and you ought to do that across the board in a
19 certain percentage of cases.

20 The Chairman: The thought occurs to me that you could
21 get, you know, one of these agencies the fellow who is doing
22 it, what he is recommending amounts to an expenditure of
23 Federal funds. The Federal government is paying the whole cost
24 of it, right?

25 Mr. Ross: Yes, sir.

1 The Chairman: If you do not watch out, you will get some
 2 fellow down there, if you are not reviewing those fallible
 3 decisions where it is decided for the applicant, one fellow
 4 would figure one way I could be sure I am not going to be
 5 reversed is to just go along with everybody. That way he would
 6 not be reviewed and he could make everybody happy, you might
 7 say, by recommending that they all get a check, although they
 8 may not be disabled.

9 Mr. Ross: Yes, sir. We do some now, Mr. Chairman.

10 The Chairman: What is that?

11 Mr. Ross: Right now, we do a certain amount of
 12 pre-effectuation review checking, 5 percent -- enough of a
 13 sample to check against it.

14 What we do in the House bill, go beyond the sampling of 5
 15 percent and build ourselves up where we are effectively
 16 rechecking virtually every case, I suppose.

17 The Chairman: It seems to me that that might be the thing
 18 to do.

19 In other words, it costs a lot of money when these people
 20 go on the rolls, does it not? It costs a lot of money.

21 Mr. Ross: Yes, sir.

22 The Chairman: You want to be sure that you are not
 23 recommending somebody go on there. That does not have a
 24 meritorious case.

25 Mr. Ross: Right.

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1 On the other hand, I think that there is someplace between
2 5 percent sampling and checking every case where you know the
3 state agencies are doing a good job.

4 For example, I do not know what that is, exactly. We
5 could study that.

6 If we are doing half of their cases, or something, you
7 might well know that. At any rate, we do not object to the
8 staff recommendations here.

9 We are all moving in the same direction, to do more
10 checking on an even-handed basis, just to make sure that we
11 have greater accuracy in the process.

12 The Chairman: Well, along the line of this discussion it
13 seems to me there are certain type cases where it is a lot
14 easier to decide, well, the person is disabled, than others.

15 I would think that the real difficult decision cases, for
16 example in the area of arthritis, I was talking to a young man
17 -- I say young man; a man younger than I am, a man I knew in my
18 college days -- and he wanted to talk to me about the fact that
19 his case had been denied and to look at him, I would not know
20 that he had any disability, but to hear him tell about it, he
21 is in very severe pain because of his arthritis.

22 He convinced me he is not pretending. He is really in
23 pain, very severe pain.

24 I recall before we put the program into effect many years
25 ago when the doctors came before us testifying that you were

1 going to have a lot of arthritis cases where even they as
2 doctors have great difficulty even looking at those x-rays of
3 telling you whether that person is disabled or not.

4 I would think that there are certain types of cases like
5 that really require a real careful look. But I would think
6 that there are others where it should not be very hard to tell.

7 Is that correct, or not?

8 Mr. Ross: I think that is right. I think, though, that
9 the Federal pre-effectuation review is not a redetermination of
10 the case. In other words, the state agency works up the
11 medical evidence and applies it against the legal criteria
12 there and determines whether somebody is disabled or not.

13 What the pre-effectuation review does is takes that file,
14 that paper file, and goes back through it and determines
15 whether the evidence is there and they are in good shape and
16 matched properly against the legal criteria so that you have an
17 accurate decision.

18 They do not go back out and work up new information. If
19 there is a problem with it, it is sent back to the state
20 agency, in effect, for correction so that it is a review
21 process not a second whole determination process. It is just
22 to make sure that the determination process is being done with
23 the quality that is necessary.

24 The Chairman: I see.

25 Are we not looking at --

1 Senator Dole: Number two.

2 The Chairman: Are these cost estimates?

3 Mr. Stern: The cost estimates are on page 12. This
4 review procedure is estimated to save quite substantial amounts
5 and it may well be that the Social Security administration will
6 not be sending a lot of folders back. It may be that the fact
7 that they are looking at the state agency determinations that
8 will improve the quality of the determinations.

9 This does not necessarily mean that there is going to be a
10 lot of reversals by the Social Security Administration but it
11 does assume, perhaps a more careful preparation by the state
12 agencies.

13 Senator Chafee: Mr. Chairman?

14 The Chairman: Yes, sir.

15 Senator Chafee: What incentive is there now for the state
16 to present what you might call an accurate determination? I
17 would think that there would be great temptation since it is
18 entirely a Federal program yet the initial administration's
19 determination is made by the state.

20 I should think that there would be a great temptation to
21 take care of the local folk, get them on the program.

22 Mr. Ross: I think people are responsible and when you
23 give them the criterion, you do enough checking, the way that
24 we do that. They do try to meet the standards.

25 We have greatly improved the process in the past couple of

1 years by putting a great deal of emphasis on the need for
2 tighter administration.

3 The states have responded very well. I think it is a
4 question of providing program leadership, of making it clear
5 what you are trying to do.

6 I think people act responsibly then.

7 You know also, we have encouraged the states to put in
8 their own quality assurance mechanisms so that they self-police
9 to some extent to make sure that they are doing an accurate
10 job.

11 I am comfortable with the kind of controls that we are
12 talking about. The states will be responsive to what the
13 Congress has given them in terms of the definition that must be
14 met by applicants.

15 Senator Chafee: Do these statistics on the savings take
16 into effect the added personnel that you have to have to review
17 these? Did you tell us that these people come on the rolls?

18 What did you say, 347,000 a month or something?

19 Mr. Ross: Yes, we are getting 450,000 people on the rolls
20 a year now.

21 Senator Chafee: A year.

22 Mr. Ross: A year.

23 Senator Chaffe: I am sorry.

24 Mr. Ross: These estimates take into account the greater
25 resources needed matched against the improvement in accuracy in

1 terms of program dollars.

2 Senator Chafee: Does this not go to the very problem that
3 we discussed earlier about the charts you had showing the
4 appeals -- and I thought you were making some changes in that.

5 Mr. Ross: This is only one of the package of proposals.
6 The purpose of this one is to get more accurate decisions
7 earlier in the process which, presumably, would be less subject
8 to reversal at a later stage.

9 Senator Chafee: These are all paper decisions, are they
10 not? The Federal person just looks over a sheet of paper.
11 They do not see the applicants personally.

12 Mr. Ross: That is correct. This is checking on the first
13 decision-making process, which is done out of the folder.

14 Senator Dole: Mr. Chairman, I move that we accept the
15 staff recommendation.

16 The Chairman: All in favor, say aye?

17 (A chorus of ayes)

18 The Chairman: Opposed no?

19 (No response)

20 The Chairman: The ayes have it.

21 All right. What is the next item?

22 Mr. Stern: Mr. Chairman in the middle of page 12, the
23 House bill requires that unless there is a finding that an
24 individual's disability is permanent that there would have to
25 be a review of the case at least once every three years to

1 determine continuing eligibility and the administration
2 recommends that requirement.

3 They endorse that, but recommend that it take place
4 beginning in fiscal year 1981 rather than 1980, which we would
5 suggest we adopt.

6 Senator Dole: There is no objection to this provision
7 except for that one change?

8 Mr. Stern: The only change we know of is simply
9 postponing the effective date one year.

10 The Chairman: Without objection.

11 Senator Chafee: If I might ask a question -- we are on 3
12 there in the middle of the page?

13 Senator Dole: Right.

14 Mr. Stern: Yes, sir.

15 Senator Chafee: Do you not review -- suppose an
16 individual's disability is permanent. How often do you review
17 it?

18 Senator Dole: You do not.

19 Senator Chafee: Unless there has been a finding that an
20 individual's disability would be permanent, there would be a
21 review every three years.

22 Mr. Stern: The bill does not require it in the case of an
23 individual whose disability has been determined to be permanent
24 and probably it would not be reviewed unless something happened
25 like earnings started showing up on his earnings record, or

1 something.

2 Senator Chafee: Could I ask Mr. Ross about that? Would
3 that be a very complicated, burdensome, duty?

4 Mr. Ross: I do not think so. I think there would be a
5 certain number of cases -- that is all we are saying -- where
6 the nature of the disability is such that there is literally
7 zero opportunity for recovery.

8 In any case, where the profile of characteristics suggests
9 the possibility of recovery, then what this requirement would
10 say is that it should be reviewed periodically to see if there
11 has been a recovery.

12 One thing that we are working with the states on now is
13 determining those profiles of characteristics where you can
14 also predict recovery within a certain period and calling those
15 people back in on an even more current basis than three years.

16 We have been working with a private insurance industry on
17 this, too. There are almost some things -- there is a very
18 high chance that it could change within a year.

19 The idea is to look at the nature of what the disability
20 is and to gauge the periodic review based on that. This is
21 just saying there are some cases that are so clear that there
22 could never be a recovery that they could be left out of that
23 check-up system.

24 Senator Chafee: Is there not such a thing -- suppose you
25 determine some time along the finding process that the

1 The Chairman: Yes, sir.

2 Senator Wallop: Before we are off the bill entirely,
3 before we pass it out of here, I want to bring up an amendment
4 to it with regard to the disability and an offset provision.
5 It is not appropriate now.

6 I wanted to say as long as we are talking about disability
7 I would like to bring that up.

8 The Chairman: All right. We will ask the staff to
9 protect your rights until you do bring it up.

10 Without objection.

11 Senator Dole: We agree to what the administration
12 proposal was with the Chafee amendment.

13 Mr. Stern: Right.

14 The Chairman: Without objection we will agree to that.

15 Let me just make a point. It seems to me as though we
16 need to understand whast Senator has been saying here. We
17 wrote a statute in the beginning for total and complete
18 disability, the report language that we used was that that was
19 to be a very severe test.

20 What tends to happen with that type statute is that the
21 court, looking at these cases, tends to make the statute more
22 moderate that the congress intended.

23 At that particular time, we knew that we would end up with
24 a great deal more business than we were anticipating. That is
25 why we had such a very strict, severe test.

1 The courts have liberalized it. It stands to reason that
2 they would. It is human nature.

3 In Louisiana, we had a trend that way. We had a workman's
4 compensation law that provided certain benefits to the total
5 and permanent disability and we had a much lesser one, if a
6 person lost one hand.

7 But over a period of years, the Judges, out of sympathy
8 for the worker, came up with an interpretation saying that if
9 that was a carpenter for example, and he needed two hands to do
10 carpenter work, that he was totally and permanently disabled
11 and he was entitled to get the award for total and permanent
12 disability even though he only lost one hand and he could do
13 other kinds of work.

14 One of the most successful businessmen in my home town
15 worked for a railroad and lost a hand on the railroad so he was
16 awarded total and permanent disability.

17 Later on, he went into business again -- one of the most
18 successful businessmen in town -- in terms of finances. The
19 best break he ever got was when he lost his hand working for
20 the railroad. That is how he became a millionaire.

21 He could not work on the railroad anymore so he had to go
22 into business and became a very successful businessman.

23 That was a liberal decision by the courts. The
24 legislature never saw fit to overrule it. We are confronted
25 with that same kind of trend, where the courts look at a

1 statute very strictly drawn and the Committee Report to draw it
2 up drawn just as strictly and judges, out of compassion, find
3 ways to help people who are very much in pain, for example,
4 although they are not really totally and permanently disabled
5 as that statute contemplated, and I suppose that trend will
6 continue.

7 That is the kind of thing we are working on.

8 We have a bill that, in terms of constant dollars, a
9 program that is costing five times what we estimated the
10 program was going to cost and this is part of the trend.

11 I think in the main, more often than not, when those
12 people made the determination of being overruled they are being
13 ruled by this sort of thing, by the tendency of the courts to
14 be liberal and put people on because of compassion for the
15 individuals.

16 It is human nature.

17 That is not to criticize the examiners for denying some of
18 these applications. It is a fact of life. The examiners are
19 not a bunch of mean, hateful people. They are just doing their
20 job. In some cases they are turning down cases where they
21 think that there is a lot of compassion to be said for the
22 person, that he is not totally disabled.

23 Is that not the size of it, Mr. Ross?

24 Mr. Ross: Yes, sir.

25 That is why we have a proposal to limit the courts to

1 reviewing questions of statutory and constitutional
2 interpretation, but to regard the Administrative Law Judge's
3 determination of the facts as final.

4 Another reason for that, when you say to the courts in a
5 lot of these cases because they are factual type cases, all the
6 Federal court does is turn the case over to a Magistrate. A
7 Magistrate is a Federal official who roughly makes the same
8 money as an Administrative Law Judge but does not have the
9 expertise in determining disability so that in effect we are
10 duplicating the cost of having another hearing and then the
11 Magistrate really does a decision and it is just a redundant
12 level.

13 We are getting 8,000 to 10,000 cases a year in court that
14 we think are not necessary.

15 By all means the Court ought to review the law, the
16 Federal courts, but let there be some finality to the process
17 after the Administrative Law Judge makes the determination
18 there on the facts.

19 Senator Ribicoff: Mr. Ross, are you saying that
20 whatever the bureaucracy says is so is so and you never can
21 review?

22 Mr. Ross: No.

23 The Administrative Law Judge is an independent judge who
24 runs a full due process hearing under the Administrative
25 Procedure Act. The claimant certainly has a right to appeal to

1 to what we have proposed.

2 Senator Ribicoff: My feeling, Mr. Chairman, is that I
3 think it is unfair to decide these cases on a statutory,
4 Constitutional question if you do have some factual base there
5 or if the person who made the finding was either arbitrary or
6 capricious, there ought to be some medium.

7 This is sort of a medium solution.

8 The Chairman: That may be a fair settlement of it.

9 I can see why it would tend to happen when you put it to a
10 jury, though. You get a person in there. You have a person
11 who is severely handicapped ---now, he is not totally and
12 permanently disabled. He is severely handicapped.

13 You try that case before a jury and let them sit up there
14 and spend a couple of days looking at the fellow limping around
15 that court room and watch his wife try to help him get to the
16 desk and one thing or the other.

17 By the time he lets that jury go out, he is going to find
18 that fellow totally and permanently disabled.

19 Just like the other side of the coin where you have a
20 criminal case where a guy is clearly guilty, but it is a very
21 compassionate case. That jury retires and finds him not
22 guilty. They did not think he was not guilty, they just felt
23 sorry for him, so they come in there and decide for him.

24 And that is the kind of thing, if you have to administer a
25 strict statute, Mr. Ross, you cannot do the job that you were

1 called upon to do because you were given the job of making some
2 tough decisions and you cannot accept a jury, as a matter of
3 fact, to go along with them, can you?

4 Mr. Ross: It does undermine the administrative process to
5 people who have made these tough decisions find that they are
6 remanded like the administrative law judges tend to feel, what
7 is it all about? If they are going to take me to court and run
8 it through a Magistrate who is no more senior than I am,
9 really, in the world; he is just going to reverse it. Why
10 should I be such a tough guy?

11 I think the redundancy has all kinds of ramifications.

12 I think Senator Ribicoff's suggestion of an arbitrary and
13 capricious standard does move you very far along. It is much
14 harder at the next level to say that those decisions where
15 there has been a full due process hearing and the evidence is
16 all there that somebody has arbitrarily and capriciously.
17 However, there may be such a case and what Senator Ribicoff's
18 proposal does is pursues the idea that if there is such an
19 outrageous case the Federal courts would correct it, even
20 though it is a factual and not a legal issue.

21 I personally feel that the present law is so under what it
22 ought to be, where all they have to do is say the substantial
23 evidence rule is not met, that I would rather have Senator
24 Ribicoff's compromise, if you will, than to leave present law
25 as it stands or than to hold out for the administration

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1 proposal.

2 I think it would be a major strike.

3 The Chairman: Shall we agree to the proposal?

4 Senator Dole: That is in the next section, in claims.

5 Mr. Stern: What you have been talking about, in the
6 middle of page 13, just below that table, additional
7 administration proposal -- that is, to change the scope of the
8 Federal court.

9 Maybe you should just go over what the administration
10 proposes, namely, that the Secretary's determination with
11 respect to facts would be final and the court's review would be
12 limited to questions of statutory and constitutional
13 interpretation.

14 While the present law provides that the findings of the
15 Secretary as to fact provided by substantial evidence shall be
16 conclusive, and the administration's bill would delete the
17 substantial evidence requirement, and this would apply to
18 decisions both under disability and SSI.

19 They are also asking for committee report language
20 endorsing steps that they plan to take administratively to test
21 the feasibility of making the hearing with the Administrative
22 Law Judge into an adversary proceeding so that they would have
23 an SSA representative to represent and defend the
24 reconsideration decision at the hearing.

25 Those are the four parts of the administration proposal.

1 Senator Dole: You would modify that with Senator
2 Ribicoff's suggestion?

3 The Chairman: Let me ask you, this finding of arbitrary
4 and capricious, is that a finding to be made by a Judge or
5 Magistrate, or is that a finding to be made by a jury?

6 Mr. Ross: It could be either, I suppose.

7 I guess if you had a jury trial, the question before the
8 jury could be whether the finding below had been arbitrary and
9 capricious. Normally it would be made by a judge who would
10 delegate a case like this to the magistrate. That would be the
11 normal pattern.

12 Mr. Stern: I think the modification Senator Ribicoff is
13 suggesting -- on the fourth line there, it would say the
14 Secretary's determination with respect to facts would be final,
15 unless found to be arbitrary and capricious.

16 Senator Ribicoff: That is what I had in mind.

17 The Chairman: My thought is that -- let me get your
18 thoughts about this, Mr. Ross.

19 I would think that a judge or a magistrate would respect
20 that arbitrary and capricious intent of the Congress.

21 Mr. Ross: I would think so, too, sir.

22 The Chairman: I would have my doubts that a jury would.
23 I would have my doubts that a jury would respect that.

24 If a jury feels worry for a guy, he can go ahead and hold
25 it arbitrary and capricious. I would fear you would not have

1 accomplished anything as far as the jury is concerned. I have
2 no doubt.

3 I would think if a judge or a magistrate -- that they
4 would construe it the way you intended.

5 Is it within our power to have that, a Judge-made
6 decision?

7 Mr. Ross: We think the number of cases that go to a jury
8 as opposed to being decided by a judge or a magistrate is
9 really quite small. I think effectively for the most number of
10 cases, Senator Ribicoff's standard would be satisfactory and we
11 could kind of indicate that because this is the Congress's
12 intention, I suppose the judge could overrule the finding that
13 they had no basis to say that what had happened was arbitrary
14 and capricious.

15 Perhaps if the judges see that the Congress really means
16 this, that it would work.

17 The Chairman: All right.

18 All in favor of that suggestion, say aye?

19 (A chorus of ayes)

20 The Chairman: Opposed, no.

21 (No response)

22 The Chairman: The ayes have it.

23 Senator Chafee: What happened to that in the House, Mr.
24 Chairman? That language did not get through the House?

25 Mr. Stern: This provision is not in the House bill.

1 Senator Chafee: What you recommended?

2 Mr. Ross: The House Subcommittee did not take this
3 recommendation. It did a couple of other things instead.

4 Mr. Stern: We can actually cover those. Those are at the
5 top of that page on the bottom of the previous page.

6 Senator Chafee: We will get to it.

7 Mr. Stern: I will start on the bottom of page 12, claims
8 and appeals procedures. There are seven items included in the
9 House bill.

10 One, that notices to claimants include a statement of
11 pertinent law and regulations and evidence and reasons on
12 which the disability determination is based.

13 Senator Dole: We have had a suggestion on that that it
14 ought to be in terms that it can be understood.

15 Mr. Stern: The next authorizes the Secretary to pay non-
16 Federal suppliers the cost of supplying medical evidence.

17 Mr. Ross: We had hoped to limit this provision to only
18 pay in cases where we had requested it.

19 I do not know how much money is involved. We do not have
20 an exact figure on this. We did want to limit a little bit
21 what we do pay for.

22 Mr. Stern: I believe that is the intent of the House
23 provision. This would be on the Secretary's initiative, not
24 just anybody's.

25 Senator Dole: Then that can be taken care of.

1 The Chairman: I know of no objection.

2 What is the next item?

3 Mr. Stern: The administration has recommended that the
4 effective date that you approved be put off for one year, which
5 we would suggest we go along with.

6 The Chairman: Without objection, agreed.

7 Mr. Stern: All right.

8 Item number 3 provides permanent authority for the payment
9 of travel expenses of claimants or their representatives
10 resulting from participation in various phases in the
11 adjudication process.

12 Senator Dole: Does the administration approve of that?

13 Mr. Ross: Yes, sir. We have no difficulty with that.
14 Sometimes the administrative law judge is in a city and
15 somebody, a claimant, is required to travel there. It seems
16 only fair to pay that travel expense.

17 The Chairman: If there is no objection --

18 Mr. Stern: The next few items--

19 The Chairman: Where are we?

20 Mr. Stern: You are on the top of page 14, number 4.

21 The next few items are the ones that Mr. Ross referred to
22 relating to court procedures. The first one would eliminate
23 item 4, eliminate the provision in present law which requires
24 that cases which have been appealed be remanded by the court to
25 the Secretary upon motion by the Secretary and instead the

1 remand would be discretionary with the court and only motions
2 by the Secretary where a good cause was shown.

3 I believe the thought here that the Secretary should not
4 be asking for remand in allowing cases that he thinks the court
5 is going to approve anyway.

6 The Chairman: This is already in the bill, is it not?

7 Mr. Stern: That is correct.

8 The Chairman: It does not require an agreement.

9 What is the next point?

10 Mr. Stern: Well --

11 The Chairman: Unless somebody wants to change it, we will
12 leave it that way.

13 Mr. Stern: Item number 5 would continue the provision to
14 give the court discretionary authority to remand cases to the
15 Secretary but would also add the requirement that remand for
16 the purpose of taking new evidence be limited to cases where
17 there is a showing that there is new evidence that is material
18 and that there was good cause for failure to incorporate it
19 into the record in a prior proceeding?

20 The Chairman: Read on. If there is no objection, we will
21 just agree.

22 Mr. Stern: Item number 6 forecloses the introduction of
23 new evidence with respect to an application after the decision
24 is made at the administrative law judge hearing level.

25 The Chairman: All right.

1 Senator Chafee: I do not know about that one.

2 The Chairman: Let us discuss it.

3 Mr. Stern: Would you explain that?

4 Mr. Ross: That one relates to the judicial review problem
5 that we talked about before. Not only can somebody appeal, but
6 they can keep producing evidence as they go along and so you
7 need to close the record at some point.

8 This is what the House did, to try to cut down on the
9 number of Federal Court factual decisions. It did not move as
10 far as we have been discussing, but it was a gesture of trying
11 to get some finality into the situation at the administrative
12 law judge level.

13 If you go to the provision that we discussed as amended by
14 Senator Ribicoff we would not need this particular provision
15 because you have gone beyond it already.

16 The Chairman: It seems to me -- you say the Ribicoff
17 matter takes care of that.

18 Mr. Ross: It would take care of this because you are
19 already saying if the decision, unless the decision below was
20 arbitrary and capricious, it stands on the facts.

21 It really runs past this one. When the decision below is
22 final in terms of the record, it does not hurt to have this. I
23 am just saying that you have gone beyond it in my judgment.

24 Mr. Stern: You might as well delete it, Mr. Chairman.

25 Mr. Ross: I would leave it. It does not hurt anything.

1 The Chairman: Frankly, that has been one of the points
2 that have been made to me with regard, in the area of criminal
3 law, that there is no finality and these cases just go on and
4 on and on forever.

5 That is one of the things that the Federal courts are
6 trying to come up with a rule so the cases do not just go on
7 forever.

8 If a person -- if we have any evidence that he ought to go
9 ahead and present it when a case is being tried or any
10 objection was made, he ought to go ahead and present it to have
11 all the case decided and then when you come up at a later stage
12 and then come up at some point, that should have been brought
13 up in the initial presentation.

14 Well, there is no finality to anything at that point.
15 They present part of the evidence and decide to present some
16 more later on.

17 If you have a case, you ought to go ahead and present it.
18 If you have an objection to something, you ought to go ahead
19 and object to it and not come along at a later date and put it
20 in, because that being the case you never get any finality.

21 Mr. Ross: That is correct.

22 This, in effect, tries at least then the submission of
23 evidence at the Administrative Law Judge proceeding. It is a
24 good sound way of indicating that it is Congress's intention at
25 some point that the proceeding ought to end.

1 Mr. Stern: Item number 7, Mr. Chairman, requires the
2 Secretary to submit a report to the Congress by this next
3 January recommending appropriate case processing time limits
4 for the various levels of adjudication. I believe the
5 administration does oppose this item.

6 The Chairman: Yes, sir.

7 Mr. Ross: That is fine with us, since it is almost
8 January 1. This was in the House bill. You might want to slip
9 that date by six months or something.

10 The Chairman: Without objection, we will do that.

11 Mr. Stern: July 1.

12 The Chairman: We decided the next item.

13 Mr. Stern: You are at the bottom of the page. The
14 present law authorizes up to 1.5 percent of disability
15 insurance benefit expenditures to be made available for
16 rehabilitation expenses. The House bill eliminates this
17 earmarking of disability trust funds and instead authorizes
18 payment from the trust fund of the bonus to the state after the
19 fact of twice the state share for the cost of services.

20 Senator Chafee: It is not quite that, is it, Mike? It is
21 a bonus based on their success in rehabilitating beneficiaries.
22 Would not, under the House bill, the state be dependent upon
23 adequate appropriations, authorizations and appropriations,
24 being made through the vocational rehabilitation program?

25 Mr. Stern: Yes, that is correct.

1 Senator Chafee: If the Human Resources Committee and the
2 Appropriations Committee do not make the authorization or
3 appropriatoin, then the states are liable to be left high and
4 dry, will they not?

5 Mr. Stern: That is correct, instead of putting money
6 out in advance as under present law.

7 Senator Chafee: There seems to me to be some concern
8 about this. What is wrong with the present system?

9 Mr. Stern: I guess the rationale by the House Committee
10 was in at least the earlier years of this part of the program,
11 the return for the money that was spent was fairly low. I
12 believe that has improved somewhat in recent years and you may
13 simply want to drop this provision.

14 Senator Dole: Mr. Chairman?

15 The Chairman: Yes, sir.

16 Senator Dole: I have a whole list of reasons here where
17 it suggests to strike that provision. I think our staff has
18 discussed it with Mike Stern.

19 Senator Chafee has alluded to one reason. There is no
20 evidence that indicates that greater savings in the disability
21 trust fund now occur from vocational rehabilitation services.

22 Secondly, I think that there is some indication -- I am
23 trying to be specific here. It appears to be premature since
24 this year, for the first time, the trust funds will be
25 allocated to the states on the basis of the number of

1 rehabilitation accomplished in substantial gainful activities
2 level of earnings.

3 Maybe we ought to see how that works before we make this
4 change.

5 Mr. Stern: The House provision, in any case, is not
6 effective until fiscal year 1982 so if you eliminated it, the
7 matter would be in conference and in any case, you would have a
8 couple of years to review the more recent findings under this
9 program, which have been a little bit better in terms of the
10 savings.

11 The Chairman: Without objection. If there is no
12 objection, we will strike it.

13 There is no objection.

14 All right. What else do you have?

15 Mr. Stern: On the bottom of page 14, item number 2, a
16 person under present law is not entitled to disability
17 insurance benefits after he has medically recovered, even
18 though he may be in a program of vocational rehabilitation at
19 the time.

20 The House bill, both with employment insurance and
21 supplemental security, that the benefits would not be
22 terminated due to medical recovery if the beneficiary is
23 participating in an approved vocational rehabilitation program
24 which Social Security determines will increase the likelihood
25 that he will be permanently removed from the disability rolls.

1 The administration opposes the provision.

2 Senator Dole: What is the cost impact?

3 Mr. Stern: No significant cost impact.

4 The Chairman: Why does the administration oppose it? It
5 does not cost anything and it might do some good.

6 Senator Dole: Senator Bellmon has set up a number of
7 suggestions.

8 Mr. Ross: Our reason is we are against paying benefits if
9 you are medically recovered here. That is the rationale for
10 the thing.

11 I do not think it is a big item with us one way or the
12 other.

13 Senator Dole: Let's take it.

14 The Chairman: We will leave it in there.

15 What is the next thing?

16 Senator Chafee: I find it astonishing that you continue
17 to pay disability benefits and it does not cost anything.
18 That is odd.

19 Mr. Stern: There is a concept here.

20 Mr. Ross: There are not many people.

21 Senator Dole: One in Rhode Island and one in Kansas.

22 The Chairman: Basically you say if you are trying to
23 rehabilitate somebody, you continue the benefits while he is
24 being rehabilitated. When you conclude that the rehabilitation
25 program has terminated or he is rehabilitated as much as you

1 are going to rehabilitate him, you pay the benefit and I think
2 that is all right.

3 What is the next one?

4 Senator Chafee: Do not people kind of take rehabilitation,
5 report in the afternoon or something and take some
6 rehabilitation even though they may well be working?

7 Mr. Ross: It is possible under this because the person
8 can be medically recovered. On the other hand, philosophically
9 this again is designed, I suppose, to help somebody to get
10 their benefit while they are completing their VR program, while
11 they are going back to work. That is the rationale the House
12 had.

13 The Chairman: Let's take the next point.

14 Mr. Stern: On the top of page 15, these are various other
15 items. First, employment and sheltered workshops. If a person
16 does work in a sheltered workshop the earnings that they get
17 are considered to be unearned income for purposes of
18 determining the payment under supplemental security income.

19 Senator Dole's bill, and also the committee, approved a
20 similar provision in the 95th Congress and would treat it as
21 earned income rather than unearned income.

22 The cost involved is about \$2 million per year. This is
23 not a provision in the House bill.

24 Mr. Ross: We have no objection.

25 The Chairman: Without objection, agreed.

1 Mr. Stern: Item number two, if a blind or disabled child
2 is applying for supplemental security income, the parent's
3 income and resources are deemed to be available to the child.
4 That child does include not only individuals under 18 but
5 individuals 18 through 22 if they are in a school or training
6 program.

7 The House bill in this regard provides the deeming of
8 parent's income is limited to disabled or blind children under
9 age 18 and those through age 21 receiving benefits at the time
10 of enactment are protected from loss of benefits, but
11 prospectively it would only be children under 18 whose parents
12 income is deemed available to them.

13 The Finance Committee had included a provision like this
14 without the grandfather clause in its bill last year, so that
15 the difference between what the House bill does and what you
16 have done in the past is whether you provide protection to
17 those individuals who are age 18, 19, 20, 21 and are students
18 and whose parents income is not involved.

19 The cost of the whole provision goes from \$1 million
20 in 1980 to \$4 million in 1984 without the grandfather clause.
21 We do not think there would be a significant cost if you have a
22 grandfather clause.

23 Senator Chafee: I would think you would save money. Why
24 does it cost money?

25 Are you not cutting back the program?

1 Mr. Stern: The difference is, if you have a disabled SSI
2 recipient who is age 19 and going to school, the bill would say
3 that you do not look at the parent's income whereas under
4 present law you look at the parent's income.

5 So suppose you have a totally disabled student aged 19
6 attending college, under present law the Social Security
7 Administration looks at the parent's income. The House bill
8 says you do not look at the parent's income under age 18.

9 Senator Dole: Does the administration object?

10 Mr. Ross: We support this because this is a
11 simplification. We would support this.

12 Senator Dole: With a grandfather clause?

13 Mr. Ross: No, we would support this.

14 Senator Dole: With a grandfather clause.

15 The Chairman: Without objection, agreed.

16 Mr. Stern: Item number 3 is not an item that the staff
17 recommends but it did come up in the hearings so we thought we
18 would bring it to your attention.

19 This is a proposal that there not be a five-month waiting
20 period for disability benefits in the case of an individual who
21 has been medically determined that he is going to die within
22 twelve months.

23 This is an expensive proposal. We think there are some
24 important psychological reasons for not asking your doctor to
25 certify that an individual is going to die within twelve months

1 also and would recommend that you not include such a provision.

2 Senator Bradley: Mr. Chairman, may I speak to that?

3 The Chairman: Yes sir.

4 Senator Bradley: The cost figure that you have placed is
5 \$300 million. Could you discuss how you arrived at the \$300
6 million figure?

7 Mr. Stern: When a longrange cost is a percentage of
8 taxable payroll, it is given in terms of a rather tiny percent.
9 So as to illustrate the significance of that cost, we multiply
10 that by price and payroll levels.

11 What this means is since the amount of wages subject to
12 payroll taxes is about \$1 trillion, a longrange cost of .03
13 percent amounts to, at present levels, \$300 million a year over
14 the next 75 years, each year. However the cost in the first
15 year --

16 Senator Bradley: \$300 million over the next seven years?

17 Mr. Stern: Seventy-five years.

18 Senator Bradley: Seventy-five years.

19 Mr. Stern: Increased as the payroll goes up.

20 On the average this provision using present payroll levels
21 costs about \$300 million a year. The actual first-year cost is
22 about \$150 million.

23 Sometimes you have social security proposals which are
24 quite expensive but very inexpensive over the next two or three
25 years so that this seems like a fair way of showing what the

1 longrange costs are.

2 Senator Bradley: What year figures did you use in the
3 calculation?

4 Mr. Stern: How do we get \$300 million? We took this
5 percentage of .03 percent and multiplied it by taxable payroll
6 which is something more than \$1 trillion now to show on the
7 average given present taxable payroll it will cost \$300 million
8 a year.

9 I understand that the first year costs, the actual
10 first-year costs, are \$150 million, but it would go up.

11 Senator Bradley: Does Mr. Ross agree with those figures?

12 Mr. Ross: Yes.

13 The 3 percent figure represents averaging over the 75-year
14 projections and on this one I would just like to bring the
15 Committee's attention to the fact that the Health Care
16 Financing Administration, which is a part of HEW, has a major
17 demonstration project underway to look at what services and
18 benefits could be appropriately designed for the terminally
19 ill, and if you wanted to do something on the subject, you
20 might provide some demonstration authority to SSA to
21 participate in that project to see what type of things could be
22 developed that was targetted towards this particular situation.

23 We would also oppose elimination of this waiting period
24 both because of the cost and the administrative problems that
25 we feel would be implicit in it.

1 Senator Bradley: I think that maybe this is not the
2 appropriate place, but something should be one for people who
3 are terminally ill and who, if they live longer than a year,
4 qualify for some disability payment.

5 The Chairman: It is a very difficult problem. I hear the
6 witness.

7 My reaction was to the witness who was presenting it that
8 we should not do it. Here he was, a very talented, able person
9 who was performing. That person could be declared disabled,
10 permanently disabled, and it tends to discourage people from
11 continuing bravely in what they should be doing.

12 Just go back and check it out over the people who know who
13 had cancer, let us say, and died very bravely and courageously
14 doing what they could under the circumstances.

15 If you say well, we will find them totally and permanently
16 disabled if you conclude they are going to die within a year,
17 that is just the opposite of what you are trying to do. You
18 are trying to make them feel that they might make it yet, that
19 they might get this thing in a stage where it is in remission
20 and perhaps they will live for quite a few additional
21 years and you would like for them to do the best they can under
22 the circumstances

23 It also sets the stage for retiring a lot of people who
24 can carry on doing their job quite a while longer and are doing
25 it now.

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1 My administrative assistant, for example, took a job as
2 the head of an association. When he had cancer, he continued
3 to do the job. I am sure others had to give him more help than
4 they did before, but he was a religious person and carried on
5 very bravely right up to the end.

6 I know I had another person working for me who, at one
7 time ---they only took a job with the Federal government. The
8 other people in that department joined forced to try to get him
9 to take disability so that they could all take a promotion and
10 everybody moved up the ladder one step.

11 He almost was engaged in a fist-fight, but he was
12 determined to hold his job as long as he could.

13 In many cases where we have people working for us or we
14 are associated with, if they are working in a business, most
15 employers would tend to lighten the workload of people like
16 this and keep them on the job.

17 I know if we do not vote this we will have a case made on
18 the Floor. Of the cases that I know, the evidence to me tends
19 to go the other way.

20 Hubert Humphrey was a very good example of it. He was out
21 there on the Senate Floor and made a magnificent speech when he
22 came back to see us. I heard the very preacher on television
23 who encouraged him to come back and make that speech say that
24 his family wanted that preacher to encourage him to do what he
25 did, and he came back and performed admirably as a United

1 States Senator and made a magnificent speech and was a good
2 Senator while under this theoretically he should just lay down
3 and give up.

4 But he was determined to do what he could, and probably
5 set one of the finest examples I know for all of us as to how
6 people should behave when their days are numbered.

7 Senator Dole: I think the point that you make, if we do
8 not do something here, we will probably do something on the
9 Floor. I do not object to that.

10 I have not tried to explore any middle ground.

11 Mr. Ross: Senator Dole, I was trying to suggest one
12 possibility to put some authority in the bill to let SSA
13 participate in this project where HCFA is trying to determine
14 what are the services and benefits that can appropriately be
15 designed for permanently ill patients -- not a disability
16 benefit, but something that would support the kind of
17 philosophy that Senator Long has articulated, if you want to do
18 something.

19 Senator Bradley: What funding level?

20 Mr. Ross: It would not require much money to have us
21 participate in a project at HEW that they are going on with. I
22 do not have any exact estimates with me, no.

23 Senator Dole: What happens now? What program benefits,
24 SSI benefits, are available for the terminally ill?

25 Mr. Stern: There is no waiting period.

1 Mr. Ross: Medicare, Medicaid.

2 Senator Dole: SSI.

3 Mr. Stern: Yes, SSI would be available right away. The
4 question here relates to whether you would start disability
5 benefits right away?

6 Senator Dole: I am trying to think, if we did not do
7 this, if you reduce the waiting period for the terminally ill
8 to two-and-a-half months, you would have a double --

9 Mr. Stern: The staff problem with that, first of all, you
10 do not really know whether a doctor certifies it or not,
11 whether a person is going to die within a year. The case in
12 point is the man who came and testified who had been told that
13 he was going to die in less than a year and has, in fact, lived
14 longer than that.

15 The provision, as introduced, does not recoup any benefits
16 from anyone. It does pay benefits if a person was not
17 certified that he would die within that twelve months and he
18 does indeed die within twelve months.

19 Senator Dole: A second opinion, I guess. A Federal
20 doctor.

21 Senator Bradley: The people who would qualify for this
22 are not people who are necessarily terminally ill. Everybody
23 who is terminally ill would not qualify. If I understand it,
24 it would be only those people who are disabled and terminally
25 ill.

1 Mr. Stern: Yes, but it has to be determined by somebody.
2 It would be determined by a doctor and I would think the
3 pressure on the doctor would make such a certification so
4 people can get additional benefits. Even if he tells the
5 person privately, I do not believe you are going to live 100
6 years but I am going to make the certification for you, it does
7 have to be done by a doctor.

8 It would seem to me the pressures would be all in one
9 direction.

10 Senator Bradley: What if you did what Senator Dole
11 suggested, two physicians having to certify it? Then you would
12 not have the situation with the physician who was personally
13 involved as well as financially involved with the case.

14 Mr. Stern: I wonder, still, if a case can be made for
15 distinguishing between disabled people on the basis of length
16 of life?

17 The Chairman: Let me tell you what is wrong with this?
18 Let me give you one example.

19 Here was a very fine person who was working for a house,
20 working for my family. The person had cancer, but we decided
21 -- and this person was working for some other people as well,
22 not just working exclusively for us.

23 We decided, all right, as long as that person wanted to
24 work for us, that person had a job, they could do whatever the
25 person felt like doing and have a lighter work schedule, do

1 just what the person could do, and that person had a job, all
2 right?

3 Because this disability program is available, if that
4 person goes down to see about the disability and so that person
5 decides, all right, that person will apply for the disability.
6 Now, continuing to work for these other people.

7 In my situation, I felt that we could not have somebody
8 working for us who was declared totally and permanently
9 disabled so that we had to say no, I am sorry, we cannot do
10 business under those circumstances. We will be glad to pay you
11 to work for us but to draw that money from the government and
12 have that person working at the same time would not be right.

13 So the person continues to work for other people and draws
14 the disability at the same time. Nobody wants to drop the flag
15 on one of those cases and say that that person is not really
16 totally and permanently disabled, but you set the stage for
17 that when you start this thing and saying that the person is
18 going to die within a year, that you are going to declare the
19 person to be disabled, who wants to argue about the fact that
20 the person with cancer is going to die but can still work.

21 Nobody likes to argue about that. Who wants to dispute
22 that? That is a tough case for anybody to decide.

23 What tends to happen in those cases is that the employer
24 keeps those people on and they do not perform as well as they
25 could perform before they had the disability but they are not

1 totally and permanently disabled.

2 The question is, you have one other factor here. Does
3 this not tend to make a person let down and give up when you
4 ought to be encouraging him to carry on?

5 In most cases with cancer, you are trying to make the
6 person think that they might beat this thing, with faith in God
7 and with determination, that one has some important days left
8 here.

9 When you start saying well, we can declare this person to
10 be permanently ill and disabled and waive the waiting period
11 and put on the rolls, do you not really encourage him to give
12 up when you ought to be encouraging him to be courageous and
13 persevere and try to make it.

14 Mr. Stern: I would think by requiring a two-doctor
15 opinion, you would exacerbate that very situation. The
16 argument then would be, with two doctors fighting over whether
17 a person is going to die within a year or not?

18 Senator Chafee: Mr. Chairman, are we not inserting a new
19 philosophy under this, the theory being if you wait five
20 months, you are not going to be around to collect from a
21 program which you partially invested in. So thus if you can
22 collect immediately under this doctor's proposal here and you
23 get your money out that you put into it.

24 I did not think that was the theory of the whole program.
25 I thought the theory was you would not necessarily get out what

1 you put into it, or would be restricted as to what you put into
2 it.

3 It is an insurance program.

4 If we start getting the philosophy that someone might not
5 get what they put into the program, then there are all kinds of
6 ramifications. How about the fellow who is going to live 15
7 months? Should he not be able to collect, too? He has to also
8 get his money out quickly.

9 Senator Dole: His family will get benefits.

10 Senator Chafee: It will not come to the total he would
11 get without the five-month waiting period.

12 Senator Dole: Why can we not adopt what the
13 administration suggested, not taking any final action on the
14 balance?

15 The Chairman: What does the administration suggest on
16 this?

17 Mr. Ross: I suggest the possibility of giving the Social
18 Security Administration some demonstration authority to allow
19 it to participate in this project with the Health Care
20 Financing Agency to study the nature of the specific services
21 and benefits that might be appropriately designed for the
22 terminally ill cases where you might take a look at what is
23 done now, at what exist in Medicare and Medicaid and see if
24 there is not something specific there that would be consistent
25 with the philosophy you articulated where you do not want to

1 take away somebody's incentive to carry forward the battle.

2 The Chairman: Why do we not agree to that, and we will
3 talk about the rest of it later?

4 Mr. Stern: Mr. Chairman, to name a number, shall we say
5 \$2 million a year. Is that all right?

6 Mr. Ross: That will be fine.

7 The Chairman: Without objection, agreed.

8 I would suggest we stand in recess now. We will come back
9 as scheduled.

10 Mr. Stern: That will be tomorrow morning at 10:00.

11 The Chairman: All right.

12 (Whereupon, at 12:30 p.m. the Committee recessed, to
13 reconvene on Wednesday, October 31, 1979 at 10:00 a.m.)

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