

EXECUTIVE SESSION

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FRIDAY, OCTOBER 26, 1979

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United States Senate,
Committee on Finance,
Washington, D. C.

The Committee met, pursuant to recess, at 10:35 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long, Chairman of the Committee, presiding.

Present: Senators Long, Talmadge, Ribicoff, Byrd, Nelson, Baucus, Bradley, Dole, Chafee and Durenberger.

The Chairman: Let us talk about what we have here. The other Senators will be along shortly and we will be able to vote on some of these matters.

Mr. Stern?

Mr. Stern: Mr. Chairman, there are pending in the Committee two House-passed disability bills, one dealing with disability insurance, one dealing with the Supplemental Security Income disability program. Both of them have as their object to improve the work incentive under both programs, so that persons who are disabled will be able to return to work.

The disability insurance bill does this in three different ways. It puts a limitation on the size of the cash benefits so that they are not so high compared to previous wages, so as to

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1 serve as a deterrent to come back to employment.

2 Then there are a series of liberalizations associated with
3 how one gets back on the disability rolls if one has been
4 working, increasing the length of time of the trial work
5 period, continuing the Medicare coverage and other concerns the
6 disabled persons have which, under present law, do serve to
7 deter them from going back to work.

8 The third element are some administrative changes which
9 are intended to tighten up the administration of the disability
10 program.

11 So it would be our suggestion that the Committee proceed
12 these provisions according to this document called "Social
13 Security Act Disability Proposals" that you have before you.

14 The first proposal starts at the very bottom of the page.

15 Senator Chafee: Mr. Chairman, could we have a preliminary
16 explanation at the beginning?

17 Are we doing this so as to comply with the 1980 budget
18 situation? Is that why we are here?

19 Mr. Stern: You are considering these bills because they
20 have passed the House. They are significant bills. They do
21 not help you much in savings in 1980.

22 The House bills themselves both cost a very slight amount.

23 We would suggest that you adopt some of the administration
24 suggestions for postponement of effective days will result in a
25 bill that saves a slight amount. It is not primarily a fiscal

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1 1980 bugetary issue.

2 Senator Chafee: If you make savings in the Social
3 Security -- these are all in the Social Security trust fund,
4 are they not?

5 Mr. Stern: The most significant ones are, yes, sir. The
6 SSI program is general funds. Most of the significant amounts
7 are in the disability insurance program.

8 Senator Chafee: That would affect the budget even though
9 it is in the trust fund.

10 Mr. Stern: It will affect the budget in fiscal year 1980
11 by quite a small amount.

12 Senator Chafee: I mean dealings in the trust fund affect
13 the budget?

14 Mr. Stern: That is correct.

15 Senator Chafee: Thank you.

16 Mr. Stern: The first provision relates to what we were
17 saying earlier about the size of benefits. Over the period of
18 time between 1970 and 1976, Congress approved a series of
19 increases in Social Security benefits which affected the
20 disabled as well as the aged.

21 The effect was that the proportion of previous earnings
22 which Social Security benefits represent went up. The result
23 was that the benefits that disabled persons received have
24 tended to be at an ever-higher proportion of previous earnings
25 to the extent that the Social Security Administration had

1 concluded that the size of the benefits themselves were a
2 deterrent to returning to work, since the individual, in a
3 number of cases, could have higher benefits by staying on the
4 rolls than by going back to work.

5 The House bill deals with this in three different
6 provisions.

7 The first provision is to say that the benefits would be
8 limited in the case of a disabled person to 80 percent of a
9 worker's average indexed monthly earnings, a concept where you
10 take average earnings and you update the amounts by the
11 increase in average wages or -- this is the second part -- 150
12 percent of a worker's primary insurance amount.

13 The effect of this is that the 80 percent limitation tends
14 to affect workers at lower earnings levels while 150 percent
15 tends to affect higher wage earners.

16 The Chairman: Would it be the lower of those two?

17 Mr. Stern: The lower of those two.

18 The Chairman: I see.

19 Mr. Stern: However, there is a provision which says that
20 no family benefit would be reduced below 100 percent of the
21 worker's primary benefit. This is a provision which is
22 prospective only, and it is based on disabilities which began
23 after calendar year 1978 for people who become entitled to
24 benefits beginning the next calendar year, next January, and
25 that is the substantial cost savings provision of the House

1 bill.

2 The third element relates to younger disabled workers. It
3 starts at the bottom of page 2.

4 Under the present law, anyone who qualifies for Social
5 Security benefits can drop five years of low earnings in
6 calculating his average earnings under the program.

7 While this tends to treat retired people the same, it does
8 give a rather higher benefit to a younger disabled person than
9 to an older disabled person, because an older disabled person
10 has to average his earnings over many more years.

11 So the House bill attempts to have a more equitable
12 distribution of benefits, depending on the age of the disabled
13 person by allowing fewer drop out years. You could disregard
14 fewer low earning years if you are younger.

15 The table on the top of page 3 shows how it phases in so
16 that, beginning at age 47 it is the same five years as now, but
17 below age 47 there would be less drop out years than now.

18 This would tend to have the effect of equating more the
19 situation of a 30 year old disabled person with a 47 year old.

20 The House does have one provision in addition to this.
21 That is, if a worker provided the principal care for a child
22 under age 6 for more than six months in a calendar year, if
23 that was a year of low earnings, that year would also be
24 dropped.

25 So if you had a person who was 37 years old, is entitled

1 to three drop out years but has two years in which he provides
 2 child care, you could drop those two also. The administration
 3 would suggest some changes in how the child care provision
 4 works by saying an additional child care drop out year would be
 5 provided when a worker had a child in care under age 6 and
 6 living with the worker, if the worker had earnings of less than
 7 the amount needed for four quarters of coverage.

8 The staff suggests perhaps you should just simply not have
 9 any special provision for child care because it involves a
 10 difficult determination after the fact of whether five years, a
 11 person provided child care at least six months during a year,
 12 and there may be no evidence of this at all.

13 The staff recommendation does not affect fiscal year 1980
 14 as far as the child care is concerned. That provision would
 15 not be effective until January, 1981.

16 That represents the provisions that deal with curbing
 17 benefit levels. The rule of 80 percent, or 150 percent,
 18 whichever is lower, the additional drop out years with the
 19 provision for child care.

20 Senator Ribicoff: Just a question, Mike.

21 Is there not a national commission on Social Security
 22 studying all of this and they are supposed to come up with a
 23 report in November, just next month, on this whole subject?

24 Mr. Stern: There is a national commission but their final
 25 report is due in January, 1981.

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1 Mr. Ross: There is a statutory Advisory Council on
2 Social Security which will be reporting next month, but they
3 have already substantially completed their work and they are
4 just finalizing their report.

5 Senator Ribicoff: Their report in this field --

6 Mr. Ross: We know what they are recommending already.
7 That is public information which has been incorporated in our
8 consideration.

9 Senator Ribicoff: As this is being developed, the
10 Committee has before it the recommendations of the National
11 Advisory Committee.

12 Mr. Ross: Of the statutory Advisory Council. There
13 are two separate study groups which were created by the 1977
14 amendment. One is the quadrennial, or every four years,
15 statutory advisory council which goes back in its origins to
16 1935. That is the one that is reporting next month, although
17 under the laws that govern the conduct of advisory councils,
18 all of their work has been done in public so that we have a
19 total public record of what they are recommending and what they
20 have thought about as they have gotten there.

21 Now it is just the typing and finalizing of the report and
22 submitting it to Congress, so we know what they are going to
23 say.

24 There is a second group that was created called the
25 National Commission where the appointments were made by the

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1 House, the Senate and the President. They are on a track where
2 their report would be in January, 1981.

3 Senator Ribicoff: You mean there are two commissions
4 studying the same subject at the same time?

5 Mr. Ross: More or less, yes. There is overlap.

6 Senator Ribicoff: Are we responsible for some of that?

7 Mr. Ross: The Congress mandated both study groups,
8 yes, sir.

9 Senator Ribicoff: I would hope from now on this Committee
10 would not have two competing groups at the same time.

11 Mr. Stern: Senator Ribicoff, what happened on that, when
12 the bill came over to the Senate in 1977, you did indeed drop
13 the National Advisory Commission but, in conference, the House
14 insisted on keeping both.

15 Senator Ribicoff: We do have before us what is supposed
16 to be reported next month.

17 Mr. Stern: It has not been submitted to Congress yet. It
18 was due October 1st.

19 The Chairman: What are they going to recommend, do you
20 know?

21 Mr. Ross: Yes.

22 As reflected in my testimony, they propose a more modest
23 cap on benefits than the House provision. That would be the
24 major point that they would make. That is reflected in my
25 testimony.

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1 They also have other changes which are more technical than
2 that, but that would be the major substantive one.

3 The Chairman: I want to ask about this. It has been
4 directed to our attention, this program, even in terms of
5 constant dollars, this program is costing about five times what
6 it was estimated when we put this program in effect, is it not?

7 Mr. Ross: The first estimates when the program was
8 put into effect were about \$500 million and we now have a \$15
9 billion program.

10 The Chairman: \$15 billion.

11 Mr. Ross: Billion, yes, sir.

12 Senator Dole: You have an awful lot of inflation in
13 there.

14 Mr. Ross: That is true.

15 The Chairman: After you adjust it for inflation, how much
16 does this program exceed the amount of the program when we
17 voted it?

18 Mr. Ross: It is hard to give you quite that because
19 there have been program changes over the years that have
20 expanded it.

21 Mr. Stern: As a percentage of payroll, it has gone up
22 from half a percent to 2 percent estimated. To the extent that
23 that builds in inflation and so on, that would suggest four
24 times.

25 The Chairman: Four to one over what we started out to do?

1 Mr. Ross: Yes, sir.

2 The Chairman: It is my understanding that there are
3 certain areas. Do I take it that this is an area where you
4 feel that we have been more generous than we really had in
5 mind, or that the administration had in mind when we started
6 this program?

7 Mr. Ross: I think that is correct, sir. I think that
8 the basic problem is that you took the formulas for computing
9 benefits over from the old aged, survivors program and in the
10 disability insurance context. The result is that you have a
11 substantial number of cases where people get more money by
12 going on the disability rolls than they got while they were
13 working.

14 I think that was a phenomenon that was not an intended
15 part of the legislation.

16 Senator Dole: I am not certain that is correct.

17 I think the study you rely on shows that about 6 percent
18 of recipients received benefits which exceed their previous
19 earnings and 16 percent received benefits in excess of 80
20 percent of their average pre-disability net earnings.

21 I am advised that that study may be based on questionable
22 assumptions.

23 Mr. Ross: That is the first time we have heard that.
24 We have been through lots of hearings in the House and that
25 material has been out there for a good long time. That is the

1 first time I have ever heard that. I will be glad to check any
2 information that you have to that effect.

3 Our actuaries will be delighted to study any additional
4 data you may have.

5 Senator Dole: One specific are the pre-disability
6 earnings which are compared to the disability benefits. Are
7 they based on the average earnings over the entire time the
8 individual worked, or some immediate prior period?

9 Mr. Ross: The calculations are based on average
10 indexed monthly earnings which is the concept used in all of
11 our programs, old age and disability. And then we take into
12 account the fact that the Social Security benefit is not
13 taxable while the earnings were taxable when we give you that
14 figure.

15 Senator Dole: Do the comparisons assume that individuals
16 receiving disability benefits have additional expenses to
17 treat the disability?

18 Mr. Ross: Well, our program certainly does because
19 some of the proposals we are making are designed to take
20 account of that and to treat more generously people with those
21 kinds of expenditures.

22 But in terms of the calculation of the replacement rates,
23 no. It is just a comparison of the net dollars that you get by
24 going on the rolls as compared to the net dollars that you had
25 while you were working in your working career, because that is

1 a fairly standard test that all private insurance companies
2 use.

3 As you know, there are large numbers of private disability
4 policies out there and this concept of the replacement rate,
5 what percentage of earnings you can safely have through the
6 insurance is a very standard concept because there are a lot of
7 studies that show that, as the replacement rate rises, you find
8 a larger incidence of disability in the population.

9 Senator Dole: The figures also assume that the spouse in
10 a two-earner family continues to work? Many of them have to
11 stay home and take care of the other one.

12 Mr. Ross: That is a complication in those studies and
13 we could certainly lay out more detail on it.

14 We do not take account of that in those precise
15 figures, but we do have studies that show you the effect of the
16 second spouse working or not working under various of the cap
17 proposals.

18 In general, when you look at those studies, they show you
19 that where the second spouse continues to work ---which, we
20 suspect, is the larger number of cases -- then that replacement
21 rate is extremely generous.

22 When you are replacing the income of one spouse and two
23 are working, the tax factor is enormous because, as you know
24 from your tax work, the second spouse's earnings go on top of
25 the first and they are taxed at very high brackets. So when

1 you run these two-spouse models it shows that an 80 percent cap
2 is quite a substantial replacement rate.

3 Senator Dole: What about -- I guess there are a number of
4 things you can do. You can maintain the current law, you could
5 do what the administration suggests, or you could do something
6 else.

7 Mr. Ross: Yes. I laid out in my testimony the fact
8 in the House there had been five serious proposals ranging from
9 less than the House adopted to considerably more than they
10 adopted and the 8150 formula in the House bill represents a
11 compromise between a variety of these positions which I did
12 bring to your attention.

13 Senator Dole: What about 90 percent of AIME or 175
14 percent of EIA?

15 Mr. Ross: That one reduces the savings rather
16 substantially. It reduces the fiscal year '80 savings from \$38
17 million to \$8 million and it reduces the 1984 savings from \$525
18 million to \$112 million.

19 That would make the bill cost money, more money than as it
20 is presently constituted right in 1980.

21 Senator Dole: If you took 90 percent of the five highest
22 years of earnings, how much would you save?

23 Mr. Ross: We have a figure for 80 percent, I suppose.

24 If it is just 90 percent of the highest five, our
25 actuaries say it would just be like \$2 million the first year.

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1 It is even less than the other one you mentioned.

2 Senator Chafee: Are you saying that under the House bill
3 the 8150, with a married family, where the other spouse is
4 working, that the 80 on top of the earnings, the 80 tax-free on
5 top of the wife's earnings, let us say, will produce a greater
6 net than if the husband, assuming he is the injured one, were
7 working?

8 Mr. Ross: Yes, in many cases.

9 The Chairman: It seems to me that you ought to give us an
10 example on the board. I would think that if they are both
11 working, making \$15,000 a year, for example, I would like to
12 see how it comes out.

13 Do you have that? Do you have some examples to show us
14 how it works out?

15 Mr. Ross: I am embarrassed to say we do not have one.
16 We could certainly work one out.

17 The Chairman: Where is your statement? Did you have some
18 illustrations in your statement or attachments to it, or
19 something?

20 Mr. Ross: Not of the two-earner phenomenon, no.

21 Is that in your blue book at all, Mike?

22 Do you have a copy of the House bill? It is all laid out
23 in there.

24 The Chairman: These benefits are not taxable, are they?

25 Mr. Ross: No, sir.

1 The Chairman: So that the 80 percent -- I would just like
2 to see -- you ought to have some charts to show us so that we
3 could take a look and see how that works out in various
4 situations.

5 I believe these hearings were held by the Subcommittee,
6 were they not? Or was it by the full Committee.

7 Mr. Stern: The full Committee.

8 The Chairman: I was there during part of them, I know. I
9 was busy that day. I was in and out. I was around to hear
10 some of your statement. I thought you made a good case.

11 For those who might have some doubts about it, I think it
12 would be good if we had a few arrows there to show the kind
13 of thing you are talking about.

14 Mr. Stern: Mr. Chairman, in the blue book that you have
15 before you on page 70 there are, not specific cases, but
16 averages in the case where you have earnings by the spouse and
17 you can see, for example, on the average for men, if there is a
18 spouse the pre-disability disposable income was \$14,493 and the
19 post-disability disposable income was \$15,407, which is 6
20 percent higher.

21 The Chairman: Assuming a family earning of what?

22 Mr. Stern: That was, in fact, the average case where the
23 man and woman are both working and where it is the man who is
24 disabled.

25 If the woman is disabled, the amounts are higher, but the

1 percentage relation is similar. The pre-disability disposable
2 income was \$17,196 and post-disability, \$18,509 so that it is a
3 percent higher after the disability where the woman is
4 disabled.

5 You can see there is an age distribution there, but the
6 relation seems to be fairly constant.

7 The Chairman: I just have to speak for myself in that
8 regard. I was one of the cosponsors of the amendment that got
9 this thing started when we offered it out on the Senate Floor.
10 I think Senator George was the principal sponsor of the
11 amendment at that time. I believe Harry Byrd was Committee
12 Chairman speaking against it. And I recall Senator George
13 explained how little all this was going to cost. In constant
14 dollars, it is costing four times what it was estimated to
15 cost.

16 We supported this but I do not believe any of us -- I
17 suppose, in fact I know, I was the only member of this
18 Committee who was there when all of this started and I say,
19 with confidence, that there was not one of us who sponsored
20 that amendment who had any idea that we were going to pay
21 somebody, when all things are considered, more than 100 percent
22 of what they would have been making if they had stayed on the
23 job.

24 We had no idea of providing somebody with an incentive to
25 try to have somebody declare him disabled so he would make more

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1 money than he would make if he were on the job.

2 It dismays me to see that here we have that. Here you
 3 have a chart where if you look at what happens when you have a
 4 spouse as well as a worker -- and we are taxing working people
 5 so that the family income would be in some cases, more than 100
 6 percent of what these people would make if they have stayed on
 7 the job. That is hard to sell, folks. You go out and try to
 8 sell that to people who have to pay taxes who work for a
 9 living.

10 Senator Ribicoff: Am I correct that only 6 percent of the
 11 disability cases get more than 100 percent?

12 Mr. Ross: Yes, sir.

13 Senator Dole: Is it also correct in line with that, that
 14 75 percent of those who are going to be penalized are below the
 15 poverty level?

16 Mr. Ross: The earnings level is low but it is hard to
 17 know who is in that population. As we show it in the materials
 18 when we had the hearings, these are often people with
 19 intermittent association with the work force and it could be
 20 that they are in noncovered employment or part-time employment
 21 or other things.

22 There is an SSI program that is designed to pick up people
 23 on a means-tested basis who are in poverty, and we do have
 24 provisions for expanding that net to help those people, so that
 25 the people who really need it do continue to get benefits.

1 Senator Dole: Shift the cost to the AFDC and SSI
2 programs?

3 Mr. Ross: It is not a clear shift. You are talking
4 about, in the insurance program, people where the cap applies
5 who may not need the money. We save a great deal of money
6 overall by putting back what we call an insurance principal
7 into the insurance program which is a replacement rate which is
8 reflective of what most people would say is sound and then
9 picking up those who need help in the SSI program.

10 Senator Ribicoff: Can you not take care of the problem
11 raised by the Chairman, which is it seems wrong for people to
12 get more in disability than they earned on pre-disability? If
13 it is only 6 percent, you should not be penalizing that segment
14 of beneficiaries who are not getting more money.

15 Mr. Ross: You have data that shows that if you
16 increase those replacement rates above 50 percent you increase
17 the incidence of disability in the population. When you go
18 from 50 to 60 percent, it increases. You find much more than
19 you thought when you go from 60 to 70 percent. Even more.

20 That is why the private insurance industry would not
21 insure anybody, I would think, for more than 65 percent of the
22 replacement rate because it puts too much pressure on.

23 When we go to an 80 percent cap, that is really very much
24 in my mind, on the generous side in terms of creating this
25 situation where somebody has an economic incentive to either

1 stay disabled or view themselves as disabled.

2 It would be all right if we could actually look at a
3 person and say, that person is disabled and this person is not,
4 but when you are dealing with 1.3 million claims per year and
5 450,000 people going on the rolls a year and you are
6 administering this across 50 states with making the
7 determinations, the problem is that there are a lot of kind of
8 gray cases, if you will, and in those cases, the psychology of
9 the person, perhaps, as to whether they obviously do have
10 medical impairments, as to whether they want to stay in the
11 work force or go on the rolls I believe is influenced by the
12 level of the replacement rate.

13 Senator Dole: Do not the Social Security records show
14 that the higher the benefits, the higher the recovery rates?

15 Mr. Ross: The recovery rates are extremely small.
16 They are down around 2 percent.

17 Senator Dole; What about the ones with the highest
18 benefits? We are advised, according to a Social Security
19 Administration study, that disabled individuals with the
20 highest benefits also have the highest recovery rates.

21 Mr. Ross: We are not aware of that, our actuaries
22 say, but if you have that data, we will be glad to look at it
23 and give you a report on it, sir.

24 The Chairman: With only a 2 percent recovery rate, you
25 are not getting much back.

1 Mr. Ross: No. We do not do a good job, I have to
2 admit, of monitoring the rolls and seeing if we could help with
3 people becoming rehabilitated and going back to work. One of
4 the purposes of the bill is to put in more provisions that
5 would both improve that aspect of the administration and to
6 provide help to people who want to go back to work. Let them
7 keep their Medicare.

8 If they try trial work, fail, get automatically reinstated
9 -- we want to do things in the bill that would increase that
10 phenomena.

11 The Chairman: Well, you have to keep in mind that when
12 you make it very attractive to be declared disabled, you are
13 going to have a lot more business than you had if it is not so
14 attractive.

15 I have told this story before. Maybe there is somebody on
16 the Committee who has not heard it.

17 I can recall when I had this lawsuit representing this
18 fellow who said he was disabled he claimed to have this back
19 trouble. When he bent over, he was in terrible pain.

20 I had a little office right next door to a doctor who was
21 an orthopedic surgeon. I went over and I had that fellow
22 examined. That doctor said he did not think that there was
23 anything the matter with him.

24 Of course, my client protested that that doctor was just
25 wrong. So I, of course -- if you are a lawyer, especially a

1 young fellow just starting out, the customer is always right.

2 I presumed that litigation. One day, after having talked
3 to my client -- a great big strapping fellow, weighed about 225
4 pounds. I think, aside from that back, he would have been able
5 to go out and play with a pro football team.

6 He got on the elevator on the way down and after he left,
7 I decided to go out for a cup of coffee, so I took the
8 elevator. It turns out that his elevator made some stops on
9 the way down, apparently, so I was on the ground level when my
10 client hit the street and you would have thought that guy could
11 win the Marathon the way he pranced out of there.

12 So I thought we had better compensate that case in a hurry
13 because people on the other side would be wise enough to know,
14 with a case like that. I would go right next door and ask that
15 orthopedic surgeon to take a look at that client.

16 If I did not subpoena that man, they would subpoena
17 them just on the chance that he would examine that man --
18 which, of course, I found they had done.

19 We would have lots of business like that if you are going
20 to pay them more money than you are going to pay them to be on
21 the rolls.

22 Of course, I do not think that is what is costing us so
23 much money. What is costing us so much money are people who
24 are in pain. They are in pain, all right. They have problems.
25 But there are other people who are working and making a living

1 and paying taxes who have the same type problem.

2 That is the kind of thing that plagues you in that job, is
3 it not, Mr. Ross?

4 Mr. Ross: Yes sir.

5 The reason that we are for these reforms, for the vast
6 bulk of the dollars spent in this program, the people genuinely
7 need that support and should have it. What I am worried about,
8 if you do not reform the program at the margins, you bring
9 disrepute upon the whole program.

10 It is a very vital and important part of the Social
11 Security programs. What we are really saying is, put in the
12 modest reforms we need to get on with the job of making this
13 program work better and truly demonstrate to the American
14 people that we can run an efficient and highly humanitarian
15 disability program.

16 Our intentions are not to cut benefits. I do not like
17 to sit here presenting to the Senate Finance Committee a bill
18 that some people characterize as you are trying to cut disabled
19 persons benefits in the future. That is not our purpose at
20 all.

21 Our purpose is to do the things that are necessary in this
22 program to make it work better. If we do not do that, then we
23 have just another one of these social programs that slops along
24 and causes the public to feel like the people in Washington do
25 not know what they are doing.

1 Senator Ribicoff: What do you figure when you say
2 corrected at the margins? What size is the margin?

3 Mr. Ross: . This bill, overall, would save about \$20
4 million in fiscal '80. It is virtually a break-even bill. But
5 over time, by 1984 with the changes we have proposed, it would
6 save the American taxpayer about \$670 million.

7 Senator Nelson: Per year?

8 Mr. Ross: Per year, yes.

9 The 1984 figure, Senator Nelson, overall, when you are
10 talking about a \$15 billion program, those numbers are at the
11 margins but it is made up of taking some money here and putting
12 it back there where it would be more productive.

13 What we are trying to do is target on the needs.

14 These are to provide more help and incentive to those
15 people on the rolls who want to be rehabilitated and go back to
16 work.

17 At the same time, the formulas that allow some people to
18 get more than when they were working.*

19 Thirdly, the major objective is just administrative
20 changes that will allow us to run a more uniform and efficient
21 program across the country.

22 This is a unique program in the sense that it is 100
23 percent Federal financed, yet we work with the 50 states under
24 a contractual basis where each one of them is kind of running a
25 separate part of the determination process and we need to bring

1 uniformity and consistency to is.

2 Senator Ribicoff: Let me ask you, you talk about help
3 incentives and administrative changes. Will you give us some
4 examples of each one of the three, help incentives,
5 administrative changes?

6 What are some of the concepts that you have there?

7 Mr. Ross: The help, for example, is we would let
8 people who try trial work know that if they fail they do not
9 have to go through this whole determination process. They can
10 automatically be reinstated.

11 Secondly, they can keep their Medicare benefits for three
12 years, because that is a major cost. Right now, the way it is,
13 if somebody decides to go back to work, they lose the medical
14 help and the social services and it is like a Catch-22. They
15 cannot really afford to go back to work; they lose too much.

16 So they have to, if you will, stay disabled in order to
17 keep the economic assistance.

18 On the incentives, it is the cap. We do believe that an
19 80 percent cap is an appropriate level of replacement rate and
20 on the administrative side, the major one for the first time.
21 We would have authority to issue Federal regulations with full
22 consultations with the state where we set performance
23 standards, where each state determination unit would have to
24 meet certain standards on length of time and processing the
25 claim accuracy and cost-effectiveness.

1 But then we would let the states go and do it. Under
2 present practice, we almost tell them where to put the
3 typewriters, how many people to have. They do not like it and
4 we cannot do it right, so we want to change the way we work
5 with the states in this to a more efficient mechanism.

6 Senator Byrd: As I understand it, Mr. Roth, you feel that
7 the maximum disability benefit should not exceed 80 percent?

8 Mr. Ross: Of the AIME, average earnings. Yes.

9 Senator Byrd: It seems to me that what you say is very
10 sound. If you do not tighten this program it will reflect
11 adversely on the entire program.

12 What you are trying to do, as I understand it, is to
13 eliminate the excesses, you might say, which for one reason or
14 another have crept into the program.

15 Mr. Ross: Yes, sir. That is a fair characterization.

16 Senator Dole: Mr. Chairman?

17 The Chairman: Senator Dole?

18 Senator Dole: Well, it is hard to look at somebody and
19 determine whether or not they are disabled. Somebody may have
20 some internal disability. They do not have their arm or leg
21 shot off, but they may die tomorrow and may not be able to
22 work.

23 There are all kinds of things that are disabling.

24 I think we should reform the program, do not misunderstand
25 me. I do not want to punish anybody who should not be punished

1 -- maybe that is not the right word -- in the process, but if
2 there are 6 percent of all cases which actually exceed the
3 disabled person's previous net earnings and approximately 16
4 percent of beneficiaries who receive benefits that are more
5 than 80 percent of their average pre-disability net earnings --

6 Senator Nelson: What was that?

7 Senator Dole: 6 percent of beneficiaries receive benefits
8 which are more than 80 percent of their average pre-disability
9 net earnings, but about three and four of that 6 percent had
10 average annual earnings of less than \$4,000 in the preceding
11 five years. That is below the poverty level.

12 That is taken from the Social Security Report, April,
13 1979, page 14. Three out of every four people who you say, or
14 suggest, or someone suggests, are abusing the program, are
15 below the poverty level.

16 Mr. Ross: But those people, I submit, need something
17 more and different than at that level.

18 A few extra dollars out of an insurance program, they need
19 the SSI program. They need the other social programs we have
20 to help people in that situation.

21 In other words, you cannot do everything in a Title II
22 Social Security Insurance program.

23 I would not sit here for a minute and deny that perhaps
24 people need the money, but this is not an isolated program.
25 This is part of a panoply of programs. We should be concerned

1 that we are delivering the right services and right amounts to
2 people who are in poverty but, at the same time, you do have an
3 obligation, I believe, to the taxpayer that in a social
4 insurance program that there is some relationship to insurance
5 and it becomes hard to do that when you have formulas that
6 produce the kind of results that have been presented in your
7 blue book here.

8 Senator Ribicoff: Senator Dole makes a very important
9 point. If a large percentage of the 6 percent are under the
10 poverty level -- and these are the people who, one way or
11 another, are going to get help and they are going to use the
12 Social Security fund, one title or another --

13 Mr. Ross: That is not true. It would go into general
14 revenues and you would be protecting the trust funds for the
15 insurance program.

16 The SSI program is financed by general revenues which is
17 quite proper.

18 Senator Ribicoff: Are you going to take the case that
19 Senator Dole talks about and shuffle that person between --

20 Mr. Ross: Not in most cases. The additional SSI
21 general revenue costs are relatively small related to the trust
22 fund savings. The trust funds come out of the payroll tax
23 which is a dedicted tax from the workers to pay social
24 insurance benefits.

25 I think that this very discussion shows one of the

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1 problems. If you are really leaving that alone there because
2 you want a welfare element in Social Security, that is wrong
3 because that is a payroll tax. You really want that financed
4 from your general income taxes and general revenues.

5 The Chairman: Let me ask about this.

6 In most states, would not those people that Senator Dole
7 refers to, people who are in poverty and drawing this Social
8 Security money, this DI money, would not those people be
9 eligible for food stamps?

10 Mr. Ross: In some cases.

11 Let me just say that those low earnings do not necessarily
12 mean poverty. In many cases, as I said, there are intermittent
13 earners. There are people like somebody who is basically a
14 housewife who works some periods of time and not others, or
15 somebody with a second job, a moonlighter who is basically an
16 uncovered employee, a state or local government job.

17 The fact that our figures show that these are low-earning
18 people does not lead necessarily to the conclusion that they
19 are below the poverty level.

20 The Chairman: That just gets me to a point -- Martin
21 Anderson made this point in his book about welfare, where we
22 report we have 11 or 12 percent of our people in poverty. That
23 is the official census figure.

24 Those figures fail to count in income gifts-in-kind in
25 government programs. They do not count food stamps. If you

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1 count the cash value of the foods stamps in there, he makes the
2 point that that cuts the number of people in poverty in half
3 right there, just that one item.

4 My impression is that these people who would be in poverty
5 -- I should think that most of them would be eligible for the
6 foods stamps. I would ask, are they not?

7 Mr. Stern: They would be, Mr. Chairman.

8 The Chairman: All right.

9 If they are eligible for food stamps and they are drawing
10 the food stamps but the Census figures do not count that as
11 income, so in other words, you know, it was not this committee
12 that did that. It was the Agriculture Committee which says,
13 give these people the food stamps and put in the law, this
14 shall not be counted.

15 That is money you do not count. All right?

16 If you take that into account, you do not have a lot of
17 people in poverty. You have them in poverty because you said,
18 by law, you will not count the money.

19 So when you take taht into account, you do not have any
20 three out of four. Furthermore, you have -- read this article
21 in U.S. News and World Report. We should be collecting \$25
22 million in taxes that we are not collecting.

23 They refer to a young lady with three jobs, for example,
24 who is not reporting or paying taxes on any one of the three.
25 Undoubtedly you have situations where people are receiving

1 money that you just do not know about. That also kind of
2 gets in the picture, does it not?

3 Senator Ribicoff: I still go back. Senator Dole still
4 has an important point that has not been answered. You have
5 the most unfortunate part of the population, someone in poverty
6 and someone who, at the same time, is disabled, which makes it
7 very difficult to get out of poverty because, with all other
8 disabilities, they have a physical handicap or disability.

9 Whatever we are trying to correct, are we overcorrecting
10 and eliminating these people from trying to do something for
11 them, and they are probably the most deserving of all, and I do
12 not think you have answered Senator Dole's question.

13 Senator Roth: Let me answer it directly.

14 There are very major parts of this bill. This is a long
15 bill with lots of provisions which are targeted to
16 accomplish just that objective. We agree with what you are
17 saying. It is terribly important to try to do something for
18 the people in that category and we have spent a lot of time,
19 and the House spent a lot of time, to use their ingenuity to
20 think of things that would be good to do right for that
21 problem.

22 So we are not overlooking that.

23 Senator Dole: If you put a cap ---the same question I
24 guess Senator Ribicoff addressed. Would the cap, in effect,
25 negate some of the benefits for severely disabled, which we are

1 trying to provide for under the incentives?

2 Mr. Ross: This cap would only apply in the future and
3 would not affect anybody on the rolls today. It would just be
4 a correction of the formulas and the replacement rates that
5 people would get who became disabled some time in the future,
6 depending on what effective date you took.

7 Since you cannot really predict for any given individual
8 whether they would be in that category, you are not really
9 doing anything to hurt any existing person on the rolls. You
10 are just trying to set a climate in which the determinations on
11 disability in the future are governed by more rational, if you
12 will, economic incentives.

13 Senator Dole: If I could raise one other point, I want to
14 get back -- just for the record, because it was taken from the
15 Social Security Bulletin, April 1979, Table 7, pages 15 and 16,
16 that stated in effect, in every category of mobility status,
17 hospitalized, bedridden, chairbound, no limitation and so
18 forth, those with 75 percent or more replacement rates, the
19 percent of benefits to pre-disability earnings had higher
20 recovery rates than those with lower benefits.

21 Maybe that does not mean anything, only 2 percent.

22 Mr. Ross: We would be glad to give you an analysis of
23 that, if you like, for the record. It is a study on historic
24 data.

25 As I recall, when I looked at it, it really did not deal

1 broadly enough with the kinds of issues that are before you.

2 Senator Dole; I think that the program has grown and
3 there should be some restraint, but I think it may not be that
4 easy to qualify. I think about 70 percent of those -- again,
5 based on Social Security Administration reports -- who consider
6 themselves disabled are denied benefits.

7 Maybe it ought to be higher. I do not know.

8 One reason a lot of people are not working is because they
9 cannot work, not the benefits.

10 Senator Chafee: Mr. Chairman?

11 The Chairman: Yes, sir, Mr. Chafee.

12 Senator Chafee: Let me see if I understand this.

13 What you are suggesting is that the limitation be 80
14 percent, that the total income under this program be limited to
15 80 percent of their previous earnings when they worked, using a
16 period as a base.

17 Mr. Ross: . Yes, the working wife.

18 Senator Chafee: If this 80 percent is entirely tax free,
19 do you not come right up to 100 percent or equal pretty
20 quickly?

21 Mr. Ross: Yes. In a lot of cases, yes.

22 Senator Chafee: I am not sure you are accomplishing what
23 you are setting out to do.

24 As I understand it, the objective here is not to make the
25 program so attractive that people will lose the incentive to go

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1 back to work.

2 If I look at your tables correctly on page 70 here, you
3 show not only the situation where there is a family where the
4 spouse is working ---that is the upper section of the table --
5 but down below, families where the spouse does not work. For
6 men under 40, I take it that there the income is averaging over
7 100 percent, 106 percent.

8 The woman is 105 percent. I do not know what the next
9 line means, 102 percent.

10 At 80 percent, are you achieving your objective?

11 Mr. Ross: As I testified, different people have a
12 different idea. It is a matter of judgment as to where you
13 place the limit on the benefits.

14 Senator Chafee: What did you recommend?

15 Mr. Ross: We originally recommended the 80 percent
16 but then in the course of the House Subcommittee consideration
17 again there were different ideas, as I showed in my testimony,
18 ranging from 90 percent of the high five through an amendment
19 which would have been much more stringent, and the 81.50 cap in
20 the House bill was an agreed-upon compromise with everybody
21 across the spectrum and the administration supported that, too.

22 You know, when all is said and done, those are judgments
23 that reasonable people have to make for themselves. We felt
24 that the House came into the middle of the thing and it was a
25 reasonable way to go. You are entitled to your own judgments

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1 as to where you would put the cap but I do think that the
2 concept of some limit on the amount of benefits, which is
3 related to prior earnings, is a sound concept and the argument
4 has to be where you want to place it.

5 The Chairman: It seems to me, Mr. Roth, that you have a
6 good case. I just think that your program that you are
7 speaking for here is supposed to be the insurance program. We
8 have some welfare programs. We have the food stamps. We have
9 the cash benefits.

10 The Federal government is putting a lot of money into the
11 welfare programs. I do not think we are going to be harsh or
12 cruel to anybody.

13 I see you are nodding. You agree with that. We are not
14 planning to be brutal or severe on anybody. But I think that
15 these insurance programs will be much better received by the
16 American people if we make insurance programs out of them
17 rather than making welfare programs out of the insurance
18 programs.

19 We are hard put to try to find out how we are going to
20 finance Social Security. The most logical way to do it,
21 without having these big increases, is to go back and take
22 these welfare benefits that were cranked into that program and
23 take that out and pay for that out of general revenues.

24 When we do that, we will not have to raise the Social
25 Security tax. We will have to find the general revenues to pay

1 for the welfare part of it, but people would be far better
2 disposed towards an insurance program that is a solid, sound
3 insurance program than they would an insurance program that had
4 all kinds of giveaways and rip offs and welfare program wrapped
5 into it.

6 If we take the view that it is insurance that we are not
7 going to go around here being compassionate, and all of that,
8 but we are going to talk about solid insurance principles: if
9 you qualify, you get it; if you do not qualify, you do not get
10 it.

11 To be insurance that somebody would be willing to pay his
12 own money for and also insurance that somebody would be willing
13 to sell him.

14 If we re going to do it on that basis, I think we will be
15 in a lot better shape and the public will receive it better.

16 Now, you have said here you did not think anybody would
17 sell you any insurance for disability where you are going to
18 get, when disabled, more money than you receive when you are
19 working. I think anybody would be an idiot to sell you such
20 insurance because it would be to your advantage to come in and
21 take him to court saying that you were disabled when you were
22 in good shape.

23 You would be like that client of mine where we decided to
24 settle that case out of court because we knew that the one
25 thing we dare not ask for is justice. That is the one thing we

1 had to avoid, if it could be done.

2 You do not want to do business that way if you are in the
3 insurance business. On the other hand, if you are any person
4 to buy insurance and you can get somebody to sell it, if you
5 look at what it would cost to buy insurance where, if you are
6 disabled, or declared so by the court, you are going to be paid
7 more money than you were paid when you were working, the cost
8 of the premiums would be so high that you would be a fool to
9 take that unless you planned to treat somebody.

10 So that, in either event, both from the point of view of
11 the person taking the insurance or the point of view of the
12 person selling the insurance, whether it be Uncle Sam selling
13 it on behalf of the taxpayers or the taxpayer buying it for his
14 own benefit, what we have here in this regard is forcing
15 people, as a matter of compulsion, to take insurance that no
16 sane man would buy and no sane man would sell.

17 If we want to have an insurance program, I think we ought
18 to make an insurance program out of it and then take the
19 welfare parts of it and say that anybody who cannot qualify
20 under the insurance program can pick up on the welfare end, and
21 I think we would have a program that people would approve of.

22 I think it is so that is the only logical way to go about
23 it, and I would challenge anybody to defend any other position
24 before any civic group. Let's say if you have to go before the
25 Lion's Club or the Optimist's Club or the JC's, those fellows

1 go out there and put on a Santa Claus costume and shake a cup
2 at Christmastime and ask people to give money and put their own
3 money in there along with those that try to raise money to help
4 less fortunate people.

5 I think that they would strongly disapprove of the kind of
6 thing where you make a welfare program out of an insurance
7 program and call something insurance when, in fact, it is a
8 giveaway.

9 I applaud you in coming here on behalf of the
10 administration, on behalf of the Social Security system, in
11 asking us to restore some insurance principles and make them
12 work out as insurance principles.

13 Senator Dole: What about somebody who was on the DI
14 program who goes back to work. He is going to get a lower
15 benefit under your proposal. Why should he go back to work?

16 Mr. Ross: We would be glad to work out some
17 grandfathering in the effective dates so that nobody presently on
18 the rolls would be adversely affected by these changes in the
19 program. That would be an unusual -- you are not talking about
20 very many cases and if that is a concern -- I think with your
21 staff there is no problem in making sure that any changes that
22 you make only affect people in the future.

23 That ought to be done.

24 Senator Ribicoff: Again, I am very admiring of Senator
25 Dole's position, because he is right because many people go on

1 and off the disability. We want to encourage as much as
2 possible for them to get off of disability.

3 Mr. Ross: Absolutely.

4 Senator Ribicoff: If they get 100 percent and are frozen
5 out, they are not going to get off if they have a lower one a
6 year from now if they have to go back and on disability:

7 Mr. Ross: We want to make sure through the way we
8 write the effective dates that that phenomenon does not occur.

9 Senator Ribicoff: What bothers me is you are talking about
10 what you want to do administratively and I am listening to the
11 Chairman. As always, he makes a lot of sense, but when you are
12 dealing at this level, what you are trying to do and what the
13 Chairman seems to indicate, if you want to take some of these
14 people on disability and then they are going to go on another
15 type of program that is a welfare program, they have three or
16 four agencies handling the same man or woman in the same
17 family.

18 I do not see where that is administratively sound.

19 If you have got these problems, why should they not be
20 handled out of one place?

21 Mr. Ross: They are Social Security administrators
22 today as a result of the 1977 reorganization. All of these
23 cash payment programs, the Title II insurance, the SSI and --
24 you know, we handle the clients together.

25 If somebody comes into our office who both qualifies for

1 some Social Security and SSI, we handle the claims together, we
2 process them together. There is only one determination of
3 disability made by the state unit and the programs are
4 administered together all the way and that is why it is very
5 important, as you do your mark-up of these two bills, that you
6 get parallel consistent treatment of the SSI and Title II
7 program in the House.

8 They had two different subcommittees that sent two
9 different bills forward. It is very important to intermesh
10 them because it is read as one program.

11 Senator Ribicoff: The House bill does not take care of
12 the problem raised by Senator Dole.

13 Mr. Ross: There are two House bills.

14 Senator Ribicoff: Together, they do not take care of the
15 problem raised by Senator Dole.

16 Mr. Ross: You have to put the two together to take care
17 of that problem, yes but the administration's original bill did
18 mesh and take care of it.

19 You held hearings on both bills at the same time and they
20 are both before you in mark-up, so I do think that this
21 Committee will have the capacity to bring the two programs
22 together and accomplish that purpose.

23 Senator Bradley: Mr. Ross, why do you think only 2
24 percent of the people on disability have rehabilitation?

25 Mr. Ross: We have studied this. It is a very complicated

1 subject.

2 I think that it is a field where much more study and work
3 has to be developed as to what people need, what kinds of help
4 you can give them.

5 But under present legal rules, there is a Catch-22
6 situation. There are positive economic disincentives to try
7 and work.

8 Senator Bradley: There possibly is another explanation
9 and that is what is the definition of a disabled person? How
10 stringent are these definitions? Could you give us the
11 definition of a disabled person?

12 Mr. Ross: The definition is very stringent, involving
13 partially a definition that says you cannot work anywhere in
14 the economy. The problem is, when you get as a practical
15 matter people applying those definitions, you are not sure how
16 they do it.

17 As I showed during my testimony on a chart, after the
18 initial decisions, 20 percent are denied disability. 20
19 percent are reversed on reconsideration. Then they appeal to
20 an administrative law judge.

21 Over 50 percent are reversed because the administrative
22 law judge is the first person to have actually seen the
23 claimant, under present practice. Then, if you lose there, you
24 can go to the Federal courts and we are effectively getting 40
25 to 45 percent reversals.

1 The problem is, I think we just have to do a much better
 2 job in the interest of both the claimant and the taxpayer of
 3 getting a good, solid decision early so that people who are
 4 entitled get on the rolls and people who are not are not given
 5 an incentive to keep appealing through this whole process until
 6 they can find somebody who says, well all right. I think we
 7 have a terrible incentive built in that system now, to keep
 8 going until you can win.

9 The Chairman: Let me make one point here. Senator
 10 Ribicoff was the man who made this point sometime back.

11 We take all the money we are spending in any social
 12 welfare program and target that on the poverty people and just
 13 put the money where the poverty is. There would not be any
 14 money in poverty because the amount of money we are spending is
 15 enough to take everybody out of poverty, if you targetted the
 16 money on the poverty.

17 There are reasons why you cannot do that very well. I
 18 heard the testimony responding to his suggestion along that
 19 line. It is not as easy as it sounds, but I should think when
 20 that is the case ---and I think it is -- I think the amount of
 21 money we are spending -- and Senator Ribicoff is right about
 22 that -- the amount of money we are spending, if targetted on
 23 the poor, if you could target it with precise payments aimed at
 24 the poverty level, you would move every poor person in America
 25 out of poverty.

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1 We are spending enough money to do it, but we are not
2 doing it as efficiently as we would like to.

3 Now, you have a bill here recommended by the
4 administration which saves some money in areas where you think
5 the public is not really getting value received and it does
6 more for poor people in areas where you think that a lot more
7 good can be done.

8 So if you take the money you save with a provision like
9 this one and use it to provide better justice in other areas,
10 you come up with more equal justice and you do less for those
11 people who have less right to claim it and you do a lot more
12 for those who have more right to claim it.

13 Now, by doing that you will do a lot to help meet the
14 poverty problem, will you not, if we pass the bill you have
15 here?

16 Mr. Ross: Yes, sir.

17 The Chairman: All right.

18 You do a lot more good by people.

19 If I were sitting there as President of the United States,
20 I think I would be doing kind of like the President is doing.
21 He said all right. I am not going to sign a hospital bill to
22 provide more hospital benefits unless you give me a cost
23 containment bill. I am not going to sign this -- I think maybe
24 I would say, if I were him, if you fellows will not come up
25 with this lick log -- are you familiar with that expression,

1 Mr. Ross?

2 Mr. Ross: I am from Missouri, like Senator Bradley
3 originally. I have heard the expression, yes.

4 The Chairman: It is very familiar.

5 The farmers, if they cut down a huge tree, you could not
6 haul it away, so the cut it off into sections before they could
7 move that huge tree, so they would have to stand there all day
8 and chop away on that thing, and some fellow sits on the stump.

9 They say, come on up to this lick log, you lazy Bob, we
10 have work to do here. If you say, come on up to this lick log
11 and put your licks in, you have to chop away with the rest of
12 them.

13 If I were the President, I would be saying, come on up to
14 this lick log, brothers. We love to vote benefits here in the
15 Congress, we love to give somebody something -- especially if
16 they appreciate it.

17 My impression is that the things you give them that they
18 have no right to expect whatever they appreciate a lot more
19 than those things they really have coming to them, because the
20 latter is something they feel was their due anyway.

21 But if it is something like a 120 percent benefit, or
22 something like that, 120 percent more than they had any right to
23 expect, they really appreciate that because it makes no sense
24 whatsoever, and you made a gift to them.

25 All right. But if you say come up here fellows and you

1 have to cut down on some of the rip-offs in this thing and that
2 will pay for some of the benefits we want to do for the people
3 who really have a right to claim it, we can do a lot of good
4 here.

5 So I think maybe we had better pass through this and get
6 back to these things you want to do here that are going to cost
7 money because I think if I were the President, I would think I
8 am not going to sign a bill to give you more money unless you
9 fellows are going to tighten up on the loose ends.

10 If we look at some of these areas where you do more for
11 people, maybe it might be more appealing to Senators to vote
12 for some of these things that would save money.

13 Mr. Ross: I think that is right.

14 Senator Durenberger: Mr. Chairman?

15 The Chairman: Yes.

16 Senator Durenberger: I am intrigued by your design of the
17 Rotary and Lions Club speech and the distinction between
18 insurance benefits and welfare and so forth. Obviously I have
19 to think about the speech before the Retired Citizens and
20 Disabled American Veterans.

21 I found some speech material that I would like Mr. Ross to
22 clarify as we deal with alternatives. What is available. On
23 page 69 it has a chart that relates to disabled male Social
24 Security beneficiaries with dependent children. Frankly, my
25 concern here is more for the cap that they recommend putting on

1 the family side than the 80 percent. I wonder if Mr. Ross
2 would just take us through that little chart there and explain
3 some of the alternatives, or someone else would.

4 Mr. Ross: Staff, would you like to do that?

5 Mr. Stern: This table comes from some material that was
6 prepared by the Congressional Budget Office showing the various
7 other sources of income of disabled beneficiaries with
8 children.

9 Of course, since they did it on the basis of Social
10 Security recipients, 100 percent have income from that source.
11 27 percent -- well, they broke it down between those whose
12 benefits were less than \$3,000 and those whose benefits were
13 more than \$3,000. If their own benefits were less than \$3,000,
14 27 percent of them were also getting SSI benefits.

15 29 percent, public assistance. This would typically be
16 Aid to Families with Dependent Children.

17 17 percent were getting Veterans Benefits. 8 percent
18 workman's compensation; 24 percent income from property; 11
19 percent public or private pensions; 73 percent earnings and 5
20 percent all other.

21 Then the actual amount per recipient is shown in the third
22 column there.

23 Senator Durenberger: And Food Stamps at the bottom.

24 Mr. Stern; Excuse me. A little more than one-third were
25 eligible for food stamps as well.

1 In terms of cash income, the average was \$9,400 of which
2 Social Security was \$2,600.

3 If you look at the recipients who got more than \$3,000
4 from Social Security, the percentages are somewhat different,
5 as you would expect. A rather lower percentage are either on
6 SSI or other welfare programs. More of them have property
7 income earnings slightly less.

8 Their average family income is more like \$12,000 and the
9 \$3,000 difference is mostly a difference in the average Social
10 Security benefit.

11 The Chairman: Why do we not talk about some of these
12 goodies that we can give people? It is kind of tough to be the
13 advocate of something to save money.

14 Mr. Stern: Mr. Chairman, those provisions start on page 4
15 of the staff document. If you want to go through them --

16 Senator Chafee: Where do we stand on this other? I have
17 trouble seeing the arguments against the proposal made by Mr.
18 Ross.

19 Mr. Chairman?

20 The Chairman: Yes, sir.

21 Senator Chafee: Where do we stand now? What are we
22 doing?

23 Are we moving out or are we voting on each one? I do not
24 know the arguments against the position of Mr. Ross.

25 It is also noted on page 68 of the testimony here of one

1 of the witnesses, in addition, a disabled individual is
2 relieved of many expenses incidental to employment. The fellow
3 who is not working, such as travel allowances, special
4 clothing, union or professional dues and the like.

5 It does not seem to me that any of us want to go home and
6 espouse a system where somebody who does not work earns more
7 than the fellow who works. That is the point that you have
8 been making.

9 It seems to me even at the 80 percent -- I do not
10 understand how that person is not going to end up with more
11 than the fellow who works, more than he had when he was
12 working.

13 I do not believe that any tax rate is less than 20
14 percent.

15 What is it, Mr. Stern? Is that possible?

16 Mr. Stern: If you paid income taxes, you start at 14
17 percent. Social Security taxes are about 6 percent. So you
18 would start at about 20 percent if you were in a taxpaying
19 bracket.

20 Senator Chafee: I am not sure what is going to be
21 accomplished that this bill is going to achieve all it sets out
22 to achieve at 80 percent, but I guess that is what the House
23 passed and that is what we have got.

24 Is that right?

25 Mr. Ross: Yes. It does quite a bit, though.

1 Senator Chafee: You seem to give it lukewarm support. I
2 am not clear what you had originally.

3 What were you for originally?

4 Mr. Ross: I do not mean to be giving lukewarm support.
5 What I do mean to be saying is that people do feel differently
6 and they did in the House on where exactly you put the cap.

7 I think it would be presumptuous for me as a witness
8 before the Senate Finance Committee that reasonable people
9 looked at a lot of caps and then taking a compromise which the
10 8150 represents and which the administration agreed as a
11 compromise to support in the context of the total bill, to say
12 that you could not go at it and decide where you want to put it
13 in the context of the total bill.

14 That is all; I am trying to be clear about.

15 Senator Chafee: Also in connection with doing this, you
16 referred to it here in mentioning it a minute ago, as the
17 Chairman remembers, and those who were here, your testimony
18 that anybody who tries to get these benefits has to go through
19 the most horrendous process.

20 Only the person with the most dogged determination, it
21 seems to me, finally gets the benefits -- dogged determination,
22 a good lawyer and the capacity to endure the tests of going
23 before the hearing examiner and going before the courts.

24 You are going to straighten that out, is that right?

25 Mr. Ross: Yes, sir.

1 I do not want to overstate the situation. A lot of people
2 do get their benefits approved at the first stage.

3 Senator Chafee: Not according to that chart you showed
4 us.

5 Mr. Ross: A pretty substantial number.

6 Senator Bradley: What is the percent?

7 Senator Chafee: It is terrible.

8 The Chairman: What is it?

9 Senator Chafee: Thirty qualified and seventy were turned
10 down. Then if you stuck it out and went to the next court, 30
11 percent, 70 were thrown out and they got it.

12 Mr. Ross: Of the total allowances during the year,
13 450,000 of the people who go on the rolls, 357,000 of those
14 people get it at the first stage.

15 It is only the people who are denied where you get those
16 reversal percentages. You get another 45,000 at the
17 reconsideration; about another 45,000 at the administrative law
18 judge hearing and then 1,600 at the Federal courts. You are
19 dealing with a smaller population at each stage as you go
20 through the process.

21 Senator Chafee: The fellow who had the tenacity as
22 opposed to the fellow who does not have the money or the
23 understanding, he gets it. The fellow who sticks it out.

24 The other thing I would like to ask Mr. Ross, that 2
25 percent rehabilitation is really a shocking figure. Something

1 is wrong.

2 Mr. Ross: We agree with that.

3 Senator Dole: Does that 2 percent count the people who
4 die?

5 Mr. Ross: No.

6 Senator Chafee: They are not considered rehabilitated.

7 Senator Dole: How many go out of the program every year?

8 Mr. Ross: How many people come off the rolls every year?

9 Senator Dole: It may prove that some have disability.

10 Mr. Ross: 450,000 go on.

11 Senator Dole; Some people -- let's see how many die.

12 The Chairman: Let me be the Devil's Advocate on the other
13 side of this thing for a moment.

14 Did you see that program "60 Minutes" where they told
15 about those people down there, those traffic controllers down
16 there in Atlanta, Georgia? Did you see that?

17 Mr. Ross: No, sir.

18 The Chairman: I want Senator Chafee to hear this.

19 Senator Chafee: Excuse me.

20 The Chairman: Have you heard about it since that time?

21 Mr. Ross: No.

22 The Chairman: Here is a program, "60 Minutes" on CBS
23 shown nationwide; they even replayed the thing. They showed it
24 twice.

25 Senator Chafee: What was the subject?

1 The Chairman: I want you to get somebody to go get the
2 transcript of the program. Maybe you had better show it to the
3 Senators.

4 They were showing about these air traffic controllers down
5 there on good wages, very high paid. These fellows get up
6 there and bring these airplanes in for awhile and after awhile
7 they say the pressure is so tremendous bringing those planes in
8 that they cannot do it anymore. They are disabled, they cannot
9 stand the pressure, and those people are in nice homes, all
10 that kind of thing, retired and drawing all this disability
11 money.

12 I am trying to control Social Security money. Did you
13 see that.

14 Mr. Ross: Those are Federal employees. That would be a
15 different program than Social Security.

16 The Chairman: Did you see the program?

17 Mr. Stern: No, sir.

18 The Chairman: That is a Federal program?

19 Mr. Ross: A Federal program for Federal employees.

20 The Chairman: You just take a look at the rip off. We
21 ought to get that in here.

22 I do not think we have jurisdiction over that one, thank
23 the Lord, but get that thing in here and take a look at it.

24 Mr. Ross: I do not either, thank the Lord.

25 The Chairman: You could not defend that.

1 Now, over there in HEW, I never gained the impression that
2 your people are beneath the people. You do not think the guy
3 is entitled to something, once in a while you decide to be
4 tough. But you are supposed to -- we drafted a law for you to
5 handle and when we put that thing in there we had doctors come
6 and testify that we were going to have all kinds of malingerers
7 and people who were not disabled at all just loading these
8 rolls down and we tried to draw it tightly enough so that would
9 not be the case.

10 We knew that it is always easier to loosen up than tighten
11 up after the fact and we intended -- we said in that law --
12 that you have got to be totally and permanently disabled from
13 doing any gainful work, did we not?

14 Mr. Ross: Yes, sir.

15 The Chairman: The fact is, if you have that statute to
16 administer you have to be a pretty tough guy because you have
17 to turn down a lot of heart-rending cases where people are not
18 really totally and permanently disabled.

19 Senator Dole: Could I add to that?

20 Mr. Ross: We have tightened the administration of it in
21 the last year. I now have from my actuaries the figures. We
22 are currently also getting about 450,000 terminations each
23 year. The rolls are beginning

24 We had a major spurt in the rolls in '74, '75.

25 Senator Dole: What were the causes of the terminations?

1 Mr. Ross: Lots of causes.

2 Mr. Stern: At the age of 65, a person who is on
3 disability automatically goes into old age. That would be the
4 majority of the cases.

5 Mr. Ross: That would be the biggest single category.

6 Senator Chafee: That is hardly a triumph for the program.

7 Mr. Ross: No, I would not claim it as a triumph for the
8 program sir.

9 Senator Dole: The same thing that Senator Long was
10 mentioning, according to the Social Security Administration in
11 1971, the Johns Hopkins Study reviewed and confirmed by the
12 Social Security Administration in '75, found of applicants
13 denied disability 75 percent of them did not go to work five
14 years after the denial.

15 So I think that there are some peope out there who should
16 be concerned about what we are doing.

17 The Chairman: Let us keep in mind that that is a very
18 severe test that you are supposed to administer. There is no
19 doubt in my mind that many judges, in looking at these cases,
20 have overruled your examiners just because they thought that
21 was too tough a statute.

22 Mr. Ross: That is our judgment too.

23 Sentaor Dole; That is why you have a low recovery rate.

24 Mr. Ross: That is why we have a proposal here on
25 questions of fact. After they are finally determined, that

1 ought to be the end of it. The courts ought to restrict
2 themselves to issues of law and constitutionality.

3 The final determinations are the fact and they be made and
4 that ends the thing because we are beginning to clog the
5 Federal courts. We are getting 8,000 to 10,000 cases a year
6 going in there.

7 The Chairman: Where you have a case that a person is in
8 pain and a person will be in pain practically every waking hour
9 from now until the Good Lord calls him home, but there are
10 people like that who are working, and there are situations like
11 that. They have counterparts throughout this society who are
12 making a contribution.

13 They are not totally and permanently disabled.

14 If I were a Judge sitting there on a case and saw a
15 pathetic case come before me, especially if I were familiar
16 with it, someone from the community and everybody knew what
17 that person's situation was, the person was genuinely in pain
18 and the person was genuinely suffering, but that person can do
19 something and so something of a gainful nature, and under that
20 statute did not qualify, as a Judge, I would be inclined to
21 find some way to rule that he did qualify and go home and feel
22 good about it, even though I knew that I had really upheld my
23 oath of office that day, I just thought I would take the view
24 maybe I will go to jail for it, but on the other hand, I
25 thought I did right.

1 I have done things like that in the Navy in courts martial
2 back when I did some legal work at the Navy at one point on the
3 basis that your heart tends to go out to the person and
4 say, let's find some excuse to throw this thing out.

5 So Judges do that. That is why the rolls tend to have a
6 lot more people on there than we planned to have on there.

7 You are proposing here that you do some things to give
8 some additional breaks to these people. On the other hand, you
9 are also proposing something that makes good sense that we
10 never had in mind paying anybody more than 100 percent of what
11 they would have made.

12 All things considered that is where we can say the money
13 to pay for these nice things that you would like to do for
14 these people. It just seems to me that we ought to do that.
15 It is a matter of tightening up on a loose thread and loosening
16 up on the tight end. If we do that, we will have a better
17 law.

18 The only way I can defend some of the votes I will have to
19 cast to make this a better law would be to say that is where we
20 found the money to do some of these other things that we think
21 make real good sense.

22 Senator Roth: That is right. That is the philosophy of
23 the package that was put together in the House. It was done
24 over several years.

25 This has been going on, the studies of this House Social

1 Security Subcommittee through two Chairmen over a number of
2 years and that was the general philosophic approach of putting
3 together a balanced package that did all three things at once.

4 Senator Dole: I hope that we can cooperate with everyone
5 -- saying "we", those of us who have a little different view.

6 I do not disagree with the Chairman. I think he has a
7 heavy responsibility, having voted for this program in the
8 first place. So you have a little different vantage point than
9 the rest of us who are new on the scene, because it has grown
10 and now we have to restrain it in some way, but we need to do
11 it so it is not going to be punitive.

12 Mr. Ross: Nobody wants to be punitive. We would all
13 agree with that.

14 Senator Dole: I know the rhetoric is easy around here,
15 but I would hope that we can help put together a responsible
16 package that everybody can vote for.

17 We probably cannot do that this morning, though.

18 The Chairman: Let's talk about some of the goodies in the
19 bill, some of the things that people would be very happy about.

20 Let me say, Mr. Ross, I felt a little sorry for you in
21 that hearing we held before this Committee. Everybody came in
22 here, except you, advocating that we spend more money and you
23 had to be the tough guy. I know the reason you got that job is
24 because you are interested in people. You want to help people.
25 You want to serve humanity.

1 So here they come in here, the Veterans of Foreign Wars,
2 Disabled American War Veterans, paralyzed veterans, now how can
3 you testify opposing those veterans. Blinded Veterans
4 Association.

5 American Nurses Association. American Association of
6 Workers for the Blind. National Association of Retarded
7 Citizens. Multiple Sclerosis Society. National Conference of
8 Catholic Charities. National Council of Senior Citizens.
9 National Council on Aging. American Association of Community
10 and Junior Colleges.

11 Lutheran Council of the United States. American Cancer
12 Society. U.S. Catholic Conference. United Methodist Church.
13 American Foundation for the Blind. American Jurors Commission.
14 National Indian Council. United Cerebral Palsy Association.

15 You are a brave man there, Mr. Ross.

16 Mr. Ross: Fortunately, sir, I do not have to run for
17 office. I was appointed and you confirmed me, so I have got to
18 do my job.

19 Senator Dole: Wilbur Mills, Wilbur Cohen ---here is
20 another list.

21 The Chairman: Yes, sir. I never thought we would have
22 Wilbur Mills -- Wilbur D. Mills, Honorary Chairman of the SOS.

23 Senator Dole: Save our System.

24 The Chairman: I thought it was Save Our Souls. Save Our
25 System.

1 SOS Coalition. Wilbur J. Cohen, Chairman SOS Coalition.

2 Robert Ball, formerly in your job, and so forth. I am
3 telling you, you are a brave man to come in here.

4 Well, let's talk about some of these things you would like
5 to do.

6 What about the medical waiting period?

7 Mr. Stern: The provisions you are referring to, Mr.
8 Chairman, begin on page 4. Basically, you could characterize
9 them as trying to alleviate the concerns that disabled people
10 have of the kind of benefits other than cash benefits that they
11 have to forego or might stand the risk of losing, including
12 getting back on the rolls.

13 The first one deals with that subject, re-entitlement to
14 benefits because now, if a person completes a nine-month trial
15 work period and continues to work his benefits terminate and
16 then if he later becomes unable to work he has to reapply and
17 go through the entire process.

18 What the House bill does is extend the nine-month trial
19 work period to 24 months. The last twelve months of the 24,
20 although they would be part of the trial work period, he would
21 not actually receive cash benefits, but if the work attempt
22 fails during that period he would be reinstated to active
23 benefit status without going through the whole adjudication
24 process again. The same trial work period would be applicable
25 to disabled widows and widowers. The same provision applies in

1 the other House bill before you for SSI recipients, but it does
2 go further and say if a person who loses either disability
3 insurance or SSI disability status due to earnings in excess of
4 this substantial gainful activity would be considered
5 presumptively disabled if he applied for SSI benefits within
6 four years following the loss of disability status and then he
7 would get SSI benefits based on meeting the income and assets
8 test and would continue to receive benefits until it is shown
9 that he is not disabled.

10 A bill that has been introduced by a number of members of
11 the Committee, including Senators Dole and Moynihan, would say
12 that an applicant for SSI would be considered presumptively
13 disabled if, within the last five years, he was treated as
14 disabled for purposes of either the disability insurance or SSI
15 program, but lost benefits because he performed substantial
16 gainful activity.

17 That same provision had been approved in the last Congress
18 by the Finance Committee except in the case of S. 591, it also
19 includes a provision under which benefits would not be subject
20 to recovery.

21 The administration can speak to this. They suggest
22 deleting the additional four year presumptive disability
23 proposal. It would be subject to recovery.

24 The administration actually has four suggestions:

25 One, deleting this four-year provision.

1 Second, that the fifteen-month period during which an
2 individual could be reinstated automatically to benefit status
3 would start with the first month in which the individual
4 performed substantial gainful activity after completing the
5 trial work period rather than at the end of the trial work
6 period, regardless of whether or not the individual is engaged
7 in substantial gainful activity.

8 The third recommendation, that the 15-month period be
9 extended to previously disabled workers who become re-entitled
10 to disability benefits within 60 months and disabled widows and
11 widowers and adults disabled since childhood would be
12 re-entitled to benefits within 84 months.

13 Finally, they recommend delaying the effective date of the
14 re-entitlement until July, 1980.

15 I might mention at this point that there are a series of
16 recommendations as you go through this where the administration
17 recommends a delay of the effective date.

18 The staff would suggest that you go along with it as it
19 affects fiscal year 1890 because it will make the difference
20 between the bill which net saves money and which net costs
21 money.

22 In either case, it will not be a large amount of money but
23 if you report out a bill with even a small amount of savings
24 you will have no Budget Act problems for fiscal year 1980.
25 That is the first element. If you would like, I could go on to

1 the Medicare, or do you want to talk about this first?

2 The Chairman: Why do you not talk about the Medicare
3 thing too?

4 Mr. Stern: All right.

5 Medicare coverage under present law stops when an
6 individual loses his disability status. This is a significant
7 cause of concern among disabled people who would like to work.

8 The House bill would extend the Medicare coverage for an
9 additional 36 months after the cash benefits cease. The first
10 twelve months of that 36 is actually part of the trial work
11 period and the administration simply recommends that the
12 effective date on this be delayed.

13 This would provide for the extension of Medicare beyond
14 the trial work period by two years.

15 On the top of page 6, also in relation to Medicare --

16 The Chairman: Why do we not agree to this? I would like
17 to get something agreed to today. This is something that I
18 think --

19 Senator Dole: Which one is that? Medicare waiting
20 period?

21 The Chairman: Yes.

22 Mr. Stern: Page 5. Not the Medicare waiting period, but
23 the extension of Medicare.

24 The Chairman: Extension of Medicare benefits for 36
25 months after the cash benefits end because of work activity.

1 Without objection.

2 Mr. Stern: Would you agree to this suggested effective
3 date of July 1, 1980?

4 The Chairman: Why do we not agree with what the
5 administration recommends? We could move it up if we think we
6 want to.

7 Mr. Stern: All right.

8 Senator Dole: \$5 million in 1980.

9 Mr. Stern: Excuse me?

10 Senator Dole: \$5 million in '80.

11 Mr. Stern: Under the House bill, with this effective
12 date, \$1 million.

13 Senator Dole: Why do we not -- if it is only \$5
14 million, let's just leave the date where it is.

15 Mr. Stern: There is a whole series of provisions. If you
16 agree with July 1, 1980 instead of January, you will save a
17 total -- I do not have a figure in mind, but it is \$30 million
18 or \$40 million.

19 Each one is sort of small in itself, but overall it will
20 change the bill from costing a little bit to saving a little
21 bit, which will help you for budgetary purposes.

22 If you report an entitlement bill at this time which costs
23 money, it will probably be referred to the Appropriations
24 Committee for a fixed period of time. If it saves money, even
25 just a little bit, you will avoid that Budget Act requirement.

1 The Chairman: Maybe. I would suggest, then, that we
2 agree to it, but with a deferred date. But after we get
3 through, let's see if we can move some of these dates forward.

4 I would like to move them forward, if we can.

5 Mr. Stern: All right.

6 Senator Chafee: Is the theory that this will get the
7 people out of the program because they would be reluctant to
8 get off for fear they would lose their Medicare?

9 Mr. Stern: There was a fair amount of testimony that said
10 there are three concerns of disabled people: one, that it is
11 difficult to get on the disability rolls if your work
12 experience does not work out after all.

13 Number two, you lose medical care which, in many cases, is
14 as significant, or more significant than cash benefits.

15 Third, to lose entitlement to certain kinds of social
16 service such as attendant care which you may need in order to
17 work.

18 If there is a way of prolonging this, even after a person
19 is no longer on the cash rolls, people who are otherwise very
20 concerned about losing those benefits would go ahead and try to
21 work.

22 That is the main thrust of these various provisions.

23 The next one, the third one on the top of page 6, relates
24 to the Medicare waiting period. Under present law, a
25 disability beneficiary is not eligible for Medicare until 24

1 months after becoming entitled to benefits, but then if he goes
2 to work and is taken off the disability rolls and becomes
3 entitled to benefits again as disabled, he has another 24 month
4 waiting period.

5 The House bill does not modify the first waiting period
6 but again, it says if a person is on the rolls, goes off, has a
7 trial work period and it is successful and then, later on, he
8 finds that he has become disabled again and is unable to
9 continue to work, he does not have to wait that 24 months
10 before becoming eligible for Medicare.

11 This really conforms to what they do on the cash benefit
12 side, that you can go back into the cash benefit status and you
13 can go back to the Medicare status. The hope here is really
14 not to provide the additional benefit right away so much as to
15 ease a person who wants to work. He will not be risking
16 another two-year waiting period.

17 Senator Dole: This fiscal '80 cost is \$30 million if you
18 change the date on that.

19 Mr. Stern: There, again, if you change the date as the
20 administration suggests, you would save \$20 million. It would
21 only cost you \$10 million.

22 One way you could do this, Mr. Chairman, for the time
23 being, go along with these effective dates and then, when you
24 are all done with the bill, just look at how much it takes to
25

1 wind up with a small savings overall. It might be you could do
2 all this effective April 1st or March 1st and still wind up
3 with a \$2 million or \$3 million savings overall in the bill,
4 save yourself the budget problem while, at the same time
5 advancing the date as early as possible, so we could come back
6 with a suggestion along those lines.

7 Senator Durenberger: Mr. Chairman, I would hope we could
8 approve this right now.

9 I have one small question. Explain why we give the longer
10 period to widows and widowers. Is there a good rationale
11 behind that?

12 Mr. Stern: Do you mean the longer period during which --

13 Senator Durenberger: This is also back under --

14 Mr. Stern: On page 6, the middle of the paragraph. The
15 same thing applied on the cash benefit.

16 Mr. Commissioner, do you have any thought on that?

17 Senator Durenberger: Could we not make it 60 months?

18 Mr. Ross: It is just a category where we thought we did
19 not want to penalize people for trying work. It seemed, under
20 the circumstances, a somewhat longer period was more
21 appropriate.

22 Mr. Stern: The question is, why 84 months in the case of
23 an adult disabled since childhood and a disabled widow as
24 opposed to 60 months in the case of a worker.

25 I do not have any thought on that at all.

1 Mr. Ross: The people in the second category are less
2 likely to have a work history so you give them a slightly
3 longer period.

4 Senator Durenberger: All right.

5 The Chairman: Let me ask you now -- this provision, this
6 is H.R. 3236 we are talking about.

7 Mr. Stern: Disability insurance, that is correct.
8 Disability insurance.

9 The Chairman: All in favor, say aye.

10 (A chorus of ayes.)

11 The Chairman: Opposed, no?

12 (No response)

13 The Chairman: The ayes have it. We will agree to that.

14 Senator Dole: This is the same as the House bill. This
15 is the House bill.

16 Mr. Stern: The House provision with the exception of the
17 effective date, except when we are done we will come back with
18 some modification.

19 Senator Chafee: If we change the effective date we will
20 have to go back to the House.

21 Mr. Stern: You will have differences with the House,
22 other than the effective date, I am sure, by the time you are
23 done, Senator.

24 I should not think this would be the only one.

25 The Chairman: Senator, take my word for it. There will

1 be other amendments. If I know Senators, there will be other
2 amendments. You can depend on it.

3 That is one thing, I think -- I could comfortably say you
4 could depend on that. There would be other amendments.

5 What is the next item?

6 Mr. Stern: The next item is demonstration projects on the
7 bottom of page 6.

8 There is authority under the Social Security Act for
9 demonstration projects but not with relationship for waiving
10 requirements under Title II which is the disability insurance
11 and Social Security programs, Title XVI which is SSI, to
12 conduct experimental or demonstration projects and -- in Title
13 XVIII, that should be Title XVIII ---to conduct experimental or
14 demonstration projects.

15 The House bill has a waiver to allow the Social Security
16 Administration to test ways in which to stimulate a return to
17 work by disability beneficiaries, and the Social Security
18 Administration is going to report to Congress by 1983.

19 The House SSI bill similarly authorizes the Secretary to
20 conduct experimental, pilot, demonstration projects which are
21 likely to promote the objectives or improve the administration
22 of the SSI program. There are certain restrictions that he
23 could not experiment in such a way as to substantially reduce
24 any individual's total income resources, could not require an
25 individual to participate, has to obtain in form written

1 consent, and any individual could revoke his agreement to
2 participatae.

3 The administration proposes broadening the demonstration
4 authority to cover other areas beyond simply stimulating a
5 return to work and they also have some technical changes and
6 recommend that the due date for a report to the Congress be
7 moved back from January 1, 1983, to a point five years after
8 enactment.

9 Our suggestion is, if you do want to go along with the
10 administration, that you retain the report, the requirement of
11 a report on work incentives by January 1, 1983, so you have
12 some way of looking at how things have worked.

13 Senator Dole: Have you finished that point?

14 Mr. Ross: That would be fine with us. That would work
15 out.

16 The Chairman: Should we agree with the staff
17 recommendation?

18 Senator Dole: I want to raise one question. I have been
19 advised on human experimentation -- Sheila, can you address
20 that, or Joe?

21 Ms. Burke: Yes, Senator.

22 Last year when we were in the midst of debate over the
23 Medicare-Medicaid amendments, the issue was raised with respect
24 to demonstration projects and the implications for human
25 experimentation laws, whether that law needed to be waived in

1 the case of these projects.

2 I advised you of the language that we worked out with
3 Senator Kennedy on the Floor and included in the committee
4 report on H.R. 934 and also language -- we may also want to
5 look at that in the context of these demonstration projects.

6 Mr. Ross: We have looked at that. We did not think that
7 would really apply to our situation. We do not feel that is a
8 problem.

9 The Chairman: Let me ask you, on these demonstration
10 things, do you not have in mind demonstration things where the
11 beneficiary gets a break, where he gets a better deal than he
12 would have otherwise?

13 Mr. Ross: We certainly do.

14 The Chairman: All of this language suggested over here in
15 H.R. 3464 that you are going to subject human beings in human
16 treatment, can you anticipate any kind of experimental program
17 where you might have that type thing in mind?

18 Mr. Ross: No, sir. I really cannot.

19 At least, in what we are contemplating in the Social
20 Security Administration with this authority are things that are
21 designed to work in a context of trying to figure out how we
22 can better help people who want to get rehabilitation and work.

23 I am not going to go too broad. I know what we have in
24 mind here and I know that there are other areas that there have
25 been concerns in.

1 The Chairman: Do you want to say something, Mr.
2 Constantine?

3 Mr. Constantine: Yes, sir.

4 In the Medicaid-Medicare areas, the way the committee
5 acted, some states -- for example, Georgia -- tried to put a 50
6 cent copayment in on prescription drugs. That was held to be
7 human experimentation, under the human experimentation statute,
8 and the Committee in previous bills -- most currently in 934
9 ---said usage of deductibles, copayment, administrative
10 approaches and so on would not be regarded as human
11 experimentation.

12 It is conceivable with respect to the disabled, trying to
13 provide coverage of certain services for them, that someone
14 might contend -- even though you would agree that they would
15 better, that it was better care -- that that was human
16 experimentation by directing them in one way as opposed to
17 another.

18 You are probably safer by putting in what Senator Dole is
19 proposing as a safeguard there.

20 Mr. Ross: We would be happy to have that, absolutely. We
21 do not anticipate a problem.

22 The Chairman: What do you suggest, Senator Dole?

23 Senator Dole: I think that there is some report language,
24 is there not?

25 Mr. Constantine: Not just report, Senator. In 934 there

1 was a specific provision approved by the committee with
2 accompanying report language.

3 The Chairman: Why do you not show it to us? We can pass
4 it over and come back.

5 I would just like to see what it is what we are suggesting
6 in terms of language.

7 What bothers me about it, somebody brings in some language
8 -- I do not want to agree to this thing in H.R. 3464 that you
9 will not carry any project that results in a substantial
10 reduction of anyone's total income, could not require any
11 individual to participate.

12 Voluntary participation would have to be obtained through
13 a written consent agreement. The Secretary would also have to
14 assure that any individual could revoke at any time.

15 My impression is, you put all that junk in there, then you
16 are just asking for some character to come along and claim you
17 are doing some of those things when you are not and take you to
18 court and argue about it and demonstrate.

19 After you are finished it seems to me it is a great big
20 furor about nothing. I think you are better off if you are
21 going to have a demonstration program to say they can have a
22 demonstration program, period. If you want to limit it, limit
23 it to say -- as I understand it, Mr. Ross, you want to be able
24 to demonstrate on something more than just going back to work?

25 Mr. Ross: That is right.

1 We would like to figure out, for example, if you lengthen
2 trial work whether more people with a longer period might get
3 back to work or if you got earlier referral of beneficiaries
4 for rehabilitation, that might help.

5 We have also been working to wonder whether we could work
6 with some private contractors -- employers and others ---who
7 have good experience with rehabilitation. We could learn some
8 techniques and ideas that would help us in our program.

9 We are looking for a much broader thing.

10 The Chairman: I think we ought to try to give you that.

11 It seems to me that there might be ways that we could work
12 with employers to provide some kind of subsidy for them to give
13 a job preference in certain areas where these disabled people
14 might be coming, be able to take a job. Even if you did not
15 save any money, while the saing was minimal, if you just did
16 better by people, gave them more a feeling that they are making
17 a contribution, being a part of society rather than a parasite,
18 that everybody would feel better about it.

19 You would like to try some things along that line.

20 Mr. Ross: Yes, exactly.

21 Senator Chafee: It seems to me that it would skew the
22 results of the demonstration project if you had to get every
23 participant's permission in the beginning.

24 Mr. Ross: We would like to eliminate that.

25 Senator Chafee: The type of people who give their

1 permission -

2 Mr. Ross: That is right.

3 Senator Chafee: To make it voluntary now, most people
4 would say they would not have any part of it, because they rae
5 nervous or afraid of what the government will do to them.

6 The Chairman: The fact that you have to ask their
7 permission would scare them to begin with.

8 Senator Chafee: Yes

9 Senator Dole: Jay has the language now.

10 The Chairman: Read that language. Any requirement --

11 Mr. Constantine: Otherwise held -- that is under the
12 Human Experimentation Statute held applicable -- are hereby
13 waived with respect to coverage or copayments, deductibles or
14 other limitations or payment for services whether for general
15 application or in effect only on a trial or demonstration
16 basis, and so on.

17 The purpose of that is simply to give them the flexibility
18 that I think you intend, Mr. Chairman, that they can do more
19 for certain types of people than they did for others, or less
20 anyway, one way or the other, without being held in any way as
21 violative of the human experimentation statute.

22 It does not inhibit the flexibility designed to protect
23 it.

24 The Chairman: Yes.

25 Just trying to tell somebody if they go back to work and

1 if they decide they cannot hold a job and have to drop out that
2 they can be immediately restored to the rolls, for example,
3 trying that type thing ---you have to say that you have to get
4 all kind of waivers and all of that. People would be scared to
5 death to sign for fear that they would lose some right.

6 So this language over here, would that be all right with
7 you?

8 Mr. Ross: Yes.

9 The Chairman: Without objection, we will agree to that.

10 Mr. Stern: Mr. Chairman if you want to, we might simply
11 apply to SSI the same rather general approach that you have for
12 disability insurance and leave out, then, the kinds of
13 restrictions that are in the House SSI bill and just use this
14 approach instead.

15 The Chairman: If there is no objection, we will do that.

16 What is the next point?

17 Mr. Stern: On page 7, deduction of impairment-related
18 work expenses. Under the regulations that are in effect now,
19 if a person -- in trying to determine whether a person is
20 performing substantial gainful activity, extraordinary expenses
21 incurred by the individual in connection with his employment
22 can be deducted to the extent that such expenses exceed what
23 the expenses would be if he were not impaired. Just the
24 additional cost of transportation or clothing or what have you
25 that are related to the impairment.

1 The regulations specify that the expenses for medication
2 or equipment which an individual requires to carry out his
3 normal daily functions cannot be considered to be work related.

4 Senator Dole; What are these impairment-related work
5 expenses, aide, attendant?

6 Mr. Stern: Yes.

7 It could be making a car drivable.

8 Senator Dole; Special equipment?

9 Mr. Stern: By special equipment.

10 Senator Dole: The administration has a different view.

11 They support the impairment related work expense, including
12 third-party payments for SSI and DI.

13 Mr. Stern: The House bill permits a reduction of cost for
14 extraordinary impairment-related work expenses and so forth
15 including equipment and drugs and services necessary to control
16 and impairment in determining whether there is substantial
17 gainful activity even if those drugs, equipment, what have you,
18 are necessary for daily life, too.

19 The administration suggests going further and saying where
20 the individual himself does not pay for the cost on the theory
21 that in determining substantial gainful activity ---this is not
22 a question of determining eligibility for a particular level of
23 benefits, but if a cost is necessary for an individual to
24 engage in employment the fact that somebody else is paying it
25 should be deducted if that is the net of what a person could

1 really earn.

2 Senator Dole: We are not talking about much additional
3 cost?

4 Mr. Ross: That would not cost much additional.

5 Senator Dole: I think that is the best position.

6 Mr. Ross: That is what we feel. It treats everybody
7 fairly.

8 The Chairman: Without objection, let us agree to that.
9 If there is no objection, agreed to.

10 Mr. Stern: The agreement includes the administration
11 modification, Mr. Chairman.

12 The Chairman: Without objection, agreed.

13 Mr. Stern: All right.

14 The Chairman: What happened to number one?

15 Mr. Stern: , Number one you had passed over.

16 The Chairman: We decided we would pass that over. That
17 was too close to call in the beginning, so we thought we would
18 pass over that one and come back to it later on.

19 Mr. Stern: This was a question of real entitlement to
20 benefits, number one, under the goody portion of the bill.

21 The Chairman: Under the what?

22 Senator Durenberger: Page 4.

23 Mr. Stern: Page 4, not the cap, but the re-entitlement to
24 benefit question.

25 Senator Dole: Do you want to save that one, then?

1 The Chairman: Page 4?

2 Mr. Stern: Yes, sir.

3 Senator Dole: It does not cost anything, does it?

4 Mr. Stern: The cost does amount to something. Let's see.

5 No, that is correct. It is negligible. This is to give people

6 the confidence that if they do attempt to work and the attempt

7 fails, that they can go back on the rolls right away. It is

8 not primarily designed as an additional benefit but as a kind

9 of an insurance to people.

10 Senator Dole: It is not going to be a cost because they

11 are going to be on the rolls anyway.

12 Mr. Stern: To encourage people to undertake a work effort

13 in the first place.

14 The Chairman: All in favor, say aye?

15 (A chorus of ayes)

16 The Chairman: Opposed, no?

17 (No response)

18 The Chairman: The ayes have it.

19 All right.

20 Mr. Stern: The administration did have some suggestions

21 that related, not to the basic question of re-entitlement, but

22 in the SSI bill there is a presumption that if a person

23 reapplies for SSI benefits within four years of losing

24 disability status that he would just be considered

25 presumptively disabled and all they would do is apply the

1 income and assets test and if the person has a low enough
2 income and assets to meet the SSI test he would be considered
3 disabled until they show otherwise that the disability
4 requirements are not met.

5 The administration suggests deleting that provision.

6 The Chairman: Let us pass that over for the time being.
7 We will come back to that one.

8 I would suggest -- it is 12:30. I would suggest that
9 everybody take the materials with him, study this over the
10 week-end and then come back in there. We should all be
11 experts.

12 Mr. Stern: Tuesday morning.

13 Senator Dole: We meet on Monday?

14 Mr. Stern: This will be Tuesday at 10:00, Mr. Chairman.

15 Senator Dole: Maybe another area, Mr. Chairman, where our
16 respective staffs can get together and work out a compromise.

17 The Chairman: I would suggest that our staff people --

18 Senator Dole: With the administration.

19 The Chairman: Meet and talk about this.

20 That does not bind any Senator, at least to the extent
21 that they tend to agree on something. They might make some
22 good suggestions.

23 All right.

24 We will meet again on Tuesday.

25 (Thereupon, at 12:35 p.m. the Committee recessed, to

