S. HRG. 101-1192

SOCIAL SECURITY RESTORATION ACT OF 1990

HEARING

BEFORE THE

SUBCOMMITTEE ON
SOCIAL SECURITY AND FAMILY POLICY

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

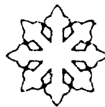
ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2453

MAY 11, 1990



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SOCIAL SECURITY RESTORATION ACT OF 1990

FRIDAY, MAY 11, 1990

U.S. SENATE,
SUBCOMMITTEE ON SOCIAL SECURITY AND FAMILY POLICY,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:00 a.m., in Room SD-215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the subcommittee) presiding.

Also present: Senator Durenberger.

[The press release announcing the hearing follows:]

[Press Release No. H-30, May 8, 1990]

FINANCE SUBCOMMITTEE TO HOLD HEARING ON SOCIAL SECURITY RESTORATION ACT; MOYNIHAN BILL WOULD MAKE SOCIAL SECURITY AN INDEPENDENT AGENCY

WASHINGTON, DC.—Senator Daniel Patrick Moynihan, (D., New York) Chairman, said Tuesday the Senate Finance Subcommittee on Social Security and Family Policy will hold a hearing on his bill, S. 2453, the Social Security Restoration Act of 1990.

The hearing will be held this Friday, May 11, 1990 at 10 a.m. in Room SD-215 of the Dirksen Senate Office Building.

The Moynihan bill would establish the Social Security Administration as an independent agency and would make a number of other changes in the administration of the Social Security program.

"Social Security is the nation's most important and successful domestic program and we need to take care that it is properly administered. There are serious problems at present," Senator Moynihan said.

"The Social Security Restoration Act is aimed at restoring vitality and fairness to the administration of this great program," Moynihan said.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Good morning to our guests and our distinguished witnesses. This is a meeting of the Subcommittee on Social Security and Family Policy to discuss the legislation which has been introduced to reestablish the Social Security Administration as an independent agency of government and to attend to the internal problems which appear to have developed over the last decade or more having to do with the single most important program that is carried out by the Federal Government as regards the welfare, the livelihood of American citizens.

The Social Security Act was an epic event. It had about it all the improvisation that characterized the new deal and also the picking up of long, deep currents in American life. The people who planned the program had been working at it for 40 years. The American Association for Social Insurance had been an adjunct of the American

Economic Association since the early twentieth century. Men like Whity from Wisconsin knew exactly what they would like to do.

Frances Perkins, when she agreed to come to work as Secretary of Labor for President of Roosevelt had a short list of things that she thought were necessary, and what came to be known as the Social Security Act was right there at the top of that list. We should remember that Social Security established unemployment insurance, as well as old age insurance, aid to dependent children, aid to the blind, aid to the disabled, and old-age assistance. The entire range of the population was involved.

The program has grown with extraordinary success in a half century. But again, it has always reflected a certain amount of that improvisation. As I said, there was a combination of long, careful planning. A generation of economists and social welfare experts had worked on this. And yet when it actually came time to do it there was a large question of how it could be done.

History records that it was absolutely a chance encounter between Frances Perkins and a member of the Supreme Court that provided the answer. Then talked at a reception in Washington in 1934. This ancient Jove-like creature asked this timid lady with the tri-corner hat what she was doing and she said she was doing very good things, and she had this wonderful plan and it would devise all these important benefits but every time anything like that was proposed the Supreme Court declared it to be unconstitutional, which indeed they did.

He asked her more. This is a matter of the record. He thought about it a moment and then he said, the taxing power, my dear; all you need is the taxing power. And that is why Social Security is here in the Finance Committee.

We remember Mr. Wagner, my distinguished predecessor, having introduced the legislation. But, in fact, the bill that passed was introduced by Mr. Doughton of North Carolina, the Chairman of the Committee on Ways and Means. Absent that reception in Washington we might not have a program to this day. That's how close these things can be.

The program that was put in place had a particular quality to it from the first. It was superbly administered. A great generation of public servants took hold, and led by Arthur Altmeyer, who was inspired in his ability to create a large nationwide organization. Keep in mind all the accounts were kept in pen and ink, and yet they were flawlessly done. It marked a change in the whole structure of American government.

In his book, The Coming of the New Deal, Arthur Schlesinger, Jr. concludes that chapter by saying, "With the Social Security Act, the constitutional dedication of Federal power to the general welfare began a new phase of national history." The idea of the general welfare now extended to the provision of coverage from the earliest moments of life until old age.

Some of these programs have proved more successful than others. The old age insurance has all but eliminated poverty in the aged. On the other hand, aid to dependent children, which was meant to be a temporary widow's pension, later supplemented by survivors' insurance, hasn't worked out as expected. One child in three in the United States will be on what is called welfare before

they are age eighteen. No one has ever found a way to look after this issue within the Government.

We think we may have done something. We have created the Family Support Administration; and in 1988 we redefined the welfare program. But it has no real patrons. It has no lobby. As I say, one child in three will experience it. That is the experience of being a pauper. You go on AFDC when you have no money, no possessions, no income. It is an anomaly that we should reach a point where the poorest group of the population are the children and they get poorer. Since 1970 the benefits for children in AFDC have declined by 37 percent in real value.

Disability proved a difficulty for the system. What was previously simply a matter of calculating benefits became a more complex issue of determining inability to work. There are students of the Social Security Administration who feel it never has quite handled that.

Well, in any event, a great generation of public servants took over this program and ran it for 40 years. It never quite required the sort of oversight in Congress that other activities did. That was fine so long as that generation was in place. The time came when the Social Security Administration sort of disappeared into the government. The independent agency, the three-person board established in the 1930s was folded into another agency. Eventually the creation of the Department of Health, Education and Welfare came about.

The Department absorbed Social Security, which now had a single administrator. That worked all right so long as that first generation was in place. But then things began to go wrong. To begin with Social Security was way, way, way down on the list of things that were important. We have had two distinguished physicians who have been Secretaries of Health and Human Services and their principal interest has been health. They were obviously chosen for that reason. Social Security gets further and further down. I looked at the Congressional Directory awhile ago and counted the number of names between the Secretary of Health and Human Services and the Commissioner of Social Security. I think it came to 139. I had to go through a lot of agencies before I found this outfit up in the suburbs of Baltimore.

Administrators have come and gone. I am now in my fourteenth year on this Committee, as is my distinguished colleague Senator Heinz who will speak to us in a moment. And in the fourteen years that I have been on this Committee we have had nine heads of the Social Security Administration. Each came in, made some changes, and did not stay around long enough to see whether they were effective or not—a kind of administrative collapse took place. You can't have a new head of an organization this important—1,300 offices around the country and providing payments to 39 million people every month, collecting payments from 132 million people—and have the average tenure in office be, you know, 15 months. Yet we have had that.

In the course of that, the real direction of the Social Security Administration was taken over by the Office of Management and Budget. We began to hear of quite savage events, driven not by any needs within the system but by external needs altogether. In the

early 1980s, the Social Security Administration was told to cut a quarter of its employees and obediently did so with extraordinary disservice to the people whose benefits were paid for as an insurance system. There was no reason to do that, excepting that the OMB wanted to save some money; and if it meant devastating the disability insurance program, they did. And nobody in the Office of the Commissioner could say no. There was no one who would say, "No, I won't do that."

The time came when the activities of the Social Security Administration verged on the criminal. That is a very hard thing. I do not think we say that often here in this chamber. But there came a time when the U.S. attorneys around the nation refused to defend the government in appeals on disability disallowance. It was a savage thing. But the heads of the agency remained unperturbed. As long as OMB was happy it did not matter whether millions of beneficiaries—or potential beneficiaries—were unhappy.

And so the movement has commenced to reestablish the independence of this agency and a measure of bipartisan control. The House has unanimously passed legislation that would have created an independent agency. This Committee last year approved a bill to do the same thing. And we are now reviewing it again.

No one has been more concerned about these matters, more informed about them, more patient in pursuing them, than my distinguished colleague, my good friend, the Senator from Minnesota, Mr. Durenberger. He has taken a very special interest in what he calls intergenerational equity and very conscious that Social Security is a program that starts with the most outcast welfare child, to the most affluent Floridian retiree. I mean, the whole nation is in this system and we are together in it. No one understands it better than David Durenberger and I am very happy to recognize my good friend.

Good morning, sir.

Senator DURENBERGER. Mr. Chairman, I am certainly complimented by that introduction. I would like to take immediate advantage of it, but I wonder if I might defer to my colleague from Pennsylvania about whom you might say as much or more certainly in this area. I do have a statement that I would like very much to reach at least in some substantial part, but it is a little on the lengthy side. I am wondering if——

Senator MOYNIHAN. Well why don't we have Senator Heinz first.

Senator DURENBERGER. Yes, I would appreciate that.

Senator MOYNIHAN. And we appreciate that our colleague who is a member of this Committee, who has involved himself with these matters with great energy, and again that capacity to stay with a subject for 14 years if need be, has also distinguished himself as a member of the Senate Committee on Aging, and so represents the two panels in this body that are involved with these matters. It gives us great pleasure to welcome Senator Heinz, if he would come forward and proceed as you will, sir.

OPENING STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you very much. I appreciate the opportunity you are giving all of us to comment on the issues confronting the Social Security Administration. I want to especially commend you for giving us what is surely the most concise, while complete, history of the Social Security Administration ever given to a public audience, and to single out some of the more important chapters in its evolution.

In case anybody wonders why I am down here instead of up there, in spite of my involvement with issues involving the aging and Social Security and Medicare, you Chair the Social Security Subcommittee of the Finance Committee and we are limited, fortunately I might add, to the number of subcommittees on which we can all serve. I am not a member of your Subcommittee, so I am separated from you on this particular occasion, but I am very much with you as you know—both you and Senator Durenberger—in spirit and in action.

I wanted to testify today to discuss some of our mutual concerns about the status of service delivery in the Social Security Administration. I do believe a Finance Committee hearing, namely this one, on these topics is overdue; and I commend you for scheduling what is a very effective and comprehensive panel of witnesses.

Mr. Chairman, I have the distinct, disconcerting sensation of standing in an echo chamber today. For almost a decade, we have been asking the Social Security Administration: Hello out there, are there any problems to report? And for almost a decade we have gotten the consistent answer: No, we are efficient; we are effective; we are doing fine.

And for almost a decade circumstances have proven the echo to be little more than a hollow assurance.

Now a case in point, and you referred to it, is a hearing that I conducted way back in 1983, as Chairman of the Committee on Aging, to examine how well Social Security was at that time serving the public. Then Acting Commissioner, Martha McSteen, who has gone on to other responsibilities in the more or less private sector and is your last witness today, assured us that the systems modernization that had been implemented had stabilized workloads, cleaned out the backlogs, and that SSA was prepared to move forward to achieve a superior level of service to beneficiaries.

In direct contradiction to those assurances, the General Accounting Office testified about how staffing problems had negatively affected the Agency's performance and discussed at length the limitations on the Administration's computer modernization program.

Seven years later, here we are again. Some of the players have changed. But I think the echo remains distinctly the same— promises and assurances made, but I fear unmet. I for one am gravely concerned that Social Security's emphasis on more technological forms of service delivery have actually worked to the detriment of beneficiaries.

The negative effects of staffing reductions and the shift away from face-to-face contact are evident throughout many levels of the programs administered by the Social Security Administration.

Your bill, Mr. Chairman, calls for an increase in Social Security staff. I want to say on the record that I support this provision; and I want to focus on a few areas which demonstrate the problem at the beneficiary level where the "rubber really does meet the road."

I mentioned 1983 earlier. Also in that year I directed a national investigation of the so-called continuing disability reviews of the Social Security Administration. As you will recall, Congress eventually legislated reforms, but in November 1989, a GAO report which I requested showed that many of the problems we faced in 1983 still persist six years later. According to this most recent report 58 percent of the people denied benefits—that the process administered by SSA says can work—in fact cannot. They are not able to.

Your bill, Mr. Chairman, includes a speeding up of the appeals process for disability benefits. More timely appeals are critically needed and it is reasonable to combine this with reforms at the beginning of the process, the criteria for determining disability.

To give you and Senator Durenberger a specific case history that recently came to my attention, let me tell you about a woman from my home State, Mrs. Sleymaker, from Bird-in-Hand, Pennsylvania. She has been trying to get disability benefits for 3 years. She has severe spinal deformity which causes her severe and constant pain even with medications. Her doctor stated that her pain was indeed credible and that her condition could not be corrected with surgery.

Mrs. Sleymaker's case has been reviewed eight separate times. She was denied benefits at initial review, then at reconsideration, and by the Administrative Law Judge, and the Appeals Council. That process, Mr. Chairman, took 2 years. Her case was recently heard again by a second Administration Law Judge, who stated that she was indeed 100 percent disabled and that her disabilities were so evident he did not even need to conduct a full hearing!

Senator MOYNIHAN. That is extraordinary!

Senator HEINZ. That is an extraordinary, but I fear not unusual, example.

Mr. Chairman, I think you share my view that the Social Security Administration simply must do a better job of developing evidence of disability at the outset of these cases. I do not see how you can do it without a face-to-face interview. So I have recommended that there be face-to-face interviews for all disability applicants, unless it is a case where it is not physically convenient or possible for the applicant to do so. A face-to-face interview is particularly critical for those kinds of disabilities that most often are reversed at the Administration Law Judge level. We should target these decisions at the level where it makes the most sense to do so, namely where the fielding errors are being made.

I also believe we need to seriously consider if the reconsideration step is an unnecessary layer. It does not seem to be producing much in the way of differences.

Which brings me back to the point, Mr. Chairman, of the echo. If more staff are needed to do the proper job, then I expect the Administration to inform Congress of the Social Security Administration's staffing needs. It is unconscionable that the Administration publicly says that staff levels are adequate and then privately laments the absence of sufficient staff to get the job done. Yet that is

what has happened repeatedly. Just this March, Herb Doggette wrote an internal memo to Commissioner King acknowledging that the Social Security Administration's workload was out of control. That very gentleman has been before this other Committee saying everything was under control.

So if the Social Security Administration thinks things are out of control now with current staffing, let me ask the rhetorical question of what is going to happen in the next few months when there are a minimum of 250,000 cases to be reviewed as a result of the very welcome Zebley decision on children's disability.

This legislation session, Mr. Chairman, I intend with you to push for reform in the eligibility standards for disabled widows. You are not yet a co-sponsor of my legislation but I have not personally asked you yet, but I will.

Senator MOYNIHAN. The man who is not in favor of helping disabled widows ought not to be in our calling. [Laughter.]

Senator HEINZ. Mr. Chairman, I would be happy to list you as an early co-sponsor.

Senator MOYNIHAN. Put me down. Senator Durenberger.

Senator DURENBERGER. By all means.

Senator MOYNIHAN. You've got two co-sponsors.

Senator HEINZ. I've gotten two and I hardly even had to ask. Thank you both for doing what I know you would have done even if I hadn't asked and I am very serious about that.

Let me just say that while the recent Zebley case ruled that functional capacity was to be evaluated in the case of children, widows are not accorded the same protection. That is what S.2290, of which you are now proud co-sponsors—and actually, Senator Durenberger is already a co-sponsor—does. [Laughter.]

Together with Senator Dole, and Senators Riegle and Boren. S.2290 would equalize eligibility standards for disabled widows of all ages.

Mr. Chairman, let me borrow an analogy from baseball, as the Pittsburgh Pirates roll up the best opening baseball season record that they have achieved in a long time. You know, we expect and indeed we need the Social Security Administration to function with the efficiency and precision of an all-star baseball player in the field and for very good reason.

The Social Security Administration must get the right check in the right amount to all the right people at the right time. They need to field at a virtual 1,000 fielding average. Now, obviously, no one is perfect. But when some 1,000 balls are hit into their court they need to pick up and redeliver those balls very accurately to the player—the beneficiary.

If they are fielding at even a major league average rate of 975, or if you will, if they're getting it right, 97 out of every 100 times, roughly, what that means is since they have 100 million inquiries from beneficiaries a year that they are making 3 million mistakes. Now there are only about 33 million beneficiaries. So that means that what looks like a reasonable average for a major league baseball player is a disaster for 3 million, or one out of every ten, Social Security beneficiaries.

So if they are batting at an average that sounds like it is good, the fact is that even something that sounds good does not do the

kind of job they have to do. They cannot have even a major league, let alone a bush league average. They have got to do better.

So I hope as you hear the testimony today that you and our colleagues will bear that in mind. There is very little room for any errors in the field at all.

Mr. Chairman, thank you very much.

[The prepared statement of Senator Heinz appears in the appendix.]

Senator MOYNIHAN. We thank you, sir. Can I just call attention to your statement that the Zebley decision will require that some quarter million cases be reviewed. These are not just technical calculations. At some level, for some reason—I don't know that I fully understand it—the Social Security Administration became almost hostile in its handling of disability cases.

We established a Commission—the Commission on the Evaluation of Pain—in the early 1980s, as you recall. The purpose was to say, you know, well how do you measure pain as a disabling function. The doctors involved—I got to know some of them—had no difficulty with this at all. I knew nothing about this subject. But they said, oh, it is easy to tell whether someone is disabled by pain, they behave differently.

The whole history of medicine is the history of people telling the doctor it hurts and the doctor does not know why. And over a long, painful experience it turns out, oh, I see, that is not a belly ache, that is appendicitis; and this is what you do about it. And yet almost the hostility to people who say, "I cannot work; I hurt." "So you say." And the point, in the end the U.S. attorneys would not even defend the government; and you had the awful feeling this was being done for budgetary reasons.

The Social Security trust funds are in surplus. They rise at $1 billion a week. I am not saying give anybody the money who just asks for it. But there is no excuse for letting directives that came out of OMB control the decisions of social insurance. I think you feel that.

Senator HEINZ. Mr. Chairman, if you would permit me an editorial comment. I had hoped that with the Reagan's Administration—of the corrective legislation that this committee we worked on that the attitude you have described, which is that there is a presumption that anybody who seeks or is on disability is somehow morally flawed, and that flaw has to be subjected to the administrative equivalent of some medieval tool for defining what is the matter, like throwing the person in the water and if they sink, they were pure; and if they try and swim and struggle to the surface we know that they are morally flawed. In this case, we will not burn them, we will just cut off their benefits.

What has troubled me is that the administration, both at OMB and at the Social Security Administration, has known for some time that the Supreme Court was extremely likely to affirm the Zebley decision. The original opinion was written by Carol Lois Mentman from Pittsburgh, Pennsylvania, who I had the privilege of recommending to President Reagan for appointment to the District Court back in the early 1980s. She was a Reagan appointee. Then the Third Circuit, which includes Pennsylvania, affirmed her decision overwhelmingly. Even if you were not a lawyer and you

read the congressional debate, you would come to the conclusion that it was a very clear cut decision and that it would be standing both the law and legislative history, as well as the Third Circuit court, on its head for the Supreme Court to overturn the Third Circuit.

And here we are months after the Zebley decision has been affirmed by the Supreme Court with no plans, as far as I know, having been made to deal with this enormous backlog where individual functional assessments of these children must and should with dispatch be made.

Senator MOYNIHAN. Amen.

Senator Durenberger.

Senator DURENBERGER. Mr. Chairman, I want to take this occasion to compliment John Heinz. The most complimentary word I could use to describe Senator Heinz is "persistent" in a situation like this and for the leadership that he has provided. Persistent not only as we hear these issues and vent our frustrations, but when we consider what he has done for each of us. He has reminded us of our responsibility to translate case work and the real life stuff that we are experiencing in our home states, to translate that into legislative policy; and then most of all, that we play a role in following that up inside the bureaucracy.

I mean there is only so much that the people that work for us can do. At some point it becomes our responsibility inside that huge system out there to try to effect change.

I think of all of the people I know on this Committee John has certainly done a good, if not a better, job than anyone else in reminding us that that's another part of our responsibility.

Senator MOYNIHAN. Wouldn't you agree, though, that the fact that Senator Heinz has to stay at this himself suggests the problem in the organization? They never come to us with problems they say they need help with. We find out about the problems and then they sort of resist even telling you. It is bizarre.

You know, the Marine Corps never hesitates to say they need more men if they need more men or they need a different amphibious vehicle or whatever, nor ought they hesitate. But you never hear a word——

Senator DURENBERGER. Mr. Chairman, one of the other reasons that I think the three of us are here today—is because, John and I spent the better part of a year on the Pepper Commission, and one of our charges was to do something about long-term care.

If you cannot do this job well, think of what an incredible problem as a government or society we are going to have at the point in time when we want to implement a long-term care program. Somebody is going to have to help us make decisions as to who is experiencing the elimination of two of five average daily living requirements.

I mean, if you cannot do lung cancer face-to-face, you cannot do the obvious well, how are we going to do simple things like incontinence, and the inability to feed one's self, because we want to make certain members of our society eligible to enter into a more humane long-term care system. If we cannot do this one, how in the world are we going to do the 5.8 million people currently that we suspect are in need of long-term care.

So the frustration of sitting on the Pepper Commission was not only our inability to come to grips with mandated health benefits, universal access, but looking at this huge unmet need in long-term care, if we are going to have this kind of stumbling block in front of each of 5.8 million Americans, what good does it do to recommend that we move everybody into a front end or a back end social insurance program because they are going to sit there blocked by the same process that is blocking people from disability determination.

Senator HEINZ. And Senator Durenberger makes—as he did during the deliberations both with that and in other areas, a very profound point which is a subject for a whole other hearing because there will not be time to hear the other witnesses. But at some point, Mr. Chairman, it would be very productive, I think, to follow up on Senator Durenberger's suggestion. Because as any number of experts would be willing to tell us, if we ever want to do anything beyond what we do now, whether it is comprehensive long-term care or a modest step forward, we have a tremendous shortage of knowledgeable, trained people to do it.

We do not even have the teachers to teach the teachers to teach the people who would do it. It is another subject for another day.

Senator MOYNIHAN. But your testimony had to do with the disability program which was enacted under President Eisenhower—one of its authors is with us today. They have had a quarter century experience and it is not working.

We thank you very much, sir. Could you have a moment to join us?

Senator HEINZ. Mr. Chairman, I have another Committee I must get to. Thank you very much for this opportunity.

Senator MOYNIHAN. You have a co-sponsor.

Senator DURENBERGER. Mr. Chairman, might I make my statement at this stage?

Senator MOYNIHAN. Would you? Please do, sir.

OPENING STATEMENT OF HON. DAVE DURENBERGER, A U.S. SENATOR FROM MINNESOTA

Senator DURENBERGER. Thank you, Mr. Chairman.

In April of last year I wrote you a letter about the problems many Minnesotans are experiencing with Social Security disability claims appeal process, expressing my hope that this day would come, that we would be able to have this hearing. So I am deeply grateful to you for this opportunity today.

There are more than 2 million Americans whose claims are processed each year. And to put that in perspective, that is about the number of people that populate the Minneapolis, St. Paul area in my own State of Minnesota. Many disabled Minnesotans contact me each year because of the problems they experience with the SSDI claims process.

I have found in my analysis that the current system is not only cumbersome and time consuming but that it creates extreme financial hardships for a lot of people, as I have already reflected.

In my written remarks I have gone through the whole of the disabilities appeal process, as has already been done by others, and I will not do that at this time.

Senator MOYNIHAN. We will put those remarks in the record as if read; and my own as well.

Senator DURENBERGER. Thank you, Mr. Chairman.

I will though reflect on two sort of real life examples. One is a constituent of mine that I met in January of this year. who in September of last year—September 29, to be precise—was diagnosed as having an inoperable lung cancer. The prognosis at that time was to have no more than two to 4 months to live. As of today he is still alive, but he has had no income since October 5 of last year.

He filed immediately for SSDI and was turned down on the initial application; and again upon the reconsideration appeal. The denial noted that his condition was not severe enough to meet the definition of disability.

Between the initial denial and the reconsideration phase he requested a face-to-face meeting with reviewers so they could see the difficulty he has with even the simplest of life functions, such as talking or breathing with his oxygen tank on his back; and that request was ignored. Today, as I say, he is alive, but he is still waiting for a review hearing.

Another constituent of mine, also with terminal cancer, contacted me in January of last year because she was having problems getting her disability award. I contacted the local Social Security office where they gave me a list of reasons for the delay. Many phone calls and months later, she did finally get her Social Security.

However, in July of last year she contacted me again because she was due benefits from an earlier date than was originally determined. By the end of August the matter was cleared up. However, we did not have much time to savor her accomplishments. She died 6 months after she received her check.

I would like both of the letters from my constituents to be placed in the record at this time.

Senator MOYNIHAN. Without objection.

[The letters appear in the appendix.]

Senator DURENBERGER. Let me close with just making a couple of points. There are a lot of aspects of the appeals process which your legislation, John's legislation, and that of a lot of people I think clears up.

But I would like to point out maybe two things that I think are of some urgency. One is that we consider some system of expedited processing for people who are terminally ill. That is why I used those two examples.

We now have the example of the Prudential Life Insurance Company, and I think a growing number of insurance companies, who are beginning the process of instituting an accelerated death benefit payment program for people who are certified by a physician to be terminally ill. It seems to me that if they have paid enough attention to the potential of letter the ill persons who have provided for their own life insurance for others advance the payments, and they have a system for determining who would be eligible, that perhaps there is a process like that that could be adopted for SSDI.

Right now the SSDI waiting period and the appeals process is unrealistic for those claimants who have terminal cases. There just has to be a way we can get these people the benefits they need sooner so it can help them pay for their medical expenses and their living expenses while they are still living, not after the fact.

Second, I believe we need to do more at the front end of the process as well. Currently, about 50 percent of all applicants who file for SSDI eventually receive benefits. Yet only 36 percent of those receive these benefits based on their initial application.

We should be doing all we can to ensure that people who are entitled to benefits receive them in a timely manner and are not forced to go through this lengthy process in order to receive them. There are many things that I think we can do to improve the process; and I look forward to hearing the thoughts and suggestions of the distinguished group of panelists that we have before us; and hearing from Commissioner King's Deputy as well.

I think there are a lot of other issues that delay and tie up the appeals process, from the difficulty local Social Security offices have finding physicians who will do consultation exams and act as medical experts for the amount of reimbursement that they are willing to pay. Two, the fluctuation in OHA workloads, the need for additional staff, and for updated equipment.

None of these solutions are simple. I believe it will take more than a bandaid approach solution to provide a review process that is fair, timely and efficient.

As part of the 1984 disability reforms we mandated a review of the appeals process and we mandated a report on recommended solutions. I believe it is time that we act on that information. For those disabled Americans whose livelihood depends on their SSDI benefits justice delayed is truly justice denied.

I thank you for this opportunity to be here.

[The prepared statement of Senator Durenberger appears in the appendix.]

Senator MOYNIHAN. We thank you. I think that is a first rate thought about the terminally ill and disabled.

We are here trying to find out, what is the problem with this agency, which for so long seemed problem free. I want to make clear, just because it might seem there is an edge of partisanship about OMB and the directives of the 1980s, that I know for a fact that in the Office of Management and Budget, in the Carter Administration, it was common to hear it said that the disability program was out of hand, out of control. There is an institutional life at OMB and it goes sort of regardless of Presidents.

It is perfectly clear the continuing pattern of saying, you are giving away too much; you are granting too much. Cut it back. And yet there is no administrative executive response from Social Security.

Now let's welcome a very distinguished and able career public servant, Mr. Louis Enoff, who is Deputy Commissioner for Programs of the Social Security Administration.

Mr. Enoff, we have your testimony which we will place in the record; and you may proceed exactly as you wish, sir.

STATEMENT OF LOUIS D. ENOFF, DEPUTY COMMISSIONER FOR PROGRAMS, SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MD

Mr. ENOFF. Thank you, Mr. Chairman. I appreciate that, Senator Durenberger. This may be the first time I have ever been in a group where there were two Pittsburgh Pirate fans in a row. So I am going to suggest that we do want to have the golden glove at Social Security.

I do welcome the opportunity to appear here before you and to discuss provisions of S. 2453—the Social Security Restoration Act of 1990. Before addressing the other provisions of the bill, I would like to mention the Administration's opposition to making Social Security an independent agency. I think we can agree that the overriding issue here is serving the public, serving the public compassionately and efficiently. We believe there is no evidence that independence would improve public service.

The Administration believes, to the contrary, that removing Social Security from HHS would disrupt an integrated network of services that presently is in place and working well. Our service is significantly better today than it was a few years ago. Both Secretary Sullivan and Commissioner King are dedicated to insuring that the public service provided by Social Security is of the highest quality.

Next, I would like to discuss the provision in the bill that would require a 7,000 increase in Social Security staffing in fiscal year 1991. We do not support this mandatory increase in staff because at this point we are confident that we can achieve our public service goals and keep all of our workloads under control if the resources requested in the fiscal year 1991 President's budget are approved in full by the Congress.

If workloads do increase beyond what can reasonably be accommodated within those resources, Commissioner King has repeatedly stated that she will be the first to ask for additional resources.

With regard to the administrative appeals process which has been discussed already a bit this morning, we have consulted with the former members of the Disability Advisory Council, the Administrative Conference of the United States, and other recognized experts in the field of administrative law and Social Security appeals in order to obtain recommendations for improvements.

We are now considering those recommendations. But it is clear that the recommendations fall basically into two groups: first, those dealing with improvements to the earlier stages of the administrative process or the so-called front end, and second, those which suggest fairly significant changes in the hearing and appeals process itself.

Much of the advice we have received strongly reflects the belief that changes at the front end of the claims process, the first level of adjudication, would reduce the problems we experience at the appeals levels. To a large extent we agree, and we are now moving to implement a number of the recommended changes on the front end. These include sponsoring continuing medical education to improve treating physicians' ability to provide the evidence we need

for disability evaluations, and sponsoring research to enhance our ability to make disability determinations.

Also, we are revising our standards and procedures for adjudicating claims in light of recent advances in medical knowledge.

We also oppose the provision in the bill which we understand would eliminate the two stages in the appeals process, the reconsideration and Appeals Council stages, because we believe it preferable to first improve the front end and then pilot any changes in the appeals process. Therefore, I would hope that you would consider not making such radical changes to the appeals process at this time.

Mr. Chairman, I would like now to discuss the requirement in the bill that both the 800 number and the telephone number of the local Social Security office be listed in all telephone books. We are concerned that this requirement could impair the delivery of telephone services to our claimants and beneficiaries, with District office workers forced to answer more telephone inquiries at the expense of people who visit the field offices to apply for benefits.

Commissioner King has restated our policy that the telephone number of the local office will be furnished promptly to anyone who calls the 800 number and expresses the desire to deal directly with the local office.

You also requested that I comment on the provision of S. 2453 which would accelerate the schedule in the 1989 legislation to provide benefit statements to people who have not requested them. The Administration, again, opposes this provision. At a time when we are being criticized by some for our performance in providing current services, we believe it would not be productive to legislate new deadlines for new services which the public may not utilize.

Senator MOYNIHAN. Mr. Enoff, may I ask you where you are in your testimony?

Mr. ENOFF. Yes, sir.

Senator MOYNIHAN. Where is that in your testimony? On what page? I think I am ahead of you or behind you.

Mr. ENOFF. Toward the end.

Senator MOYNIHAN. Oh, page 11.

Mr. ENOFF. Okay.

Senator MOYNIHAN. Page 11, fine.

Mr. ENOFF. The fact that we did initiate this new service and that we are actively working at expanding it, I think shows that we do have a commitment to get a benefit statement to everyone who will use it. But we are still in the process of testing some of the theories with this new benefit statement. So we believe that we need more time to find out what, in fact, could be used most by the public and what they desire.

Mr. Chairman, I, too, appreciate your interest and concern about improving the service at the Social Security Administration. We are confident that we have the will and the commitment to meet the public service goals that Commissioner King has set. The Commissioner has said that we do not have customers. Our public does not have another choice. We must give the best service. We have a public trust.

So with that I would be pleased to try and answer any questions that you may have.

[The prepared statement of Mr. Enoff appears in the appendix.]

Senator MOYNIHAN. May I first be clear that any criticisms we may have about the Social Security Administration are institutional and ought to be very much disassociated from any personal comments on individuals. You are in a right honorable succession of public servants that goes back to, for example, Robert Ball, who is sitting there behind you.

But two things, and just two things to comment. Then Senator Durenberger might have something. You say as you know over the last 6 years, SSA has undergone a dramatic downsizing.

Mr. ENOFF. Yes.

Senator MOYNIHAN. What you mean is you cut a quarter of your employees—you know, a dramatic downsizing, it sounds like something third generation computer technology will involve, downsizing. You cut a quarter of the people that worked for you.

Mr. ENOFF. Well I would say that we really did not lay off anyone. Attrition occurred and it did occur unevenly. That is one of the reasons that the Commissioner has asked that we have a period of stability in the work force.

Senator MOYNIHAN. But dramatic downsizing? Come on, Lou. And that you saved $2 billion by doing it. You went from 80,000 persons in 1984 to 63,000 in 1990. I just have to tell you, we feel that this decision did not come from Social Security; it was ordered from OMB. Do not answer that, sir, because I do not want to put you in a position of having to do so. But I think we know that.

Is there any other Agency in the Federal Government? Did the Defense Department lose a quarter of its employees in the 1980s? It did not; it grew. Is there any Department that didn't grow. It is bizarre that the agency responsible for 39 million retired persons, disabled persons, dependent persons, that is where the cuts took place.

It is not as if Congress has not seen that there are ample resources. These are benefits that are paid for. This is social insurance. This is not general revenues spent for beneficiaries. These are people who are insured, who have a number on their account. You know, the government does no one a favor when it provides no insurance coverage for which it has collected the premium.

I am sure you agree with that.

Mr. ENOFF. Yes.

Senator MOYNIHAN. Another thing that just troubles me, and it baffles me, I mean, I—this is the kind of thing that I just claim to understand. A majority of nonretired adults do not think they are going to receive their social insurance—their retirement benefits.

Now if any organization had that kind of approval rating you would be worried about it. There would be an institutional concern. You know, your majority of people do not think they know we are taking their money, but they do not think they are going to get it. Well, what do they think? You know, you feel the Administration should be worried about that. They say, oh, no, we have to do something about that. We have come along in this Committee and said, What do you think? Once a year you send out to each of 132 million people a statement of what they paid in last year, what their employer paid, what their accumulation is, what if they continued about as they are they would get at retirement, what if they were

disabled they would get, what their widow, the dependent spouse and children would get. So they know that you know that they are there.

I got my Social Security card—listen to this, David—in January 1943. That is very close to half a century ago. Well it is almost a half a century ago and I have never heard from you. I do not know that I spelled my name right back in January 1943. I was not a very reliable person about these things. I do not know if you have my address right. I have moved a great many times since January 1943. See, I do not know if you have followed me around. I do not know anything.

As a matter of fact, of course, I do know because I asked you and you told me; and in fact, you have done a remarkable job. But I would not know it. I would say, if were running an organization like that and Congress said, why don't you send that statement out—the largest cost involved is the postage stamp. So every January 132 million people would know the Social Security Administration knows you are there. They got it right. If you made any mistakes, and mistakes must be made—have to be made—they would say, oops, correct your mistakes.

You know, in your twenties you would throw a statement like that away, and in your thirties you would put it somewhere and then forget where you put it. In your forties it will go into a drawer somewhere and you will keep track of it and you will look at it and you will know about it; and you will know that your wife knows. Why don't you all do that? Because OMB said no. That's why.

Mr. ENOFF. Sir, let me say that we do not disagree with the sending of benefit statements, per se. But we do have some problems in implementing the provision where the person has not requested a benefit statement. I am not making light of the idea that we do want to improve public confidence. It is a concern. It is one of the Commissioner's priorities, and we believe there has been improvement there.

But we do not have, for instance, current addresses on everyone. We are experimenting now with addresses supplied by the Internal Revenue Service to see how accurate they are. There is a common misunderstanding by many people who think that we do keep addresses, but in fact the only addresses that we have are for those persons who are receiving benefits on a regular basis. We do not, in our records, keep track of a person's address once they have a Social Security card and they move.

The other problem and concern that we have—and we are testing this with some groups of people—relates to estimating future earnings in order to give a benefit estimate. Currently, if people request a benefit estimate they tell us what they believe they will earn between now and the time they retire. They also tell us when they plan to retire. If we do estimates on our own, then we have to make an estimate of their future earnings as well as an estimate of the retirement date. Now we can give them various dates.

Senator MOYNIHAN. Sir, all you do is say if you continue as you are doing, this is what will happen.

Mr. ENOFF. We are experimenting with that now and sending some unsolicited benefit statements. We have been running a test

for the last 6 months. We have some results. We are going to go out with another series of tests; we would like to make it as usable as possible and also determine how often a person would like to check his or her account.

Senator MOYNIHAN. We obviously have a disagreement there. But thank you.

Senator Durenberger.

Senator DURENBERGER. Yes, Mr. Chairman.

I have a number of questions, but I was reminded to start with where you left off with the downsizing and so forth. I am sure somebody on my staff does not want me to do this, but I am going to just talk out loud about one claims office that happens to be in the same building as my office, so I can't understand those people, I guess.

Up until I recognized some of their problems, I felt sorry more for my colleagues here in the Senate than anybody else because we could not keep our systems up to date. There was a little note in the Washington Post here a few weeks ago about the fact that the Senate had gone to low bidders for computer equipment in the Senate offices. And as we all know from personal experience, the low bidder delivered all the computers to us and the darn things did not work. They ate up whatever information got fed into them as quickly as it got there. Which is not a new experience.

The same thing happened to me 4 years ago when my very first computer arrived. It happened to have been made by a hometown computer maker. I had bought it and it ate up everything I fed into it; and it disappeared.

But that is the way the Senate operates and I did not think anybody else did. Apparently what the Senate did then was sort of behind the scenes without telling anybody the Rules Committee made a deal with some other computer operator to install their equipment and that stuff works. I thought that only happened to us.

But I want to talk to you a little bit about an office with which I have some familiarity. We asked those people what their needs are. They say, of course, their number one need it realistic staffing against realistic production quotas. They will cite you information like the Appeals Judges are requesting four times more consultive exams for claimants than were requested a few years ago. But there is no staffing adjustments to keep up with that.

In other words, the reality since we changed some of the process here are the realities, but the budgetary realities are not keeping up with it.

But along the line of what happened to the Senate, let me just share a couple of things that are going on in this little office. It relates to updated and quality office equipment. We need new photocopy machines, recording and transcription equipment and typewriters. We need quality envelopes that will stay sealed instead of using scotch tape. That is good for 3M that they need scotch tape. But, you know, right sort of at the top of the list is envelopes that will stay sealed. We need decent chairs and desks instead of cast offs from other agencies of SSA components. We need file cabinets to store our files to meet security regulations.

You know, somebody over here makes a security regulation and somebody over here deals with file cabinets; and never the twain shall meet. We need photocopy machines with automatic sorters that will photocopy both sides of a paper. We make 50,000 copies a month in our office. Once upon a time we had a stay-in-school position—stay-in-school position, a wonderful thing we probably helped to facilitate in this Committee—but it was eliminated last January. We kept her busy with nothing but photocopying files for the 20 hours a week position. With proper equipment, time could have been cut in half.

We have at least nine small recorders—the kind of recorders that you take on the field with the field hearing folks. We have nine recorders that require repair or are too old to repair. The last new recording machines we received a couple of years ago for our staff attorneys were of very poor quality. One of the buttons on them does not work. It seems to be on the machine for ornamentation. [Laughter.]

This is for real. We received seven new Olivetti typewriters a couple years ago. They too are of very poor quality. After one short training session the clerical staff got very frustrated with trying to use them. The Olivettis are compatible with IBM word processors. The only problem is, they will never be hooked up to IBM word processors. In fact, they will not be hooked up to any word processors in this particular office. All of them had to be adjusted after we got them because they were not meant to type with more than three carbons; and the typewriter ribbons would constantly break, and typewriter ribbons are expensive.

Then on word processors, our WANG word processors are from the early 1980s and are considered obsolete in private industry. So last year we received three PCs. The same sort of thing we have been doing in our office. We received three PCs and started keeping track of cases in our office on these three PCs. We have an office staff of approximately 40 people, 33 of whom are to use the PCs for coding. So you can imagine 33—and I have experienced this in my own staff, only the numbers are not—33 people who need access lining up behind the three PCs. When do you get your chance to do your coding?

It took 21 seconds for the PC to absorb information after it was typed in. But we still have only three PCs. Shipments of additional PCs have been delayed.

Much of the coding has to be done to SSA's national computer system, which I am sure we all understand. At this time, this is still a two-step process. The coding must be done on our PCs for the in-office tracking system and then must be done again on the one 1980 WANG word processor which is hooked up to the national computer system.

Mr. ENOFF. Let me just say, Mr. Durenberger, that you are obviously talking about a hearing office, and we have had some problems with some equipment. I am happy to tell you that Commissioner King has approved the replacement of the entire WANG equipment that you talked about. That is in our fiscal year 1991 budget. We have also had a problem with the recorders that you mentioned. That was a low bid. We do have to follow procurement

regulations. That was a problem. We are in the process of replacing those.

But I understand some of those frustrations. We will have, in accordance with the President's fiscal year 1991 budget, an increase in the number of PCs in that office, and we do have a staff that has completed the work to eliminate that two-step coding process, so that the interface between the WANG system and the national computer system will not require that additional step. That is not to say that those were not real problems that they were facing, but I do think we have those under control. Assuming that our fiscal year 1991 budget is approved, we would replace those and upgrade them.

Senator MOYNIHAN. I guess I was going to make that point, sir. With that we will have to leave it. Providing your budget is approved.

I mean, let's be clear. Where did the 17,000 staff cut come from? In the early 1980s the Administration set up the Grace Commission. The Grace Commission was going to show how free enterprise could transform American Government. It made all sorts of wonderful proposals, none of which anybody paid any attention to at all, that I could tell. Except in one proposal, they said, cut Social Security Administration staff by 17,000 people. That's how the private enterprise would do it. And OMB said cut and cut you did.

It was a political decision. I mean that was politics in the pure form, that Grace Commission hurrah. And in the end, that did not happen anywhere else in the government, as far as I can tell, except in Social Security. And why did it happen there? Sir, you do not have to answer. Because there was no capacity of the agency to say no.

I could just imagine the first time Mr. Stockman told Mr. Weinberger the Grace Commission says cut out the B-2 bomber. Boom! Off went—you know, you didn't do that to anybody else, but you could do it to Social Security because nobody was looking after it and nobody had the capacity to resign and there you are.

Mr. Enoff, do not answer me. But thank you very much for your testimony. You know how much we respect you.

Mr. ENOFF. Thank you, sir.

Senator MOYNIHAN. Once again, we congratulate you for making it into the golden ranks of the Senior Executive Service.

Mr. ENOFF. Thank you.

Senator MOYNIHAN. It is the pleasure of this Committee once again to hear from two of the legendary figures in social insurance in our country. The Honorable Arthur S. Flemming, former Secretary of Health, Education and Welfare; and all time champion of these purposes. And with him his long associate the former Commissioner of Social Security, Hon. Robert Ball.

Mr. Secretary, we welcome you, sir. You have been very patient back there. You were here ahead of time, as usual. We have your testimony. Would you proceed exactly as you wish. We very much look forward to your views on this legislation.

STATEMENT OF ARTHUR S. FLEMMING, CHAIR, SAVE OUR SECURITY COALITION, WASHINGTON, DC

Mr. FLEMMING. Thank you very much, Mr. Chairman. I appreciate the opportunity of being here. I appreciate the opportunity of listening to the testimony that has been presented up to this point. I would like to join in commending you for your short, but very, very effective of the history of the early days of the Social Security developments. I was a reporter at that time for what is now U.S. News & World Report so I witnessed some of that.

I appreciated particularly your comments on Secretary Perkins. I went on the Civil Service Commission in 1939. But when President Roosevelt died, President Truman took office. As you know, he brought in his own Secretary of Labor, but there was a vacancy on the Civil Service Commission. He invited Secretary Perkins to become a member of the Commission, so for 3 years she and I were colleagues on the Civil Service Commission; and I learned a great deal about Social Security during the informal conversation that took place during that association.

I certainly appreciate this opportunity of testify on S. 2453 on behalf of Save our Security, which as you know is a coalition of well over 100 national organizations dedicated to maintaining the integrity of our Social Security system. We welcome the fact, Mr. Chairman, that in drafting this bill your primary concern was to improve the manner in which our Social Security laws are implemented.

You know that millions of families in our nation are dependent every day on efficient, equitable, nonpartisan and compassionate administration of the Social Security program which replaces programs which replaced some of the income lost as a result of the retirement, or the death, or the disability of a worker. You know that in the 1980s we did not meet this standard of performance, and certainly you have had additional evidence discussed here today which bears out that particular statement. That is why we welcome the leadership reflected in the introduction of S. 2453.

First of all, I would like to express my own conviction that Commissioner King, by both her words and deeds up to this point has made it clear that she is the person as a public official committed to doing everything within her power to providing the nation with an efficient, equitable nonpartisan and compassionate administration of our Social Security laws.

Next, I would like to comment briefly on each of the titles in your bill. First, establishment of the Social Security Administration as a separate, independent agency. As you know, this concept has had the vigorous support of SOS throughout the 1980s. And, of course, one of its most effective supporters was the late Wilbur Cohen, the founder of SOS and with whom I served as co-chair. He and I had many conversations on this.

When I was testifying on this before the Ways and Means Committee, I drew on some of the testimony that he had given before that Committee in 1984. For example, he said, I sincerely believe that if there had been a Board administering the disability provisions of the Social Security program in 1981 we would not have had the unfortunate recent experience with the administration of

the Social Security program. With a bipartisan board, there very likely would have been a whistle blower on the Board who would have prevented or moderated the precipitant and uncompassionate implementation of the 1980 amendments. I think that sums up the feeling on the part of many of us.

I have had the privilege of reading the statement that Commissioner Ball is going to file with the Committee. I would like to join with him in suggesting that you think about revising the bill by providing the Social Security Administration be governed by a bipartisan board and that the Board have authority to appoint an Executive Director of the Administration and to delegate to the occupant of that position authority for administering the program.

I do not believe that the specific duties of the Executive Director should be spelled out in the law. The Board should spell out the specific duty and should be held responsible for the manner in which the Executive Director discharges those duties. This will help to make it clear that the President and the Congress are holding just one entity responsible for the successes and failures of the Social Security Administration, namely the Social Security Board.

Unless it is done in this particular way, I can envision arguments before the Committees of the Congress to how to interpret what Congress said, what the Executive Director should do, as over against the Board. I can even envision lawsuits filed by an Executive Director saying that the Board has not permitted me to do what the Congress said I should do. To me that is totally unnecessary.

The responsibility should rest with the Board. The Board should then appoint, of course, the Executive Director and delegate the authority to the Secretary, her or him, to administer the program.

Senator MOYNIHAN. Could I stop you there for a second, sir?

Mr. FLEMMING. Yes, sure.

Senator MOYNIHAN. That is a pattern you have in American business, is it not?

Mr. FLEMMING. Yes.

Senator MOYNIHAN. You have a Board and you have a Chief Executive Officer.

Mr. FLEMMING. That is right.

Senator MOYNIHAN. That pattern is what American businesses have seemed to have worked out as the way they like these things.

Mr. FLEMMING. That is right.

Senator MOYNIHAN. Okay.

Mr. FLEMMING. That is right.

Now on the Social Security cards, we have not taken a position on this issue up to now. It is my understanding, Mr. Chairman, that action on this proposal is being held in abeyance by you pending the report of the Commission that is considering this and related issues.

Personally I believe that the proposal does raise some fundamental issues in both the areas of Social Security and civil rights, which I would be very happy to discuss with you at a later date.

Senator MOYNIHAN. We can discuss them now.

Mr. FLEMMING. Well, I prefer, like you, to see how this Commission reports.

Senator MOYNIHAN. Okay. Fine. Sure.

Mr. FLEMMING. I would be very happy then to come up and discuss it with you.

Senator MOYNIHAN. Good.

Mr. FLEMMING. The mandatory provision of Social Security account statements is enthusiastically endorsed by SOS. If enacted it will certainly help to develop and maintain confidence in the system. I recognize there is some problems as indicated in the dialogue here this morning, but it seems to me those problems can be worked out.

I do think that if this move is made that the Social Security Administration should be in a position where it is not required to fully implement it until it has requested the number of persons that it needs to implement and until it has received the resources to employ those persons.

Senator MOYNIHAN. Of course.

Mr. FLEMMING. On hearings we concur in the views that will be presented to this Committee by the Senior Citizens Law Center. We feel these are very important issues, but we like the provisions that you have incorporated in your bill. It would simplify it. It would expedite this whole process. We believe it should be expedited. We are delighted that you have included this issue in this bill.

On the minimum Social Security full-time employee level, we believe that if the minimum level of 70,000 full-time employees is established as provided in S. 2453 it will enable the Social Security Administration to utilize the opportunities provided by new and improved technology in such a manner as to not only maintain, but improve, the quality of service.

It seems to me when we get a break because of new technology we should not only think of some savings we can make, we should also say, what can we do as a result of this break in terms of improving the quality of service. I do not believe the Social Security Administration has had the opportunity of focusing on that aspect of it.

Now we believe that if this action is taken, Commissioner King will take full advantage of the opportunity. I have listened to the dialogue on the setting of this ceiling and I did testify a number of years ago before the Ways and Means Committee on this. I said then, we are deeply disturbed about the way in which the decision was made to cut the Social Security Administration staff by 17,000 by the end of fiscal year 1990. Then I quoted from the General Accounting Office Report where they said in October 1983, Executive Branch Hearing before OMB, on SSA's fiscal year 1985 budget, SSA was asked to access the effect on SSA staff over the next five years of this budget.

OMB believed that systems modernization could yield large staff reduction, perhaps starting as early as fiscal year 1986. But because SSA had lacked an integrated plan and was unable to provide an agency-wide response, OMB later imposed what appears to be an arbitrary staff cut of 17,000 on SSA to be achieved by the end of fiscal year 1990.

That is not our judgment; that is the judgment of the General Account Office. I do not believe that the system should be subject to arbitrary and capricious cuts on the part of OMB. I agree with you, I think the Social Security Administration, and as long as it is

within the Department of Health and Human Service, the Secretary should always be appealing actions of that kind on the part of OMB to the President.

After all, the Director of OMB is just a staff officer for the President of the United States. And the Cabinet officer works for the same person. He has a perfect right to appeal and should appeal. In that way, my feeling is that OMB has become too institutionalized in exercising sometimes power on its own, losing sight of the fact that it is just a staff officer for the President.

I was encouraged to note that during this Administration the Secretary and the Commissioner did appeal one staffing decision on the part of OMB to the President and the President held with them. So I would think that there might be other opportunities along that line.

Telephone access to field offices of the Social Security Administration we believe should be done. It definitely will improve the relationship with the Social Security beneficiary.

And then I like your provision on improving the W-2 forms. This has always bothered me. This is long overdue. Employees are certainly entitled to understand the purpose for which payroll contributions are being made. I do not think one in 10,000 understand it when they look at FICA.

Again, Mr. Chairman——

Senator MOYNIHAN. Really, thank you for that.

Mr. FLEMMING. I will tell you, that is important. I mean that is an important educational step in getting people to understand how this system operates.

Thank you for focusing the attention of the Congress on these important issues. I am confident that as a result of your leadership constructive action is going to be taken.

[The prepared statement of Mr. Flemming appears in the appendix.]

Senator MOYNIHAN. You never let us down, sir.

Why don't we hear from Mr. Ball and then we will talk with you both. We welcome you, sir.

STATEMENT OF ROBERT M. BALL, FORMER COMMISSIONER OF SOCIAL SECURITY AND CONSULTANT ON SOCIAL SECURITY, HEALTH AND WELFARE POLICY, WASHINGTON, DC

Mr. BALL. Mr. Chairman, I am sure all supporters of Social Security welcome this hearing on service levels and administration. I am certainly very glad to have been asked to participate.

There is a great deal at stake here. There are only three agencies of government that are in close contact with the American people. The American people's view of how well government as a whole is doing depends on the administration of those three agencies. They are the Post Office, the Internal Revenue Service, and Social Security.

These agencies are Uncle Sam in every town, village, and city in the country. And if Social Security does not perform well—if it is bureaucratic, if it makes mistakes, if it is unresponsive to people, that is what people will think of their government. So the importance of getting Social Security service levels to the right point is

even more important than just the Social Security system. It goes to the confidence of people in the ability of the Federal Government to do its job. The Federal Government does hundreds of important and useful things, but they do not come to the attention of the ordinary American family.

Another point that I would like to stress is that since Social Security is supported out of the earmarked contributions of workers for the benefit of their families and themselves, and since the administrative costs also come from those contributions, it is very important that people who make those contributions and own, really own, Social Security in a very real, immediate sense see the operation of Social Security as the best example of an insurance program.

The fact that the benefits are earned rights, the fact that they come out of past work and out of contributions aught to be reflected in the way the Agency Does its job. Nobody is giving anybody anything. These are contributors who deserve comfortable, well situated offices, these are people who deserve, wherever they come in contact with Social Security a responsiveness on the part of the Agency and treatment with dignity. Every single person who comes in contact with Social Security is an owner.

To me, the business of the United States is the most important and exciting business in the world. We have to have in government the very best people because we have so many important things to do that only government can do.

This hearing is being held at a very fortunate time. It is my impression, as it is Arthur Flemming's impression that Commissioner King is going to do the very best she can to raise service levels and to administer the program in the spirit of right and to do a good job. If she gets support, I believe she will be an outstanding Commissioner. So calling the administrative side of the program to the attention of the Congress and the country at this time seems to me to be of great importance.

I do have two or three suggestions. I have a very long statement——

Senator MOYNIHAN. Which we will put in the record.

[The prepared statement of Mr. Ball appears in the appendix.]

Mr. FLEMMING. Mr. Chairman, could I make a comment on that?

Senator MOYNIHAN. Please do.

Mr. FLEMMING. His complete statement, as I indicated, I have read it. It is an eloquent statement and it should be required reading in every course in the country on Social Security.

Senator MOYNIHAN. We will let the Secretary of Education know about that.

Mr. BALL. I have two or three suggestions built on the kind of thing I was just saying. That is, I tried to think about what was it early in Social Security that made it different from your ordinary government agency—it was an elite service. There is no question that for a long time Social Security was considered, not by just its own employees, which is important—high moral is important, but by people interested in government generally as a very special agency.

Among other things that struck me—incidentally I came in at a very lowly job in Social Security, a Grade 3 at $1,620 a year——

Mr. FLEMMING. 1939, right?

Mr. BALL. Right.

But one thing that Arthur Altmeyer and John Corson and the other early founders of the program stressed was training. Before they let people loose on the unsuspecting public, they insisted on a substantial period of training, not only in the technical details of the law that they were going to administer, but in how to interview, in attitudes, in respect for people. I had three months of training in Washington.

And as you moved up the ladder, there was a lot of emphasis on broad philosophy, background, foreign system, what is the program all about. Training was, I believe, a key element in what made Social Security the kind of elite organization it was.

Another element in the equation that struck me as I thought about it was researched. Every Agency has the obligation to study its functions and make recommendations for improvement. But Social Security did it very well. It had a research organization that was one of the best, if not the best, in-house organization in the Federal Government. It was backed by law. They were told that they should study economic security and how to improve it.

I was going to suggest that you might want to consider, Mr. Chairman, setting up a couple of outside advisory groups in your bill to review the status of training, for one. That is one group. And review the status of research, that is an other group. And to make recommendations to the agency for improvement. It seems to me that those are two of the things that made a difference. The policy recommendations that were made grew out of a great deal of research and information about the Social Security beneficiaries—how they lived, what their income was, and so on.

The other major thing we have already talked about, Arthur Altmeyer and his associates emphasised that in a contributory social insurance program, particularly, but actually in all government the agency was the servant of the people. They had rights, and everything should be done to make them feel that. They believed that the whole character of the organization had to be set up in that way.

So those are the three things that I came to feel were most significant about Social Security. I think our new Commissioner would agree with that. It seems to me that we have slipped some in the last several years away from some of those original ideas, and that it might be very useful to have some outside groups look at them.

As I say, I have a long statement here and I do not want to take the Committee's time to go into a great many other items even though I do think they are important. Even though I am testifying as an individual and not as part of SOS—Arthur Flemming testified for SOS—I agree with his policy statements on all the issues that he mentioned. I think all parts of the bill are important.

Mr. FLEMMING. He is one of our most valued consultants. I learned how valuable his consultation was when I was Secretary of HEW.

Senator MOYNIHAN. We would agree, sir. We would be very diminished in this Committee without continued counsel from Mr. Ball.

I am going to make a comment and then I am going to ask a question—a key question. Probably you have noticed—I am sure Mr. Ball has, and probably you, Mr. Secretary—that there is an increasing commentary that appears in the press to the effect that Social Security is inequitable in its treatment of racial minorities, owing to the demographics of minority groups as against whatever, if there is a majority. I do not know what that would be. But people who die younger and of consequence do not collect benefits at all or do not collect them for as long a period. This is now said, and said with conviction.

If you ask the Social Security Administration what about it, they blink and say, "Well, yeah, what about it?" The research is not there. They are not on top of that. They do not know more about it than anybody else. They do not know anything about it. That, I think, 50 years ago would not have been an acceptable position. I am sure you are familiar with this. So I think advisory committees on training and research would be very useful.

But let me ask you this, both of you, a big issue before this Committee is the one that, Mr. Secretary, you addressed—you are the perfect pair to give advice on it—will it work to have a three-member bi-partisan board? In your testimony you say that a bi-partisan board moderates the swings in policy, and that board appoint an Executive Director. First of all, I was saying that that is a pattern you see in American business. The 3M Company will have a Chairman of the Board, have a Board, and then it will have a Chief Executive Officer. So it is obviously a pattern that has developed as a mode of running an enterprise.

Is there anywhere in the Federal Government a situation where a board picks an Executive Director? Would this be too generous? I just do not know. Would you give us your administrative counsel on this matter? Because the Chairman of the full Committee very much wants a single executive. So we do not have agreement here.

Mr. BALL. Mr. Chairman, I think that the considerations are not entirely administrative. I think the argument for the Board, as against a single person, go partly to the question of public confidence. As you pointed out earlier, we are in a terrible situation when almost half the adults in the country think they are not going to get their Social Security benefits.

Part of our thought was that a bi-partisan board, which had continuity, staggered terms and continuity, would make a contribution to confidence. Obviously, it may not be the most important part of restoring confidence, but we believe it will make a contribution. It also makes a contribution to continuity, which has been sadly lacking in the last ten years or so. So that the idea of public trust and bi-partisanship was part of the reason for selecting a board—not the sole reason, but partly that.

I think it will work if the Executive Director is clearly the creature of the board. I think the people who have argued against the board have a point about the possibility of some difference of views between the Chairman of the Board and Executive Director that could lead to difficulty. But I do not think that is possible if all the real power is in the board and then they select an Executive Director. I would not give the Executive Director a set term. I do not believe that is needed. The board is not going to lightly dismiss

somebody they have carefully selected to run an agency. It only makes more trouble for them, just as in the case of a president of a company.

So I am not concerned about rapid turnover. I am not concerned either about there necessarily being a conflict. But you want to look for the worst possible situation, and you could have a problem if an Executive Director had a fixed term, and defined duties in the law. But if you do not do that, and an Executive Director is selected as Chief Executives of companies are selected and is responsible to the board, I think it would avoid that problem of possible conflict.

A board may not be quite as efficient as a single head but I think it is very close to being as efficient. And given the other considerations, I think it is a better approach.

Senator MOYNIHAN. And you make the point——

Mr. BALL. And it did work.

Senator MOYNIHAN. It did work, yes.

Mr. BALL. It worked in the worst possible time for Social Security. I mean setting up the whole program was harder than anything that has been done since. It was a board organization then. Now Arthur Altmeyer used to now and then feel, gee, it would be better if I could just do it by myself and did not have two other members of the board. But on the other hand, he has said that when you have agreement, and it is bi-partisan, and you have a member of the other party——

Senator MOYNIHAN. You had John Wimant, I believe, first.

Mr. BALL. John Wimant was the Chairman at first; and then George Bigge became the Republican member when Altmeyer became Chairman and Wimant left. And he said once you got that agreement and moved forward with it, it was an added strength to have had the bi-partisan board.

Mr. FLEMMING. Mr. Chairman, I might say that I did have 9 years of experience on a bi-partisan board.

Senator MOYNIHAN. The Civil Service Commission.

Mr. FLEMMING. The U.S. Civil Service Commission, which was a bi-partisan board and I happened to be the minority member of that bi-partisan board over that period of 9 years. That board worked all the way through the war program and the post- war program. It did work.

I will have to refresh my memory on the Executive Director. The Executive Director was on the job when I came on and we did not have any turnover during that 9 years in the Executive Director. But I think the Commission had a responsibility for the selection of the Executive Director.

On the other issue that you have raised on this question of inequity, as far as the system is concerned in relation to minorities, first, I agree with you. It seems to me that the Social Security administration should recognize the fact that that issue has been raised and should go to work on dealing with that issue. Now just offhand, of course, there will be some inequities of the kind that you have indicated reflected in the system because of discrimination in the field of education, because of the fact we have denied access to education resources, particularly because we have denied access to minority in the field of health care.

After all, we have 38 million people now that are not under any kind of a health plan, public or private. And a good percentage of those 38 million are minorities and so on. If we deprive the minorities of access to education to health care, housing, and so on, they may not live as long as some others who have access to those resources.

Consequently, what they claim in the way of benefits may not be quite as great. What I am saying now kind of applies to the retirement area. But when you begin to look at how the survivorship program has operated in terms of minorities as against the majority of population, or how the disability program is operated. I do not have facts on it, but there should be facts brought together on it so we can respond to that kind of an issue. And if it is an issue, point out why it is an issue.

It is not because of the way in which the Social Security system is constructed or developed and so on. Now there may be some discriminatory practices into the Social Security Administration itself; and certainly they have to be on top of that. But I think it goes to some of those other fundamental issues. But somebody ought to be able to demonstrate that.

Senator MOYNIHAN. Right.

Mr. BALL. Mr. Chairman, could I comment on the minority issue?

Senator MOYNIHAN. Please.

Mr. BALL. Oh, I am sorry. Did you recognize Senator Durenberger?

Senator MOYNIHAN. Please comment, and then Senator Durenberger.

Mr. BALL. Mr. Chairman, I am morally certain that minority groups are treated equitably under the Social Security system because what these critics leave out is the great weighting in the benefit formula.

The proportion of benefits that you get back related to your contributions is much greater if you have low wages; and, of course, it is not something to feel good about, but minorities actually get more protection from survivors and disability insurance than others. But nevertheless, these are not proven facts. These are the conclusions one would derive from the way the system is set up.

You might be interested to know that we have in our work plan at the National Academy of Social Insurance addressing this issue in the very near term. Bob Myers and Bruce Schobel, another Actuary, are looking at the issue of the treatment of low income workers under the program. This will be a close proxy for the treatment of minorities. The data for a direct study of minorities are not available.

But the facts ought to be developed. The late Joe Pechman called me 1 day a few weeks before his death and raised the same point that you are raising. He asked, what are the facts? How do we prove that this discrimination is not so. So I looked into it and it is true—Social Security has not run the numbers on this.

Senator MOYNIHAN. There you are. That answered your point.

Senator Durenberger.

Senator DURENBERGER. Two quick questions. First, let me compliment both of you, not only for being here and doing what you continue to do to contribute to this most difficult problem, but for the

quality of both the presentations today and the statements. But maybe best directed to Bob Ball, I have two questions. One is with regard to the reconsideration phase of the appeals process. Part of the legislation here eliminates it.

I am just curious as to your view of what is to be accomplished in that phase of the process and is it really happening out there and how it should be handled. The second was the comments I made earlier. I think you were here for that. When I was talking about the way we deal with the terminally ill and the need for some change in the procedures for approaching the terminally ill. If I could have your comments on each of those, I would appreciate it.

Mr. BALL. On the first, Senator, the way I read the bill, you could still have a reconsideration on the part of the Secretary. What happens is that when an individual files for a hearing, time starts to run and you have pressure to move. A hearing has to be held within a certain time. But within that time the administering agency could reexamine the case and decide they were wrong in the first instance and pay it. You do not want to interfere with that. Hearings are very expensive and time-consuming.

And a reconsideration in the sense of a different group within the same administering agency, different people taking a look at the same thing, seeing whether or not they come to the same conclusion is efficient, not inefficient.

But I think what the bill does is start to run a time period on this and say, if you do not get it done then it goes to a hearing. So that seemed completely acceptable to me. But I do think you want something short of a hearing, whatever you call it, something like a reconsideration process, because mistakes are made. Even if you are using the same rules, different people see it differently, or evidence is missing and so on.

On your second point, I had never thought of it before, but I like it. It seems to me that a fast track for a decision in the case of someone diagnosed as having a terminal illness is so sensible I am ashamed I did not think of it myself.

Mr. FLEMMING. I would like to associate myself with that conclusion also. I listened to that with great interest. And again on Bob's point, as Secretary I always felt that the appeals procedure was there to help the Secretary make good decisions; and that they were always in effect advising the Secretary. So sure, the Secretary can step in, or a board that we are talking about and so on, at any point where she or he feels that that is the thing to do in order to administer it in a compassionate way.

Senator DURENBERGER. Thank you.

Senator MOYNIHAN. Gentlemen, we thank you so much. We are much in your debt.

The Committee will stand in recess for five minutes so the Chairman can stretch his knees.

[Whereupon, the hearing was recessed and resumed at 11:55 a.m.]

Senator MOYNIHAN. The Committee will resume.

We now have a panel of some very, very specialized persons we are very pleased to have with us. First of all Mr. Breger. Good morning, sir. Marshall Breger is Chairman of the Administrative Conference of the United States; and Joseph Delfico is Director of

the Human Resources Division of the General Accounting Office. We welcome you back.

Mr. Delfico, you are getting to be almost a regular at these things.

Mr. DELFICO. Thank you for inviting me.

Senator MOYNIHAN. Now is Mr. Skwierczynski here?

[No response.]

Senator MOYNIHAN. Oh, I am sorry; he is not on the panel. He will follow this panel.

Good morning, Mr. Breger; would you begin?

STATEMENT OF MARSHALL J. BREGER, CHAIRMAN, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, WASHINGTON, DC

Mr. BREGER. Yes, Mr. Chairman. It is a pleasure to be here. As you know, we have written testimony; and I would ask that the testimony and accompanying material be placed in the record.

Senator MOYNIHAN. Of course.

[The prepared statement of Mr. Breger appears in the appendix.]

Senator MOYNIHAN. We particularly look forward to your professional judgment about how we should proceed. Go ahead, sir.

Mr. BREGER. You are very gracious. I have a few oral comments; and then, of course, I would be happy to answer any questions you may have.

I believe you are familiar with the Administrative Conference. It is a government agency that serves as a kind of think tank for proposed reforms and improvements in administrative procedures and the structure of government throughout the government system.

Senator MOYNIHAN. One of the few inventions in the last 20 years.

Mr. BREGER. We like to think so.

Senator Moynihan, we have studied various aspects of the Social Security hearing process since 1978. We have conducted five different studies at the various levels of adjudication; and, of course, we have general recommendations that have implications for the disability hearings process. I have included the formal recommendations of the conference on these matters as an appendix to my written testimony.

I should begin by pointing out that it is my intention to talk about the decisional process—hearings and appeals—but we have no comment on the staffing suggestions in this bill. Nor do we have any position on the creation of SSA as a separate agency. We want to talk about hearings and appeals.

Now as I understand it, there are currently four bites at the apple for someone with a disability claim. Four bites of the apple within the government before he goes to court. The initial determination at the State level, the reconsideration at the State level, the ALJ—Administrative Law Judge—hearing, and the Appeals Council. This bill proposes to streamline that process by eliminating the reconsideration stage at the State level and by substituting for the Appeals Council a Secretarial review provision.

Now we think that streamlining is very important; and, indeed, one of the things we constantly jump up and down about at the Administrative Conference is, let's get some more efficiency. But you

will forgive me if I perhaps trump you here. We also have to care about fairness. We are concerned—and our Recommendation 89-10, which talks about implementing changes in the hearings and appeals process points out—that you cannot reduce or streamline the number of steps in the process unless you improve the fairness of the initial steps. That is to say, if you improve the front end, the initial determination, you will have less need to worry about or have continual bites at the apple—continual reviews, partial reviews.

So our focus would be, this streamlining is very good, and there is no need for four different cuts at a Social Security application before it goes to court. But there needs to be more focus on the front end and on improving the process of the initial determination stage.

Senator MOYNIHAN. Would that go to the point Mr. Ball was making about training, among other things?

Mr. BREGER. It certainly goes to training in the general sense. Because obviously the more knowledgeable the fact finder is, the more trained he is, the better decisions he will make. We think there is a need for training particularly in regard to medical evidence and the use of medical evidence. In particular, persons who make decisions about the medical evidence and put the medical evidence forward need to be better trained, and you need to ensure that the medical member of the team, so to speak, is given primary responsibility for developing the medical evidence in the record.

That is to say, one of the problems on the ground in the real world is that the medical evidence is sometimes put forward by persons who are not medically trained. Then, the fact finding is by persons who are not medically trained in many cases. So that creates a set of problems. We think it is important that there be a face-to-face interview with the claimant because you can have a stack of pages describing a problem, but as you suggested, the kind of existential statement, "I hurt" can only be assessed—I would not say can only—can be best assessed by actually looking at the person when they make that statement to you.

So we think that the face-to-face interview is important. We think it is also important that the claimant be notified that there is missing information in the record. This may seem like a simple point, but there are many, many instances where these records can be very complicated. Material may not arrive from a hospital. So the person can be denied for that reason. They can go up and down the system, and then 18 months later the person learns that the problem was he did not have his full medical record, and you start all over again.

Well, again, if you improve the front end, if at the initial determination, the claimant was told, look, we do not have this document so either you will adjourn for 30 days for you to get it or we are going to go forward without it, you might save a great deal of unnecessary wastage in the system; and also you will be a lot fairer.

So we think that you need to focus attention as well in this legislation on what I call the front end, on the initial determination stage at the State level. The more effort that you put in to making that initial determination fairer and fuller (so that you have all the

information there), the more likely you are going to have a proper determination, and you will not need so many appeals later on along the line.

Senator MOYNIHAN. Good.

Mr. BREGER. Now second, we think that as to the focus on what should happen to the Appeals Council, while it certainly is a very important point to look at, we would not go along with the view of getting rid of the Appeals Council completely.

The purpose of the Appeals Council, we believe, should be to have consistency by the individual fact finder and to have precedential decisions that the individual fact finder can use. Presently, the Appeals Council, it is like a tsunami wave of case load. A few years ago there were 50,000 a year. One of my staff worked out that you would have to decide each case in under 15 minutes. So you are not getting much of a serious appeal if you are really holding out the promise of individualized honest review of all the facts. That 15 minutes included while you were eating and shaving and everything else.

So the purpose of the Appeals Council should be to get consistency because we have hundreds of judges out there.

Senator MOYNIHAN. On the way of the Supreme Court.

Mr. BREGER. Correct.

And secondly to have some precedents would help provide that consistency. At the moment there really isn't any precedent in cases. There are regulations that you look to. It is like a kind of civil law system in that regard. You look to interpret the regulation; you do not look to the cases of the Appeals Council.

Now this is not to say people should not have their individualized review. They should. That is what the District Court reviews should be about; and that is what the other reviews in the court should be about. But the Appeals Council should be focused, except for egregious examples of impropriety, on trying to get consistency in the case load, setting precedents, and just helping to move the whole system forward more quickly, as well as, we think, more fairly.

Now should you go forward with your view that you want to have. Secretarial review instead, we have some concern that the actual language of S. 2453 calls for mandatory review by the Secretary. Again, mandatory review is going to mean rote review, because you have that tidal wave of your case load.

We would suggest that instead there be discretionary review, but with the statutory requirement that failure to act, failure to review, after some period of time, would make the ALJ decision final agency action and then you could request judicial review. You do not want the Secretarial review stage to be a significant delay, but you want to give the Secretary an opportunity to pick up those cases that would require some real intensive review by him.

But it is a kind of easy thing to say, review everybody. The result of that will be nobody will get serious review. You will get one guy there with a stamp.

Senator MOYNIHAN. I want to agree with you right here and now. Yes.

Mr. BREGER. Now after those comments, I should say we are very pleased by one aspect of this bill—the Ombudsman provision. The

whole question of Ombudsmen is being studied by the Administrative Conference right now and will be debated at our June plenary. Our proposals track very much S. 2453; and we think that this Ombudsman concept can help work to break through ossification in the bureaucracy; and has worked in the past. I should say the experience at IRS with Ombudsmen has been very successful.

Senator MOYNIHAN. It has been.

Mr. BREGER. Yes, sir.

We would suggest that the statute might want to state that the Ombudsman has explicit authority to investigate complaints; and the statute might also provide for access by or to the Ombudsman and also protect the confidentiality of Ombudsman investigations. And we would be happy to provide the proposed language should you wish.

Senator MOYNIHAN. Will you give us language?

Mr. BREGER. Yes.

[The information follows:]

POSSIBLE BENEFICIARY OMBUDSMAN AMENDMENTS

AUTHORITY TO INVESTIGATE

Add to subsection e(3), the new subsection e(3)(F), as follows:

"(F) to investigate, on complaint or on his own motion, any matter affecting a beneficiary or potential beneficiary regarding the operation of the old age, survivors, or disability insurance program under title II and the supplemental security income program under title XVI."

OMBUDSMAN'S ACCESS

Add to the end subsection e(5) the following:

"The Beneficiary Ombudsman is authorized to request agency officials to provide information (in person or in writing) or records the ombudsman deems necessary for the discharge of his responsibilities. Such information shall be supplied to the extent permitted by law."

CONFIDENTIALITY

Add a new subsection e(7), as follows:

"(7) Neither the Beneficiary Ombudsman nor any member of his staff shall be required, in any judicial, administrative, or other proceeding, to testify or produce evidence submitted to him in confidence concerning matters within his official cognizance."

Mr. BREGER. Finally, one kind of general caveat. We can appreciate—I do not want to use the dreaded word "micro- manage"—but we can appreciate that when Congress is sometimes unhappy with an agency it wants to impose specific time limits and deadlines on action of the agency.

But I would suggest that external deadlines can often skew agency priorities and make it difficult for the agency to adjust to changing circumstances. We have general recommendations suggesting that Congressionally-imposed time limits on administrative action are not a good idea, that it might be better to require the Agency to set deadlines and to set their own general time limits.

Senator MOYNIHAN. I here now agree with you. I think it is fair for the Congress to say you will set deadlines, but not for us to do. In that sense.

Mr. BREGER. Well that is the gravamen of my point.

I think this legislation is very important. It faces a real problem for the American system of justice in what is clearly today an administrative state. As one of the previous speakers correctly pointed out, Social Security is one of the areas where the average and ordinary man interacts with the Government.

We believe that it is possible for claimants to have their claims adjudicated accurately—I would say fairly, and also efficiently. The way to make sure both of these goals is obtained is to look to have improvements at the front end of the system. We think this is most likely in the long run to help the system overall.

Thank you very much.

Senator MOYNIHAN. Mr. Breger, we thank you.

I am going to ask Mr. Delfico if he will not adlib some thoughts on disability. Disability is where all the trouble began and where it continues. We set up a Federally funded State disability determination service. I think that was not—I do not know if that was a very good decision. But maybe you will comment on that.

Once again, sir, we welcome you—without whom we would have very little sense of where we are going in this business.

Mr. Delfico.

STATEMENT OF JOSEPH F. DELFICO, DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE

Mr. DELFICO. Thank you very much, Mr. Chairman.

Regarding your question about State disability determination services, we have studied that issue for about the 6 years that I have been involved in Social Security. There is no real right answer to that kind of question. I guess the question could be phrased: Should we federalize the State disability determination services?

Senator MOYNIHAN. I guess that is the question, yes.

Mr. DELFICO. That is a very tough question to answer. We do not have an answer for it.

Senator MOYNIHAN. Then do not answer.

Mr. DELFICO. Okay.

With me today I have Mr. Thomas Smith, Mr. Barry Tice and Mr. Rod Miller who helped to prepare this testimony.

Senator MOYNIHAN. Good morning, gentlemen. Do you want to come up to the Committee?

Mr. DELFICO. Thank you. I will call on them if I get in trouble, Mr. Chairman.

Senator MOYNIHAN. All right. Fine. Good.

Mr. DELFICO. With your permission I would like to submit the whole testimony for the record.

Senator MOYNIHAN. Of course.

[The prepared statement of Mr. Delfico appears in the appendix.]

Mr. DELFICO. I will give you a brief summary. As you know, our position on many of the suggested changes in the bill that you are proposing has been given in prior testimonies before this Committee and others in both Houses of Congress; and we have attached a brief summary of our positions in the appendix to my testimony. I

would be glad to answer any questions you may have about the appendix, by the way, as we go along.

But today I would like to focus on three of the bill's provisions. The first provision deals with streamlining the appeals process. The second provision deals with the 70,000 staff floor for Social Security. And the third provision covers expanding access of the 800 number system at Social Security.

Senator MOYNIHAN. Fine.

Mr. DELFICO. So I will briefly go into all three of them.

Senator MOYNIHAN. Good.

Mr. DELFICO. The bill makes, as you know, several significant changes to the appeals process. We hope if they are put into place they will work because we feel that the current process takes too long for applicants who appeal the original State decisions; and we support these efforts to shorten the time and reduce the associated human costs resulting from these delays.

If this bill is implemented and the necessary resources are provided, the applicants will receive more timely decisions and appeals and have access to judicial review sooner than they do now, obviously.

However, we have a number of questions we do not have the answers to. We would like to just lay them out here and then conclude.

First of all, we do not know what the impact of the legislation will be on the appeals rates of denied disability applicants. We do not know how substantial the additional ALJ workloads might be, although we have made some rough guesses at that. We know little about the effects of the new time lines on the quality of disability determinations. We are concerned that with the shorter time frames for disability determinations that the quality of determinations would drop. We know little about the cost to SSA and the related implications for the State agencies.

The bill will effect resources in two ways. First, the increased work load resulting from eliminating reconsideration will increase the ALJ staffing requirements. Second, the new shorter mandated time frames for conducting hearings and issuing decisions will probably add to these staffing needs. We will have a multiple effect going on which will influence the increase in staff.

Right now as many as 180,000 additional cases could be expected to go to the ALJs each year, which would add between $100-$200 million in administrative costs. These are very rough first estimates, but are presented just to give you an idea of what the impact will be. However, there may be a reduction in costs in the State disability determination service who will no longer have to do many reconsiderations. So there may be a cost balance there, but estimating what the savings will be right now is pretty difficult.

There will be probably a large workload impact on the U.S. courts. The bill appears to eliminate the Appeals Council, although the Secretary would have 30 days in which to review any decision. This provision has the potential for increasing the workload of the Federal District Courts. Currently about 57,000 applicants appeal to the Appeals Council. However, only 15 percent are successful. And the District Courts now only receive 7,000 of them on subse-

quent appeal. Under the proposed process the potential exists at 57,000 applicants. I recognize this is an extreme case.

Senator MOYNIHAN. That is not good.

Mr. DELFICO. All this could be dumped onto the District Courts, so we think this should be given more thought.

Because of the uncertainties in the bill and the bill's impact, we suggest that before mandating these major changes the legislation be modified to require that SSA experiment in selected States and areas of the country with different appeals structures, such as those provided in the bill. I think this will give some better insights as to what the impact and the ramifications of the process will be.

Senator MOYNIHAN. Now how would you do that? Would you suggest that we say try different arrangements and then pick the one you think best?

Mr. DELFICO. Right. I would set some demonstration programs up or pilot studies and track them to determine which work the best in fact.

Senator MOYNIHAN. But leave this to the administrative judgment of the system itself?

Mr. DELFICO. Yes.

Senator MOYNIHAN. Okay.

Mr. DELFICO. See how that plays out.

Senator MOYNIHAN. I mean if in ten years time it does not, we can revisit it you mean?

Mr. DELFICO. Well, I would hope that it would not take ten years to find out what the answers to those questions were.

Senator MOYNIHAN. Okay. But say to the board we are not happy with what we have; we think you ought to try this, and we think you ought to try that. Okay. I heard you—heard you very carefully.

Mr. DELFICO. Okay.

Senator MOYNIHAN. And also that the time, that issue of the time frames, I think I certainly—I am only one person here, but I certainly heard Mr. Breger say, you know, indicate you want time frames but do not specify them.

Mr. DELFICO. Yes. I would agree with that. I think that would give the Agency more flexibility.

Regarding the floor of 70,000 full-time positions, we have noted that there are areas where there may be a need for more staff. We see a need for staff possibly in servicing the 800 number telephone system which is undergoing some start-up problems, and for supplementing SSI outreach activities. We testified on SSI about a month and a half ago.

However, we are not aware of any comprehensive studies to determine what the Social Security Administration's actual staff needs are. We have for several years recommended that the Agency develop a work force plan. That is a technical term which means take a look at where your needs are, take a look at whether or not you can reallocate within the Agency and look at a redistribution of existing resources before you go ahead and add resources.

Most information we have seen on the needs is anecdotal and to some degree unsubstantiated. We think a thorough study needs to be undertaken before wholesale increases in staffing are made. And that is not to say wholesale increases are not needed. It is to

say, let's find out what is needed, where the need is, and reallocate if possible.

We have been saying this for 5 years now during the staff cuts. In 1983 and 1987 I testified on the same topic. We don't find adequate work force planning. Again, it may be a technical point but we feel it is probably the best way to approach this.

Senator MOYNIHAN. But here if I can just say, this is what we are talking about. We have been asking things like this, and asking things. They do not happen. The energy in that organization is below low.

Mr. DELFICO. At times it can be frustrating. Yes, sir.

The final point I would like to make is on telephone access. Title VI of the bill will provide increased telephone access to field offices. Specifically the Agency would be required to advise all callers to the 800 number system and tell them that they have an option to call a field office; and secondly, to publish in the phone directories the number of local offices.

At present there is a policy to publish no local numbers in the phone book, as you know; only the 800 number. However, based on concerns and pressures from the Congress, SSA has modified its policy in January 1990 and it now does give out the phone numbers when asked after a query comes in through the 800 service.

In a September 1988 report we supported the decision to establish a nationwide 800 number service. Compared with the old system we found that the 800 design could be much more efficient. Efficiency gains are realized by centralizing the phone service delivery which requires fewer staff to provide a given level of service. The 800 system also provides comprehensive management information on the quality of access. This is something we did not have in the past. We did not know what the rate of busy signals were; and we did not know what the wait on hold was.

We did a study in 1984 and 1985 where we set up our own system to determine busy signal rates and then briefed the then Acting Commissioner. It was the first time SSA officials had seen that kind of information. With this type of information the 800 system has, for the first time, information to monitor the quality of its services and manages the telephone workloads.

The transition to the 800 numbers has not been easy though. I am sure that you and others have noted that the system has been plagued by start-up problems, including high busy signal rates and spotty service. Perhaps the most difficult problem to address, however, is the concern that there is something impersonal about the 800 service. The notion that someone very remote from the caller is handling the inquiries is disturbing to many.

The provisions in Title VII of your bill appear to be designed to remedy this, for example, by publishing the phone number in the local office phone book. Though on the surface, taking this action appears inconsequential, we believe it could serious undermine the progress in developing an up-to-date phone system. To the extent that callers will call local offices rather than the 800 number, the overall cost of phone service will increase; and the capability of SSA and the Congress to monitor service quality will decrease.

In summary, first we believe that there needs to be a balance between providing direct phone access to local field offices and the ef-

ficiencies realized from more centralized phone systems, such as the 800 system. I do not think we had the balance when the 800 system was put in. The Social Security Administration is moving in that direction by now giving out the phone number when asked. We believe that expanding direct access to local offices as proposed in Title VII needs some more careful study because we do not know what the impact will be on the local offices if you allow this to happen. In our view the local offices are not equipped to handle the call volumes that exist today.

So we would like some time to pass to see how the current Commissioner's initiatives will work. And if you intend to go to local offices to take your time on installing the equipment in local offices so that the calls can be handled. The busy signals and the service may just plummet if they are not ready to handle the calls.

Senator MOYNIHAN. Right.

May I say that Mr. Enoff earlier told me of some developments they have in mind there, which would lead us to think that maybe this will work out on its own. This again is one of those things that I am not sure legislation is the way to proceed. I mean, give people authority, whose judgment you trust, and let them administer.

Gentlemen, thank you very much. May I ask before you leave, could you send us a note sometime about those disability determination centers. It is a kind of strange thing. We put the disability determination out in the States and we are bringing all the queries from around the world into one 800 number. There is a legislative history here that I think I know, but I am not sure about. If you had any thoughts would you send them in?

Mr. DELFICO. Sure.

Senator MOYNIHAN. We would very much appreciate it.

Mr. DELFICO. We would be very pleased to do that, Mr. Chairman.

Senator MOYNIHAN. And we thank you both.

Mr. Breger, this is a special pleasure to have you before us.

Mr. BREGER. Thank you, Senator.

Senator MOYNIHAN. We appreciate your advise. I hope the Conference will know how valuable it will prove to be.

Mr. BREGER. Thank you, Mr. Chairman.

Senator MOYNIHAN. We are going to have to speed up our appeals process here. So I am going to take the liberty of merging the next two panels. Mr. Skwierczynski is a panel all of his own. But we are going to ask you, sir, to join with basically your colleagues, Ms. Eileen Sweeney, Ms. Tarantino, The Honorable Ronald Bernoski, and Ms. Diane Archer.

I think, Mr. Skwierczynski, you are first. I am going to have to ask that we keep presentations to five minutes. All statements go in the record. I am doing so only because we have rules.

Mr. Skwierczynski, good morning, sir.

Mr. SKWIERCZYNSKI. Good morning.

Senator MOYNIHAN. We welcome you the day after we modified the Hatch Act or hope we did. It must be a nice moment for the AFGE.

Mr. SKWIERCZYNSKI. It is a great day. Hopefully President Bush can be persuaded to sign the legislation.

STATEMENT OF WITOLD SKWIERCZYNSKI, PRESIDENT, NATIONAL COUNCIL OF SOCIAL SECURITY ADMINISTRATION FIELD OPERATIONS LOCALS, AFGE, AFL-CIO, CHICAGO, IL

Mr. SKWIERCZYNSKI. My name is Witold Skwierczynski; and I am President of the National Council of SSA Field Operations Locals, which is part of the American Federal of Government Employees, AFL-CIO. We represent Social Security field office workers in 1,100 offices around the country. The Council is an organization of 90 individual AFGE Locals.

What I am here to testify about is the portion of your bill regarding staffing—the 70,000 staffing floor—which the AFGE strongly supports.

As has been stated earlier today, the 17,000 staff cut was a political decision.

Senator MOYNIHAN. It was. I know how that Grace Commission did its work; and I know why it did its work. If it took five minutes for the Grace Commission to decide to cut 17,000 members from the SSA, I would be surprised. But, very well.

Mr. SKWIERCZYNSKI. An examination of budget documents over the years that we have done shows that very little of the staffing cuts by the Agency were even justified by systems modernization. The workers in the Social Security offices know the problems that they have experienced with the computer system in delayed responses which do not necessarily reduce the time that it takes to take any application.

The 17,000 staff cut, in that it was a political decision and not a decision based on the lack of need for personnel in Social Security, has caused an incredible amount of problems. As was also mentioned before, former Deputy Commissioner Doggette has provided some evidence of that in an internal memorandum. Statistical data recently provided by the Agency to the House and Senate Appropriations Committee would indicate that in the past year some of the pending workloads have increased astronomically. SSI age claims are up 46 percent. SSI blind and disabled pending have increased 13.66 percent. In the Office of Disability Operations the claims workload is up 45.99 percent.

These kind of workload increases are due to the fact that there is insufficient staff to do the work. The work is sitting and it cannot be accomplished.

In a GAO report (6AO/HRD-89-106BR) issued in 1989, it was shown that post entitlement work also had some rather astounding increases in pending. During the period from 1984 to 1988, RSI reconsiderations were up 20 percent. SSI reconsiderations, 36 percent. Representative payee pending applications up 134 percent. SSI representative payee applications were up 234 percent. And health insurance activities were up 140 percent. Again, the pendings tend to indicate not so much an increase in the amount of these items, it tends to indicate an increase in the backlog.

At the same time that the Agency had initiated these staffing cuts, they have also initiated an entire new service delivery system—the 800 number—and while initiating the 800 number continued cutting staff. And in addition to continuing cutting staff, the agency reallocated staff from other components to these teleservice

centers in order to answer 800 number calls. So not only do you have staff cuts across the board, you have movement of allocated staff into the teleservice centers, further reducing staff in District offices and processing centers.

This 800 number system that has been implemented has been nothing short of a disaster. The busy rates since the system went nationwide in October 1989 have ranged from 52 percent of all the calls in January 1990; 47 percent in February 1990; 51 percent in November of 1989. The Union has no objection with initiating a new type of service delivery and no essential problem with the 800 number, we have no objection to this service if the 800 number is implemented in a sound and rational fashion with appropriate staffing and with an appropriate public information campaign which may limit the types of calls that go into the 800 number.

However, currently the amount of calls being received are far in excess of the capabilities of the current staff to deal with this type of phone traffic.

Other abuses have occurred because of the staff cuts such as the closing of hundreds of local contact stations in every State in the country. These are facilities primarily in rural areas and in places like nursing homes and hospitals, that Social Security personnel visit to consult SSA business with the public. The Agency has closed these due to staffing considerations. Often these contact stations are located in cities and towns where there is no SSA office.

We are still experiencing things such as group interviews in offices in Chicago. Such interview practices force beneficiaries to disclose in a group setting personal information about their situations. Appointments are backed up over 60 days in the offices in the Seattle region. We have untrained personnel assigned to the teleservice centers on heavy call days who have been given no training whatsoever on answering questions and concerns from beneficiaries. Managers and GS-10 workers are doing clerical work.

The Agency——

Senator MOYNIHAN. Finish your sentence.

Mr. SKWIERCZYNSKI. Can I continue?

Senator MOYNIHAN. Sure, but we do not want to get locked in here.

Mr. SKWIERCZYNSKI. The Agency has initiated policies in many areas of the country shifting the burden of the work of taking applications to the claimants. Claimants are asked to fill out their own forms. Claimants are asked to provide their own translators in many instances. Claimants are asked to secure their own documents.

When I became a claims representative in 1973 the employees were trained to provide public service to the best of our abilities. We helped claimants; we assisted them. If they didn't have evidence or information, we went out of our way to provide it. Now personnel are trained not to do that.

In some of the other abuses, we have situations in your own State, Senator, and recently the SSA had strike teams the Commissioner initiated to go out to various regions to look at staffing problems. The strike teams visited the Washington Heights Office in New York and found out that the office opened at 9:00 and proceeded to close at 9:05 because the amount of claimants, the traffic

of claimants, was so heavy and the staff was not equipped to deal with those claimants.

The manager made a decision that the only way the crowd could be serviced was to close the office so that no additional people came in. In another office the strike force——

Senator MOYNIHAN. In Washington Heights?

Mr. SKWIERCZYNSKI. That occurred in Washington Heights.

In another office the strike force visited, they found that claimants who had gone to the office at 9:00 in the morning, were still there at 2:30 p.m. and their needs hadn't been taken care of, they hadn't been interviewed; and they had waited for five and a half hours.

Another area which is of extreme concern is an area of outreach. Now I must say that we have been pleased so far with the performance of Commissioner King; and we think that Commissioner King is suffering under constraints imposed upon her by OMB and other forces. But one of the things that she has initiated has been an outreach program to go out and see if people who qualify for SSI, if we can take their claims and make sure that they are entitled to benefits.

Unfortunately, while this outreach effort is going on, the Agency has reduced its field representative, staffing level, in the last 5 years, by over half. Now field representatives are employees who go out to public contact facilities and are ideally suited to do this outreach work. In fact, it is part of their job. Unfortunately, we now have under 600 field representatives in the Agency because of cuts that have been administered in that position.

The current budget that the Commissioner has proposed has a tiny staff increase of 510 full-time equivalents. As the GAO and the——

Senator MOYNIHAN. Mr. Skwierczynski, you are going to have to wrap up here. We know that data. I want to ask you a particular question here. You have done a nationwide survey of the place, in SSA, and you found 45 percent were seeking other employment?

Mr. SKWIERCZYNSKI. Yes. We did a survey, as did—— There were three different surveys that were conducted—one by the Union, one by the Management Association, and one by the Agency. In our own survey we found, yes, that 45 percent of employees' moral was so poor that they were actively seeking other employment.

Senator MOYNIHAN. Does anybody know what it might be in the Internal Revenue Service or the Bureau of Printing and Engraving? That is a very disturbing number.

Mr. SKWIERCZYNSKI. Well, Senator, the Agency cut 17,000 staff. And the way they cut it was through attrition. In many instances the Agency offered discontinued service retirement possibilities for people to leave; and a lot of people took it. The pressure of working in a Social Security office in these conditions of inadequate staff. In many instances the facilities are poor. While initiating the computer modernization system, SSA has failed to provide cryonomic furniture for the employees, except in limited offices. So the working conditions are poor, the managers are under a lot of stress to produce numbers in order to justify their merit pay, while their staffing is being cut. So the pressure is intense and a lot of good people have left.

Senator MOYNIHAN. All right, sir. We thank you very much. If you could send us a copy of that survey for the record, we would appreciate it.

Mr. SKWIERCZYNSKI. I would be glad to.

[The information appears in the appendix.]

Senator MOYNIHAN. I mean it was a political decision. It was not a decision made on a public administration basis of any kind.

[The prepared statement of Mr. Skwierczynski appears in the appendix.]

Senator MOYNIHAN. Now we next are going to hear from some lawyers. The first is Eileen Sweeney who is with the National Senior Citizens Law Center here in Washington. Ms. Sweeney, we welcome you.

STATEMENT OF EILEEN P. SWEENEY, STAFF ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER, WASHINGTON, DC

Ms. SWEENEY. Thank you, Senator.

I would like to raise a couple points, but also respond to a few things that I have heard in other testimony. First, I understand Mr. Breger's concern about not setting limits in terms of hearings.

Senator MOYNIHAN. Not legislating.

Ms. SWEENEY. Not legislating. But as a practical matter, that is the only way it is going to happen. There has been a decade and a half of litigation over these issues. The courts had imposed limits. The Supreme Court in a case called *Heckler* v. *Day* in 1983 or 1984 told the courts they could not impose those types of limits, that Congress had looked at the issue and if Congress wanted to set the deadlines, they would set them.

Also in that period SSA did issue a set of proposed regulations in response to a sixth Circuit case called *Blankenship* in which, under the proposed regulations, the time lines they would have set were at least two and maybe three times longer than the time lines you have in your bill. I do not think you can expect it will be any better if you just say to them now, "Secretary, we want you to set up time lines."

The other problem is that they never would call them "deadlines;" they only would call them "goals." And "goals" are not enforceable. So when somebody was in his or her 300th day, there would be still no way of forcing the Agency to follow the rules. So I urge you to take a second look at whether or not there is not some way at this point to impose deadlines on this Agency.

It is very clear though that the flip side of course of deadlines is that you have to have quality decisions. They are critical in these cases. Most people do not go to the courts. The ALJ stage is the key stage. I think that to put those deadlines in without also making sure that there are enough staff and ALJ's to cover the speed up process would be a serious problem.

There is a memo attached to my statement from the Chicago Region of OHA which is where Senator Durenberger's State is located, which talks about the fact that they do not have any staff. They have very serious staffing problems. And not only that, it talks about the fact they do not have any paper—— copying paper. And they ask legal aid programs and attorneys to bring in pack-

ages of copying paper. When you hit the point that you are asking advocates for the poor to bring you paper, I think that you have to recognize there are some very serious problems in this Agency.

The third point I wanted to make is that we have been seeing a lot of problems, not across the ALJ population, but there are some very serious problems with bias in some ALJ's. There are some who are racist; there are some who will discredit the testimony of any person appearing before them. There are currently three petitions or lawsuits—they are all in different statuses—pending against three ALJ's. I think it is very important generally to give ALJ's more independence and to protect them. They desperately need it. At the same time, there must be some mechanism set out that makes sure that the ALJ who is no longer doing his job and meeting his legal responsibilities is able to be removed.

Right now it has only been since Secretary Sullivan came that anybody at SSA even acknowledges that they have any procedures for reviewing bias claims. It is very important that this be built into any independent agency legislation.

The next point is that there are virtually no women ALJ's and virtually no minority ALJ's. This is largely a result of the veterans' preference. It has got to be having an impact on the kinds of decisions that women claimants and minority claimants get from SSA. There are studies that talk about the fact that doctors tend to discredit the testimony of pain and other symptoms of women, particularly older women. And there is no reason to think there would be any difference in the legal profession.

Here where you have the dovetailing of the medical and legal, I think it is a very serious problem. I urge the Committee to act now. With SSA adding new ALJ's and also the possibility of more being added under your legislation these needs to be a method developed for giving women the extra points veterans get until they are properly represented in the ALJ corps.

Two last points. One is that if you do decide to go along the lines of what was suggested by Mr. Delfico in terms of experiments about the Appeals Council level, it will be important that somebody besides SSA set up the experiments and decide whether or not the information that will be yielded from them is useful.

Too many times in this past decade Congress has agreed that SSA would study some aspect of its procedures. Aid paid pending, the continuation of benefits at the ALJ stage is one example. SSA was supposed to report back to you years ago on how it worked. The report, I think, has been filed recently, but it is useless. SSA did not do the tracking they should have done. The same thing, I am fairly confident, is going to happen when you get the report on face-to-face at the reconsideration level and the demos on face-to-face at the initial level.

You need to have somebody, perhaps the GAO, perhaps the Administrative Conference, tell them how to do it right.

Senator MOYNIHAN. The Administrative Conference would not be the worst idea; would it?

Ms. SWEENEY. That would be wonderful.

One last point, and that is that Mr. Enoff listed amongst his improvements at the initial level the fact that SSA is revising its standards to keep up with the medical knowledge. I have learned a

little bit about one of the revisions that are coming up that will create a very serious problem. SSA is about to propose regulations that fit more in my view of your comment about the savagery in the early 1980's.

SSA is going to propose regulations in the context of ischemic heart disease to require all people whose cases are being reviewed and new applicants to have a treadmill test in the file that is not older than 12 months old. SSA will spend $1.9 million to purchase these tests.

The State of New York is under a court order in a case called *State of New York* v. *Sullivan* that says that SSA cannot rely upon those tests to the exclusion of other evidence. Typically, they do that when they have it in the file. So, by requiring that everybody have one, they will be clobbering people across the country with that kind of a rule. Knowing that the advice will be used to deny more claims, they are seeking to assure it is as many files as possible.

There is a memo, which I do not have, but which SSA acknowledges exists, which SSA agrees says what I say it says, that says that they are going to spend $1.9 million to buy these tests for people; and in fiscal year 1995 alone they are going to save $245 million in benefits. In other words, they have found a way to use a test, despite the fact there may be other evidence that would be more valuable in determining whether or not the person really can function, as a way to terminate and deny benefits to people.

I think that you have to look behind what they are saying. It sounds nice. They are updating their standards. But, in fact, they still have some very serious problems over there.

Thank you.

[The prepared statement of Ms. Sweeney appears in the appendix.]

Senator MOYNIHAN. We thank you. I guess I do not have any confidence in what I know about Administrative Law Judges. This category has just come about in my life time. But I just do not know what their tenure is or anything. I would like to find out about it.

Ms. SWEENEY. It is for life.

Senator MOYNIHAN. It is life tenure?

Ms. SWEENEY. Yes.

Senator MOYNIHAN. Okay. They are Judges.

But there is a veterans' preference?

Ms. SWEENEY. Yes, veterans' preference applies. The GAO did a study for Representative Sander Levin in November of 1988 which I cite in my statement, which shows that veterans' preference is the reason why there are virtually no women ALJ's. Well, there are about 14 out of 500 and a few minority ALJ's. It is a very serious problem.

Senator MOYNIHAN. The ALJ is not confined to the Social Security Administration, they are system wide.

Ms. SWEENEY. They are system wide. But, in fact, SSA's ALJ's work only for SSA; and they are assigned to SSA.

Senator MOYNIHAN. Oh. They do not move around?

Ms. SWEENEY. No.

Senator MOYNIHAN. I see. I should, you know, just chalk it up to ignorance.

Thank you very much, Ms. Sweeney.
Now, speaking of New York, Ms. Tarantino.

STATEMENT OF LOUISE M. TARANTINO, STAFF ATTORNEY, GREATER UPSTATE LAW PROJECT, ALBANY, NY

Ms. TARANTINO. Good afternoon, Mr. Chairman.

Senator MOYNIHAN. Yes, good afternoon to you.

Ms. TARANTINO. Thank you for giving me the opportunity to testify today. As an attorney with the Greater Upstate Law Project, which is a legal services State support center in Albany, I am a state-wide coordinator for the Disability Advocacy program, which is a State funded program under which legal services attorneys provide representation to persons who have been denied or terminated from SSI or Social Security disability benefits.

Previously I worked for almost 8 years as a staff attorney with Neighborhood Legal Services here in the District of Columbia, where I also handled a large number of Social Security cases.

My work as a legal services field program attorney and as a State support person, leads me to the inescapable conclusion that the Social Security appeal system has to be streamlined. I represent numbers of clients who are suffering and dying while their cases wend their way through the Social Security appeals system.

Preparing for this I recalled my very first Social Security case that I handled as a new staff attorney in the Anacostia office of Legal Services in Southeast, Washington. I inherited that case at the District Court level, after it had already been in the Social Security system for over two and a half years. Although the District Court ultimately did issue a favorable decision in that case, unfortunately the client died before receiving any of the SSI retroactive benefits to which he was entitled. The thrill of that first victory for me was soured because I felt that I or the system had somehow failed that particular client.

Eleven years later the memory of that client is still with me. And from where I sit now in Albany, not much has changed in those 11 years in the way that Social Security is administering appeals. Cases still take as many as 2 years to get through the system. Clients are still dying while they are waiting for their cases to be resolved. I provided some information for you in my written testimony about other claimants.

Senator MOYNIHAN. I have been looking at that, yes.

Ms. TARANTINO. I know this is not news to you members of Congress, and you have been asked before to remedy the situation. I cannot help but think that the language in Senate bill 2453 would take a giant step towards resolving these delay issues. The bill would help alleviate the bottlenecks in the system where we really see them the most, and that is at the reconsideration stage and at the ALJ hearing stage.

I think that doing away with the formal reconsideration stage is an excellent idea because cases at that level often seem to fall into a black hole where they emerge many, many months later, often in the very same condition in which they went in—that is, very little or further evidence development. And they come out with the veritable rubber stamp of the initial decision.

Also, since statistics in New York indicate that the highest percentage of favorable decisions are made at the ALJ level, it makes sense to move the case along to a face-to-face hearing as soon as possible. However, I think that allowing the Secretary to do that——

Senator MOYNIHAN. Would you take me through that again?

Ms. TARANTINO. Yes.

Senator MOYNIHAN. After some initial disallowance the largest number of favorable—of reinstitution or whatever—comes at the ALJ level?

Ms. TARANTINO. Yes.

Senator MOYNIHAN. Okay. Something says to me, maybe that is because people do not—the bad cases give up and then the good cases make their way through.

Ms. TARANTINO. No. I think probably that is because it is the first time that the claimant actually has an opportunity to be face-to-face with the decision maker, with the fact finder.

Senator MOYNIHAN. Oh. Oh, okay.

Ms. TARANTINO. And it is at that point that the ALJ could, you know, look the claimant in the eye and make some assessments as to credibility and as to the various impairments. So I think that that is really the reason why, of cases that do go on to appeal, that that high percentage are successful.

Senator MOYNIHAN. Fine. That is coherent. Sure.

Ms. TARANTINO. Okay.

But as I was saying, I think that is important to allow the Secretary to do some reconsideration during that 90-day period before which a hearing has to be held, without delaying the hearing. In that case, there could be more evidence development and there could be a reversal of the decision before actually having to go to a hearing.

Once a hearing is actually held, we in New York are experiencing enormous delays in the issuance of the hearing decision. Requiring the hearing decision within 30 days of the completion is a reasonable step in alleviating these delays. However, since the backlog at this level is probably attributable, at least in part, to staff shortages, we think it is important for the Offices of Hearings and Appeals to be provided with a sufficient number of trained staff to produce quality and correct decisions within this time frame.

These time lines are consistent with litigation I described for you in detail in my written comments. In New York State where a District Court Judge has issued an order allowing for notices to go out to claimants, letting them know that their cases should be decided within a specific time, and it is the same time frame that you have in your bill.

I do not have a doubt that this bill would contribute to the orderly and sympathetic administration of the Social Security programs that you, members of Congress, that the courts, and most importantly the claimants are desperately seeking.

Thank you.

[The prepared statement of Ms. Tarantino appears in the appendix.]

Senator MOYNIHAN. Thank you, Ms. Tarantino. That was very clear and very—you have spoken from experience. Sorry about that first case.

And now Judge Bernoski. Good afternoon, sir.

STATEMENT OF HON. RONALD G. BERNOSKI, FEDERAL ADMINISTRATIVE LAW JUDGE, THE ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INC., MILWAUKEE, WI

Judge BERNOSKI. Good afternoon, Mr. Chairman.

My name is Ron Bernoski. I am an Administrative Law Judge for the Social Security Administration, located in Milwaukee, Wisconsin. I appear here as the Secretary of the Association of Administrative Law Judges.

Senator MOYNIHAN. Yes, sir.

Judge BERNOSKI. I offer my written statement into evidence and I will summarize my comments.

Senator MOYNIHAN. Please do.

Judge BERNOSKI. Mr. Chairman, we agree with the basic concepts set forth in S. 2453. This bill provides for an office of the Chief Administrative Law Judge within the Administration. The Chief Judge shall be appointed by the Board and shall have the operational control of the Office of Administrative Law Judges.

Mr. Chairman, we believe that this reform is long needed; and it meets one of the recommendations of the recent Federal Court Study Committee report, which stated that Administrative Law Judges should be released from undue Agency influence. This report stated as follows, and I will quote, "Recent experience suggests that the process is vulnerable to unhealthy political control. The Social Security Administration has made controversial efforts to limit the number and amount of claims granted by Administrative Law Judges, leading to widespread fears that the Judges' proper independence has been compromised."

Senator MOYNIHAN. Your Honor, where is that in your testimony? I need to have that.

Judge BERNOSKI. That is set forth——

Senator MOYNIHAN. Oh, it is right on page 1.

Judge BERNOSKI.—under paragraph two, Mr. Chairman.

Senator MOYNIHAN. Yes.

Judge BERNOSKI. That is in reference to the Federal Court Study Committee that issued its findings several months ago.

Senator MOYNIHAN. All right. That is important. Thank you for giving us that. That is a real citation.

Judge BERNOSKI. The Chairman of that Committee was Chief Justice Rehnquist.

Mr. Chairman, this report establishes the need for the decision making independence of the Administrative Law Judge. This system is fragile and must be insulated by law from undue Agency influence. We believe that the basic integrity and trust in this hearing process is vital to providing a fair hearing system for the claimants.

Mr. Chairman, the bill also provides that the Judges should issue their decisions within 30 days after the hearing. We have some concern with this provision. They are as follows: First, it may impede

our court imposed responsibility to develop the record for the claimants after the hearing. Second, it allows only 20 working days, which would be further reduced when Judges are on the road hearing cases. Thirdly, our Judges do not supervise their own staffs under our office configuration. So we do not direct their work flow. So once we render our decision, many times we lose control of the case at that time. There are office administrators who actually control our staff.

At one time the Judges had a staff that was assigned directly to the Judge. He had his own—he or she, as the case may be—had their own clerk and hearing assistant. Now all these people are pooled and under the control of an office administrator. So the Judge, in effect, loses control of that case because the people that are actually working it up are really supervised by other people. Formally the Judge actually rated or supervised the staff person. We do not do that anymore.

By losing that, we have lost a certain amount of control over the case, and of our work.

Senator MOYNIHAN. I can understand that.

Judge BERNOSKI. So, Mr. Chairman, we believe that if any standards should be imposed, it should be a reasonable time standard. Or if a numerical standard is required it should be at least 60 days. Also, we believe that the time should run from the date that the hearing record is closed, and not from the date of the hearing.

Because, many times the claimants come in before us, Mr. Chairman, and we develop the record——

Senator MOYNIHAN. And they left something behind and you say go back and get it.

Judge BERNOSKI. Correct. And many times that takes 60 or 90 days. Sometimes they come in and there are tests due. So to develop a complete record it takes time, sometimes in these cases to protect the interest of the claimant.

Mr. Chairman, just one thing further, the minority opinion of the Federal Court Study Committee—May I just develop this last point?

Senator MOYNIHAN. Please do.

Judge BERNOSKI. The minority opinion of the Federal Court Study Committee recommended that a Benefits Review Board replace the Appeals Council. We believe that this Committee should create a review panel within the board. The review panel would replace what is now known as the Appeals Council. The review panel should consist of appellate Administrative Law Judges appointed by the Board under Title 5, U.S. Code, Section 3105, with Administrative Procedure Act protection.

The lack of this Administrative Procedure Act protection for the present Appeals Council concerned the Federal Court Study Committee. This reform, that we suggest, would convert the appellate body into a meaningful tribunal. This reform also addresses a recent report—I think it was 1987—of the Administrative Conference of the United States, which suggested that the Appeals Council either be improved or abolished.

We suggest, Mr. Chairman, that this reform be implemented either by this bill or by subsequent legislation. Mr. Breger, or one of the witnesses before, I cannot remember, did indicate something

along this line. We also think that this panel should have the authority to issue precedential decisions—in other words, have some precedent.

Senator MOYNIHAN. As against a civil law system.

Judge BERNOSKI. The cases probably would still go into the courts, but I think there would be more uniformity in our decisions if the Appeals Council—if some of the decisions would at least have some precedential value for other Administrative Law Judge decisions.

Senator MOYNIHAN. Yes.

Judge BERNOSKI. If I may clear up another point, with relationship to Administrative Law Judges, there are approximately 1,000 Administrative Law Judges in the Federal Government for various agencies. I think there are probably about 25 or 30 agencies, and of these about 700 are in the Office of Hearings and Appeals in the Social Security Administration.

Senator MOYNIHAN. So you are the———

Judge BERNOSKI. Correct. We are the bulk of the administrative law judges and they are classified as GS-15's and GS-16's. There are only two groups that are GS-15's—the Coast Guard and us. Other Administrative Law Judges are all GS-16's.

There was also a comment as to why there is a greater percentage of cases reversed at the Administrative Law Judge level. If I may just reflect on that. I think one of the reasons is that the claimants are represented by counsel at this level. This is an important fact. Because of this, the record is more fully developed, because they have an attorney who is taking care of it. So the record is more fully developed. So the Administrative Law Judge sees probably a better record.

Also, the Administrative Law Judge follows the regulations and the court law, and where many times the case adjudicated at the lower level, there are administrative policy manuals that govern these lower level adjudicators and so we are freer, I guess you could say, to make the decision according to the law, the regulations and the Social Security rulings.

So those are probably several factors. There are probably others. If I would think longer, I could come up with other reasons also.

Senator MOYNIHAN. Apart from just being soft hearted.

Thank you very much. I particularly thank you for the reference, the citation of the Federal Court Study Committee. I have to get that.

Judge BERNOSKI. We will provide it.

[The information appears in the appendix.]

Judge BERNOSKI. Thank you for the opportunity of coming before you this afternoon, Mr. Chairman. We appreciate the work that you have done, you and your staff, and your Committee on this bill.

[The prepared statement of Judge Bernoski appears in the appendix.]

Senator MOYNIHAN. You are very kind to say, sir.

Now the final panelist in this occasion, Ms. Diane Archer, who is the Executive Director of the Medicare Beneficiaries Defense Fund in New York, New York.

STATEMENT OF DIANE S. ARCHER, EXECUTIVE DIRECTOR, MEDICARE BENEFICIARIES DEFENSE FUND, NEW YORK, NY

Ms. ARCHER. Thank you, Mr. Chairman.

Medicare Beneficiaries Defense Fund is a not-for-profit organization, which assists beneficiaries in appealing denials and reductions of their Medicare benefits. Our organization emphasizes the appeals process as the primary means of obtaining proper reimbursement from Medicare. More than 60 percent of all Medicare claims that are appealed result in additional reimbursement for Medicare beneficiaries.

An integral component of the appeals process is the judicial independence of the Administrative Law Judges, the judges who currently hear both Social Security and Medicare cases. According to a GAO report issued in November of 1989, Administrative Law Judges reversed 40 percent of the Medicare cases for which in-person hearings were held, resulting in an average of $1642 in additional benefits per claim.

Medicare Beneficiaries Defense Fund is most concerned that the establishment of an Independent Agency to hear Title II and Title XVI cases exclusively raises the risk that independent Administrative Law Judges will no longer hear Medicare appeals. We ask that you recognize the means by which the Health Care Financing Administration has already sought to undermine the integrity of the Medicare appeals process. For example, the Health Care Financing Administration attempted to install a dial-a-judge program——

Senator MOYNIHAN. A dial-a-judge program?

Ms. ARCHER. Yes.—to minimize in-person hearings, which Congress wisely prevented, and has instituted a Medicare Development Center in Arlington, which many believe improperly seeks to influence the outcome of Administrative Law Judge appeals.

We ask that Congress consider the impact on Medicare appeals of any decision to institute an Independent Agency to hear Title II and Title XVI cases. In particular, we believe that you should consider which judges will hear Administrative Law Judge appeals if an independent agency is established, where these Judges will sit, and which agency they will answer to.

Unless you include Medicare Administrative Law Judge appeals in the Independent Agency, which is the subject of this hearing, or work to establish an independent Medicare agency parallel to it, the Independent Agency you propose will exacerbate the extended delays and access problems already experienced by Medicare beneficiaries, as well as jeopardize the integrity of the Medicare appeals process.

Thank you for permitting me to testify.

[The prepared statement of Ms. Archer appears in the appendix.]

Senator MOYNIHAN. Do you realize that you have not used up your allocated time? [Laughter.]

Ms. ARCHER. I promised Mr. Lopez I would spend only 2 minutes speaking.

Senator MOYNIHAN. I think we could use you inside the Federal Government. All right, I guess I do follow that. Medicare remains in Health and Human Services; and if we set up an independent agency, then you have that problem. Can you solve it for us?

Ms. ARCHER. You can take us along with you.

Senator MOYNIHAN. No.

Ms. ARCHER. Or you could recommend an independent agency for Medicare appeals.

Judge BERNOSKI. Mr. Chairman.

Senator MOYNIHAN. Sir.

Judge BERNOSKI. We recommended at one time at the beginning of this session, anticipating this problem when these bills went through the first time, we drafted a bill which would set up a commission, similar after AUSRAB, in which if this division would take place, where the Social Security would be split away from Health and Human Services, that this independent review commission of the Administrative Law Judges, you see, would sit in between these two agencies and the cases from both of these agencies would flow into that Commission.

Senator MOYNIHAN. Okay.

Judge BERNOSKI. So that would provide an independent law judge system for both of these agencies. That is a possible way. There is a pattern in the government, the AUSRAB, or probably even NLRB, there are boards that would be set up so we can use AUSRAB.

Senator MOYNIHAN. What does Ms. Archer think about that?

Ms. ARCHER. I would have to think about it further. I am not prepared to comment on it at this time.

Senator MOYNIHAN. All right. Why don't we leave this record open. Why don't you send us a note about the specifics. I do not want to claim to understand everything you just said.

Judge BERNOSKI. Okay.

Senator MOYNIHAN. And send it to Ms. Archer and to your other panelists here and see what you think. I think you raise an issue, yes.

Ms. ARCHER. Thank you.

Senator MOYNIHAN. When I said no to the proliferation of jurisdictions that is something that worries me institutionally. The congressional Directory is long enough as it is. But you have raised a perfectly clear issue. If we are going to do this, we just can't act like we are not changing your situation because we are.

Ms. ARCHER. Thank you.

Judge BERNOSKI. Thank you, Mr. Chairman.

[The information appears in the appendix.]

Senator MOYNIHAN. Thank you all very much. We really do appreciate your patience. You have helped us a very great deal.

Now, finally, the most patient of all. If our good friends from the AARP, the National Council and the National Committee will come forward.

[Pause.]

Senator MOYNIHAN. Now then, let's see who got the pick of the draw here. Ms. Dixon did. Good afternoon, Ms. Dixon, again.

STATEMENT OF MARGARET DIXON, MEMBER, BOARD OF DIRECTORS, AMERICAN ASSOCIATION OF RETIRED PERSONS, OXON HILL, MD

Ms. DIXON. Good afternoon, Mr. Chairman. I am Margaret Dixon. I am a member of the Board of Directors of the American

Association of Retired Persons. AARP commends you for introducing the Social Security Restoration Act. S. 2453 provides remedies for problems that have plagued the Social Security Administration over the last several years. This bill can help SSA regain its preeminence and boost the public confidence in the Social Security program.

Those who contact the agency must be assured that they can count on a Social Security system that not only provides adequate financial benefits, but also promises a compassionate, competent and effective means for delivering services.

Many of the matters dealt with in local SSA offices require personal contact and they cannot be easily automated. When individuals contact SSA, it is often at an emotional time in their lives, such as the onset of a disability, widowhood, or retirement. And it is a time when personalized service can make all the difference in the world. The need for personalized attention and the unfamiliarity of many older and disabled Americans with automated devices suggests that local offices need to be well staffed.

We have heard mentioned during this hearing of the 17,000 person staff cut in SSA that was mandated by OMB. According to SSA, improvements such as modernized claim system, magnetic reporting of wages, and office automation, and on-line access to programmatic data bases has enabled it to adhere to OMB's time table. However, the staffing reduction has resulted in a noticeable decline in service in many local SSA offices.

As a result, claims and service representatives are devoting less time to handling initial claims. And post-entitlement work is back logged in many offices. This situation also increases the potential for error. Some of the agency's administrative operations are suffering as well. Not only has SSA lost skilled professionals whose expertise in these areas took years to develop, but the agency has been assigned additional responsibilities as a result of tax reform and immigration reform.

Earlier we heard mention of the fact that the Supreme Court has ruled that the agency must locate at least 250,000 children who were improperly denied SSI benefits. While Commissioner King has made a gallant effort to improve service, the agency simply cannot keep pace with an expanding work load if its staffing level is not increased. SSA's staff should not be forced to sacrifice accuracy, timeliness and compassion because of inadequate resources.

Not only should the agency's staffing be increased, but its status must be revamped if it is to provide quality service to beneficiaries and workers. AARP has previously testified before this Committee in support of making SSA an independent agency. We support this proposal because it will ensure that the agency is run by a competent professional management. It would enable it to function in a stable environment which is conducive to long-range planning.

We believe that an independent SSA would be less effected by political factors and better insulated from the fluctuations in politics and policy that produce sudden shifts in direction. This would restore public confidence in the system.

In our written testimony we also explain our support for the provisions in S. 2453 requiring that the numbers of local SSA offices

be published in telephone directories, and for reforming the appeals process.

In conclusion, AARP supports the Social Security Restoration Act because it will help revitalize the agency. SSA has lost its place as the premier Federal agency because its resources have been spread too thinly. S. 2453 would help regain the agency's reputation for fairness, integrity and compassion. AARP appreciates having had the opportunity to present its views on this matter.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Dixon appears in the appendix.]

Senator MOYNIHAN. We appreciate the clarity and precision of your statement. Obviously, we agree. There is a point to be made. Martha, you can make it; and Larry, you can. Bob Ball there this morning, you know, this was once the model of what a government institution could be and it ought to be again.

How can I be blunt? I will be blunt. There has been an element of turning the Social Security offices into welfare offices. You come in there and the question is: Who are you cheating now? You know, what are you up to? You don't think you are going to fool us, do you?

Hey, wait. This is not necessary. OMB has set this style and it did not happen last year. As Bob Ball says, you know, these are people who—the administrators of this system have been paid for by the contributors into it.

Ms. DIXON. That is right.

Senator MOYNIHAN. It is your insurance. You paid for this.

Good afternoon, Mr. Smedley.

STATEMENT OF LAWRENCE T. SMEDLEY, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF SENIOR CITIZENS, WASHINGTON, DC

Mr. SMEDLEY. Thank you, Mr. Chairman. As you know, I am Larry Smedley, Executive Director of the National Council of Senior Citizens. I have submitted a much longer statement, and I will try to summarize this statement.

Senator MOYNIHAN. Please do. We have read your statement, Mr. Smedley.

Mr. SMEDLEY. Mr. Chairman, I know you must be hungry, as I am; and I will try to emulate the previous panelists and try to do it within less than five minutes.

Senator MOYNIHAN. Actually, we turned the bells off. We are not going to have any bells going on you three, but go exactly forward as you would like.

Mr. SMEDLEY. Mr. Chairman, on behalf of the 5 million members of the National Council of Senior Citizens, I want to thank you for holding this hearing on the Social Security Restoration Act of 1990. Millions of older Americans are dependent upon Social Security benefits for their very survival. And many of them have voiced their concerns to us about the unnecessary politicalization of Social Security and the deteriorating service at the Social Security office.

Mr. Chairman, your legislation, S. 2453, will do much to repair the damage done to the Social Security during the past decade; and to restore confidence in the system. In addition, we feel very strongly that along with the changes included in S. 2453 Congress

must move quickly to remove the Social Security trust funds from the Gramm-Rudman Hollings Act, and adjust the deficit reduction targets. Only in this way can we truly ensure that Social Security is removed from budget politics.

Mr. Chairman, since 1985 over 17,000 staff have been cut at SSA; and the result has been a marked decline in service and renewed complaints about inaccurate information, constantly busy telephones, arbitrary rulings on eligibility, et cetera, coming from older and disabled Americans. We therefore applaud the provisions of S. 2453 that establishes a staffing floor of 70,000 SSA.

In the remaining time, Mr. Chairman, I would like to comment on a few of the specific provisions of your bill.

Senator MOYNIHAN. Yes, please.

Mr. SMEDLEY. We believe that Title III of the bill requiring annual statements from SSA will be extremely helpful in educating Americans about their investment in Social Security. Such mailing should also include general information about Social Security, its benefits and status of the trust funds.

GAO estimates that the records of 9.7 million Americans, both working and retired, could have uncredited earnings. Therefore, we would strongly recommend that when SSA sends out its first earning statement, it includes a clear mention of this problem and specific suggestions on how participants can verify the accuracy of their wage records.

One of the continuing problems at SSA is the ability to get through to either a local Social Security office or the nationwide 800 telephone number. In our view, Section 101 of your bill requiring telephone access will go a long way toward restoring public confidence and support for Social Security.

Section 702(E)(1) of the bill, establishing a position within SSA of a beneficiary ombudsman is of great interest to a senior citizen organization such as ours. It is essential to have such representation inside the Agency. We look forward to the appointment of an ombudsman who can forcefully and effectively represent the interests of participants.

Finally, Mr. Chairman, given the appalling record of reversals of denials of claims for disability benefits, and the fact it often takes 2 years for a claimant to get through the administrative appeals process, we strongly endorse the provisions of the bill which are intended to make the entire process comprehensible, equitable and expeditious, thus assuring that claimants have adequate opportunity to present their cases.

In conclusion, we believe that along with increased efficiency the creation of an independent agency would provide the Social Security system with more stable and a continuous administration and leadership. Creating a separate, independent agency to administer the program offers visible proof to Americans that our national retirement system, Social Security, is a self-contained, self-financed program in a lasting compact between the Federal Government and the American people.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Smedley appears in the appendix.]

Senator MOYNIHAN. Larry, you never fail to bring information forward that really matters in our case. I mean, you know, where is that $58 billion? I think you are right. That annual statement ought to tell you about it when you are interested. You know, you open it up and find out——

Mr. SMEDLEY. Yes. I mean, if you saw the General Accounting of 1987, which made a number of very logical and sensible recommendations on how to deal with the problem. The Social Security Administration should be held accountable as to what they have done with regard to that report since that time.

Senator MOYNIHAN. And to tell you. It is your money.

Martha McSteen, a distinguished former acting commissioner of Social Security.

STATEMENT OF MARTHA McSTEEN, PRESIDENT, NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE, WASHINGTON, DC

Ms. McSTEEN. Mr. Chairman, after 39 years of predominantly field experience in the Social Security Administration, no one could have a more sincere interest in the Social Security programs and in the well being of those programs and the welfare and stability of the staff. I am very pleased, therefore, that you have introduced legislation designed to improve and to stabilize the institution and to enhance service to the public.

The confidence of the American public in Social Security has been shaken over the past two decades by various cuts and certainly now by the use of the trust funds to mask the deficits. Independent agency status, combined with a return to pay-as-you- go Social Security financing, would go a long way toward restoring lost confidence. But other actions are required.

Trust funds are more than adequate to enable the Social Security Administration to provide the quality service that we have been talking about this morning. Services which have been discontinued, such as Medicare counseling and community outreach, must be reinstated.

Senator MOYNIHAN. Medicare counseling?

Ms. McSTEEN. Yes, to advise individuals when they come in as to how can I find out about my bill, who do I contact, would you help me.

Senator MOYNIHAN. And this would be a person in the office, as it were?

Ms. McSTEEN. It used to be.

Senator MOYNIHAN. And that is out?

Ms. McSTEEN. Yes, that is my understanding.

Access to local offices must be restored and the appeals process again made responsive to the needs of the claimants. Your legislation, Mr. Chairman, addresses all of these issues. I understand that Commissioner King is committed to improving service to the public and improving the esprit de corps in the organization. I commend these initiatives.

Independent agency status would allow an administrator to concentrate on Social Security programs and their delivery. Some critics would have you believe that the establishment of an independ-

ent agency would weaken and leave the organization without power. But what could be more powerful than a system supported by 130 million or more workers in this country and some 39 million beneficiaries?

Independent agency status would allow the organization to function in a more expedient manner by curtailing layers of supervision and coordination and restricting disruptive political involvement. Social Security staffing reductions and improper imbalance of staffing have cut deeply into the ability of the local Social Security offices to provide even basic Social Security services, let alone assistance for information at the local and State level.

According to feedback from National Committee members, it is becoming more and more difficult to get a response from Social Security or really to trust the answer that they get. The point of no return has passed. Staff cuts considered possible in 1985 were carried out even after system capabilities failed to materialize.

Consideration must now be given to decentralization of certain functions, correcting serious staffing imbalances in field offices, and to working more closely with the Office of Personnel Management to improve the recruitment of qualified individuals.

We also welcome your initiative to improve the appeals process. The rights of beneficiaries are harmed by delays which now occur at every step of the way. Simply streamlining the process by cutting out steps does not in itself guarantee that the process will better serve beneficiaries. Adequate, trained and highly motivated staff must be an essential element of any restructured appeals process.

We applaud your goal of cutting the average processing time in half, but it is essential that the goal of reducing processing time not overshadow the responsibility of SSA to full protect the rights of beneficiaries. Expediency cannot and must not replace due process.

We believe quality decisions can be reached with a shorter time frame only if applications are initially better prepared and documented before being sent to the DDSs.

Senator MOYNIHAN. We heard that from Mr. Breger, didn't we?

Ms. MCSTEEN. Yes.

Claimants need help with this process but they should not have to employ legal counsel to get it. If claims are prepared thoroughly in this manner and State agencies are properly staffed, initial decisions will be made sooner and there will be far fewer appeals.

One reason for retaining some type of post-initial review process is that beneficiaries who believe an initial denial is unfair may be hesitant about approaching an ALJ hearing if they cannot afford or find legal counsel.

The hearing step has always presented the longest delay in the appeals process. For that reason, we endorse the requirement in your bill that ALJ's schedule hearings within 3 months after a hearing application is filed and then render decisions within 30 days of the completion of the hearing.

Mr. Chairman, legislation to restore vitality and fairness to the administration of this country's most important domestic program is urgently needed. Individuals entitled to benefits are also entitled to prompt, accurate and courteous service.

The challenge to the organization is not that foreboding. What is needed is stability, strong leadership, a commitment to serve the public, and accountability to the taxpayers of this country.

Thank you, Mr. Chairman, on behalf of the National Committee.

[The prepared statement of Ms. McSteen appears in the appendix.]

Senator MOYNIHAN. Thank you, Martha McSteen. Let me ask you a question; and, obviously, I just do not know the answer. Are you satisfied with the arrangement we put in place—and I think it was put in place up here—that the disability determination services be a State agency? In your experience as Administrator, did you find that they said one thing in Minnesota and another thing in Montana and yet a third thing in Arizona?

Ms. MCSTEEN. Well I know that has always been an allegation. But I really think that the policy directives of the Social Security Administration properly disseminated; and when they were properly received by the State agency staff would allow for the uniformity. There are always going to be some deviations because of interpretation. But I think the receptivity of the States to the national guides is very important. They simply have to have the staff to have the training and know how to implement those policies.

Senator MOYNIHAN. So you are well enough content, if they have the resources. The Federal Government pays the whole price, does it not?

Ms. MCSTEEN. Yes.

Senator MOYNIHAN. Mrs. Dixon, would the AARP be of that view?

Ms. DIXON. Pardon?

Senator MOYNIHAN. Would the AARP generally agree with the present arrangement that States determine disability?

Ms. DIXON. I am a volunteer and I am not too familiar, but I do have a staff member here who would speak to that.

Senator MOYNIHAN. Neither am I.

Ms. MORTON. Senator Moynihan, we believe that is correct. We would support that.

Senator MOYNIHAN. You are content with this arrangement?

Ms. MORTON. Yes.

Senator MOYNIHAN. All right.

Mr. SMEDLEY. I do not want to let this be unanimous.

Senator MOYNIHAN. Larry.

Mr. SMEDLEY. I would say I am not the expert that Martha McSteen is because she is a former Commissioner. But from my past experience, unfortunately not recent experience there was some discrepancies between the State disability determination units and whether they are liberal or conservative. I think the South used to be more conservative than the northern States.

One thing I can remember, Martha, unless it has been changed recently, the Social Security Administration had the right to overrule a State to deny benefits, but not to overrule a State to allow benefits. Is that still correct?

Ms. MCSTEEN. I do not know that it is as of today. It used to be that way.

Senator MOYNIHAN. It used to be that way?

Ms. MCSTEEN. Yes.

Mr. SMEDLEY. And it may still be. I think that is an injustice that the Federal Government can have the right to overrule to deny benefits, they should not have the right to overrule——

Senator MOYNIHAN. That is a very nice point.

Mr. SMEDLEY. That is something that occurred some years ago. I may still be in effect.

Senator MOYNIHAN. Let me ask over to the stage right there. Is that still the practice in the SSA?

Mr. FISHER. No, that has changed.

Senator MOYNIHAN. That has not changed?

Mr. FISHER. It has changed.

Senator MOYNIHAN. Oh, it has changed. Would you want to help us where we are now. You can both deny benefits and award benefits at the national——

Mr. FISHER. There is generally no Federal overrule of the State decisions because Federal reviews are generally conducted on a pre-effectuation basis; that is, prior to the final State decision. There may be instances, however, where a case is returned to the State for additional review, or where the case is reviewed by the Federal Government after a decision is made.

Under the 1980 disability amendments, the secretary has the authority to review and reverse State agency decisions, either favorable or unfavorable.

Senator MOYNIHAN. Okay. Would you mind giving your name to the Reporter, now that you are part of this hearing.

All right. That is a nice question and we will look at it. I thank you all very much. It is very important to this Committee, the three great organizations; and we heard earlier from SOS. Let's see if we cannot get a good bill.

With that, we are again thanking our reporter, thanking our long suffering staff, thanking you, and thanking all concerned.

The hearing is adjourned.

[Whereupon, the hearing was adjourned at 1:30 p.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF DIANE S. ARCHER

The Medicare Beneficiaries Defense Fund is a not-for-profit organization, based in New York, which assists beneficiaries in appealing denials and reductions of their Medicare benefits. Our organization emphasizes the appeals process as the primary means of obtaining proper reimbursement from Medicare. Approximately 60% of all Medicare claims that are appealed result in additional reimbursement for Medicare beneficiaries.

An integral component of the appeals process is the judicial independence of the Administrative Law Judges, the judges who currently hear both Social Security and Medicare cases. According to a GAO report issued in November of 1989, Administrative Law Judges reversed forty percent of the Medicare cases for which in-person hearings were held, resulting in an average of $1642 in additional benefits per claim.

Medicare Beneficiaries Defense Fund is most concerned that the establishment of an Independent Agency to hear Title II and Title XVI cases exclusively raises the risk that independent Administrative Law Judges will no longer hear Medicare appeals. We ask that you recognize the means by which the Health Care Financing Administration has already sought to undermine the integrity of the Medicare appeals process. For example, the Health Care Financing Administration attempted to install a dial-a-judge program to minimize in-person hearings, which Congress wisely prevented, and has instituted a Medicare Development Center in Arlington, which many people believe improperly seeks to influence the outcome of Administrative Law Judge appeals.

We ask that Congress consider the impact on Medicare appeals of any decision to institute an Independent Agency to hear Title II and Title XVI cases. In particular, we believe that you should consider which judges will hear Administrative Law Judge appeals if an Independent Agency is established, where these judges will sit and which agency they will answer to. Unless you include Medicare Administrative Law Judge appeals in the Independent Agency which is the subject of this hearing, or work to establish an independent Medicare agency parallel to it, the Independent Agency you propose will exacerbate the extended delays and access problems already experienced by Medicare beneficiaries as well as jeopardize the integrity of the Medicare appeals process.

Thank you for inviting me to testify.

MEDICARE BENEFICIARIES DEFENSE FUND

100 PARK AVENUE, ROOM 2606 • NEW YORK, N.Y. 10017
(212) 876-5076

May 29, 1990

Senator Daniel P. Moynihan
Chairman, Subcommittee on Social Security
and Family Policy
U.S. Senate Committee on Finance
Room SD-205
Dirksen Senate Office Building
Washington, D.C. 20510-6200

Dear Senator Moynihan:

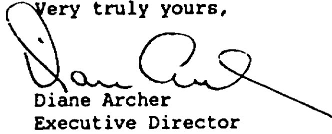
Medicare Beneficiaries Defense Fund submits this statement at your request to recommend an appropriate Medicare administrative appeals structure should an independent Social Security agency be created.

Medicare Beneficiaries Defense Fund, along with the National Senior Citizens Law Center and the Center for Health Care Law, believes that Congress should establish within the Department of Health and Human Services, Office of the Secretary, an Office of the Chief Administrative Law Judge to oversee Title XVIII (Medicare) and Title XIX (Medicaid) administrative appeals. This Office of the Chief Administrative Law Judge would be analogous to the Office of the Chief Administrative Law Judge proposed in S.2453 to oversee Title II and Title XVI administrative appeals. The President would appoint the Chief Administrative Law Judge for Title XVIII and Title XIX appeals.

The Chief Administrative Law Judge would have jurisdiction over Title XVIII and Title XIX administrative appeals. To preserve the integrity of this administrative appeals process, Congress should pass legislation to ensure that Administrative Law Judges are 1) able to render decisions on an independent basis, through the President's appointment of a Chief Administrative Law Judge who is outside the control of the Health Care Financing Administration; and, 2) accessible locally, sitting in communities convenient to Medicare beneficiary-claimants.

Medicare Beneficiaries Defense Fund has not as yet received a copy of the proposal described in brief by Judge Bernoski at the May 11, 1990 hearing regarding an appropriate Medicare administrative appeals structure. Accordingly, we are unable to comment on it. We ask that, if possible, the record be kept open until we can submit our position.

Very truly yours,



Diane Archer
Executive Director

The following statutory and report language sets forth our position:

Statutory Language

A.(1). There is established within the Office of the Secretary of the Department of Health and Human Services an Office of the Chief Administrative Law Judge. The Chief Administrative Law Judge shall supervise all functions related to the administrative review of cases under Titles XVIII and XIX of the Social Security Act.

A.(2). The President shall appoint the Chief Administrative Law Judge. The Chief Administrative Law Judge shall oversee the activities of administrative law judges who conduct administrative reviews under Titles XVIII and XIX of the Social Security Act. The Chief Administrative Law Judge shall ensure that such administrative law judges review and decide claims in accordance with applicable statutory law and regulations promulgated in accordance with the Administrative Procedures Act.

B. The Chief Administrative Law Judge shall ensure that a claimant requesting administrative law judge review under Titles XVIII and XIX receives an in-person hearing promptly and at a time and place convenient to the claimant.

C. Notwithstanding any other provision of law, the Chief Administrative Law Judge shall appoint the administrative law judges within the Office in accordance with Section 3105 of Title 5 of the United States Code.

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PREPARED STATEMENT OF ROBERT M. BALL

Mr. Chairman and members of the Committee: My name is Robert Ball. I was Commissioner of Social Security from 1962 to 1973. Prior to my appointment by President Kennedy I was a civil service employee of the Social Security Administration for some twenty years. Since leaving the government in 1973, I have continued to write and speak about Social Security and related programs. I was a member of the 1978-79 Advisory Council on Social Security and more recently was a member of the National Commission on Social Security Reform, the Greenspan Commission, whose recommendations were included in the 1983 Amendments. I am also a member of the current Quadrennial Advisory Council on Social Security appointed by Secretary Sullivan. I am testifying today as an individual and the views expressed are not necessarily those of any organization with which I am associated.

Mr. Chairman, I believe that all supporters of Social Security welcome this hearing which deals with the administration of the program and the levels of service provided by Social Security. I am certainly very glad to have been asked to participate.

The hearing couldn't come at a better time. We now have a Commissioner of Social Security, Gwendolyn King, who is committed to improving the service levels of the agency and one who is open to suggestions on how to do it. She has committed herself to securing adequate resources. She has already made progress in lifting the morale of the employees at Social Security. With adequate backing, I believe she will make an outstanding Commissioner.

Improving Social Security service levels seems to me very important. The attitudes of people toward their government is shaped primarily by the effectiveness, the helpfulness, and the overall impression that people have of three agencies: the Post Office, the Internal Revenue Service and the Social Security Administration. These are the only direct-line operations of the Federal government that large numbers of people come in contact with every day. They are Uncle Sam in every town, village and city in America. If the employees of these organizations are friendly and considerate and the organizations give good service that will mean to most people that government can make things work. If these three organizations are unresponsive, bureaucratic and make mistakes, then that is the impression that the ordinary citizen will have of his government.

My point is simply that although the Federal Government does hundreds of important things, not many are visible to just about every family. The three that are give people their impression of how well or how badly the whole Federal Government is working. It is worth a great deal in investment of manpower and brains to make these three organizations models of both efficiency and warm human relations so that people will say, "I know how the Federal government works because of what Social Security did for my mother and father and because of the pleasant young man in Internal Revenue who was so understanding of the mistake I made on my income tax."

The legislative statement of a program is, of course, of primary importance, but the law takes on life only through the way it is administered. It is a truism that a good law can be ruined by poor administration.

The old-age, survivors and disability insurance statute is a statement in detail of the rights and obligations of people, but the Social Security Administration is responsible for translating these statutory rights and obligations into precise and detailed operating policies and practices which guarantee that the rights are fulfilled and the obligations carried out. The responsibility has two aspects:

In the first place, the Administration has the duty of performing the many concrete tasks necessary to protect and maintain the rights earned by the participants. In the second place, and equally important, the way it performs these tasks should create a personality and a character for the administering agency that is appropriate to a program based on the concept of earned right.

The OASDI program is supported by an earmarked tax on covered earnings. The trust funds to which contributions are made and from which benefit payments come are in a very real sense the property of the contributors. Each benefit payment from this source must therefore be exactly what is due to the individual in order to preserve the rights of the group and the individuals who compose it. Since the administrative expenses of the program are also charges against these funds, the Administration has a special obligation to give the best in service for each administrative dollar. And the Administration together with its "Board of Directors," the Congress of the United States, has the obligation to see that it has enough dollars and staff to provide adequate service.

Inherent in the maintenance of program rights is the need to obtain and maintain adequate resources to do the work. The program cannot be operated at a level of service appropriate to an insurance program based on a concept of earned right and in a way that protects and maintains the rights of program participants unless the agency has the funds and staff it needs. Therefore, the provisions of S. 2453 designed to assure adequate staffing are of great importance to the very purpose of Social Security—just as important as the basic provisions of the statute itself. To help assure adequate staffing I would propose one other step—remove Social Security administrative expenditures from the Gramm/Rudman process. Under present law, benefit payments are not subject to sequester but administrative expenses are. Since Social Security is independently financed including administrative costs—both should be excluded.

Beyond the day-to-day tasks, the Social Security Administration has the long-range responsibility to develop policies, administrative procedures, and staffing practices with the permanency of the program in mind. The agency must build for the future no less than for the present. Persons just beginning their working life must have the same assurance of protection deriving from the stability of the management of the program as beneficiaries currently receiving payment. This is one reason I strongly support the provisions of S. 2453 establishing Social Security as an agency run by a Board and reporting directly to the President. Such a Board, with staggered terms, provides a continuity for administration that has been sadly lacking in recent years.

Most people who get an OASDI check depend on it for the necessities of life. No goal of the organization is more important than seeing that people get their check every month at the time they expect it and that the initial payment of claims for benefits is as prompt as possible. Accuracy—the right check to the right person at the right address on time—is the very essence of Social Security's service. And it takes adequate and trained staff to accomplish this purpose. Building up staff and then cutting back to arbitrary ceilings is destructive of good administration.

Who is entitled to Social Security benefits, how much, and under what circumstances is a matter of *national* law. The job of the agency is to apply the law under a great variety of circumstances and conditions in such a way that all people can depend on getting equal treatment regardless of who they are or where they come in contact with the organization.

To accomplish this goal requires a well organized system of national policies and procedures in the form of written instructions and manuals. Training programs, conferences and similar devices are needed on a large scale to promote common understanding on the part of those who administer a national program. Training of staff used to be a major priority of Social Security. In the early days, before field personnel were let loose on an unsuspecting public, they were trained thoroughly, not only in the technicalities of the program but in attitudes of service and interviewing skills. Everyone was expected to understand the basic purposes and philosophy of the program and as people moved up, there was emphasis in training on basic program concepts and objectives. I am not sure this is true today.

Mr. Chairman, you might want to amend the Social Security Restoration Act to provide for an outside review of the training program of Social Security, charging the review group with the task of recommending improvements. The great emphasis on training, I believe, was one of the factors that almost from the beginning made Social Security an elite organization.

The agency needs to be staffed and trained so that everyone who comes to a Social Security district office or gets a communication from any part of the organization is treated with respect and the courteous, friendly helpfulness they are entitled to. Old-age, survivors and disability insurance is a translation into operation of the spirit and objectives of contributory social insurance. In such a huge organization it takes great effort to bring about and maintain staff understanding of this goal.

The Social Security program needs to have claims policies and procedures that are as little burdensome on the public as possible but at the same time offer adequate assurance that the statutory provisions are being carried out. The agency has an obligation not only to see that people get what is due them but to protect the trust funds against improper payments. The public must have respect for the integrity of the administration of Social Security as well as for its helpfulness and humanity. So the program must operate with insistence on proof of disability, proof of age, proof of coverage and earnings. All this takes trained staff in adequate numbers. At the same time, although reviews and checks are essential, it is important to avoid policies and procedures that make people impatient with unnecessary red tape.

In somewhat the same way, reporting of wages and self-employment income must be complete, accurate and available on time, but it is important that procedures impose minimum costs and difficulties for the employers and the self-employed persons who make the reports.

The effectiveness and the economy of this huge program depends upon an underlying willingness on the part of the public to cooperate. The agency could not force without prohibitive expense what the public now does willingly. What people think of Social Security as an organization therefore is important. Its reputation derives from the personnel selected to represent the organization, how they are trained, what the offices look like, whether there is an attitude of friendly and dependable service in all the activities that take place between the agency and the public, including the tone of the correspondence, the promptness with which it is answered, the soundness of the policies and the correctness of the decisions under those policies. Such everyday matters shape the public relations of Social Security much more than speeches, press releases, and radio and television programs, as important as these efforts are in getting information to the public about their rights and obligations.

Particularly at the place where the public meets the program, the facilities should fully reflect the character of a social insurance system, with adequate space, convenience in location, and number of points of contact that will provide convenience and comfort to the public and reflect credit on the program and the organization.

Many factors contributed to making the Social Security organization an elite service among government agencies, but three of them are sufficiently important to deserve special mention. In this testimony so far I have been stressing two of them: an attitude of public service at all levels of the organization and an emphasis on the training of personnel. The third distinguishing characteristic was great emphasis upon research in program evaluation and in research on the best ways to meet the problems of economic insecurity—all based on knowledge about the income, assets and living arrangements of Social Security beneficiaries. Social Security once had one of the finest in-house research organizations in government.

Inherent in the administration of any program is the duty to improve its effectiveness. This obligation is reinforced in the case of Social Security by the statutory duty to study and make recommendations as to the most effective methods of providing economic security. In addition, from both public and private sources there is a constant stream of proposals for change. The agency must equip itself to provide pertinent facts and to recommend policy positions on these proposals. The Social Security Administration must have foresight and be prepared to deal with proposals and issues that will emerge as the program matures. It must also be equipped to deal with the policy issues that will arise with respect to relationships between OASDI and other expanding public and private programs for income maintenance. To meet these responsibilities the Bureau must maintain an effective long-range program of research and analysis.

I would like to propose, Mr. Chairman, that you add to your bill the provision for another outside advisory group—this one to examine and make recommendations on Social Security's research program. My impression is that in recent years research has not been given the priority it once had. Yet it was research feeding into policy development that along with training and service concepts made Social Security such a unique organization. A restoration Act should include this area too.

There are three other provisions of S. 2453 that I believe are very important and which I strongly support:

I believe the mandatory provision for individual Social Security account statements should be implemented at the earliest possible date. The issuance of such statements will add to confidence in the program on the part of contributors and will also help them plan their supplementary retirement and insurance programs. I do not know what the "earliest possible date" is, but I think there is a strong burden of proof on the Social Security Administration if they wish to argue that they cannot meet the new deadlines imposed by this legislation.

I also believe strongly in the proposal to make the W-2 form more understandable. In a contributory social insurance system it is very important for people to know what they are contributing to and "FICA" has no meaning to the ordinary person. A deduction, on the other hand, for "SOC SEC" and "Medicare" would be very meaningful.

The third set of provisions in the bill I would like to comment on are those that return Social Security to a Board form of organization reporting directly to the President.

I believe it would add significantly to public understanding of the trustee character of Social Security as a retirement and group insurance plan if the program were

administered by a Board directly under the President. Social Security with over 60,000 employees and some 1300 district offices across the country is one of the very largest direct line operations of the Federal Government. It does not make sense administratively to have this huge program, which intimately touches the lives of just about every American family, operated as a subordinate part of another government agency. The management of Social Security could be made more responsive to the needs of its beneficiaries and contributors if it were free from the frequent changes in the levels of service to the public which grow out of short-term decisions about employment ceilings and the varying management value systems which follow the frequent changes of Health and Human Services Secretaries and their immediate staffs. But most important, an independent Board would be visible evidence that contributory social insurance was different from other government programs.

Just about every American has a major stake in protecting the long-term commitments of the Social Security program from fluctuations in politics and policy. The administration of Social Security by a separate Board would strengthen public confidence in the security of the long-run commitments of the program and in the freedom of the administrative operations from short-run political influence. It would give emphasis to the fact that in this program the government is acting as trustee for those who have built up rights under the system.

I believe that setting up Social Security as an independent agency under a bi-partisan Board is particularly important at this time. There has been an erosion of public confidence in the system due in part to financial problems in the mid-1970's and early 1980's. It is going to take some time to restore that confidence. Making the program an independent agency under a Board form of organization with bi-partisan membership would be a helpful step in improving confidence.

The issues here are not by any means entirely administrative. The argument for an independent agency is largely administrative, but the argument for the Board form of organization on a bi-partisan basis with the continuity arising from term appointments is desirable primarily to underline the long-range character and trustee nature of the government's responsibility.

In addition, the fact that the Board is bi-partisan acts as a brake on major swings in policy, and provides a barrier to proposals of doubtful validity. It seems to me unlikely that under a Board form of organization we would have had the major shifts in the administration of the disability program that has characterized the last several years. A Board with a minority member would have been unlikely to remove hundreds of thousands of people from the disability rolls and later restore benefits to a large percentage of them through the appeals process. Nor would a Board have adopted a policy stance that caused many Governors under contract with Social Security to refuse to carry out Social Security's directions. And a Board would have been unlikely to pursue a course overturned by the courts in literally hundreds of cases. I would have expected, rather, that at least the minority member of the Board would have raised public questions about the policy before it was adopted, and it is even more likely that a majority of the Board would have thought a long time before adopting such a damaging set of policies. Under the organizational set-up in effect in the 1980's, policy seems to have gone directly into action by agreement between OMB and the Commissioner of Social Security without much review, certainly without a bi-partisan review.

Even on smaller matters such as administrative reorganizations, Ibelieve a Board would have been more conservative and advisedlyso. For awhile, Social Security seemed to be getting a newCommissioner every year or two and, with each new one, a sweepingreorganization. Such constant change is damaging to performance.

Another example of an administrative decision where the checks andbalances of a bipartisan board might have been useful is in theplanned reduction of Social Security's staff over the 6-year periodfrom 1984 to 1990.

There is little doubt but that some reduction in staff has beendesirable due to the further automation of Social Securityprocedures. But a question can be legitimately raised about the plan adopted. I believe a bi-partisan Board would have carefully examined whether service could and should have been improved from the 1984 level as automation was further introduced, rather than translating the technological advances entirely into reduced staffing.

The reduction of some 17,000 full-time equivalent positions was a number negotiated with the Office of Management and Budget primarily with the object of reducing administrative costs. But in OASDI the more relevant question may be how to improve service, not how to get by with fewer people. A bipartisan Board might well have taken the view that, since administrative costs are only about 1 cent out of each Social Security dollar and are paid for out of dedicated deductions from work-

ers' earnings and matching contributions from employers, savings from automation should go first to improved service—making sure that district offices are efficient and pleasant places for the public to carry on its business with Social Security, making sure there is adequate outreach service from the district offices to people who have difficulty getting to the office, making sure there is adequate public information activity, making sure handicapped people have sufficient help with their Social Security business, making sure the telephone service is adequate so that people do not have to wait on the phone for long periods of time and, in general, making sure the administrative values are those of the highest level of a public service agency. What has actually happened is a negotiated arrangement between Social Security and OMB, with the emphasis on the reduction of staff and lower administrative cost and without the kind of emphasis on service levels that is important in this kind of program. I believe a bi-partisan Board would have very likely done better, or the minority member would have made an issue of it, just as I believe he or she would have in preventing the policy decisions that led to the disability disaster.

So there is in the bipartisan Board organization, I believe, a check on unwise action as well as an institutional arrangement which will give people confidence in the handling of the finances of the program and the objectivity of administration. By and large, these are the advantages of a Board form of organization rather than day-to-day administrative efficiency.

The case for an independent agency can be made on administrative grounds alone. As pointed out by the Grace Commission some years ago, making a huge operation like Social Security a subordinate part of a Department creates duplicating staff services and repetitive levels of decision-making. Duplication is almost unavoidable. Social Security is big enough to have its own personnel services, budgeting, comptroller activities and everything it takes to make a big organization work. At the same time, a Secretary's staff feels the need to understand and control the activities of the subordinate unit so that the relationship between the agency and the outside world tends to be filtered through a second level of staff activity.

Now it is true that, in practice, during the initial period the Social Security Administration was part of a Department, it enjoyed a very substantial degree of independence. This was certainly true when I was there, but I have a strong impression that this independence has eroded. It is very likely that one reason there was such a contrast in the implementation of the Medicare program, which went extremely smoothly, and the implementation of the Supplemental Security Income program, which was pretty bumpy, was the degree of delegation which the Secretary and his staff were willing to make to the Social Security Administration. In the implementation of Medicare there was a very strong delegation to Social Security, and it was the only way that the program could have been put into effect successfully in the time available. The tasks were enormous and if decisions had been held up at the Secretary's level, there would have been an impossible situation. In that setting, Social Security operated almost as if it had been an independent agency, making its own arrangements with the rest of the government and receiving great help and support from the rest of the government.

In the case of the implementation of the Supplemental Security Income program, policies had to be cleared in the Secretary's Office whether they were fundamental questions of direction or not, whether they were solely administrative issues, procurement issues, or whatever, and the result was inevitable delay, duplication, and lack of clarity in instructions out to the field.

So it is possible to administer the Social Security program well within a Department, providing there is more or less complete delegation to the organization. On the other hand, there is almost no contribution, if any, to the smooth functioning of Social Security from being a subordinate part of a Department, and in recent years there have been very strong disadvantages in the layers of clearances required.

Mr. Chairman, I believe S. 2453 also greatly improves both the appearance and reality of the trustee function. Under present law, the managing trustee of the Social Security trust funds is the Secretary of the Treasury. He is very much in charge. The other trustees do not have much authority under the Act although they do have responsibility in connection with the trustees annual report to Congress. Investment is just about completely in the hands of the Secretary of the Treasury.

Ordinarily this does not create difficulty because the statute itself carefully determines the coupon rate on new investments in special issue securities, which in recent years have been the only investment instruments used. The areas in which the statute grants discretion are (1) the extent to which the funds might buy government securities on the open market, (2) the question of whether the funds should buy U.S.-backed securities of government instrumentalities, and (3) what the matu-

rity dates on special issues should be. The trustees for a bong time have adopted a policy on maturity dates designed to come as close as possible to having the whole portfolio evenly distributed over a 15-year period. Nevertheless, the managing trustee has considerable statutory discretion on all three of these matters.

There is something of a conflict of interest between the Secretary of Treasury's role as the primary trustee of the trust funds and his role as the chief financial officer of the government. In his role as Secretary of the Treasury it is to his interest to reduce the burden to the general treasury of interest payments to the trust funds. As the managing trustee of the trust funds he is charged with securing the highest possible rate of return for those funds. Most of this conflict has been resolved by statutory rules that are intended to be fair both to the trust funds and to the Treasury. Yet there is a problem in having one person attempt to exercise both of these functions.

In recent years an outstanding example of a direct conflict of interest has occurred in connection with the debt ceiling. When the Treasury bumps up against the debt ceiling it, of course, is unable to borrow for any purpose, including the payment of interest on the outstanding debt of the United States or the payment of Social Security benefits. The managing trustee of the Social Security trust funds more than once has resolved the issue in favor of the Treasury rather than the trust funds. Specifically, he has cashed in Social Security debt to give room to the Treasury to borrow. In place of interest-bearing securities in the trust funds, the Treasury made notes of what was owed to the trust funds, with the intention of later making good, but it took an act of Congress to make up for the loss of interest and to restore the integrity of the funds. In the meantime, the trust funds had been put at some risk of interest loss, and there was, at a minimum, a public relations problem of loss of faith in the integrity of the Social Security funds. Several organizations, individuals and members of the Congress went into court to prevent the managing trustee from continuing this action. There was no lasting damage from this activity on the part of the Secretary of the Treasury, but it demonstrated clearly the possibility of a conflict of interest between his or her role as chief financial officer for the government and as a trustee of the trust funds.

The Secretary of the Treasury is needed as the day-to-day administrator of the Social Security funds. Only he is equipped to carry out the routine functions of fund management, but I believe that the provisions of your bill, Mr. Chairman, are a big improvement in shifting policy decisions to a new Board of Trustees. S. 2453 subjects the Secretary of the Treasury to policy direction by a Board that has the interests of the Social Security trust funds single-mindedly at the center of its responsibility. This is a good move. Policy should be set by a Board of Trustees that does not have the kind of conflict of interest that a Secretary of the Treasury has inherently.

Some people who oppose setting up Social Security as an independent agency have argued that Social Security will not be as well represented in the councils of government as it is today because there will be no one at the Cabinet table to explain and defend the interests of the Social Security program. Although there is some merit in this contention, I do not find it persuasive. Surely any President would invite the chairman of the Social Security Board to attend Cabinet meetings when the discussion involved Social Security. Nevertheless to emphasize this point you may find it desirable to have the Committee report on this bill make clear that it is the intention of the Congress that the Chairman of the Social Security Board be directly involved in White House and Cabinet discussions of all matters that affect the present and future of the Social Security program.

There is, of course, no single right way to organize the functions of the Federal Government. Some of the possibilities are to group things together by subject-matter similarity. This is the principle that brought together the two medical care payment programs of Medicaid and Medicare. Another possibility, however, is to group by type of administration, that is whether a program is administered primarily at the Federal level or primarily at the state level, with the Federal role being one of financing and standard setting. Still another possibility is putting together those things that have a similar program approach, such as grouping together all social insurance programs where the right to benefits grows out of past work and contributions, as compared to welfare programs where the object is to bring people up to a minimum standard of living based on an examination of their income and resources.

All of these approaches and others have been used in the past. The principle of direct Federal operation and the similarity of approach in social insurance led originally to Medicare being administered by the Social Security Administration, and there is a case to be made for the return of Medicare to a newly established Social Security Board. In favor of it are not only the organizational considerations I mentioned, but the fact that Social Security has district offices all over the country that

can help people with information about Medicare and with the filing of claims, a resource not now available to the Medicare beneficiary. But the practicalities are against this move. After Social Security is removed from the Department of Health and Human Services what remains in the Department are largely health related programs, and if the Medicare program were also to be removed, the rationale for the Department is considerably weakened. And undoubtedly the removal of Medicare would be strongly resisted by most people primarily interested in health programs. Thus I support the decision of the Chairman to establish an independent Social Security Board with responsibility solely for Old-Age, Survivors, and Disability Insurance plus the closely related Supplemental Security Income program, (SSI).

The organizational principle that justifies including SSI in this new entity is the avoidance of obvious and important duplication in the operation of direct benefit programs of the Federal government. It would be ludicrous to establish a nationwide network of offices to administer SSI separately from Social Security when most beneficiaries of SSI are also Social Security beneficiaries. The two programs can be handled by the same administering agency at greatly reduced cost and greatly increased convenience for beneficiaries if they are kept together. So this should be done, even though one has to recognize that administering these two programs in the same agency has created some public confusion, and I must say also, at least in the beginning, some confusion on the part of the staff in the Social Security Administration. The SSI program is paid for entirely out of general revenues and is a welfare program. Everybody needs to understand that. The reasons for having the two together are for the convenience of the public and for administrative saving to the government. They are philosophically and financially very distinct programs.

At the same time there is no reason for Social Security to be involved once more in the AFDC program. AFDC is a state-administered program and there is no significant beneficiary overlap with Social Security or SSI.

The bill leaves AFDC in the Department as I believe it should. When I was Commissioner of Social Security I was at first responsible for the AFDC program and the Old-Age Assistance program, the predecessor program to SSI, as well as Old-Age, Survivors, and Disability insurance but there were almost no situations in which there was any need to consider policy in AFDC at the same time one considered policy in OASDI. They were just two completely separate operations and almost entirely separate policy entities. I had to turn my attention from one program to the other. You could not look at them together, and they got nothing out of being grouped together. The time spent in staff meetings by the heads of one agency listening to the problems of another could have been spent better in other ways.

I would, however, give the research arm of the new Social Security Board a mandate to pursue research in the whole area of economic security. It is not desirable, in my view, to restrict the research mandate as narrowly as the bill does. In social insurance, over the years, one of the most important research questions in the provision of economic security has been the relationship of social insurance to welfare, on the one hand, and private activities on the other hand. I would use language similar to that in the present Social Security Act in describing the research function of the new agency. If there is some degree of overlap with other agencies in the research area, it can be worked out informally without restricting the mandate by statute. In research there is always more to do than there is money to do it.

I believe the relationship of the new Social Security Board to the Executive Office of the President, particularly the Office of Management and Budget should be similar to any Cabinet department. I do not argue that the independence of a Social Security Board should remove it from the ordinary oversight of the President and his control agencies. Legislative proposals, for example, should be made by the President. However, in certain respects Social Security is large enough to conduct its own service activities and to do so more efficiently. For example, I would certainly grant the new Social Security Board very strong delegations in the personnel area to determine its own recruitment policies and classification work, and I note that the bill provides for this on a demonstration basis. I believe, on the whole, Social Security could do a better job in space management and space procurement than working through the General Services Administration. It should certainly have its own General Counsel, as the bill provides, but such Counsel should have the same relation to the Justice Department as any other Department of government would have when it came to dealing with the courts.

The object here is not to set up an entity with the same degree of independence, say, as the Federal Reserve Board which operates very largely outside the President's control in almost all respects. The object here is to secure a combination of administrative efficiency and to demonstrate an objectivity of administration and a trusteeship of established rights that is called for by long-range commitments. These

goals by no means require the elimination of the oversight function of OMB and the other control agencies of the President.

There is really no logical basis for the present grouping of programs in the Department of Health and Human Services. The relationship of Social security to other agencies within HHS is not very close. In fact, Social Security's relationship with other government departments is frequently much closer. For example, Social Security must closely coordinate its coverage decisions and its work with the Internal Revenue Service which has responsibility for collecting Social Security taxes. Except for Medicare, I can think of very little of any importance that Social Security has in common with the other agencies grouped within the Department of Health and Human Services.

Mr. Chairman, there is just one additional point in the bill that gives me pause. Those who advocate an independent agency under the direction of a single individual rest their case to a considerable extent on the possibility of overlapping functions between the Board and an administrator. They argue that distinctions between policy and administration are not clear enough to keep the Chairman of the Board and the administrator out of each other's hair. They argue that getting agreement within a Board is inherently more difficult than the decision of one person, and that if you have both a Board and an administrator you compound the difficulty of responding quickly to administrative problems or in carrying out day-to-day operations. They make a good point. If all that was at issue was the efficiency of day-to-day operations, it is probably true that a single head would be a better form of organization. But as I have tried to point out there is much more at stake here than day-to-day operations. Still it is desirable to set up the Board organization so as to minimize any potential for conflict between the Board Chairman and an executive director, the day-to-day operator.

The relationship that I envision is not too different from that of the Chairman of a board of a corporation or a non-profit organization and the chief executive officer. I would give the Board responsibility for selecting the top administrator, as the bill does, but I would also give the Board the power to define the duties of the job and remove the top administrator in the unusual situation where they couldn't get along. I think there is the potential for a problem if the executive director with responsibility for operations has a set term and duties defined in statute that are separate from those of the Board. I think it ought to be made clear that the Board in all respects is the top authority—that it is the Board that is responsible for the whole program in all its aspects and that they hire a chief executive officer to carry out their will. I would hope the legislation would put all responsibility in the Board and let them get the help they need to carry out the work.

This would not by any means result in frequent turn-over in the administrator any more than is the case in a corporation where the Board of Directors hires and fires the chief executive officer. A Board will not go to the trouble of selecting a top officer of the caliber needed for this job and then force him or her out without good reason. That just makes their life more difficult. I believe a Board will be very responsible in the selection of a person whose primary duties are administrative and will stick with him or her as long as that chief executive officer is doing a good job. But don't make it too difficult for them to replace that officer in the event that things don't go well.

Mr. Chairman, I fully support S. 2453 and believe that its passage would make a major contribution over the long run to the smooth functioning of our Social Security system and to the restoration of complete confidence in the integrity of the program.

Thank you very much for the opportunity to discuss this important matter with you and the members of the Committee.

Prepared Statement of Ronald G. Bernoski

I. Introduction

Mr. Chairman: My name is Ronald G. Bernoski. I am an administrative law judge (ALJ) assigned to the Office of Hearings and Appeals for the Social Security Administration, sitting in Milwaukee, Wisconsin.

I appear before you in my capacity as the Secretary of the Association of Administrative Law Judges, which is a professional organization having the stated purpose of promoting due process hearings to those individuals seeking adjudication of controversies with the Social Security Administration and the Department of Heath and Human Services.

Our Association agrees with the basic concepts set forth in S. 2453. Because the current problems in the Social Security Administrations hearing process, as administered by its Office of Hearings and Appeals (OHA), are a direct result of the current structure and mismanagement of this agency, my comments will be directed to recommending changes in the appellate structure that will improve the hearing process.

II. OFFICE OF CHIEF ADMINISTRATIVE LAW JUDGE

S. 2453 provides for an Office of the Chief Administrative Law Judge within the Administration. The Chief Judge shall be appointed by the Board and shall have the operational control of the Office of Administrative Law Judges.

This reform has been long needed, and it meets one of the recommendations of the Federal Courts Study Committee report that administrative law judges be released from undue agency influence. To be successful, the new structure must meet and address the criticism of that report which stated: "recent experience suggests that the process is vulnerable to unhealthy political control. The Social Security Administration has made controversial efforts to limit the number and amount of claims granted by the administrative law judges leading to widespread fears that the judges' proper independence has been compromised."

This report establishes the substantial need for decisional independence for administrative law judges. It is essential that the Chief Judge be solely responsible to the Board. This system is fragile and must be insulated from undue agency influence by law. The basic integrity and trust in this hearing process is vital to preserving a fair due process system for the claimants.

III. THE NEED FOR REFORM IN THE ADMINISTRATIVE HEARINGS PROCESS

The case for reform of the Social Security Administration hearing process and the structure of the Office of Hearings and Appeals has been clearly established. The long standing conflict and controversy within the Office of Hearings and Appeals caused by placing the ALJ's within the Social Security Administration is well-documented. Congressional hearings in 1975, 1979, 1981, 1983, 1988, along with the recent studies done by the Government Accounting Office (GAO) and the report of the Federal Court Study Committee, have clearly established that the problems are systemic. These reports and congressional hearings have clearly demonstrated that the agency lacks an appreciation for the role of administrative law judges as independent decision makers within the agency. The GAO report specifically found low morale among the administrative law judges as well as the support staff. The background materials for the Federal Courts Study Committee stated: "such tension is inevitable in a system which houses supposedly independent adjudicators within a disoriented department."

S. 2453 provides that the decisions of administrative law judges shall be rendered within thirty days after the hearing. This raises a broader issue.

Our Association is dedicated to developing a fair and speedy administrative hearing process for Social Security claimants. We believe that both the Claimants and the Government are entitled to a full and fair hearing and a prompt determination.

However, the fundamental problem in the Office of Hearings and Appeals, as currently constituted, is that the responsibility and accountability for the entire hearing and decisional process is placed upon the individual ALJ, yet the judges are given no authority to carry out this mandate. As some of the committee members may be aware, some years ago the Office of Hearings and Appeals made a managerial decision to take away from the individual administrative law judges all supervisory authority over hearing office support personnel, including staff attorneys, decision writers, clerical support staff, and typists. The result of this office configuration is that each individual administrative law judge does not have the power to expedite the preparation of written opinions and/or the issuance of decisions once the case has been decided. Authority for case control, resource improvement and management has been given to an ever-enlarging group of non-legally trained bureaucrats who have no understanding of the concepts embodied in the Administrative Procedure Act or the concept of administrative due process. This has lead to confusion and a work product of lesser quality for this agency which has resulted in more Federal district court remands of our decisions and a longer processing time for claimants.

It should be noted that the survey done by the GAO finds that the vast majority of administrative law judges would favor a return to the prior system in which they had supervisory authority over the staff assigned to them. An obvious advantage of having supervisory control over the persons assigned to handle one's docket would

be to return responsibility for the timeliness of the hearing decision to the administrative law judge.

Further, the provision imposing a time deadline for the issuance of the decision may have another unintended consequence. Administrative law judges operate under a court imposed responsibility to develop the record on behalf of claimants, especially those not represented by counsel. In other words, it is the administrative law judges' responsibility to make certain that all relevant evidence becomes part of the hearing record. Because of this responsibility, the administrative law judge must frequently hold the record open after the hearing is completed for the receipt of additional evidence. Any legislatively imposed time deadline should be tied not to the date of the hearing, but should run from the date the hearing record is closed. Based on these concerns,' we recommend that S. 2453 provide that the decision be rendered within a "reasonable time" after the hearing record is closed. If a numerical limit must be stated, we recommend that it be at least 60 days after the hearing record is closed. The specified time of 30 days only provides for 20 working days which is even more severe for offices in which the judges spend a week or more hearing cases at remote hearing sites removed from the main hearing office. The "reasonable time" standard, or a 60 day limit from the time the record is closed, would reflect a realistic alternative given the nature of the cases decided and the pressure of the case load.

We believe that any requirement to expedite the hearing process must be staffed with sufficient personnel, including judges, to meet the demands of the workload. We are encouraged by the mandate for hiring additional personnel which is included in this Bill.

S. 2453 provides for a change of the reconsideration determination procedure at the state agency level of adjudication. Our experience shows that few determinations are changed at the state agency level and the only result of having a claimant go through a reconsideration process is delay. This improvement should shorten the total administrative processing time and also provide a greater opportunity for a more meaningful state agency determination in the first instance.

Although the proposed Bill does not address this subject specifically, the administrative processing time could also be reduced by providing the administrative law judges (by either statute or regulation) with the authority to require those claimants represented by counsel to have all the relevant evidence introduced into the hearing record within a reasonable time prior to the date of the hearing. This provision is necessary to implement any numerical formula which requires the administrative law judge to issue the decision within time constraints after the hearing. This would also eliminate the time now used to hold the record open for post-hearing receipt of evidence. A "good cause" exception should be provided to relieve any harsh effects of such a provision.

The problem of the Social Security Administration's policy of "non-acquiescence" in Federal court of appeals decisions has been a long standing problem for this agency. We feel that the policy of the Social Security Administration of non-acquiescence is simply another manifestation of its institutional arrogance. Just as it attempts to impede the power and authority of the individual administrative law judges to control the manner and methods by which they hold hearings and render decisions, it also refuses to accept their decisional independence. Likewise, the Social Security Administration refuses to acknowledge the authority and precedent set by the Federal circuit courts of appeal. The agency has been given an ample opportunity to correct this problem but has refused to respond in a meaningful manner. We believe that congress should remedy the situation by adopting recommendations made in the recent report of the Federal Courts Study Committee. Congress should pass legislation which requires the agency to abide by the law of each Federal circuit as pronounced by its court of appeals. This would allow any conflicts between the circuits to be resolved by the United States Supreme Court and would provide for a healthy growth and review of this body of law. This proposal would also shorten administrative processing time because it would reduce the number of class action law suits brought against the agency. These class actions have historically resulted in hundreds of thousands of cases being reheard by administrative law judges. Most of these class actions have been brought as a result of the refusal of the Social Security Administration to follow established circuit court case precedent or its own regulations and have caused long delays for claimants who were often entitled to benefits. In a recent class action the court found "that the evidence depicted a systematic, unpublished policy that denied benefits in disregard of the law." This non-acquiescence policy was characterized as "lawless" by one member of the Federal Courts Study Committee. The policy has caused substantial harm to claimants and should be remedied.

IV. SOCIAL SECURITY BENEFITS REVIEW PANEL

A minority opinion in the final report of the Federal Courts Study Committee recommended a reform structure for the Social Security administrative hearing system that would abolish the Appeals Council and replace it with a Benefits Review Board constituted to provide a review process for administrative law judge decisions. This Committee should consider implementing this recommendation by creating a review panel within the Board. The review panel should consist of a Chief Appellate Administrative Law Judge and appellate administrative law judges who are appointed by the Board under Title 5, United States Code, Section 3105. The appellate judges on this panel should have Administrative Procedure Act (APA) protection and they should render determinations upon orders and decisions of administrative law judges which have been appealed to the Board for review. The APA protection for the appellate judges would eliminate the undue agency influence which currently plagues the Appeals Council (which concerned the Federal Courts Study Committee) and would convert this appellate body into a meaningful review tribunal. This reform also addresses a recent report of the Administrative Conference of the United States which recommended that either the quality of the administrative review of the Appeals Council be improved or it be abolished. Since the quality of review by this body has not improved, it should now be abolished as an archaic organization that has outlived its usefulness. The Committee should consider implementing this reform in either S. 2453 or by subsequent legislation.

PREPARED STATEMENT OF MARSHALL J. BREGER

I am pleased to have been invited to testify today on S. 2453, the Social Security Restoration Act of 1990, which establishes the Social Security Administration as an independent agency and, among other things, proposes changes in the hearing and appeal procedures for disability benefits. Although the Administrative Conference takes no position on the establishment of SSA as an independent agency, we have had a long-standing interest in the procedural aspects of the Social Security disability programs. We have undertaken at least one (and in some cases more than one) study of each of the administrative levels of the determination and appeals process, and we have adopted several relevant recommendations over the years. We will also comment on the provisions establishing an ombudsman. We appreciate the opportunity to testify at this hearing, and we hope that our testimony will be helpful.

THE ROLE OF THE CONFERENCE

Let me start by telling you something about the Conference. Created by statute in 1964, the Administrative Conference of the United States is an independent Federal agency charged with responsibility to study the efficiency, adequacy and fairness of Federal administrative procedures and recommend improvements. It includes among its members both representatives of all major government departments and agencies with regulatory or policymaking responsibilities and members of the public—generally practicing lawyers, legal scholars, or others with special expertise in administrative procedures—all of whom serve on a volunteer basis. Meeting twice a year in plenary session and more frequently in smaller committees, Conference members review studies prepared by outside experts on a wide variety of issues and problems related to agency practice and procedure. Based on these studies, the Conference members develop recommendations, which may be addressed to administrative agencies, the President, Congress, or the Judicial Conference of the United States, as appropriate. I am gratified that, over the 101st Congress alone, our work has been considered to have had sufficient merit that Congress has specifically incorporated our recommendations, or taken our work into account, when enacting four separate pieces of legislation. Our recommendations have also been incorporated into numerous other bills currently pending in Congress.

CONFERENCE STUDY OF THE DISABILITY PROCESS

Through its recommendations, the Conference has spoken on a number of issues raised by the legislation before the Committee today, and to the extent that it has, I will be speaking on the Conference's behalf. Following customary practice, however, I have felt free to add some comments that go beyond the precise scope of Conference recommendations (although hopefully reflecting their spirit). Where I have done so, I am speaking on my own behalf. I would also note that the Conference has pending at its plenary session next month two proposed recommendations that address issues raised in this bill.

Although S. 2453 addresses a large number of issues relating to the Social Security Administration, our comments will be limited to the procedural issues surrounding the hearing and appeals process and the provision for an ombudsman. The Conference has carefully studied each of the three major steps in the social security hearings and appeal process—the state level disability determination process, the administrative law judge hearing stage, and the operation of the Appeals Council. Some (but not all) of these studies were done at the request of the Social Security Administration, and some were funded by transfers from them under the Economy Act. I will summarize the primary conclusions of these studies and the recommendations that derived from them, as they are relevant to the bill before you now.

The Conference's recommendations contain a large number of detailed suggestions of ways the Social Security Administration can improve the decisionmaking process in the disability programs. Many of these suggestions probably do not rise to a level requiring statutory action. And, in fact, SSA has implemented many of our recommendations.

The Conference's recommendations have had as their common theme the goal of making Social Security disability decisions as accurate as they can be as early in the process as possible, in order both to provide deserving beneficiaries with the benefits to which they are entitled, and to reduce the amount of resources necessary for appeal procedures. Obviously, improvements made at the early stages of the process, where the case load intake is the largest, have the most beneficial impact for the entire process. Copies of the relevant recommendations are attached to my statement and we hope that they will be made part of the record. All of our recommendations are based on reports that discuss the issues in detail. We would be happy to provide copies of the reports underlying the recommendations discussed today, if the Committee is interested. The Conference, I should note, has also studied numerous cross-cutting issues of the administrative process during its more than 20 years of existence. Some of our general recommendations bear on the disability process, and as pertinent, I will note them briefly.

THE DISABILITY ADJUDICATION PROCESS

The initial determination of disability is made by federally-funded state Disability Determination Services (DDS). A dissatisfied claimant may seek a reconsideration by a different individual in the DDS. This reconsideration decision is appealable to an administrative law judge (ALJ) in the Social Security Administration's Office of Hearings and Appeals, which holds a hearing on issues on appeal. The ALJ's decision can be appealed to the Appeals Council, which reviews the case (as the delegate of the Secretary) and may in some instances permit supplementation of the record. Judicial review of the Appeals Council decision is available in the United States District Court.

CHANGES PROPOSED BY S. 2453

The bill would make some significant changes in the structure of the appeals process. It eliminates the formal stage of reconsideration of initial decisions at the state level, although there appears to be a provision that would allow the Secretary on his or her "own motion" to review the initial decision and make corrections. Similarly, it does away with the formal administrative appeal from the ALJ decision. The "Secretary" [1] would have thirty days to review the decision, but there is no provision authorizing or requiring a claimant to appeal. Once the Secretary has either approved or disapproved the ALJ decision, the claimant may appeal to United States District Court.

The bill also sets up deadlines at various stages of the process. The claimant has 60 days to appeal the initial decision, which is the same as current law. However, the ALJ must hold a hearing within 90 days, and must issue a decision within 30 days after the hearing is complete. The Secretary's review must be completed within 30 days after the ALJ decision is rendered. The bill, however, does not specify the consequences of missing these deadlines.

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[1] Since the bill would establish SSA as an agency independent of the Department of Health and Human Services, query whether the reference to the Secretary in Section 401 is appropriate.

CONFERENCE RECOMMENDATIONS ON THE ADJUDICATION PROCESS

A. The State DDS Stage

Let me address the various provisions of S. 2453 in light of the Conference's recommendations. I begin with the provision to eliminate the availability of reconsideration at the state DDS stage. We considered this step in Recommendation 89-10, "Improved Use of Medical Personnel in Social Security Disability Determinations." Our overall recommendation proposed a number of changes to the medical fact-finding process used in making initial determinations, including ensuring that the necessary medical evidence is in the record, and that qualified personnel are available to evaluate it. Significantly, it recommends that an opportunity be provided at this initial level for a face-to-face interview with the claimant. In conjunction with these recommendations, the Conference was prepared to eliminate the reconsideration stage. The expectation is that the need for such reconsideration is substantially reduced if the claimant has a chance to find out what information is needed before the initial decision is made, and is given an opportunity to meet with the decisionmakers, who then can ask questions about matters that are not clear on the written record.[2] It is important that any elimination of the reconsideration stage be coupled with efforts to ensure that the initial decisionmaking process is as accurate as possible.

B. The ALJ Stage

We have also studied the ALJ stage of the appeals process. Consistent with the theme that the best way to improve the process is to ensure that decisions are made on the most complete record, Recommendation 78-2, "Procedures for Determining Social Security Disability Claims," made suggestions concerning the development of the evidentiary hearing record, including recommending that ALJ's take more care in questioning claimants, seek to collect as much evidence prior to the hearing as possible, and make better use of prehearing interviews. A proposal approved by the Conference's Committee on Adjudication, which will be presented to the Conference's plenary session next month, recommends that prehearing conferences be encouraged in order to frame the issues for the ALJ hearing, to make sure that claimants are made aware what evidence they will need, and to decide appropriate cases favorably without a hearing. The proposed recommendation also encourages the increased use of subpoenas to ensure that needed evidence is made available. Further, as a way to encourage completing the record prior to ALJ decisions, the proposed recommendation suggests that the record be closed at a set time after the hearing—unlike current practice, where the record may still be open until the ALJ's decision is actually issued. The proposed recommendation further urges that where new evidence becomes available after the ALJ decision, it be presented initially to the ALJ familiar with the case rather than being considered first by the Appeals Council. Again, the Conference is proceeding from the premise that improved decisionmaking at lower levels would have a trickle-up effect of reducing the number of cases that would be appealed, because the claimant was satisfied with the result or at least with the decisionmaking process.

With respect to those matters that will be the subject of Conference debate at next month's plenary session, I cannot, of course, predict precisely what the full Conference will do.

C. The Appeals Council Stage

Finally, the Conference has carefully studied the role of the Appeals Council. In Recommendation 87-7, "A New Role for the Social Security Appeals Council," the Conference made some wide ranging suggestions for reorganizing the Appeals Council and reordering its priorities. Recognizing that the Appeals Council had a case load (upwards of 50,000 per year) that was simply too large to handle, the Conference suggested significantly reducing that case load, by focusing on developing and implementing adjudicatory principles and decisional standards, instead of correcting individual errors in every case. It proposed organizational changes, including using en banc procedures, and meeting a ninety-day deadline for issuing decisions. It fur-

[2] The Conference also studied the DDS process in a 1987 study, which led to Recommendation 87-6, "State-Level Determinations in Social Security Disability Cases." This project evaluated SSA demonstration projects then underway testing the effects of face-to-face meetings. Because the projects were not complete at the time of the recommendation, the conclusions were preliminary. The report, however, contains a discussion of many important issues.

ther proposed that Appeals Council decisions be precedential in appropriate cases.[3] The Conference strongly believed— as do the authors of S. 2453—that the current process must be changed. Indeed, the Conference recommended that if a reconstituted Appeals Council did not result in improved policy development or case handling performance, serious consideration should be given to abolishing it.

The Social Security Administration has begun implementing aspects of Recommendation 87-7. The Appeals Council has responded to our inquiries on progress in the area by sending a summary of actions they have taken in response to Conference recommendations. We think that these steps indicate the SSA's serious interest in improving the Appeals Council's activities. In my judgment, these steps should be evaluated before any move is made to eliminate the Appeals Council's role completely.

D. Secretarial Review

S. 2453 would, in effect, eliminate the Appeals Council's appellate role in the review of ALJ decisions, depending instead on Secretarial review within 30 days of the ALJ decision. The bill as worded appears to require Secretarial review of every ALJ decision. Assuming that the reference to the Secretary refers to the head of the agency, it appears that the bill assumes that the review at this level will be cursory at best. This conclusion is based on the fact that review seems to be required for every case, and that the head of the agency has only 30 days to do it. As I stated earlier, the Conference's view is that serious attempts should be made to make the Appeals Council a more workable institution before it is completely eliminated. Nevertheless, if the current type of provision is retained, we would urge that the bill be modified to make clear that the review is discretionary.

The normal and desirable practice in administrative law is to provide for a level of review above the ALJ's to permit discretionary screening of agency decisions by presidential appointees or their delegates. We specifically made such a recommendation in the context of the Appeals Council, in Recommendation 87-7. Such review provides the agency with the opportunity to ensure that decisions are consistent with each other and with agency policy, and that clear errors are corrected at the agency level. Provision for discretionary review is sufficient for this purpose, however, especially given the case load in the disability programs. At a minimum, the Secretarial review provision in the bill should provide that if the Secretary fails to act on a decision within the prescribed time period, the ALJ decision would become the final agency decision.

E. Deadlines

The bill also contains a number of statutory deadlines for particular stages of the hearing and appeals process. The Conference has stated its opposition to statutorily-imposed deadlines in adjudicatory proceedings generally. See Recommendation 78-3, "Time Limits on Agency Actions." The Conference recognizes that administrative delay is a major problem, but believes that Congressionally-imposed time limits too often are (or become) unrealistic, and may, if they are complied with, result in a skewing of priorities and an inability to adjust to changing circumstances. The time limits in S. 2453 are quite short, particularly the 30 day limit on review of ALJ decisions. As I noted earlier, we have suggested a 90-day limit on Appeals Council decisions. We also question the feasibility of the 30-day deadline for ALJ decisions, given the size of the case load. Instead of statutory time limits, the Conference suggests that agencies establish suitable time limits; it may be appropriate for Congress to require the agency to do so. However, in general, Congress should avoid setting out specific deadlines itself. If it does do so, it should recognize that special circumstances may justify the agency's failure to act within the specified time frames in specific instances.

The Beneficiary Ombudsman

I am particularly pleased to see the bill's provision for a Beneficiary Ombudsman. A Conference committee has approved for presentation to the full Conference at next month's plenary a proposed recommendation encouraging creation of ombudsmen in various agency programs, including programs involving welfare, pension, and disability benefits. The proposed recommendation reflects the growing recognition of the practical and theoretical benefits of ombudsman offices. The proposed

[3] See also Recommendation 89-8, "Agency Practice and Procedures for the Indexing and Public Availability of Adjudicatory Decisions," which recommended that adjudicatory decisions of an agency's highest level tribunal be indexed, made publicly available, and serve as precedent.

recommendation calls for legislation that would give ombudsmen the power to undertake many of the same responsibilities provided for under S. 2453, including receiving and inquiring into complaints, recommending administrative adjustments to deal with systemic difficulties, and advising within the agency on procedures, forms, and similar issues affecting delivery of services.

Although the provisions in the bill are commendable, I would like to suggest a few ideas that might help smooth implementation of the ombudsman office and make it optimally effective in the long run. First of all, the bill should make explicit that the ombudsman has the authority to investigate complaints or problems on his or her own initiative, and to report on his or her conclusions. It should also make explicit that the ombudsman should refrain from involvement in the merits of individual matters that are the subject of ongoing agency adjudication or litigation. In addition, ombudsman legislation should address means for insuring access to the ombudsman, and that provisions for salary also be set forth. The proposed recommendation suggests a salary "commensurate with that of the agency general counsel." Similarly, the legislation might address confidentiality of communications to or from the ombudsman in connection with any investigation, his access to agency records, and limitations on the ombudsman's liability and judicial review of his actions. These issues are discussed in greater detail in the attached proposed recommendation. In this connection, I should reiterate that the Conference has not yet acted on the ombudsman recommendation. Thus, this recommendation reflects only the views of one of the Conference's committees.

CONCLUSION

The more time, effort, energy and thought that goes into a review of the disability process, the better that process will become. As I noted earlier, the SSA has already begun a serious study of the need for improving the process, and the means for doing so. S. 2453, and this committee's hearing, have also usefully focused attention on avenues for improvement. Our suggestions should not be taken as criticism of the bill's provisions. The thoughtful evaluation of those provisions will make a positive contribution to the functioning of the Social Security Administration.

§ 305.78-2 Procedures for Determining Social Security Disability Claims (Recommendation No. 78-2).

(a) For at least two decades the Social Security Administration's hearings and appeals processes, particularly those for determining disability claims which account for 90 percent of all hearings, have been the subject of study, debate, and critical comment. Suggestions for improvement of these processes abound. It has been proposed that social security hearings be exempted from the formal hearing requirements of the Administrative Procedure Act; that administrative law judges not be used to decide these cases; that the decisions be made not after "hearing," but after "examination" by a panel of experts; that the hearing process be retained, but made fully adversary; that one or another level of agency review be abolished; that judicial review be precluded or shifted to magistrates or to an article I court; that the substantive standard be changed, or at least sharpened by the development of regulations or precedent decisions.

(b) The National Center for Administrative Justice has recently concluded the most comprehensive study yet undertaken of the social security hearings and appeals system. In developing the present recommendations, the Administrative Conference has reviewed and built upon that study, the general conclusion of which is that, given existing information, the more dramatic proposals for reform of the system are inadvisable. While the problems that have been identified by others do in various degrees infect the social security hearings and appeals system, the difficulties are not so overwhelming that the proposal of a markedly different system is required. Hence the recommendations that follow are for the most part interstitial and conservative. Their purpose is to prescribe improvements while reinforcing sound practice.

RECOMMENDATIONS

A. DECISIONAL BODY

1. The use of administrative law judges appointed in conformity with the Administrative Procedure Act to decide disability claims should be continued.

2. The Bureau of Hearings and Appeals (BHA) possesses and should exercise the authority, consistent with the administrative law judge's decisional independence, to prescribe procedures and techniques for the accurate and expeditious disposition of Social Security Administration claims. After consultation with its administrative law judge corps, the Civil Service Commission, and other affected interests, BHA should establish by regulation the agency's expectations concerning the administrative law judges' performance. Maintaining the administrative law judges' decisional independence does not preclude the articulation of appropriate productivity norms or efforts to secure adherence to previously enunciated standards and policies underlying the Social Security Administration's fulfillment of statutory duties.

B. EVIDENTIARY DEVELOPMENT

1. Although evidence must sometimes be collected after the administrative law judge hearing, prehearing development often may be necessary for an informed and pertinent exchange at the hearing. Administrative

law judges should not therefore adopt an invariant policy of post-hearing development, but should develop the record during the prehearing stage whenever sound discretion suggests that such development is feasible and useful.

2. The Bureau of Hearings and Appeals should experiment with wider use of prehearing interviews as a means for case development and in order to provide increased opportunity for grants of benefits without the necessity of a hearing. Due regard should be paid to the convenience of the claimants and to the need for a suitable record of such interviews.

3. Better use should be made of treating physicians as sources of useful information. In this regard, Bureau of Hearings and Appeals should make more frequent use of available, standard-form questionnaires to treating physicians. And when the Bureau of Hearings and Appeals finds that consulting physicians' reports conflict with evidence supplied by treating physicians, it should inform claimants of the opportunity to have their treating physicians comment in writing on the consulting physicians' reports.

4. The Bureau of Hearings and Appeals should make better use of claimants as sources of information by: (a) Providing them with available State agency reasons for denial; (b) providing notice of the critical issues to be canvassed at the hearing; and (c) engaging in careful and detailed questioning of the claimant at the hearing.

5. In the absence of regulations structuring the administrative law judge's discretion when evaluating vocational factors, administrative law judges should take official notice at the hearing of vocational facts that can be established by widely recognized documentary sources or on the basis of agency experience.

6. When vocational experts are called as witnesses they should be examined in detail concerning: (a) The claimant's job-related skills; (b) the specific jobs that exist for persons with the claimant's skills and functional limitations; and (c) the number of regional location of jobs that the claimant can perform.

7. Claimants should not be asked to waive their rights to see evidence developed after the hearing.

8. Congressional inquiries should be processed by Bureau of Hearings and Appeals offices in a manner that will avoid any suggestion of preferential treatment of claimants either in the scheduling or outcome of hearings.

C. MONITORING, MANAGEMENT, AND CONTROL OF THE HEARING PROCESS

1. The Appeals Council should exercise review on the basis of the evidence established in the record before the administrative law judge. If a claimant wishes to offer new evidence after the hearing record has been closed, petition should be made to the administrative law judge to reopen the record. Where new evidence is offered when an appeal is pending in the Appeals Council, the Appeals Council should make that evidence a part of the record for purposes of the appeal only if a refusal to do so would result in substantial injustice or unreasonable delay.

2. The Social Security Administration should devote more attention to the development and dissemination of precedent materials. These actions include: (a) Regulatory codification of settled or established policies; (b) reasoned acquiescence or nonacquiescence in judicial decisions; (c) publication of fact-based precedent decisions; (d) periodic conferences of administrative law judges for discussion of new legal developments or recurrent problems.

3. The Bureau of Hearings and Appeals should continue an aggressive quality assurance program to identify errors, determine their causes and prevent their recurrence.

D. JUDICIAL REVIEW

When seeking a "Secretary-initiated" remand, pursuant to section 205 of the Social Security Act, the Secretary should state the reasons for each request.

E. REPRESENTATION

1. Bureau of Hearings and Appeals offices should fully inform claimants prior to the hearing of the availability

of counsel and lay representation and of the means by which they may obtain counsel or representation in their local area on a fee or no-fee basis.

2. The Bureau of Hearings and Appeals should assist and cooperate with appropriate organizations in the development of training programs for attorneys and lay representatives.

[43 FR 27508, June 26, 1978]

§ 305.78-3 Time Limits on Agency Actions (Recommendation No. 78-3).

(a) Eliminating undue delay in administrative procedures has long been a public concern. Congress addressed the problem in general terms in the Administrative Procedure Act in 1946. Section 6(a) of the original Act required each agency to conclude any matter presented to it "with reasonable dispatch." Section 10(e)(A) of the Act authorized a reviewing court to enforce this command by compelling agency action "unlawfully withheld or unreasonably delayed." Although these two sections (now codified as section 555(b) and section 706(1) of Title 5) contain enforceable prohibitions against unlawful or unreasonable delay, they have contributed little to the reduction of delay. Because what constitutes unlawful or unreasonable delay is not readily ascertainable, courts have afforded relief from administrative dilatoriness only occasionally and in egregious cases. Courts have also recognized that the present statutory provisions are too general to deprive agencies of the broad discretion they need to allocate limited resources among competing demands for official attention.

(b) Frustration over the inability of agencies and courts to speed the course of administrative proceedings has occasionally led Congress to adopt a somewhat mechanistic approach to the problem. In recent years Congress has with increasing frequency enacted statutory provisions that require particular agencies to complete adjudicatory or rulemaking proceedings within prescribed periods of time. In these instances, the statutory limits are stated in terms of specific numbers of days or months; the statutes also identify the categories of agency proceedings that are subject to the prescribed schedules. Congress evidently expects that if it establishes a deadline for agency action, the affected agency will meet that deadline, or will at the least complete its assigned statutory duty more promptly than it would otherwise have done.

(c) Congressional expectations that statutory time limits would be effective have remained largely unfulfilled. There has been a substantial degree of noncompliance with all the statutory time limits studied. Agency officials often view statutory timetables as unrealistically rigid demands that disregard the agency's need to adjust to changing circumstances. Practical experience at diverse agencies lends support to this appraisal.

(d) Statutory time limits tend to undermine an agency's ability to establish priorities and to control the course of its proceedings. Such limits also enable outside interests to impose their priorities on an agency through suit or threat of suit to enforce them. When asked to enforce statutory time limits, courts have recognized that an agency's observance of the prescribed limits may conflict with other requirements of law (e.g., the right of interested persons or parties to a full and fair hearing) or with the requirements of sound decisionmaking. Judges have, therefore, treated the enforcement of statutory time limits as a matter lying within their own equitable discretion despite the precisely measured language of the statutes.

(e) A recent task force study for the Senate Committee on Governmental Affairs[1] has concluded that particularized timetables or deadlines established by individual agencies to govern their own proceedings can be useful tools for reducing delays and are preferable to seemingly more rigid legislative prescriptions. This finding fully accords with those of the study underlying the present recommendation of the Administrative Conference.

RECOMMENDATION

1. Reasonable timetables or deadlines can help reduce administrative delay. Generally, it is preferable that such limits be established by the agencies themselves, rather than by statute.

2. Before determining to impose statutory time limits for the conduct of agency proceedings, Congress should give due consideration to the alternative of requiring the agency itself to establish timetables or guidelines for the prompt disposition of various types of proceedings conducted by it. It may also require that significant departure from agency adopted timetables be explained in current status reports.

3. Whether or not required to do so by statute, each agency should adopt

[1] Senate Committee on Governmental Affairs, 95th Cong., 1st sess., IV Study on Federal Regulation: Delay in the Regulatory Process, 132-52 (1977).

time limits or guidelines for the prompt disposition of its adjudicatory and rulemaking actions, either by announcing schedules for particular agency proceedings or by adopting regulations that contain general timetables for dealing with categories of the agency's proceedings.

4. Congress ordinarily should not impose statutory time limits on an agency's adjudicatory proceedings. Statutory time limits may be appropriate, however, when the beneficial effect of agency adjudication is directly related to its timeliness, as may be true in certain licensing cases or in clearance of proposed private activity where a delayed decision would deprive both the applicant and the public at large of substantial benefit. If Congress does enact time limits, for cases of any type, it should recognize that special circumstances (such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations) may justify an agency's failure to act within a predetermined time. Statutes fixing limits within which agency adjudication must be completed should ordinarily require that an agency's departure from the legislative timetable be explained in current status reports to affected persons or in a report to Congress.

5. Congress ordinarily should not impose statutory time limits on rulemaking proceedings. Purely as a practical matter, modern rulemaking proceedings are too complex and varied, and involve too many stages, to permit fixing unyielding time frames for agency decisionmaking. Strict time limits, moreover, may foreclose the use of procedural techniques that can be valuable in enhancing the degree of public participation and insuring completeness of information.[3] Congress should therefore enact statutory time limits applicable to rulemaking only when it can be relatively specific about what it expects the agency to do, and when it intends the agency to have relatively little discretion in doing it. Congress may appropriately indicate by statute the time within which an agency should respond to individual requests to commence rulemaking, but it should avoid combining that time limit with a restriction on the discretion the agency otherwise enjoys to commence or not commence proceedings and to establish priorities for its rulemaking activities.

6. If Congress does impose a statutory time limit on agency decisionmaking, whether in adjudicatory or rulemaking matters, it should be attentive to the need for revision. A time limit considered desirable at the outset may prove to have been unrealistic because it was based on incomplete information. If realistic at the time of enactment, the limit may cease to be so with the passage of time. Statutes imposing time limits therefore should provide for periodic reconsideration by the Congress or grant the agency authority to revise the limits under standards established by the Congress.

7. If a statutory time limit is imposed, Congress should expressly state whether affected persons may enforce the time limit through judicial action and, if so, the nature of the relief available for this purpose. In cases where the time limit is intended only as a norm by which the agency's performance is to be measured, a requirement that the agency report deviations from the time limit to Congress may be a desirable means of assuring oversight of its performance.

[43 FR 27509, June 26, 1978]

[3] See, for example, Administrative Conference Recommendations 76-3, 72-5, and 77-3.

§ 305.87-6 State-Level Determinations in Social Security disability cases.

In Fiscal Year 1986, nearly two and one half million individuals applied for disability benefits under two federal programs administered by the Social Security Administration: Retirement, Survivors, Disability and Health Insurance (RSDHI), and Supplemental Security Income (SSI). Payments made annually to their seven million beneficiaries totalled twenty-nine billion dollars during that period. Certain aspects of this enormous benefit program have recently been subject to close scrutiny to determine whether greater efficiency is possible.

In order to be eligible for either program, a claimant must meet medical and other criteria. The RSDHI program operates as an insurance plan. A worker qualifies by earn-

ing a sufficient amount of wages for a required period of time. By contrast, the SSI program is a welfare program whose non-medical criteria are met by a demonstration of need.

If a claimant meets the criteria for either plan, he or she must then meet the medical criteria for disability in order to establish eligibility for benefits. The basic statutory test is identical for both RSDHI and SSI:

"Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). (See also 42 U.S.C. § 423(d)(2)(A) which liberalizes the work requirement somewhat.)"

Claimants begin the application process by filing an application at a Social Security Administration office. If a claimant meets the non-medical criteria, the file is then forwarded to a federally-funded and SSA-regulated state Disability Determination Service (DDS) for a determination as to disability. A two-person team consisting of a "disability examiner" and medical consultant (a physician employed by DDS) reviews the medical evidence and reaches its decision. The claimant is not present at any time during the process.

A claimant who is dissatisfied with the initial determination (about 60% are denials) has 60 days in which to seek a reconsideration. Reconsiderations are also performed at the state DDS level, and are essentially a repeat of the initial determination process, but with different personnel acting as decisionmakers. The record may be supplemented at this time, but as with the initial determination process, the claimant does not appear. In FY 1986, about 40% of denied claimants (totalling 380,000) sought reconsideration and about 17% of those received favorable re-determinations.

Further review is available at the ALJ and Appeals Council stages. See Recommendation 87-7 for a description of these later review stages.

Several areas pertaining to the disability determination, hearing and review process have been subject to criticism. First, the current system, with its four tiers of successive review, often results in the replacement of one decisionmaker's determination with that of the next, but without necessarily improving the quality of any of the actual decisions. Second, because there is little cost to filing an administrative appeal (and everything to gain in doing so), there is correspondingly little incentive for a claimant to accept any unfavorable determination as final. Accordingly, there is a wide stream of cases all the way to the end of the process. Moreover, claimants whose cases are decided without a personal appearance before the decisionmaker (as is the case in three of the four review stages) frequently feel dissatisfied with the process, that they have not received their "day in court."

In addition, courts, members of Congress, and the system's clients have all indicated that their confidence in the system has deteriorated to the point that its integrity has suffered. The public's faith in the institution is essential to its success in the long run.

In efforts to improve the administration of the state-level determination process, the stage at which the caseload stream is the widest, Congress and SSA have engaged in some modifications of the system as well as some experimental procedures. By 1983, a large increase in appeals from terminations of benefits in continuing disability review (CDR) cases had begun to flood the system. In such cases SSA performs reviews on existing beneficiaries to determine whether the disability still exists. If the determination is negative, a notice of termination is sent, triggering the above-described review process. Congress reacted to this by passing Pub. L. 97-455, which gave the option to claimants of an "evidentiary hearing" at the reconsideration stage in all CDR cases. Although a moratorium in CDR cases slowed the institution of this procedure, it is now in place and specially trained hearing officers are conducting these relatively formal proceedings.

In 1984 (Pub. L. 98-460), Congress mandated demonstration projects in selected DDS offices to try a one-step proceeding, allowing a personal interview but eliminating the reconsideration step. In five states, the interview was to be used in initial determinations, and in five other states it was to be used in place of the evidentiary hearing in CDR cases. These demonstration projects are currently underway, and results are limited. Although preliminary, the experience with evidentiary hearings and the demonstration projects with personal interviews give rise to the following conclusions:

—Face-to-face procedures are more satisfactory to claimants than are paper reviews, resulting in claimants feeling that they received a fair hearing;

—Face-to-face procedures are helpful to decisionmakers, in many instances providing them with evidence not ascertainable from the paper file.

If the final results of the demonstration projects are consistent with these initial findings, it is probable that by implementing some kind of a face-to-face proceeding at the state level, awards of benefits that ultimately would be made later in the system will be made at the outset. This will have the effect of decreasing the caseload at later levels, both for ALJs and the Appeals Coun-

cil, and for federal courts. Overall costs to the system would thereby be reduced as well.

At the request of the Social Security Administration, the Administrative Conference has undertaken a preliminary review of the disability determination process at the state level. The Conference makes the following Recommendations, based on that study.

RECOMMENDATION

The Conference supports Congressional and Social Security Administration (SSA) efforts to improve the procedure by which initial and reconsidered disability determinations are made by state Disability Determination Service (DDS) offices. Although existing experience with use of evidentiary hearings at reconsideration is sparse, and experiments using a single-step determination (after a personal interview, but without reconsideration) are at an early stage, some preliminary suggestions can be made to SSA:

1. Experiments and demonstration projects concerning use of face-to-face procedures at the initial determination stage should be continued and encouraged. SSA should conduct thorough and careful evaluations of both the evidentiary hearing procedure now used in continuing disability review (CDR) cases and the personal interviews now being tried in selected state demonstration projects and should make prompt reports to Congress.

2. Full implementation of evidentiary hearings (for other than CDR cases) or personal interviews (either at the initial or reconsideration stage) should await the final report on the current experiments by the Department of Health and Human Services (HHS).

3. HHS's reports concerning the use of face-to-face procedures should include consideration of the cost of full implementation of evidentiary hearings or personal interviews at the initial or reconsideration stage. Should cost considerations militate against full implementation of such hearings or interviews, SSA should consider the feasibility and fairness of permitting some kind of a hearing or interview on a discretionary basis subject to appropriate published guidelines where either the claimant's file, type of medical condition or the opinion of the examiner indicates that such a procedure would be of significant assistance to the ultimate determination.

4. In analyzing the results of the procedures and the ongoing experiments at the DDS level, SSA should develop accurate measures of efficiency and associated record-keeping requirements. Specifically, such measures of processing time should take into account post-interview time expended waiting for third party responses to requests for additional case development. Any measures of efficiency adopted by SSA should not serve to discourage the use of comprehensive interviews.

5. In analyzing the procedures and ongoing experiments (and in any future analyses), SSA should review the reasonableness of variations between DDS offices in their award rates and other aspects of case handling, in light of state-by-state variables that can affect the disability determination process.

6. SSA should proceed with caution before taking the position that face-to-face hearings or interviews at the DDS level would be an adequate substitute for the opportunity for an adjudicatory hearing before a SSA administrative law judge (ALJ). Rather, such modifications to the DDS process should be seen as a possible way of reducing the number of appeals to the later stages of the process.

7. Close scrutiny should be given to any legislative or other proposals to completely eliminate the reconsideration stage, taking into account the impact of that step on overall processing costs, and on the caseload at the ALJ stage. Any such proposals to convert the two DDS stages into a single stage should consider the need to allow some type of a face-to-face proceeding at that stage, as provided for in the demonstration projects.

8. Before instituting evidentiary hearings (for other than CDR cases) or personal interviews in all DDS offices, SSA should consider (a) decentralization of DDS offices into decisional units to minimize travel costs and (b) the need to select and train a sufficient number of personnel quali-

fied to conduct such hearings or interviews.

9. The record in disability appeals should not be closed until completion of the ALJ stage—that point in the process at which claimants now are more likely to be represented by attorneys or other advocates.

10. SSA should conduct a study of: (a) The reference sources of claimants (e.g., referrals from state welfare agencies, private insurance carriers, etc.) to determine whether such referrals are a source of excessive numbers of claims that are later determined to be unmeritorious, (b) the nature of "dropouts," claimants who fail to pursue their appeal rights, to determine why this occurs, and (c) the number of claimants who reapply in lieu of appealing, and the reasons therefor.

[52 FR 49142, Dec. 30, 1987]

§ 305.87-7 A New Role for the Social Security Appeals Council.

The Social Security disability system is described generally in Recommendation 87-6 which focuses on the initial determination process at the state-level Disability Determination Service (DDS) offices. This Recommendation addresses the later stages of review by the Social Security Administration (SSA).[1]

The first stage of review by federal decisionmakers is the third step in the process for disability claimants. Claimants disappointed after state-level initial and reconsideration determinations may then demand a hearing before an administrative law judge (ALJ) employed by the Social Security Administration. About 65% of such claimants do so. This is the first time in the process (except in certain demonstration projects or cases involving th' termination of benefits) that a claimant has a face-to-face encounter with the decisionmaker. The hearings are de novo, and generally follow Administrative Procedure Act guidelines. Approximately 50% of appeals taken to an ALJ hearing result in the award of benefits.

The fourth, and final, level of administrative review is to the Social Security Appeals Council. This twenty member body, created by regulation, and chaired by the Associate Commissioner for Hearings and Appeals, disposes of a staggering 50,000 cases annually. (About 40% of claimants who lose at the ALJ stage appeal.) In addition to appeals from ALJ decisions, the Appeals Council reviews, on its "own motion," selected cases where there has been a grant of benefits. The Appeals Council relies on analysts in its companion unit, the Office of Appeals Operations (OAO), to screen cases and make recommendations concerning disposition of the cases. Council members hold the same salary grade level as SSA ALJs. They perform purely a paper review on cases that are forwarded to them by OAO and assigned to them individually based on the geographical origin of the case. The Appeals Council acts on each appeal, although in most cases the request for review is summarily denied or dismissed. Because of the demands on each member (up to 500 cases per member per month), a typical case is likely to receive less than 15 minutes of paper review by the member. The Council almost never sits in panels or conducts oral arguments. In recent years, approximately 5% of the cases reviewed result in reversals (i.e., awards of benefits), and another 7 to 15% are remanded to the ALJ.

After exhaustion of state and federal administrative remedies, a claimant may seek judicial review in the federal district court. In the years 1981 to 1986 the number of new SSA disability cases filed in the courts ranged from 9,000 to 26,000 per year.

In past years, the Appeals Council has to some extent played a policy-relevant role. Yet, as its caseload increased, it was by necessity limited to a narrow case correction function. Accordingly, its members had little time to devote to policy matters. Recently, the Appeals Council has come under attack from many fronts, including Congress, claimants and their representatives, and academicians, who have questioned both the Appeals Council's usefulness as an additional step in the adjudicative chain and the resulting delays caused to claimants who wish to proceed to court.

Critics have complained that the rate of reversals is so low that it fails to compensate for the additional delay caused to claimants who wish to seek judicial review. The Conference's study noted that because its members are so driven by the "tyranny of the caseload," it has failed to take advantage of its unique position as the final administrative review body—one that sees a diverse number of disability cases, and accordingly, can detect emerging problems, and identify new issues to be resolved and policies to be developed. Thus, any capabilities it should have in promoting consistency of lower-level decisionmaking, and policy integrity throughout the system, are thwart-

[1] The Conference has previously addressed elements of the Social Security appeals process (focusing primarily on the ALJ hearing stage) in Recommendation 78-2, Procedures for Determining Social Security Disability Claims, 1 CFR 305.78-2.

ed, and it is left with little more than a case-handling role.

The Social Security Administration requested the Administrative Conference to study and analyze the operation of the Appeals Council.

Serious consideration was given to recommending outright abolition of the Appeals Council. This view was premised on the Appeals Council's present inability to do little more than add one more layer to the already-lengthy review bureaucracy. (This criticism was not intended as a denigration of Appeals Council members, whom the study found to be competent, dedicated, and cooperative.) Before recommending such a drastic, and irreversible step, however, the Conference felt that an attempt should be made to use the unique perspective and expertise of the Appeals Council to help correct the existing problem. The Conference believes that fundamental changes are needed to reduce the Council's caseload to a more manageable volume, so that individual cases can be given more attention and the Council can be a significant contributor to agency policymaking. Accordingly, to implement a system-reform function for the Appeals Council, the Conference makes the following Recommendations for modification of its structure, purpose and operations.

While the recommendation anticipates a reduced volume of cases for the Appeals Council, the Conference believes that improved fact-finding will result from the changes in initial determinations (*see* Recommendation 87-6), and that this will compensate for diminished factual review at the Appeals Council stage.

RECOMMENDATION

1. The Social Security Administration (SSA) should, as soon as feasible, restructure the Appeals Council in a fashion that redirects the institution's goals and operation from an exclusive focus on processing the stream of individual cases and toward an emphasis on improved organizational effectiveness. To that end, the Appeals Council should be provided the authority to reduce significantly its caseload and also be given, as its principal mandate, the responsibility to recommend and, where appropriate, develop and implement adjudicatory principles and decisional standards for the disability determination process. In particular, SSA should adopt the following structural reforms to improve the Appeals Council's ability to perform its new function.

a. *Focus on System Improvements.* SSA should make clear that the primary function of the Appeals Council is to focus on adjudicatory principles and decisional standards concerning disability law and procedures and transmit advice thereon to SSA policymakers and guidance to lower-level decisionmakers. Thus the Appeals Council should advise and assist SSA policymakers and decisionmakers by:

(1) Conducting independent studies of the agency's cases and procedures, and providing appropriate advice and recommendations to SSA policymakers; and

(2) Providing appropriate guidance to agency adjudicators (primarily ALJs, but conceivably DDS hearing officers in some cases) by: (a) Issuing, after coordination with other SSA policymakers, interpretive "minutes" on questions of adjudicatory principles and procedures, and (b) articulating the proper handling of specific issues in case review opinions to be given precedential significance. The minutes and opinions should be consistent with the Commissioner's Social Security Rulings. Such guidance papers should be distributed throughout the system, made publicly available, and indexed.

b. *Control of its Caseload.* On order to fulfill its responsibility to develop, and to encourage utilization of, sound decisional principles and practices throughout SSA, the Appeals Council must be empowered to exercise its review sparingly, so that it may concentrate its attention on types of cases identified in advance by the Appeals Council. These types of cases might include a small sample of random cases or categories identified by the Secretary of Health and Human Services from time to time. To that end, the Secretary should direct the Appeals Council to design a new review process, subject to the Secretary's approval, that would continue to be part of the available administrative remedy for a claimant dissatisfied with an administrative law judge's (ALJ's) initial decision, but that would enable the Appeals Council to deny a petition for review if the issues it sought to raise are deemed inappropriate for the Appeals Council's attention. If a petition for review is denied, the ALJ's decision

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should be deemed to be final agency action.

c. *Improved Review of Individual Cases.* The Appeals Council, given a reduced caseload, should upgrade its handling of individual cases. In particular the Council should:

(1) Work more collaboratively, including as appropriate, considering cases en banc or in panels;

(2) Encourage claimant's representatives to submit briefs (including *amicus* briefs) on selected issues and evaluate the benefits of encouraging oral arguments in appropriate cases (utilizing existing authority to reimburse participants as necessary);

(3) Write more elaborate opinions, providing better reasoning and legal analysis and relying less on boilerplate and verbatim recitation of records;

(4) Avoid substitution of judgment on ALJ factual determinations; [8]

(5) Significantly reduce the time needed to initiate or deny review of cases and issue a final decision in most cases within 90 days of accepting review, unless an extension or delay request by a claimant is granted for good cause; and

(6) Specify that once the period for accepting review has passed, ALJ decisions should be deemed to be final agency action, and should be subject to reopening by the Appeals Council only in accordance with existing standards.

d. *Enhancement of Status of Appeals Council.* SSA should improve the status of the Appeals Council and insure high caliber appointment by:

(1) Reducing the size of the Council so that the Council can meet and act more collegially;

(2) Upgrading the salary level of members so that it is one level above SSA ALJs;

(3) Providing the members, by regulation, with the same civil service protections as accorded to career service personnel and by providing ALJs who agree to serve on the Council with assurances that they will receive reappointment to their former position upon completion of service; and

(4) Establishing merit selection criteria for appointment to the Appeals Council, giving preference to prior experience as an ALJ.

e. *Enhancement of Support Systems.* SSA should improve the support system provided to its Appeals Council by reorganizing the Office of Appeals Operations, providing law clerks to assist members, and updating production and communication systems.

f. *Enhance the Appeals Council's Visibility.* The Appeals Council should enhance its visibility both inside and outside the agency by reinstating the "visiting ALJ" program,[9] instituting exchange programs with other SSA components, seeking publication of precedent by a recognized reporter service, and encouraging other outreach and bar-related activities.

2. If the reconstituted Appeals Council does not result in improved policy development or case-handling performance within a certain number of years (to be determined by Congress and SSA), serious consideration should be given to abolishing it.

[52 FR 49143, Dec. 30, 1987]

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[8] In conjunction with this reliance on the record below, the Appeals Council should not permit new evidence to be introduced without good cause, although motions to remand to the hearing stage should be permitted. See Recommendation 78-2, ¶(c)(1); 1 CFR 305.78-2(c)(1).

§ 305.89-8 Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions (Recommendation 89-8).

This recommendation examines the obligation of agencies to index and make their adjudicatory decisions available to the public.

The Freedom of Information Act (FOIA) imposes numerous affirmative disclosure obligations on agencies. Under 5 U.S.C. 552(a)(2), each agency, in accordance with published rules, is required to make final adjudicatory decisions and orders [1] available for public inspection and copying unless the materials are promptly published and copies are offered for sale. In addition, each agency shall maintain and make available for public inspection and copying current indexes that provide identifying information for the public as to any matter issued, adopted, or promulgated. FOIA further mandates that each agency shall promptly publish, quarterly or more frequently, and distribute copies of each index unless it determines, by order published in the FEDERAL REGISTER, that such publication is unnecessary and impracticable.

Many agencies do, in fact, index and publish or otherwise make available to the public their adjudicatory decisions, as required under FOIA (e.g., the National Labor Relations Board, the Merit Systems Protection Board, the Interstate Commerce Commission, the Securities and Exchange Commission). This recommendation, then, is addressed to those agencies which either entirely fail to index, publish or make their decisions available to the public or fail to do so adequately, whether or not they use adjudicatory precedent to pronounce and develop agency policy.

Debate has surrounded consideration of an appropriate test for determining which types of adjudicatory decisions are included in this affirmative disclosure obligation. The Attorney General initially expressed the opinion that FOIA requires that agencies index only those decisions cited by an agency or relied upon as precedent. This limitation, in the view of the Attorney General, was derived from both the enforcement provision in the statute, which precludes the agency from giving precedential effect to matters not indexed, and the legislative history of the statute, which indicates that the disclosure provision was intended to make available documents having precedential significance. The Attorney General also was influenced by the impracticality of indexing all agency decisions.

Application of the affirmative disclosure requirements, beyond simply precedential decisions, however, offers several advantages. First, if agencies index all significant decisions, and not just those decisions deemed to be precedential, agencies would be less inclined to be restrictive or one-sided in the selection of cases to be accorded precedential effect. Second, private parties affected by agency action would be in a better position to learn of and influence agency policy. Third, a broader application of affirmative disclosure requirements would implement the underlying aim of the FOIA indexing requirements which is to afford citizens the essential information needed to deal effectively and knowledgeably with federal agencies and to guard against the development of secret law. Lastly, a current index of final decisions may assist agencies in developing standards and policies with respect to general issues and recurring questions.

The few cases dealing with the FOIA affirmative disclosure obligations have generally read the precedential test broadly. They require disclosure not only of decisions that an agency considers to be binding but also all decisions that an agency retains for general reference and research. The recommended approach to the indexing and public availability of final decisions focuses less on the binding nature of the precedent

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[4] See ACUS Recommendation 82-1, Exemption (b)(4) of the Freedom of Information Act, 1 CFR 305.82-1 (1988).

[1] This subsection also covers agency statements of policy and interpretations, as well as administrative staff manuals and instructions to staff that affect a member of the public. The Conference has already recommended that agency policies that affect the public should be articulated and made known to the public to the greatest extent feasible, ACUS Recommendation 71-3 "Articulation of Agency Policies." See also ACUS Recommendation 70-3, "SEC No-Action/Letters Under section 4 of the Securities Act of 1933."

and more on the value that decisions can have to inform and assist the public.

RECOMMENDATION

1. Indexing of Agency Decisions

Agencies that do not already do so should compile a subject-matter index of their adjudicatory decisions so as to afford citizens information useful in dealing with the agencies and to assist the development of agency standards and policies on general issues and recurring questions.[1]

In meeting FOIA indexing requirements, agencies should ensure that a subject-matter index is made of their decisions and that the index includes all significant decisions, whether or not the decisions are designated as precedential.

2. Level and Scope of Decisions Indexed

The index should cover the adjudicatory decisions of the agency's highest level tribunal. The agency should also consider whether to index significant lower level decisions that have become final. The adjudicatory decisions intended to be covered by this recommendation are those made with an accompanying written opinion or rationale in contested cases after an opportunity for a hearing at some stage of the proceeding.

3. Index Contents

Agency indexes should be designed for effective and efficient use. These indexes should contain sufficient information on each indexed decision to identify the major issues decided and the location of the case file. Agencies should adopt one of the following practices in indexing their adjudicatory decisions:

A. *Universal Index.* Index all final decisions; or

B. *Selective Index.* Where the volume of decisions makes a universal index impracticable or uninformative, selectively index final decisions omitting those decisions that are repetitive. The selective index should include all significant decisions. Decisions may be significant because they are deemed by the agency to be precedential or otherwise establish a principle to govern recurring cases with similar facts, develop agency policy and exceptions to the policy in areas where the law is unsettled, deal with important emerging trends, or provide examples of the appropriate resolution of major types of cases not otherwise indexed.

4. Public Notice of the Index

Agency indexes should be fully disclosed and readily available. Appropriate notice of the existence of unpublished decisions should also be given in both the agency's FOIA regulations and the procedural or substantive regulations governing the specific program.

5. Computer Technology

Agencies should explore the use of computer technology in order to promote accessibility and reduce costs of indexing.

[54 FR 53495, Dec. 29, 1989]

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[1] In programs where the agency has established a policy that none of its decisions have precedential effect, the Conference urges that the agency re-examine the feasibility of creating a system that accords certain decisions precedential value to provide guidance about the factors that influence their decisions and to ensure better development of agency policy and standards. See ACUS Recommendation 87-7, "A New Role for the Social Security Appeals Council," 1 CFR 305.87-7. See also ACUS Recommendation 71-5, "Procedures of the Immigration and Naturalization Service in Respect to Change-of-Status Applications."

§ 305.89-10 Improved Use of Medical Personnel in Social Security Disability Determinations (Recommendation 88-10).

The Social Security Administration annually processes more than 1.5 million requests for Disability Insurance Benefits and Supplemental Security Income requiring a determination whether the claimant is disabled. The Administrative Conference has addressed various aspects of the Social Security Administration's administrative procedures in earlier recommendations.[1] This recommendation focuses more specifically on the appropriate use of medical personnel in making disability determinations.

The Social Security Administration (SSA) uses medical personnel currently in two ways. First, initial and reconsideration determinations are made for SSA by federally funded state agencies that use teams composed of one lay disability examiner and one medical doctor or psychologist.[2] Second, medical sources are used to provide evidence of disability in individual cases and to explain or elaborate upon medical evidence obtained from other sources. Medical sources provide evidence relating to individual claims to state agencies at the initial decision and reconsideration levels, to administrative law judges at the hearing level, and to the Appeals Council. Requests can be made to the claimant's treating physician or to an independent physician who is asked to examine the claimant and report on his or her findings. Doctors are asked by some administrative law judges to explain or elaborate upon existing medical evidence; other administrative law judges and most state agency personnel do not use independent medical doctors for these purposes. Medical personnel are involved in the disability determination process for other federal disability programs as well. Although the extent to which they are used varies from program to program, programs typically concentrate the use of medical personnel at the initial decision stage, as does the Social Security Administration.[3]

There is no doubt that medical personnel can offer valuable assistance in making disability determinations called for by the Social Security Act. Notwithstanding the mixed medical and legal content of the Social Security Act's disability standards, most disability determinations require the resolution of medical issues in one form or another. At the same time, it must be recognized that doctors cannot simply apply their general medical expertise to the work of determining disability under a complex and multi-faceted statutory disability standard. Doctors are accustomed to evaluating a person's limitations in the context of treatment; they are oriented professionally to identify the cause of and resolve limitations, rather than to identify limitations and then measure them against stated requirements for receipt of benefits. These recommendations are intended to help reconcile the needs of the Social Security Administration disability determination process for medical expertise and the ability of the medical profession to meet those needs.

Medical personnel perform three main functions in current practice. First, they assist in developing the medical records on which disability decisions are based. Second, they provide medical evidence for the record, including medical findings and opinions relating to an individual claimant's impairments and explanations of other medical evidence already in the record. Third, they participate in making disability decisions at the initial and reconsideration levels based on the record.

Each of these functions suggests models for using medical decisionmakers in Social Security disability determinations. The first model would increase the responsibility of

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[1] If it is thought that current law precludes such a State Department study, Congress should authorize the State Department to undertake the study.

[1] See Recommendations 78-2 (ALJ hearing stage), 87-6 (state level determinations), 87-7 (Appeals Council).

[2] For cases involving mental impairments, Social Security regulations provide that either psychologists or psychiatrists may assist in determining disability. Accordingly, references to the terms "medical sources," "physicians," and "doctors" in these recommendations are intended to include psychologists used in those cases.

[3] While the Conference has examined the other federal disability programs and believes that these recommendations hold valuable lessons for the agencies administering those programs, these recommendations are addressed solely to the Social Security Administration.

medical personnel for compiling all relevant medical evidence. Medical personnel would concentrate on evaluating the adequacy of the record and following up with requests for clarification and additional information from treating and consulting medical sources. Medical personnel would also be given specific responsibility for assuring that all medical evidence in the record is clear and understandable to both medical and non-medical decisionmakers. The second model would improve the use of doctors as sources for supplying medical data and opinions on which disability decisions can be based. This model also supports the use of medical personnel to evaluate and resolve certain specified medical issues relevant to a claim if, in a particular case, there are medical issues that can be identified as appropriate for separate decision. The third model would make more effective use of medical personnel in decisionmaking role. This model would concentrate medical resources at the initial decision level, where a doctor would share the responsibility for decisionmaking with a non-medical disability examiner. The doctor member of the team would be given special responsibility for certain tasks, and would undertake a full and independent review of the entire record in each case. The expectation is that through open exchange of information between the two decisionmakers and a reasonable allocation of responsibility based on each member's expertise, most disability determinations will be made by consensus. If conflicts arise on medical issues, separate medical personnel would be given the authority to resolve those conflicts.

The following recommendations would implement the important provisions of each of these models. Implementing these recommendations would require greater expenditures for medical personnel and related support at the state agencies. However, additional costs should be offset by savings resulting from elimination of the reconsideration level and reduced numbers of administrative and federal court appeals.

RECOMMENDATION

A. Improvements at the Initial Decision Level

The Social Security Administration (SSA) should enhance the decisionmaking role of medical personnel at the initial decision level. This can be accomplished by improving upon the current practice of using two-member teams—consisting of a medical member who is a licensed physician or psychologist and a non-medical member who is a disability examiner—to determine disability, as follows:

1. *Responsibility for developing medical evidence.* SSA should ensure that the medical member of the team is given primary responsibility for developing the medical evidence[4] in the record.

(a) Staff and resources should be allocated so as to assure that a complete record of all evidence relevant to a disability claim is obtained before an initial decision is made on the claim.

(b) Specially trained support staff, including nurses and non-medical personnel, should be made available to assist the medical member in developing the medical evidence.

(c) The medical member should, whenever possible, be assigned direct responsibility for evaluating the adequacy of reports from physicians and for following up with requests for clarification or additional information from these sources.

2. *Identifying and deciding discrete medical issues.* SSA should develop a list of discrete issues raised by the applicable disability standards that may arise in individual claims and that are appropriate for decision by medical staff. The medical member of the team assigned to a claim should be made responsible for identifying any such discrete issues raised in the claim, developing all evidences relevant to the issue, and reaching a decision on that issue.

3. *Resolving medical conflicts.* SSA should ensure that medical personnel are used to resolve any conflicts on medical issues that arise in the course of team evaluations of disability at the initial decision level.

(a) Senior medical staff should be given the authority to review claims where the team members are unable to agree and to recommend further

[4] "*Medical evidence*" includes (1) medical findings and opinions relating to an individual claimant's impairments, (2) other evidence, including subjective symptoms, that is relevant to determining the existence or severity of the claimant's condition, and (3) explanations of other medical evidence already in the record. The recommendations' focus on development of medical evidence is not intended to minimize the importance of the development of other evidence, including vocational evidence.

action, including the development of additional medical evidence, to resolve the conflict.

(b) If the conflict persists, the state agency's medical personnel should assume primary responsibility for evaluating the record with respect to the medical issues and for making a determination based on that record.

(c) As part of this process, independent medical experts, or panels of experts, should be identified and retained for use as examining and non-examining consultants, as appropriate.

4. *Notice of deficiencies in medical evidence.* SSA should require that claimants be informed specifically of any deficiencies in the medical evidence that could lead to an adverse determination before the initial decision is made

(a) This notice should be prepared by the medical member of the team, should clearly explain any deficiency in the medical evidence, and should encourage the claimant to provide additional information and explanation, as needed. This notice should also state that the agency will assist claimants in obtaining this information when they are unable to do so on their own due to financial or other constraints.

(b) As part of this process, either the claimant or the medical member should have the authority to initiate a face-to-face interview.

5. *Ensuring quality of evidence.* SSA should take steps to improve the quality of evidence provided by medical sources for disability adjudications.

(a) Guidelines should be established that identify priorities for the use of treating physicians, examining physicians and non-examining physicians, including specialists, for these purposes.

(b) Selection and evaluation of physicians asked to provide medical information should be performed by medical personnel independent from the agency staff responsible for making disability decisions and should be supported by a system for quality control covering both the selection of physicians and the reports submitted.

(c) Physicians asked to provide medical information should be adequately compensated and should be provided with instructions as to applicable agency standards.

(d) Medical personnel should be able, when appropriate, to consult with specialists before ordering examinations or tests.

(e) All contacts with medical sources relating to the determination of disability for a particular claim should be documented routinely in writing and included in the record. SSA should ensure that claimants are provided a copy of any reports prior to issuance of the decision and accorded an opportunity to object and rebut appropriately.

6. *Training and supervision of medical personnel.* SSA should ensure that all medical personnel are trained fully on legal and program issues and work under the supervision of the chief medical officer in the state agency. SSA should also ensure that medical staff act in accordance with the rules established by the Social Security Act and relevant federal court decisions, including the requirement to obtain and give appropriate weight to the opinions of claimants' treating physicians, in performing the functions described in paragraphs 2, 3(b), and 5(a).

B. Reconsideration

7. *Elimination of Reconsideration.* SSA should seek to concentrate the efforts of the disability determination team on a single initial decision process, as outlined in these recommendations. Together with implementations of these recommendations, the separate reconsideration stage should be eliminated.

C. Appeal Level

8. *ALJ use of medical experts.* SSA should encourage its administrative law judges to call on an independent medical expert in appropriate cases to assess the need for any additional medical evidence and to explain or clarify medical evidence in the record.[6]

[6] SSA should also ensure that its ALJs receive appropriate training on medical issues relevant to their decisional responsibilities.

SSA should make clear by regulation that a medical expert's evidence can be presented orally or in writing. The regulations should also provide that claimants are notified of the inclusion of an expert's report in the record and should assure that claimants' rights to object to the inclusion of the report, submit rebuttal evidence, and cross-examine the expert are not abridged. The regulations should also provide that all information and opinions provided by medical experts must be included in the record.

[54 FR 53496, Dec. 29, 1989]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, COMMITTEE ON ADJUDICATION

[Draft]

SOCIAL SECURITY DISABILITY PROGRAM APPEALS PROCESS: SUPPLEMENTARY RECOMMENDATIONS

The Administrative Conference of the United States has undertaken numerous studies over the years relating to the appeals process in the Social Security Administration (SSA) disability program. It has issued four Recommendations specifically involving the various levels of review in that program. It has also issued other more general Recommendations involving various aspects of adjudicatory procedure. This Recommendation is intended to supplement those previous Recommendations to reflect the passage of time and experience. It is consistent with previous Recommendations, but in some cases, it goes further, or makes suggestions in areas previously left unaddressed. Unless specifically noted, existing Recommendations have not been superseded, and their provisions will not be repeated in this Recommendation.

The SSA disability appeals process involves several steps. The initial determination of disability is made by federally-funded state Disability Determination Services (DDS). A dissatisfied claimant may seek a reconsideration by a different individual in the DDS. This reconsideration decision is appealable to an administrative law judge (ALJ) in SSA's Office of Hearings and Appeals, who holds a hearing on issues on appeal. If the claimant continues to be dissatisfied, he or she may appeal to the Appeals Council, which reviews the case and may in some instances permit supplementation of the record. Judicial review in the United States district court is available from an Appeals Council decision, which is considered to be final agency action.

PRIOR RECOMMENDATIONS

In 1978, ACUS issued Recommendation 78-2, *Procedures for Determining Social Security Disability Claims*, 1 C.F.R. §305.78-2. This Recommendation primarily addressed the administrative law judge stage of the Social Security disability program. It recommended the continued use of ALJ's, and made suggestions concerning the development of the evidentiary hearing record, including recommending that ALJ's take more care in questioning claimants, seek to collect as much evidence prior to the hearing as possible, make greater use of prehearing interviews, and make better use of treating physicians as sources of information.

In 1987, ACUS issued two Recommendations relating to the disability program. Recommendation No. 87-6, *State-Level Determinations in Social Security Disability Cases*, 1 C.F.R. §305.87-6, addressed the first level of determinations and review in the disability program. Recommendation 87-7, *A New Role for the Social Security Appeals Council*, 1 C.F.R. §305.87-7, addressed the organization and function of the Appeals Council. Recommendation No. 87-6 was based on early results from demonstration projects involving the state-level disability determination process. It recommended additional experimentation with face-to-face procedures. Recommendation No. 87-7 suggested wide-ranging and substantial changes in the workings of the Appeals Council, including that it move away from its historical primary function as a case review panel. The Recommendation suggested that the caseload be significantly limited, and that the Appeals Council focus on important issues on which it could issue precedential opinions.

In 1989, ACUS issued two further Recommendations affecting the disability program. Recommendation 89-10, *Improved Use of Medical Personnel in Social Security Disability Determinations*, addresses a variety of issues involving medical decisionmaking at the state-level determination stage. It proposes enhancement of the role of medical decisionmakers, increased effort to develop medical evidence in the record, and improved training of medical staff on legal and program issues. It recommends use of optional face-to-face interviews and elimination of the reconsideration step. It also recommends that claimants be informed of deficiencies in the medical evidence prior to the issuance of a state-level determination, and that the opinion of a claimant's treating physician be given the weight required by court decisions and SSA rules. In addition, Recommendation 89-8, *Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions*, recommends that agencies index and make publicly available adjudicatory decisions of their highest level tribunals, and further suggests that agencies not treating decisions as precedential reexamine those policies. This general recommendation would apply to the SSA Appeals Council.

SUPPLEMENTARY RECOMMENDATIONS

In 1989, the Social Security Administration asked the Administrative Conference to prepare a report that would describe the SSA disability process, review the relevant statutes, compare the process with disability programs under other statutes, and synthesize the relevant ACUS recommendations. The following supplementary Recommendations are suggested by this report. These Recommendations are consistent with the spirit, and in most cases, also with the letter of previous Recommendations described above, but they address issues that have heretofore not been addressed by the Conference or have been addressed in a manner for which additional refinement is appropriate.

Decisions on Social Security claims that are issued at each level of the process need to contain information sufficient to allow the claimant to make an informed decision whether to appeal to a higher level. It is therefore important that the basis for the decision, including the facts found, be stated clearly. Further, where the record appears not to be complete, the decision should indicate what information is lacking, so that it can be provided at the subsequent level. These suggestions apply both to the initial decision at the state level and to the ALJ decision. The Conference recognizes that SSA rules already require most of this information in ALJ decisions, but more consistent implementation of these rules is needed.

The Social Security Act provides claimants the right to subpoena witnesses and information. Moreover, the Supreme Court made clear in *Richardson* v. *Perales*, 402 U.S. 389 (1971), that the availability of subpoenas may be critical to a claimant's ability to present relevant evidence. However, subpoenas are seldom issued in disability proceedings. The Conference believes that ALJ's should be encouraged to issue subpoenas, and that claimants should be encouraged to seek them to complete the record. While the Conference recognizes that concerns exist about effective enforcement, it believes that such concerns should not prevent the issuance of subpoenas, and that the enforcement issue should be addressed separately.

Prehearing conferences at the ALJ level could be used to streamline the hearing process by narrowing issues and ensuring that necessary evidence will be available at the hearing; in some cases the prehearing conference may eliminate the need for a hearing. However, they should not be used to discourage claimants from seeking a hearing. Nor, except in rare cases, should they be used in cases involving *pro se* claimants, who might unknowingly waive rights or later opportunities to present evidence.

The Conference believes it is important that the evidentiary record be as complete as possible as early in the process as possible. It believes that the increased use of subpoenas will make this possible, in conjunction with the provision in Recommendation 89-10, para. 5(c), that physicians asked to provide medical information in disability proceedings be adequately compensated. If a claimant is informed by the ALJ what information is still needed after the hearing, and is given an opportunity to supplement the record at that time, the need to supplement the record after the ALJ hearing should decrease.

The Conference is also recommending that the record before the ALJ be closed at a set time after the hearing. The procedure would give the claimant sufficient time to acquire such information as is needed to complete the record, and would also provide for extensions of time upon a showing of good cause.

As a corollary to this, the Conference is recommending that a procedure be developed for the ALJ to reopen a record upon petition by the claimant where there is new and material evidence relating to the period covered by the hearing. Such petitions could be filed within one year of the ALJ decision or while the case is pending before the Appeals Council if it has been appealed.[1] Under such a procedure, new evidence would be considered first by the ALJ, thereby giving the adjudicator most familiar with the case the first opportunity to review new evidence, potentially reducing the number of cases that would be presented to the Appeals Council, and giving the Appeals Council more of an appellate role. *See generally* Recommendation 87-7. The ALJ's decision not to reopen should be appealable to the Appeals Council. If the Appeals Council affirms the ALJ, that action should be judicially reviewable as a final agency action. If the Appeals Council finds that new and material evidence did exist, it should generally remand to the ALJ for consideration of the evidence, except where substantial injustice or unreasonable delay would result.

These recommended procedural changes are not designed to limit the record in a disability case, but rather to impose additional structure on the process, by clarify-

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[1] These proposed procedures are distinct from and supplementary to SSA's generic "reopening" procedures set forth at 20 C.F.R. 404.987-989; 416.1487-89.

ing the rules and encouraging the timely production of evidence. It is expected that these changes will result in evidentiary records being completed in a more timely and efficient manner, thereby increasing the quality of the decisions based on those records.

The issues addressed in paragraph 5 of the Recommendation, discussed above, were considered in Recommendations 78-2(C)(1) and 87--7(1)(c)n.2 These previous provisions are subsumed within this Recommendation.

RECOMMENDATIONS

The Social Security Administration (SSA) should make the following changes in the disability determination and appeals process:

1. *Contents of Decisions:* SSA should require that disability benefit decisions, both at the state-level determination stage and at the administrative law judge (ALJ) stage, clearly provide in language comprehensible to claimants at least the following information:

a. The date the application for benefits was filed;
b. The date of onset of disability as alleged by the claimant;
c. The date of onset of disability, if any, that has been determined by SSA;
d. The period of time or category for which benefits have been denied, if any. Where benefits have been awarded for one period or category and denied for another period or category, the notice should clearly state that benefits have been partially denied;
e. If any category of benefits has been denied for any period, a list of evidence considered, and an explanation of why benefits were denied, including why the evidence of record did not support the grant of benefits;
f. The date of expiration of claimant's disability insured status (i.e., the "date last insured"); and
g. The adverse consequences, if any, including preclusive effects, that will result from failure to appeal the decision.

2. *Prehearing Conferences:* The use of prehearing conferences should be encouraged in appropriate cases to frame the issues involved in the ALJ hearing, identify matters not in dispute, and decide appropriate cases favorably without hearings. Except in rare cases, such conferences should be held only where claimants are represented by counsel, and they could be held over the telephone where all parties agreed. A report on the conference, reflecting any actions taken, should be included in the record. Issues that should be considered at a prehearing conference include:

a. Additional information that is required;
b. Subpoenas that may be necessary;
c. Witnesses that may be required;
d. What issues are or are not in dispute.

3. *Subpoenas:* Administrative law judges' use of their subpoena power should be encouraged. Subpoenas should be issued *sua sponte* where necessary to ensure that medical evidence is complete, and to obtain other necessary evidence not otherwise available. Subpoenas should be issued when requested by the claimant except where the ALJ finds good cause not to issue a particular subpoena. SSA should develop form subpoenas for use by disability claimants, and provide instructions for their use.

4. *Closing of the Administrative Record:* The administrative hearing record should be closed at a set time after the evidentiary hearing. Before it is closed, however, the ALJ should set forth for the claimant what information is needed to complete the record, the necessary subpoenas should be issued if they have not been already, and the claimant should be provided time to acquire the information. Requests for extension should be granted for good cause, including difficulty in obtaining material evidence from third parties. The ALJ should retain the discretion to accept and consider pertinent information received after closure of the record and before the decision is issued.

5. *Introduction of New Evidence After the ALJ Decision:*

a. Upon petition filed by a claimant within one year of the ALJ decision or while appeal is pending at the Appeals Council, the ALJ who originally heard the case (if possible) should reopen the record and reconsider the decision on a showing of new and material evidence that relates to the period covered by the previous decision. An ALJ's denial of such a petition should be appealable to the Appeals Council.

b. Appeals Council review should be limited to the evidence of record compiled before the ALJ, unless the claimant seeks review of an ALJ's refusal to reopen the record for the submission of new and material evidence. If the Appeals Council finds that new and material evidence was presented or offered in support of a petition to reopen, it should remand the case to the ALJ who originally heard the case (if possible), except where remand would result in substantial injustice or unreasonable delay, in which case the Appeals Council should grant review and issue a decision considering the new evidence.

c. A decision of the Appeals Council affirming an ALJ's denial of a petition to reopen the record for new and material evidence should be subject to judicial review.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, COMMITTEE ON ADMINISTRATION

PROPOSED RECOMMENDATION

THE OMBUDSMAN IN FEDERAL AGENCIES

The ombudsman is an institution frequently used in other countries, and increasingly used in this country, as a means of inquiring into citizen grievances about administrative acts or failures to act and, in suitable cases, to criticize or to make recommendations concerning future official conduct. Typically, an ombudsman investigates selected complaints and issues nonbinding reports, with recommendations addressing problems or future improvements deemed to be desirable. In cases involving the agencies of the government, an ombudsman may deal with complaints arising from maladministration, abusive or indifferent treatment, tardiness, unresponsiveness and the like.[1] To succeed, an ombudsman must have influence with, and the confidence of, top levels of an agency, be independent, and be able to conduct meaningful investigations into a complaint without being thwarted by the agency staff whose work is being examined. The most successful occupants of that office have generally been persons of high rank and status with direct access to the highest level of authority.

The experiences of several Federal agencies show that an effective ombudsman can materially improve citizen satisfaction with the workings of the government, and, in the process, increase the disposition toward voluntary compliance and cooperation with the government, reduce the occasions for litigation, and provide agency decisionmakers with the information needed to identify and treat problem areas. Agencies currently employing an ombudsman with success in various programs include, among others, the Internal Revenue Service and the Army Materiel Command.

The Conference urges the President and Congress to support Federal agency initiatives to create and fund an effective ombudsman in those agencies with significant interaction with the public. The Conference believes that these agencies would benefit from establishing an office of ombudsman either on an agency-wide basis or to assist in the administration of particular programs.

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[1] An ombudsman may be appointed by the legislature or by the executive, with or without a fixed tenure, and with a variety of possible powers, missions, and available resources. While there is no universally accepted notion of what an ombudsman should do, under one approach, that of the Model Ombudsman Statute, the ombudsman could address "an administrative act that might be

1. contrary to law or regulation;
2. unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functioning;
3. mistaken in law or arbitrary in ascertainments of fact;
4. improper in motivation or based on irrelevant considerations;
5. unclear or inadequately explained when reasons should have been revealed;
6. inefficiently performed; or
7. otherwise objectionable. . . ."

The Comment to the Model Statute adds, "Very clearly, the ombudsman must not attempt to be a super-administrator, doing over again what specialized administrators have already done and, if he disagrees, substituting his judgment for theirs."

RECOMMENDATIONS

A. Establishment of Ombudsmen.

(1) Federal agencies that administer programs with major responsibilities involving significant interactions with members of the general public are likely to benefit from establishing an ombudsman service. Examples of such programs include the following: licensing; revenue collection; procurement; award and distribution of welfare, pension, or disability benefits; oversight of public lands; administration of detention facilities; public assistance programs; immigration programs; and subsidy or grant programs.

(2) In cases where agencies with significant interaction with the public seek legislation to provide funds or other statutory underpinnings for an ombudsman, the legislation should conform generally to the guidelines set forth in paragraph B, below, and should be prepared in consultation with affected members of the public or their representatives and the Administrative Conference.

(3) Whether or not legislation is enacted, each Federal agency with major responsibilities involving significant interaction with members of the general public should consider setting up an agency-wide or program-specific ombudsman as a means of gaining experience with the concept and improving service to the public. Agencies should follow the guidelines in paragraph B in establishing an agency ombudsman.

B. Guidelines for Ombudsman Legislation and Agency Programs.

(1) Powers, duties

(a) Ombudsman legislation or agency guidelines should set out the functions to be performed by the ombudsman and confer the powers needed to enable the ombudsman to (i) receive and inquire into complaints, (ii) recommend solutions in individual matters and make recommendations for administrative and regulatory adjustments to deal with chronic problems and other systemic difficulties, (iii) advise within the agency concerning procedures, forms, and similar issues affecting the nature and delivery of services; and (iv) call attention to agency problems not yet adequately considered within.

(b) The legislation or agency guidelines should require the ombudsman to submit periodic reports to the agency head and to the relevant committees of Congress summarizing the grievances considered; investigations completed; recommendations for action, improvement in agency operations, or statutory changes; agency response; and any other matters the ombudsman believes should be brought to the attention of the agency head, Congress or the public.

(c) The legislation or guidelines should also provide that the ombudsman should refrain from involvement in the merits of individual matters that are the subject of ongoing adjudication or litigation or investigations incident thereto.

(2) Qualifications, term

The legislation or guidelines should set forth the qualifications required for the position of ombudsman, the tenure of office, salary, safeguards protecting the independence and neutrality of the ombudsman, and means for assuring access to the ombudsman. The Conference recommends that the ombudsman be a respected, senior person known for his or her judgment, probity, and persuasiveness; and the ombudsman's salary should be commensurate with that of the agency general counsel. Congress should consider whether, in any particular agency or program, circumstances require that the ombudsman be appointed for a fixed term and removable only for cause.

(3) Confidentiality

(a) The legislation or guidelines should protect communications to or from the ombudsman in connection with any investigation (other than reports intended to be made public), as well as the ombudsman's notes, memoranda and recollections, and documents provided in confidence to the ombudsman. The legislation or guidelines should provide protection consistent with that recommended by Administrative Conference Recommendation 88-11, *Encouraging Settlements by Protecting Mediator Confidentiality*, 1 C.F.R. §305.88-11.[2]

(b) An agency, when establishing an ombudsman, should explicitly state that as a matter of policy it will not seek to discover or otherwise force disclosure of an om-

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[2] As a practical matter, confidentiality guarantees in pending legislation—the Administrative Dispute Resolution Act, S. 971 and H.R. 2497 (101st Congress 1st Session)—if enacted, would likely protect communications in ombudsman proceedings.

budsman's notes, memoranda or recollections or of documents provided to the ombudsman in confidence.

(4) Judicial review, liability

The legislation should provide that (i) no inquiry, report, recommendation, or other action of the ombudsman shall be reviewable in any court, and (ii) no civil action shall lie against the ombudsman for any action, failure to act, or statement made, in discharging the ombudsman's responsibilities.

(5) Access to agency officials and records

The ombudsman should be given direct access to the head of the agency and to high-ranking officials within it. The legislation or guidelines should authorize the ombudsman to request agency officials to provide information (in person or in writing) or records the ombudsman deems necessary for the discharge of its responsibilities; and should require that such information be supplied to the extent permitted by law.

(6) Outreach

An agency with an ombudsman should take effective steps to ensure that persons who deal with the agency are aware of the existence, purpose, and availability of the ombudsman service. These steps could include active campaigns to inform the public of the service through mailings to persons with whom the agency deals, press briefings and releases, posters in agency offices used by the public, printed and video materials, and the like.

PREPARED STATEMENT OF JOSEPH F. DELFICO

Mr. Chairman and Members of the Subcommittee: We are pleased to be here today to testify on S. 2453. The bill would (1) establish the Social Security Administration (SSA) as an independent agency, (2) require development of a prototype counterfeit-resistant Social Security card, (3) shorten the time frames for mandatory annual dissemination of Social Security account statements, (4) make administrative and operational changes to the Social Security hearings and appeals process, (5) establish a minimum number (70,000) of Federal employees at SSA, (6) expand telephone access to SSA'S field offices, and (7) improve Federal tax forms.

Our position on many of the suggested changes is addressed in prior testimonies before this committee and others in both houses of the Congress. A brief summary of the major points in these prior statements is contained in appendix I. My testimony today will focus on three provisions of the legislation—changes to the hearings and appeals process, establishing a minimum staffing level at SSA, and changes to telephone access to SSA.

TITLE IV—STREAMLINING THE APPEALS PROCESS

The bill makes several significant changes to the Social Security appeals process. S. 2453 affects two stages in the current process that appear to delay many disability applicants in receiving their benefits. By mandating time limits under which appeals must be handled, the bill appears to have the effect of eliminating the reconsideration phase of the process—now the function of the state Disability Determination Services (DDSs)—and eliminate SSA's Appeals Council.

The current process takes too long for applicants who appeal original state decisions, and we support efforts to shorten this time and reduce the associated human costs resulting from these delays. If this bill is implemented, and the necessary resources are provided, Social Security applicants will receive more timely decisions on appeal and have access to judicial review sooner than they do now.

However, in our view, there are a number of unanswered questions about: (1) the impact of the legislation on the appeal rates of the denied disability applicants, (2) how substantial the increased ALJ workloads will be, (3) the effect of new time limits on the quality of disability determinations, and (4) the cost to SSA and related resource implications for the state DDSs.

The bill would affect resources in two ways. First, the increased workload resulting from eliminating reconsideration will increase ALJ staffing requirements. Second, the new, shorter mandated time frames for conducting hearings and issuing decisions will probably add to these staffing needs. As many as 180,000 additional cases could be expected to go to administrative law judges (ALJ's) each year, which would add between $100 and 200 million in new administrative costs. We do not, however, know the impact of the timeframe requirements on ALJ workloads and costs. Some of the additional cost due to increased workloads and shortened time

frames could be offset by savings from eliminating the earlier case reviews at the state level, many of which are reviewed again by ALJ's. But, estimating these savings is difficult.

There also will probably be a large workload impact on the U.S. courts. The bill appears to eliminate the Appeals Council, although the Secretary would have 30 days in which to review any ALJ decisions before they become final. This provision has the potential for increasing the workloads of the Federal district courts. Currently, about 57,000 applicants appeal to the Appeals Council, and while less than 15 percent are successful, the district courts now only receive about 7,000 of them on subsequent appeal. Under the proposed process, the potential exists that all 57,000 applicants could appeal directly to the courts.

Because of the uncertainties concerning the bill's impact, we suggest that before mandating such a major change to the appeals process, the legislation be modified to require SSA to experiment in selected states or areas of the country with different appeal structures, such as those provided for in this bill.

TITLE V—SOCIAL SECURITY ADMINISTRATION EMPLOYEES

S. 2453 mandates a staffing floor for SSA of 70,000 "full-time positions," effective October 1, 1990. This represents a significant increase over the 63,000 full-time equivalents that the administration has proposed for fiscal year 1991.

Though we have noted areas where there may be a need for more staff—such as for the 800 number telephone system and for Supplemental Security Income outreach activities—we are not aware of any comprehensive studies to determine what SSA's actual staff needs are. We have, for several years, recommended that SSA develop a work force plan and this has not been done. SSA needs such a plan to determine its staff needs and the extent to which they can be met through a redistribution of existing resources. Most information we have seen on SSA needs is anecdotal and, to some degree, unsubstantiated. A thorough study needs to be undertaken before wholesale increases in staffing are made.

We of course recognize that provisions in S. 2453 place many new requirements on SSA that would result in the need for more staff. Just how much staff is needed to comply with the provisions of the bill would also need to be determined by SSA.

TITLE VI—TELEPHONE ACCESS

Title VI of the bill would provide increased telephone access to SSA field offices. Specifically, SSA would be required to (1) advise all callers to the 800 system that they have an option to call a local field office and (2) publish in phone directories the numbers of local offices. At present, SSA's policy is to publish in phone directories only the 800 phone number and not the local office numbers. However, SSA modified its policy in January 1990, in response to pressure from the Congress and others to provide greater access to local offices. Now SSA provides the local office number to users of the 800 service on request.

In a September 1988 report, we supported SSA's decision to establish nationwide 800 service. Compared to SSA's old system, 800 service was designed to be more efficient. Efficiency gains are realized by centralized phone service delivery, which requires fewer staff to provide a given level of service. The 800 system also provides comprehensive management information on the quality of access, as measured by the rate of busy signals and the wait time on hold. With such information, SSA has, for the first time, data to monitor the quality of its service and manage its telephone workloads.

Our work 4 years ago on SSA's old phone system revealed poor service in many areas, the existence of antiquated system design, and the absence of meaningful information on service quality. Further, given the advances in telecommunications technology and the state-of-the-art telephone service in the private sector, it was apparent that SSA's phone system had major structural problems. At that time, SSA phone service could best be described as a patchwork of 34 teleservice centers, 20 mini-teleservice centers, 12 statewide answering units, and 627 local field offices.

The transition to 800 service has not been easy. The system has been plagued by start-up problems including high busy signal rates and spotty service. Perhaps the most difficult problem to address, however, is the concern by some about the impersonal nature of the 800 service. The notion that someone very remote from the caller is handling inquiries is disturbing. The provisions in Title VI appear to be designed to remedy this, for example, by publishing the phone number of local offices in the phone book. Though on the surface taking this action appears inconsequential, we believe it could seriously undermine the progress being made developing an up-to-date phone system.

To the extent that callers will call local offices rather than the 800 number, the overall cost of phone service will increase and the capability of SSA and the Congress to monitor service quality will decrease. Increased cost would be attributed to the additional staffing resulting from decentralizing phone service and operating two phone systems concurrently—the 800 number and the local office system composed of many local offices independently providing phone service.

The key question with respect to expanding telephone access to the field offices is: What will the volume be? At this point, no one knows. But the answer has a direct bearing on the cost and the feasibility of expanding access, both of which should be known before proceeding with implementation. To illustrate: *If,* for example, 70 percent of the public were to call a local number rather than the 800 number, it is possible that many SSA field offices would be overwhelmed, resulting in poor phone service and disruption to other office services and operations. At the same time, it is possible that many of SSA's 3,300 teleservice center representatives would be idle because of the diversion of calls to local offices.

In summary, first, we believe there needs to be a balance between providing direct phone access to local field offices and the efficiencies realized from more centralized phone systems, such as SSA's 800 system. SSA has recently expanded access to local offices, and we believe that this policy should be given a chance to work. Second, we believe that the idea of expanding direct telephone access to local offices as proposed by title VI needs careful study. Little is known at this point on how SSA operations and service to the public would be affected, and this impact could, in fact, be significant.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you and the committee members may have.

APPENDIX I

SEPARATE AGENCY STATUS FOR SSA

As we have stated in testimonies in July 1984, April 1985, and June 1989, independence is not essential to solving SSA's management and operational problems. We agree with the premise behind S. 2453 that SSA's management problems are caused by constant turnover in leadership. But it is our conviction that a single administrator would be the best management structure for SSA. Contrary to assumptions about the advantages of boards, they do not provide for leadership stability or insulate the agency from political and economic pressures. In fact, they often cause more problems than they cure in an agency's day-to-day management. Our concerns about section 103 of S. 2453 relating to personnel, procurement, and budgetary matters and the various sections requiring the Comptroller General to help implement the bill's demonstration projects are documented in our June 2, 1989, testimony.

SOCIAL SECURITY CARDS

In our testimony before this Committee on April 18 of this year, we stated that focusing on strengthening the Social Security card alone, without assessing the Immigration Reform Control Act (IRCA) system as a whole, could have marginal effects on the reliability of the verification system because the card's reliability may not be critical to the whole process. In our view the Attorney General in conjunction with the Secretary of Health and Human Services, should review and report on the verification system as a whole while changes to the Social Security card are being studied as required by S. 2453. This report should, among other things, include an assessment of options involving the incorporation of validated Social Security numbers on state driver's licenses. Because of the urgency to affect reductions in discrimination under IRCA, reports on both the IRCA system and the Social Security card should be issued within 1 year of S. 2453's effective date.

SOCIAL SECURITY ACCOUNT STATEMENTS

In two previous testimonies (July 1988 and June 1989), we have stated that there is merit in providing covered workers with better information about their Social Security earnings and benefits. Last year the Committee enacted requirements to issue such statements automatically in three phases. S. 2453 greatly accelerates the previous schedule in phases 2 and 3. We are not convinced of the need for an annual statement as opposed to one every 2 years as previously required. It would be costly, and the benefits of annual earnings statements relative to these costs should be considered.

Prepared Statement of Margaret Dixon

The American Association of Retired Persons (AARP), a membership organization representing the interests of individuals 50 and over, appreciates this opportunity to present its views regarding S. 2453, the Social Security Restoration Act. This comprehensive legislation contains remedies for a number of problems that have plagued those seeking or receiving Social Security or Supplemental Security Income (SSI) benefits. Enactment of this legislation could help restore the preeminence of the Social Security Administration (SSA) among Federal agencies and bolster public confidence in the Social Security program as a whole.

I. STUFFING LEVELS

A. The need for personal service

The Social Security Administration touches the lives of nearly every American through the retirement, disability, and income security programs it administers. One of the largest and most widely known Federal programs, it directly serves the needs of over 39 million beneficiaries and provides income protection for almost all other Americans. However, current and future beneficiaries must be assured they can count on a Social Security system that not only provides adequate financial benefits, but also promises a c: m assionate, competent, and effective means for delivering services.

Many of the matters dealt with in SSA offices require personal contact and do not lend themselves to automation. When individuals contact SSA, it is often at an emotional time in their lives—such as retirement, widowhood, or the onset of disability—and they often need and want personalized service. For many older American, the opportunity to sit down, to discuss Social Security questions and problems face to face with SSA staff, to arrive at a solution to a problem, and to understand that solution, makes all the difference in the world. This need for personal attention, coupled with a hesitancy among some older Americans to utilize automated devices, suggests that local SSA offices need to be well-staffed.

B. Downsizing Staff

Beginning in 1985 the Social Security Administration began implementing an Office of Management and Budget (OMB) plan to reduce SSA staff by 17,006 full time equivalent (FTE) (twenty-one percent) over a 6-year period. Based on expected increased efficiency from systems modernization, SSA anticipated that there could be major staff savings in field offices and central processing centers.

OMB's proposal largely resulted from a desire for short-term budget savings, not from a consideration of what is best for the overall management of the agency and the public it serves. It action was unwarranted since the program's administrative costs, financed out of the trust funds, already are extremely low. Such staff reductions have no "real effect" on the current causes of the Federal deficit and have noticeably diminished the duality of SSA's service.

At the end of FY 1988, the agency staff had been reduced by about 13,100 FTE's to 66,835, which is approximately 2,500 *below* the original projection. According to SSA, such improvements as the Modernized Claims System, magnetic reporting of wages, office automation and on-line access to programmatic data bases have resulted in manpower savings higher than initially anticipated and justified continued adherence to the OMB plan.

In FY 1990, the teleservice center staffs will increase by approximately 1,100, but overall SSA will reduce total staff by 2,038. SSA has not requested any additional funds for these 1,100 positions.

The staffing reduction has resulted in a palpable decline in service. Since the staffing reduction has largely been accomplished through attrition, the decline in service has been more marked in some areas than in others. Many field offices have lost between thirty and fifty percent of their staff over the past 3 years, while others have been more fortunate. In some offices, clerical positions have been reduced to the point that managers are often covering reception desks and spending time on data entry. Often claims and service representatives are given less tine to handle initial claims, and their potential for error is increasing. Post-entitlement work (continuing disability reviews, under and overpayments, representative payee changes, address changes etc.) is back-logged in many offices. Field offices do not have enough funds to conduct outreach and educational efforts in their local communities. These are serious deficiencies brought on by the major staffing reduction.

The personnel reductions also affect the agency's administrative operations. Many positions are filled by skilled professionals whose expertise takes years to develop and cannot easily be replaced. Some operations have been doubly burdened: they

have lost knowledgeable staff at the same time that they have been assigned additional responsibilities. For example, SSA was charged with assigning Social security numbers to children as a result of the Tax Reform Act and providing them for immigrants who qualify under immigration reform. In addition, immigration reform added to SSA's workload by requiring the agency to reconcile certain wage reports. Now the agency has been mandated by the Supreme Court to locate at least 250,000 children who were improperly denied SSI disabled children's benefit. All of these responsibilities have been added to SSA's existing workload.

Several surveys of SSA staff indicate a serious decline in morale as a result of the staffing reduction. Sixty-four percent of the managers in one survey said that staffing "is less or much less than needed." Seventy-one percent said staff losses have had a "somewhat or significant" effect on their ability to produce quality work. Only thirty-seven percent of all mid-level managers are satisfied with the quality, timeliness, and accuracy of SSA statistics.

A March 7th memo from former Deputy Social Security Commissioner Herb Dogette to Social Security Commissioner Gwen King, recently made public, confirms the serious deterioration in levels of service. He cited several key indicators of problems that could overwhelm the agency. These include longer processing times and a buildup of unsettled cases.

Even Commissioner King's testimony before the House Select Committee on Aging acknowledges an increase of forty-six percent in the workload in disability operation claims, a ten percent rise in backlogged disability insurance claims and a forty-six percent increase in unprocessed SSI aging claims. Dogette urged the restoration of 7,000 staff, the number recommended in the Social Security Restoration Act.

AARP believes that in order to improve the quality of SSA service and in order to keep up with an ever-increasing workload, more staff are needed. Efforts, such as those being emphasized by Commissioner King, to further personalize the relationship between beneficiaries and their government must be strengthened. However, this is unlikely to occur if an already under-manned and over-worked staff is asked to service an even greater caseload and shoulder additional responsibilities. SSA should not be forced to sacrifice accuracy, timeliness, and compassion because it is understaffed.

II. INDEPENDENT AGENCY

SSA is one of the largest components of the Federal Government, yet its autonomy is limited. AARP believes several problems affecting the agency could be eliminated and public confidence in the system enhanced if it were to become an independent agency.

In order to accommodate the growing workload of an aging population and an expanding work force and to improve the quality of service to beneficiaries, SSA must function in a stable environment. This environment must be conducive to long-range planning. Also, in order to serve the public effectively and compassionately it should be run by competent, professional management and adequately staffed by knowledgeable people This might be better accomplished if SSA were to become an independent agency.

Since the late 1970's SSA has endured successive, rapid turnover in its leadership. Between 1978 and 1983, there were three commissioners of Social Security, each serving two years or less, followed by several acting commissioners. In fact, SSA has had ten commissioners over the last fifteen years, in contrast to only eight commissioners in the preceding twenty-five or so years.

The short tenure of many recent SSA commissioners has contributed to the agency's inability to establish clear management priorities or develop a consistent direction which in turn has hampered the agency's operations. Also, the changing faces in the commissioner's office have produced counterproductive agency reorganizations that often accompany a change in leadership.

Similarly, the relationship between the Social Security Commissioner and the Secretary of Health and Human Services (HHS) can contribute to leadership problems at SSA. Social Security is but one part, albeit a very significant one, of the HHS umbrella. The Secretary, of necessity, must divide his or her time among the various HHS components. It is important to have an advocate whose sole focus is Social Security. While HHS Secretary Sullivan and Commissioner King were successful this year in heading off additional SSA staff cuts, their effective collaboration and good fortune might not prevail on an annual basis.

AARP also supports independent agency status for SSA because we believe it would help restore public confidence in the system. During the late 1970's and early 1980's public confidence in Social Security waned noticeably due to the financial dif-

ficulties the system faced prior to 1983 and the periodic use of the program as a "political football." An independent agency could be, less affected by political factors and better insulated from the fluctuations in politics and policy that produce sudden shifts in direction.

In short, an independent SSA would make a strong statement to the American people that Social Security is self-financed and that wherever possible policy and budget decisions affecting the program ought to be reached independent of other short-term decisions.

III. 800 NUMBER

AARP believes that the 800 number can assist SSA in carrying out routine business, especially for the working population. We are gratified by Commissioner King's commitment to improving its operation. However, the system has been plagued by numerous problems such as access, accuracy of information, and continuity of service. These problems require agency intervention and, in selected instances, legislatively-mandated solutions.

The 800 number should never be viewed as a panacea for staff shortages. Because the mental, physical and educational handicaps of some older and disabled Americans makes the telephone an uncomfortable and unfamiliar instrument, local offices must remain accessible and adequately staffed.

AARP supports the proposal in S. 2453 to require SSA to resume publishing the numbers of local offices in the telephone directories. This would enable those seeking assistance from a local SSA office to call directly without first having to use the 800 number. The publishing of local numbers acknowledges that local offices and the 800 number each have their own purposes. Further, it allows those beneficiaries who prefer dealing with a local office to do so.

AARP believe that the 800 number is a useful tool. However, its success as depends on SSA's willingness to better focus its use, to permit easy access to local offices, and to ensure the accuracy of information provided by 800 number operators.

IV. THE APPEALS PROCESS

AARP believes the modifications in the appeals process proposed by S. 2453 are a well-conceived and badly needed. They would streamline the back-logged appeals process and expedite the resolution of many current and future cases on appeal. We suggest that Title IV be strengthened to better protect appellants by specifying that the hearing record be left open until a decision is actually rendered. This ensures that all pertinent information can be included.

V. CONCLUSION

In the past, SSA has been a paradigm of service, but it has fallen short of the mark because of limited resources and unwise budgetary constraints. The agency has survived as well as it has because of a dedicated staff. That staff and the public that depends on SSA deserve an agency with a commitment to serving the public and building confidence in the program.

AARP supports the provisions in S. 2453 to make Social Security an independent agency, to restore staffing levels, to reform the appeals process and to require the publication of telephone numbers for local Social Security offices. We believe the Social Security' Restoration Act could revitalize many phases of SSA's operations and help ensure the agency's reputation for fairness, integrity, and compassion.

PREPARED STATEMENT OF SENATOR DAVE DURENBERGER

Mr. Chairman, in April of last year, I wrote to you about the problems many Minnesotans are experiencing with the Social Security Disability Claims Appeals process and expressing my desire for the Subcommittee to hold hearings on this subject. So, Mr. Chairman, I thank you for holding this hearing today on a subject of great concern not only to my state but to people across the Nation. There are almost 2 million people whose claims are processed each year. To put that in perspective, that is approximately equivalent to the size of the two largest cities—Minneapolis and Saint Paul—in my own State of Minnesota.

Many disabled Minnesotans contact me each year because of problems with the SSDI claims process. In my review of this process, I have found that the current system is not only cumbersome and time-consuming, but that it also creates extreme financial hardship for many claimants and their families.

For an individual to qualify for the disability insurance program they must meet the definition of disability which is the inability to engage in any substantial gainful activity by reason of a physical or mental impairment. The impairment must be medically determinable and expected to last for no less than 12 months, or to result in death.

When an applicant applies for disability benefits, that application is sent to the Federal Social Security District Office where it is reviewed and medical records examined to determine whether the applicant meets the insured status requirements. If so, the application is sent to the State agency who makes the initial determination of disability. In general it takes about 2½ months for this decision to be made. Mr. Chairman, in 1989, 64 percent of applicants were denied at this initial determination.

If denied, the applicant then faces the decision of whether to accept the initial determination or to begin the four step appeals process. Only 45 percent of those denied actually chose to go on to the next step and request a reconsideration. Reconsideration is carried out by the same State agency but different personnel than the initial review, and takes an additional 2 months for a decision. 85 percent of those applying for reconsideration are again denied benefits. From there the individual can request a hearing before an administrative law judge (ALJ).

I would like to point out that this is the first chance in which the individual—who has already been denied twice—has the opportunity to present his or her case on a face to face basis. Prior to this stage, all decisions are simply a matter of paper shuffling. It is also interesting to note that it is at this stage that the highest number of determinations are granted—60 percent. *I think the high number of cases overturned at the ALJ level raises serious questions about the effectiveness of the reconsideration stage and whether or not this step in the process is being properly carried out.*

While effective, the ALJ process is also lengthy—taking over seven months to reach final action. During this time, the mortgage payments come due, grocery and medical bills must be paid, but generally there is little income to cover these expenses. Savings disappear quickly. In many cases the ruling has been made, and it is just a matter of finishing the paper work and notifying the beneficiary. Yet still, this has taken 2-3 months in some cases.

If the claim is denied by the ALJ, the claimant goes to the next step where he or she can request review by the Appeals Council. The final action a claimant has is to file civil action in a United States district court. I take the time, Mr. Chairman to go through this process, because I think it points out just how long and complicated a process this can be. In fact, only 7,321 of the 1,516,873 cases filed in 1988 actually went through all five stages.

But for you to really understand the hardship this process creates, I think it is helpful to hear about real life examples. A constituent of mine was diagnosed as having inoperable lung cancer on September 29, 1989 and has had no income since October 5, 1989. He filed for SSDI and was turned down on the initial application and again upon the reconsideration appeal—the denial noted that his condition was not severe enough to meet the definition of disability. Between the initial denial and the reconsideration phase, he requested a face-to-face meeting with the reviewers so that they could see the difficulty he has with even simple life functions such as talking and breathing even with the use of his oxygen tank. This request was ignored. Today he is still waiting for a review hearing. But it is unclear just how long he can wait. In September, his doctor's prognosis was that he may have only 2 months to live.

Another constituent of mine also with terminal cancer contacted me in January of last year because she was having problems getting her disability award. I contacted the local Social Security office where they gave me several reasons for the delay. Many phone calls and months later, she did get her Social Security. However, in July, she contacted me again because she was due benefits from an earlier date than was originally determined. By the end of August, this matter was cleared up. However, she did not have much time to savor her victory. She died just six months after she received her check.

Mr. Chairman, the efforts you have taken through the Social Security Restoration Act and by holding this hearing today is an important step to reducing the unnecessary pain these people, and many others like them, experienced while having to wait for the process to run its course.

There are several aspects of the appeals process that I believe need to be reviewed more closely. But I would like to take just a few moments to point out a few of the things I think are most important. First, I believe we need to consider some system of expedited processing for people who are terminally ill. It is simply unacceptable

that people who are diagnosed terminally Ill are having to wait a year or more to receive benefits. I know that Prudential Life Insurance Company and other insurance companies have instituted an accelerated death benefit payment program for individuals who are certified by a physician to be terminally ill. I believe we need to adopt a similar process for SSDI. The SSDI waiting period and appeals process is simply unrealistic for those claimants who have terminal cases. There must be some way that we can get these people the benefits they need sooner to help pay their medical and living expenses while they are still living.

Second, I believe we need to do more at the front end of the process. Currently, about 50 percent of all applicants who file for SSDI eventually receive benefits. Yet only 36 percent of those receive these benefits based on their initial application. We should be doing all we can to ensure that people who are entitled to benefits receive them in a timely manner and are not forced to go through several lengthy processes in order to receive them. There are many things that I think we can do to improve this process and I look forward to hearing the thoughts and suggestions our distinguished group of witnesses before us today have to improve the system. I am especially eager to hear from Mr. Enoff, representing Commissioner King. I know this is an area that Commissioner King, and her predecessor. Dorcas Hardy, have been actively interested in and I hope to continue to work with her and her staff in implementing effective reforms.

There are many other issues that delay and tie up the process of appeal—from the difficulty local Social Security offices have finding physicians who will do consultation exams and act as medical experts for the amount of reimbursement received, to the fluctuation in OHA workloads, to the need for additional staff and updated equipment. The solutions are not easy ones. I believe it will take more than a band-aid approach solution to provide a review process that is fair, timely, and efficient. As part of the 1984 disability reforms, we mandated a review of the appeals process and a report on recommended solutions to improve the process. I believe it is time that we move forward. For those disabled Americans whose livelihood depends on their SSDI benefits, justice delayed is truly justice denied. Again, I thank the distinguished Senator from New York for the opportunity today to begin that process.

Attachment.

MANKATO, MN,
March 26, 1990.

Senator DAVE DURENBERGER,
12 S. 6th St., Suite 1020,
Minneapolis, MN

Re: SS

Dear Senator: I am writing this letter so you people have an idea of what is going on in regards to the Social Security Program.

My husband was diagnosed September 29, 1989 as having inoperable lung cancer. He transferred his Real Est. business Oct. 5, 1989. Since then, no income.

We filed for SS disability and have been turned down twice. These times are very difficult and emotional for our family and needless to say, the way this claim has been handled or mishandled, needs to be corrected. When you are at home facing a terminal illness such as indicated above, receiving a letter stating, "your condition is not severe enough to warrant disability," is a very agonizing ordeal.

The records for Joe are at St. Joseph's Hospital and Mankato Clinic here in Mankato and all information was reported to the SS office through their applications and forms. A request with the Reconsideration application was made that a SS representative stop by our home to see the results of deterioration from cancer, however, this was overlooked.

My husband at this time is involved in the Hospice Program through St. Joseph's Hospital and though we are planning on a SS appeal, we certainly would appreciate your help.

An ironic twist, is that much of our Fed. tax which we will have to borrow money to pay on April 15th, is Soc. security tax. The doctors prognoses for Joe was 2 months to 2 years. What kind of system is this???

Please make contact with me at work, (507) 625-1363 as Joe is breathing with the aid of oxygen supplied through the Hospice program and talking often causes breathing and coughing difficulties.

July 18, 1989.

Dear Senator Durenberger: I would like your help with my Social Security claim that is being processed in Washington, DC.

My last day of work was in October 1988. Currently I'm receiving Social Security disability because I have terminal cancer.

But in January my former boss completed and returned to the Brooklyn Center Social Security Office, documentation that I believe would have qualified me for SS before my May starting date.

This information showed SS that I was being subsidized by my place of work.

Brooklyn Center Office processed my paper work and sent it to D.C. Will you please see what is happening with this.

A month ago my doctor said I have two to four months to live. I have little money and would greatly appreciate your help with this matter.

Prepared Statement of Louis D. Enoff

Mr. Chairman and members of the subcommittee: I welcome the opportunity to appear before you to discuss certain provisions of S. 2453, "The Social Security Restoration Act of 1990." Before I do that, however, I would like to describe where I believe the Social Security Administration (SSA) is today in its mission to serve the public.

The standard Commissioner King has set to measure SSA's performance in providing service is very high. And based on information from our own statistical measures and from public opinion surveys, SSA employees have, through their hard work and dedication, maintained a high level of service to the public. That they have been able to do so during a period when SSA's staff had undergone a substantial reduction and when SSA's work processes have undergone rapid automation is a testimony to their commitment to serving the public to the utmost of their ability.

SSA GOALS

Our ultimate goal is to provide nothing short of outstanding service to the millions of Americans who depend on us now and who will depend on us in the future. While we have made significant strides toward that goal we still have farther to go.

As a first step toward achieving SSA's full potential, Commissioner King has established three primary goals for SSA:

- To serve the public with compassion, courtesy, consideration, efficiency, and accuracy;
- To protect and maintain the American people's investment in the Social Security trust funds and to instill public confidence in Social Security programs; and
- To create an environment that ensures a highly skilled, motivated work force dedicated to meeting the challenges of SSA's public service mission.

INDEPENDENT AGENCY

Mr. Chairman, before addressing the other provisions of S. 2453, I would like to comment on the provision which would establish SSA as an independent agency.

As you know, Secretary Sullivan in testimony before the committee on June 2, 1989, stated his intention to recommend to the President that he veto legislation making SSA an independent agency. Similarly, Secretary Sullivan, joined by the Secretaries of the Treasury and Labor, the Attorney General, and the Director of the Office of Management and Budget, in a July 28, 1989, letter to the House and Senate leadership, noted that they would recommend to the President he veto independent Social Security legislation.

I think we can agree that the overriding issue is serving the public. There is no evidence that independence would improve public service. The Administration believes to the contrary that removing SSA from HHS would disrupt an integrated network of services presently in place and working well. SSA's service is significantly better today than it was a few years ago and, both Secretary Sullivan and Commissioner King are dedicated to ensuring that the public service provided by SSA is of the highest quality. The independent SSA proposal will throw into confusion our current process on which the elderly and disabled depend for daily support and health care.

Local Social Security offices currently provide a "one-stop service" for senior citizens. If SSA is separated from HHS, the vital link between Social Security and Med-

icare would be broken. The result for senior citizens: unnecessary confusion and bureaucratic headaches. Separation also could impair SSA's gateway function—SSA's 1,300 offices serve as key contact points for the public to obtain information about other public and private programs.

Congress has spent years trying to better integrate the various programs under the HHS umbrella—Social Security, SSI, AFDC, Medicare, Medicaid, etc.—and it would defeat these efforts to remove the biggest of these programs from HHS.

I should also note that the Department of Justice is preparing a letter for the committee which addresses constitutional defects in the provision S. 2453.

I am submitting for the record a copy of Secretary Sullivan's June 2, 1989, testimony and a copy of the July 20, 1989, letter from five Cabinet officers to the House and senate leadership on the independent agency issue.

STAFFING

I would like next to discuss the provision that would require an 11 percent, or 7,000, increase in SSA staffing for fiscal year 1991. At this point, we are confident that SSA can achieve its public service goals and keep all its workloads under control if the resources requested in the FY 1991 President's Budget are approved by the Congress. If workloads increase beyond what can reasonably be accommodated within budgeted resources, however, Commissioner King has repeatedly stated that she will be the first to ask for additional resources if services are threatened.

As you know, over the last 6 years, SSA has undergone a dramatic downsizing. Full-time equivalent employment levels have dropped by about 17,000—from 80,000 in fiscal year (FY) 1984 to 63,000 in FY 1990. While the employment reductions at SSA over the last 6 years have saved the Government almost $2 billion and continue to save about $600 million annually, public demand for our service has increased. The new technology that has been implemented to help meet those demands has helped. But SSA's loyal and dedicated staff have been severely strained to meet the demands of growing beneficiary and worker populations, adjust to major changes in work processes, and strengthen service delivery.

What we need now is a period of stability and recovery, a period to heal the strain, improve working conditions and morale, and enhance training, promotional opportunities and quality of life for our employees, while continuing to improve our service to the public. President Bush's FY 1991 budget, if accepted in full by the Congress—and I emphasize in full—would increase our funding by $330 million over FY 1990, and will hold staffing at about 63,000 and give SSA the period of stability it so sorely needs.

The perception that SSA needs more staff is, we think, created by the fact that as a result of uneven attrition across field offices during the 6 years of downsizing there are now staffing imbalances in some offices. Clearly, many urban offices have been particularly hard pressed, because this uneven attrition has limited their ability to provide the special assistance, that the homeless, aged, disabled, and others in their service areas require.

To correct this problem, Commissioner King established special "strike" teams in March to identify those offices most in need of additional staffing and to provide immediate assistance. To provide, the resources needed for the teams to do their jobs, the Commissioner lifted the freeze on hiring for those offices with the most severe staffing needs. The teams visited these offices in person and authorized the immediate hiring of almost 500 new employees for these locations. Some offices also were found to have special needs for additional furniture, equipment or supplies, and the strike teams authorized assistance in these areas.

We have also taken a number of steps aimed at improving morale and creating the kind of work environment that encourages employees to provide the best public service.

- A new "on-the-spot" award process has been established to recognize superior effort;
- Onsite childcare facilities are being established in our two large Baltimore locations and surveys of employee needs for childcare are underway in large facilities in the field;
- Installation of additional computers in field offices has been expedited so that by the end of FY 1991 all employees who need one will have it; and
- An Office of Ombudsman has been established authorized to identify and propose responses to human resource and management problems.

LEVEL OF SERVICE IS STILL HIGH

Let me emphasize that, as SSA has implemented new technology and reduced staffing, the speed and accuracy with which SSA processes claims and pays benefits has remained high. During downsizing, client satisfaction with SSA service has also remained high, with over 83 percent of respondents in a national survey last year rating SSA's service as either good or very good.

One reason that client satisfaction has remained high during the downsizing is that managers have tended to retain technical, public contact positions. Although field representatives have declined in number, SSA currently has more claims representatives and service or teleservice representatives (TSRs) than in 1984. These are the two types of employees who handle the majority of SSA's contacts with the public.

Although we have been able to maintain consistently high levels of service in our basic workloads throughout the downsizing period, we are seeing the first signs that backlogs are beginning to develop. However, the Office of Management and Budget recently released $48 million from SSA's budgetary contingency fund, which should help us stay on top of sensitive workloads.

In that context I should note that a recent Supreme Court decision in the *Zebley* case is expected to require SSA to reevaluate thousands of children's applications for Supplemental Security Income disability benefits. As soon as we have an estimate of the workyears that will be needed for these cases, we will determine whether additional resources are required for FY 1991 and share that information with you. In any case, this Supreme Court decision makes it imperative that Congress fully fund the President's FY 1991 budget request for SSA.

APPEALS PROCESS

The subcommittee also asked that I address SSA's appeals process and provisions of S. 2453 which would modify that process.

Currently, SSA provides a reconsideration, a hearing before an administrative law judge (ALJ) and Appeals Council review as successive steps in the administrative appeals process. These steps ensure that applicants have the opportunity to have their cases fully reviewed. Yet, over the years, knowledgeable observers in SSA, the Congress, and the public have noted certain indicators which suggest the need for changes:

- The average processing time from the date of a request for a hearing to a decision by an ALJ is 212 days and, for claimants who proceed through all administrative appeal levels, total processing time may exceed 2 years;
- Workload backlogs are high and increasing; and
- Judicial oversight and criticism of Agency procedures have increased.

It is important to understand the context of these issues. Much has changed since the origin of the administrative appeals process in the 1940's, when the assumption was that adjudicating old-age and survivors claims would be relatively straightforward and that 12 referees (as ALJ's were called in those days) would be sufficient to adjudicate a few thousand appeals.

Today, SSA must adjudicate about 5.5 million claims a year, nearly 2 million of which involve difficult and complex disability issues. At the ALJ hearing level, over 300,000 cases were processed last year. Appeal rates have risen and as workloads have grown, backlogs and processing times have risen, often at a rate faster than staffing and other resources have increased.

Those who appeal are now usually represented. Representation of claimants at hearings has increased from less than 50 percent as recently as 1977 to over 80 percent today. At the Appeals Council level, representation exceeds 90 percent. About two-third of the representatives are attorneys, many of whom specialize in Social Security law.

Observers have also criticized the fact that ALJ's now allow more than 60 percent of all denials appealed from the previous review level. Certainly, different outcomes at succeeding steps in the appeals process are inevitable to some extent as more evidence is developed and presented at each step in the process, including changes in the nature of the person's impairments, and as the nature of the adjudicatory process changes at each step. Nonetheless, when large numbers of appealed cases are subsequently allowed, we must ask whether different procedures might identify those cases earlier in the process.

In early 1989, SSA notified the Congress that the Agency was initiating a three-pronged approach to improve the appeals process. It called for:

• convening former members of the Disability Advisory Council (DAC) to consult with the Agency and conduct public meetings to elicit suggestions for improving the process;
• asking the Administrative Conference of the United States (ACUS) to perform a legal analysis of the process and make recommendations; and
• consulting with other recognized experts in the field of administrative law.

The DAC provided its recommendations to improve SSA's appeals process after holding public meetings in Los Angeles and Washington, D.C. More than 50 witnesses, including representatives of various advocacy groups, offered a wide variety of ideas on how to improve the process.

The ACUS has reviewed past recommendations for current relevancy; performed an analysis to compare SSA's appeals process with those of other Federal agencies; reviewed the legal scholarship on this issue; and submitted its recommendations for improvement.

Finally, six recognized authorities on administrative law reviewed the DAC and ACUS recommendations and other relevant materials and recently offered their own recommendations for improvement.

We are now considering all of these recommendations, as well as additional suggestions which have come from Members of Congress and congressional staff. Counted individually, they number in the hundreds. After sorting them, however, it became clear that most fell into one of two groups: (1) those dealing with improvements to the earlier stages of the administrative process (by far, the larger number) and (2) those which recommended fairly significant changes in the hearings and appeals process.

In short, much of the advice we have received strongly reflects the belief that changes at the "front end" of the claims process—the first level of adjudication—would reduce the problems we are experiencing at the appeals levels.

To a large extent, we agree and are now moving to implement a number of the recommended changes, including:

• sponsoring continuing medical education to improve treating physicians' capability to provide the evidence we need for disability evaluations and sponsoring research to enhance SSA's ability to make disability determinations;
• revising Agency standards and procedures for adjudicating claims in light of recent advances in medical knowledge;
• ensuring that every appropriate method of securing evidence regarding applicants' claims is pursued; and
• ensuring that notices of denial decisions are clear and detailed.

In a related development, we are now preparing the final report to the Congress on projects we conducted as required by the 1984 disability amendments. In these Personal Appearance Demonstration (PAD) projects, a pre-decision personal interview was substituted for the first level of appeal (reconsideration) now available to a claimant or beneficiary who does not agree with the initial decision.

The projects were designed to test whether a face-to-face meeting between the claimant and a member of the decisionmaking team at the initial stage would permit a better evaluation of the claimant's condition, assure that all relevant information was obtained, and simplify and expedite the decisionmaking process. We have also asked the Office of Inspector General (OIG) to evaluate the projects, and OIG is now analyzing PAD data for preparation of its final report of findings and recommendations.

In evaluating the PAD results and other recommendations for systemic change, we would want to consider and pilot any changes very carefully and sequentially. In other words, the effects of "front end" changes should be considered before modifying the reconsideration level, and the effects of modifying reconsideration should be considered before modifying, successively, the ALJ hearing and Appeals Council levels of review. We are particularly concerned about modifications designed to speed processing which may hinder equitable and accurate decisions. We are opposed to radical changes to the hearings process at this time while we evaluate the effects of recent changes.

Concerning S. 2453, we understand that section 401 of the bill is intended to streamline the present SSA administrative appeals process by eliminating two stages in the process (reconsideration and Appeals Council). The bill would also establish time limits within which the Agency would have to provide ALJ hearings and decisions. As I said earlier, we believe that it is preferable to move carefully in this sensitive area—to first improve the "front end" and then pilot any changes to the appeals process. Therefore, I would hope that the Congress would not make such radical changes to the appeals process at this time.

We think that the improvements we are making at the initial adjudication level offer the first step in a long-term solution to this problem. Changes at the reconsideration, ALJ, and Appeals Council level should be done only after more is known about interactions between the levels.

We have, however, taken a number of actions to alleviate the problem in the short term. In addition to hiring over 135 new ALJ's and related support staff in hearing offices around the country in fiscal years (FYs) 1988-89, we are hiring 115 new ALJ's this year. When this is completed, we expect to have over 750 ALJ's on duty, the highest ALJ staffing level since 1984. Once these new ALJ's have been trained and become fully productive, they will contribute greatly to reducing both the number of cases pending at the hearing level and the average time to dispose of cases.

We have developed programs to balance hearing workloads among offices and adopted innovative ways to address recurring problems. For instance, we have established word processing centers in localities where Federal pay scales are competitive (e.g., Wilkes-Barre, Pennsylvania, and Huntington, West Virginia) to address the problem of high clerical staff turnover in areas where Federal clerical pay scales are not competitive. The recent decision to establish special salary rates in New York City for grades 3 through 8 will also help relieve clerical shortages there.

In other instances—e.g., where a class action lawsuit in North Carolina has created a workload that far exceeds what the local hearing offices can handle—we have established special processing centers which are staffed to provide a full range of support services to local ALJ's and visiting ALJ's from other areas of the country.

As part of SSA's overall office automation effort, the Office of Hearings and Appeals received more than 500 new personal computers in FY 1988 and is receiving 600 more this year. We have allocated the vast majority of this equipment to the hearing offices. To maximize usage, we developed a new hearing office case tracking system which provides local managers with more timely and detailed management information about workloads. We have used the data to identify, analyze, and resolve specific processing problems which have contributed to case processing delays.

In summary, we believe it is premature at this time to consider major legislation to modify SSA's administrative appeals process. We recommend deferral of such consideration until the effects of the adjustments now being implemented can be determined.

800-NUMBER TELESERVICE

Mr. Chairman, I would now like to discuss SSA's initiative to offer toll-free 800-number telephone service and the requirement in S. 2453 that both the 800 number and the telephone number of the local Social Security office be listed in telephone books. SSA implemented the first phase of the new 800-number telephone service in October 1988 and 1 year later extended the 800-number service nationwide.

Clearly, the public increasingly prefers to do business with SSA by telephone, and its response to the 800-number service has been very positive. In a late 1989 OIG survey, 82 percent of those who called the 800 number said the service they received was good or very good. By comparison, 80 percent of those who visited an SSA field office gave a positive response. In a separate SSA survey last year, 98 percent of our callers said they received courteous service.

To my mind, the most telling statistics have to do with the option people will choose when they need to make their next contact with SSA. According to a GAO report in 1984, 51 percent said they would do future Social Security business by telephone and 45 percent preferred to visit a field office. In late 1989, OIG found the number of those who preferred doing business by telephone had grown to 67 percent.

While we are pleased with the acceptance by the public of the 800-number system, Mr. Chairman, we are by no means satisfied. We are constantly striving to correct problems that make the system less than perfect. Earlier this year, the busy signal rate on certain days of each month—especially around the day checks are delivered, the Monday of each week, and the day after a holiday has been higher than we would like. Our goal is to hold busy signal rates on these "peak" days to 20 percent. On other "regular" days the goal is 5 percent.

We have taken a number of steps to reduce busy signal rates, and in April the busy rate on regular days was 4.3 percent and on peak days 26.8 percent. With this improvement in the accessibility of the 800 number, we have been able to take staff off of the telephones for additional training and our primary objective now is to ensure that each of the 800-number staff has an opportunity to develop his or her skills to the highest possible level.

At Commissioner King's direction, an executive-level workgroup is now evaluating recommendations for improving the 800-number service. The group is analyzing staffing levels required to meet SSA teleservice goals, the use of automated call-handling equipment, and will consider what phone number—either the 800 number or the local office number—should be placed in different types of social security letters as well as the scope of issues that should be handled by the TSRs in the teleservice centers (TSCs). We are confident that the recommendations of the workgroup will identify ways to improve the 800-number service so that it will meet the expectations of the American people.

With regard to the requirement in S. 2453 to list local office numbers in telephone directories, since the early 1970's SSA telephone service in metropolitan areas has been provided in special TSCs. These centers were established at the urging of district office employees in order to relieve the pressure of constantly ringing telephones on local field offices so they could focus their efforts on serving the public face to face.

Thus, before the 800 number was begun in 1988, 50 percent of the population reached a teleservice center rather than a district office when they called SSA. We have always asked, however, that telephone companies list the addresses of local offices in their telephone directories. Because concern has been expressed that some people believe they cannot call the local Social security office after national implementation or the 800 number, Commissioner King has set as SSA's policy that the telephone number of the local office will be furnished promptly to anyone who calls the 800 number and expresses the desire to deal directly with a local office. Given this policy and the 20-year history of teleservice to half of the country, we do not believe listing local telephone numbers will improve public service. In fact, we are concerned that increasing direct first contact calls to local offices could lead to deterioration of service, with district office workers forced to answer more telephone inquiries at the possible expense of people who visit field offices to apply for benefits.

PERSONAL EARNINGS AND BENEFIT ESTIMATE STATEMENTS

Mr. Chairman, you have also requested that I comment on the provision of S. 2453 which would require that SSA begin mailing personal earnings and benefit statements to all workers who reach age 60 in FY 1992 through FY 1994 and, beginning October 1994, to all workers age 25 or older on an annual basis.

As you know, in August 1988 SSA began on its own initiative to provide personalized earnings and benefit estimate statements to all workers upon request. Thus far, over 17 million workers have asked for the form to request an earnings statement and over 8 million workers have returned the completed request.

Mr. Chairman, we are continuing to explore alternatives for issuing SSA-initiated statements. One of our concerns is that workers who do not request benefits estimates may not use the information sent to them to check their earnings or learn about Social Security. Our objective is a process that will give the public the information it wants and will use and will assure that the statements are distributed in a manner that safeguards confidentiality. We recently completed pilot tests to distribute benefit statements and benefit statement request forms through employers and by using Internal Revenue Service (IRS) addresses. Although we are still analyzing test results, our preliminary findings are that:

- IRS addresses are reasonably reliable;
- Very Few workers to whom SSA sent benefit statement request forms using IRS addresses completed and returned the request; and
- Distributing benefit statement request forms or the statements themselves through employers does not appear to be effective.

At this point, we are designing a new set of tests to give us more information about the public's willingness to read benefit statements that they have not requested and to determine how to project the accuracy of future earnings without information from the workers. We must be very careful to design and implement a benefit statement distribution system that will improve the public's confidence in social security, rather than raise questions.

Where SSA's record of a worker's earnings may be incorrect, we want to identify that problem and correct it. The IRS-SSA cooperative effort to reconcile differing amounts of wages reported by employers to the two agencies is a major effort toward this goal and does not need to involve the worker in most cases. Also, SSA is undertaking a modernization of our earnings files over the next few years to make it much easier and less labor-intensive to make changes in those records.

In sum, the Administration opposes the provision to accelerate the schedule quoted in the 1989 legislation to provide benefit statements to people who have not

requested them. At a time that we are being criticized by some for our performance in providing current services, we believe it would be counterproductive to legislate new deadlines for new services which the public may not utilize. Of course, we will continue to determine the most effective way to get benefit statements to workers because we do believe it could have some benefits in verifying wage data, but we do not know how the public will respond to unsolicited statements. Also, the proposal to send a statement to everyone every year, rather than biennially as under current law, would double the cost but provide no additional protection to workers. Mr. Chairman, the fact that SSA initiated this new service and that we are actively working to expand it is, we believe, unquestionable evidence of our commitment to get a benefit statement to everyone who will use it.

CONCLUSION

Over the last 8 years SSA has largely completed a transition from a manual, paper-dominated environment to one where automated systems allows us to provide quicker, more accurate service with a smaller workforce. Although the overall quality of SSA's service has remained high during this period, our greatest necessity now is a period of stability and recovery during which we can concentrate all our energies on meeting special needs of both our employees and the public we serve. We urge the Congress to fully fund our FY 1991 request so that we can continue to provide high-quality public service.

Mr. Chairman, we know that you and the Congress as a whole share our goal of maintaining SSA's position of providing the best possible service. What concerns us is that placing responsibility for large new tasks on the Agency at this point works directly against the need for a period of stability.

Separating SSA from HHS is not the answer either. Making SSA independent would have one sure result: it would cause enormous disruption in the management of the Agency as well as in the linkages that are now in place among HHS programs.

We appreciate your interest and concerns about improving SSA and the services we provide. We are confident that we have the will and commitment to meet the public service goals Commissioner King has set, and we look forward to working with the Congress as we strive to keep SSA's service the best that it can be. We must, however, strongly oppose the wide-ranging changes proposed in S. 2453.

Prepared Statement of Arthur S. Flemming

I. INTRODUCTION

A. I appreciate the opportunity of testifying on S. 2453 in behalf of Save Our Security, a coalition of over 100 national organizations, dedicated to maintaining the integrity of our Social Security System.

B. We welcome the fact, Mr. Chairman, that in drafting S. 2453, your primary concern was to improve the manner in which our Social Security laws are implemented.

1. You know that millions of families in our nation are dependent every day on efficient, equitable, non-partisan and compassionate administration of the Social Security programs which replace some of the income lost as a result of the retirement, of the death, or the disability of a worker.
2. You know that in the '80s we did not meet this standard of performance.
3. That is why we welcome the leadership reflected in the introduction of S. 2453.

C. First of all I want to express my own conviction that Commissioner King by both her words and deeds has made it clear that she is committed to doing everything within her power to providing the nation with an efficient, equitable, non-partisan and compassionate administration of our Social Security laws.

D. Next, I would like to comment briefly on each of the Titles in S. 2453.

II. BODY

A. Establishment of Social Security Administration as a Separate Independent Agency

1. As you know this concept has had the vigorous support of SOS throughout the 80s.
2. One of its most effective supporters was the late Wilbur Cohen, the founder of SOS, and with whom I served as Co-Chair.

3. Over-all we support your proposed implementation of the concept as set forth in S. 2453.

4. I would like to join former Commissioner Robert Ball, however, in suggesting that you revise the bill by providing the Social Security Administration be governed by a bi-partisan board and that the Board have authority to appoint an Executive Director of the Administration and to delegate to the occupant of that position authority for administering the program.

a. I do not believe that the specific duties of the Executive Director should be spelled out in the law.

b. The Board should spell out the specific duties and should be held responsible for the manner in which the Executive Director discharges those duties.

c. This will help to make it clear that the President and the Congress are holding just one entity responsible for the successes and failures of the Social Security Administration, namely, the Social Security Board.

B. Social Security Cards

1. SOS has not taken any position on this issue.

2. It is my understanding, Mr. Chairman, that action on this proposal is being held in abeyance pending the report of a commission that is considering this and related issues.

3. Personally, I believe that the proposal does raise some fundamental issues in both the areas of Social Security and civil rights which I would be happy to discuss with you at a later date.

C. Mandatory Provision of Social Security Account Statements

1. SOS enthusiastically endorses this proposal.

2. If enacted, it will help to develop and to maintain confidence in the System.

D. Hearings

We concur in the views presented to this Committee by the Senior Citizens Law Center on these very important issues.

E. Minimum Social Security Full-time Employee Level

1. We believe that if the minimum level of 70,000 full-time employees is established as provided in S. 2453 it will enable the Social Security Administration to utilize the opportunities provided by new and improved technology in such a manner as to not only maintain but improve the quality of services.

2. We also believe that if this happens Commissioner King will take full advantage of the opportunity

F. Telephone Access to Field Officers of the Social Security Administration

1. We believe this should be done.

2. It will improve relationships with Social Security beneficiaries.

C. Improvement of W-2 Forms

1. This improvement is long over-due.

2. Employees are certainly entitled to understand the purpose for which payroll contributions are being made.

3. How many persons can translate FICA?

III CONCLUSION

A. Again, Mr. Chairman, thank you for focusing the attention of the Congress on these important issues.

B. I am confident that as a result of your leadership constructive action will be taken.

PREPARED STATEMENT OF SENATOR JOHN HEINZ

I am pleased to be here to discuss some of Senator Moynihan's and my mutual concerns about the current status of service delivery at the Social Security Administration (SSA). A Finance Committee hearing on these topics is long overdue, and I commend the Chairman for his initiative in bringing together such an effective panel of witnesses.

Mr. Chairman, I have the distinct, disconcerting sensation of standing in an echo chamber today. For almost a decade, we've been asking the Social Security Administration: Hello out there, any problems to report? And for almost a decade the answer consistently comes back: No, we're efficient, we're effective—we're doing fine.

And for almost a decade circumstances have proven the echo to be little more than a hollow assurance.

A case in point is the hearing I conducted back in 1983, as Chairman of the Aging Committee, to examine how well Social Security was serving the public. Then Acting Commissioner Martha McSteen assured us that with systems modernizations, SSA had stabilized the workloads, cleaned out the backloads and was prepared to move forward to achieve a "superior level of service" to beneficiaries. In direct contradiction to those assurances, the General Accounting Office (GAO) testified about how staffing problems had negatively affected SSA's performance, and discussed at length the limitations of SSA's computer modernization program.

Seven years later, and here we are again. Some of the players have changed, but the echo is the same: promises and assurances made and unmet. I for one am gravely concerned that SSA's emphasis on a more "technological" form of service delivery has actually worked to the detriment of beneficiaries.

The negative effects of staffing reductions and the shift away from face-to-face contact are evident throughout all levels of SSA programs. The busy signal at the end of the 1-800 hotline is the most recent example of how technology fails in the absence of adequate personnel. And just a few months ago it was discovered that thousands of vulnerable SSI recipients' benefits were inappropriately terminated because an overburdened staff was taking shortcuts. Senator Moynihan's bill calls for an increase in Social Security staff. I support this provision, and I want to focus on a few areas which demonstrate the problem at the beneficiary level—where the "rubber meets the road."

In 1983, I also directed a national investigation of the so-called continuing disability reviews by SSA. The GAO documented hundreds of thousands of disabled workers and their families who lost their lifeline of cash and medical support because of capricious and irrational reviews. Congress legislated some reforms. But a November 1989 GAO report which I requested shows the problem persists. According to this most recent report, 58 percent of the persons denied disability benefits are unable to work. In fact, GAO found that these denied applicants are very similar to those awarded benefits in terms of employment, health, and functional capacity. We obviously have a problem somewhere in the process.

Senator Moynihan's bill includes a "speeding-up" of the appeals process for disability benefits. More timely appeals is a critically needed change, but it seems reasonable to combine this with reforms at the beginning of the process—the criteria for determining disability.

Let me share a case from Pennsylvania which clearly shows a system in chaos. Mrs. Sleymaker, from Bird-in-Hand, Pennsylvania has been trying to get disability benefits for 3 years. She has severe spinal deformity which causes her severe and constant pain, even with medications. Her doctor stated that her pain was "credible" and that her condition could not be corrected with surgery. In addition to her physical disabilities, she was widowed twice and witnessed the drowning of one child—leading to a diagnosis of "recurrent, severe depression." She has a tenth grade education, and at age 48, has no income and lives with her father and mother.

Mrs. Sleymaker's case has been reviewed 8 separate times. She was denied benefits at initial review, reconsideration, and by the Administrative Law Judge (ALJ) and the Appeals Council. This process took about 2 years. Her lawyers took her case to Federal Court, which sent it back to the Appeals Council, which in turn sent it to the State Disability Determination Unit. Her case was recently heard again by a second ALJ, who stated that she was 100 percent disabled, and that her disabilities were so evident that he did not even need to conduct a full hearing!

Only flawed procedures or an understaffed system could allow this kind of abuse. SSA simply must do a better job of developing evidence of disability at the onset. I have recommended face-to-face interviews of all disability applicants, particularly those with the types of disabilities most often reversed at the ALJ level. And I believe we need to seriously consider if the reconsideration step is an unnecessary layer.

Which brings me back to the point of the echo. If more staff are needed to do the proper job, then I expect the Administration to inform Congress of SSA's staffing needs. It is unconscionable that the Administration publicly says staff levels are adequate and privately laments the absence of sufficient staff to get the job done. Yet that is what has happened repeatedly. Just this March, Herb Doggette wrote an internal memo to Commissioner King acknowledging that SSA's workload was "out of control."

If SSA thinks things are out of control now with current staffing, what's going to happen in the next few months when there are a minimum of 250,000 cases to be reviewed as a result of the *Zebley* children's disability decision?

I sincerely hope that the Administration does not resist needed changes in benefit programs because they won't ask for help when help is needed.

This legislative session, I intend to push for reform in the eligibility standards for disabled widows. While the recent *Zebley* case ruled that functional capacity must be evaluated in the case of children, widows are not accorded the same protection. S. 2290, which I introduced with Senators Dole, Riegle, Durenberger and Boren would equalize eligibility standards for disabled widows of all ages.

Mr. Chairman, the primary function of the Social Security Administration must be to get the right check, in the right amount, to *all* the right people at the right time. What is clear to me is that without reforms in the current system, the Agency's batting average will continue to be .200.

Again, thank you for holding this hearing today and for the chance to share my views with the Committee.

Prepared Statement of Martha McSteen

Mr. Chairman and Members of the Committee, after 39 years of predominately field experience in the Social Security Administration, no one could have a more sincere interest in both the well-being of the program itself and the welfare and stability of the staff. The two are inseparable. I am, therefore, pleased that you, Senator Moynihan, have introduced S. 2453 designed to improve and stabilize the institution and enhance service to the public.

RESTORATION OF PUBLIC TRUST

The confidence of the American public in Social Security has been shaken over the past two decades by financial crises, benefit cuts, and by the use of trust funds to mask the deficits. Independent agency status combined with a return to pay-as-you-go Social Security financing would go a long way toward restoring lost confidence. But other actions are required.

Trust funds are more than adequate to enable the Social Security Administration to provide quality service. In areas where budget driven Social Security staffing reductions have been too severe, there is a critical need to rebuild. Services which have been discontinued, such as Medicare counseling and community outreach, must be reinstated. Access to local offices must be restored, and the appeals process again made responsive to the needs of claimants. Your legislation, Mr. Chairman, addresses all of these issues.

Additionally, in response to the public outcry over the premature disinvestment of trust funds in 1965, two public trustee positions were authorized for the Social Security Board of Trustees. But how can the public have faith in the system when those positions remain unfilled? We urge you, Mr. Chairman, and other members of this Committee to continue to seek prompt appointment and confirmation of those public trustees.

INDEPENDENT AGENCY

Independent agency status would allow an administrator to concentrate on SSA programs and their delivery. Some critics would have you believe the establishment of an independent agency would weaken SSA and leave the organization without power. But what could be more powerful than a system supported by over 130 million workers in this country and some 39 million beneficiaries.

Independent agency status would allow the organization to function in a more expedient manner by curtailing layers of supervision and coordination and restricting disruptive political involvement. An agency with a strong administrator, with a bipartisan board providing direction and policy guidance, would be able to be managed, as it should be, solely in the interest of present and future beneficiaries.

The National Committee's position is clear. Social Security is too essential to American workers and their families to be left vulnerable to ideologies, whether of the left or right. To the extent that it is possible to do so, we must erect safeguards against politically motivated threats to the integrity of the program. Independent agency status, structured as provided for in S. 2453, will provide those safeguards.

Health and Human Services Secretary Louis Sullivan argues that an independent Social Security agency would be unable to provide a full range of information and assistance to senior citizens. Yet, local offices did provide a whole range of services in the past and could do so again. Interagency cooperation in the past allowed for more complete services than are now provided and renewed cooperation would be possible whether or not Social Security was an independent agency.

The National Committee fully supports the goal of one stop service, but insists that full service is not precluded by independent agency status. Medicare services,

for example could be provided now if staffing and training were adequate. The present inability of claimants to receive help with questions about Medicare eligibility, entitlement and coverage or in understanding so-called explanations of Medicare benefits is an example of less than ideal one-stop service. Referring claimants to carriers or intermediaries may not be official policy, but inadequate staffing and training make it almost impossible for local Social Security offices to do anything more for Medicare beneficiaries.

REBUILDING SOCIAL SECURITY STAFFING

Social Security staffing reductions and improper imbalance of staffing have cut deeply into the ability of local Social Security offices to provide even basic Social Security services, let alone assistance and information about other Federal, State and local programs. According to feedback from our members, it is becoming more and more difficult to get a response from Social Security or to trust the answer they do receive.

The point of no return has been passed. Staff cuts considered possible in 1985, because of anticipated technological advancements, were carried out even after the advancements failed to materialize and the cuts could no longer be justified. Consideration must now be given to decentralization of certain functions, correcting serious staffing imbalances in field offices, and to working with the Office of Personnel Management to improve recruitment of qualified individuals and training them.

Addressing these and related issues would result in an independent agency capable of providing any and all services that an intra-departmental agency could provide and allow it to do so with greater efficiency and expediency.

It is staffing deficiencies that have precluded a full measure of service to beneficiaries. For example, it is not just counselling on Medicare which has suffered from the cutback of field representatives. In the past, public information and outreach efforts enabled field representatives to interact with private and public organizations and local units of government. As a result, they were aware of multiple sources of help available in their communities and, when needed, were able to direct clients to those sources of help. Now the number of field representatives has been cut in half and many of those remaining have been reassigned to claims representative case loads. Field representatives still doing outreach are concentrating primarily on SSI outreach in response to Congressional demand for greater emphasis on reaching eligible individuals who are not participating in this important program. Public information and outreach in all other areas has suffered as has Medicare counselling

STREAMLINING THE APPEALS PROCESS

We welcome your initiative to improve the appeals process. The rights of beneficiaries are harmed by delays which now occur at every step of the way, from initial application to initiating payment of approved claims. But simply streamlining the process by cutting out steps does not in itself guarantee that the process will better serve beneficiaries. Adequate, trained and highly motivated staff must be an essential element of any restructured appeal process.

A long, drawn-out process serves neither the claimant nor the Social Security Administration. For this reason, we applaud your goal of cutting the average processing time in half. But it is essential that the goal of reducing processing time not overshadow the responsibility of the Social Security Administration to fully protect the rights of beneficiaries so that every disability applicant receives an accurate decision based on a complete analysis of medical and vocational evidence. Expediency cannot and must not replace due process.

The proposed new hearing process outlined in your legislation will be dependent on regulations written to implement the process and on policy directives to local offices. Without prejudice to the current administration, this is one of the reasons why advocates urge independent agency status. Beneficiaries need to have confidence that Social Security is being administered in their best interest and that the goal of the new appeal process is timely and correct decisions—not budgetary savings.

We believe quality decisions can be reached within a shorter time frame only if applications are initially better prepared and documented before being sent to State Disability Determination Services. Claimants need help with this process but they should not have to employ legal counsel to get it. At the claimant's first appointment, the claims representative's objective should be a thorough explanation of disability eligibility criteria and the disability claims process, completion of the disability application form, identification of all sources of medical and vocational evidence

and clear instructions as to what additional documentation the claimant himself or herself will be required to obtain and submit. If claims are prepared thoroughly in this manner, and State agencies are properly staffed, initial decisions will be made sooner and there will be far fewer appeals.

If reconsideration in some form is retained as an option, the step should be strengthened by a more complete assembly of up-to-date documentation and by providing a face-to-face interview before a decision is rendered. Due process rights to a subsequent hearing, of course, must be protected for claimants who elect a review prior to filing for a hearing.

One reason for retaining some type of post-initial review process is that beneficiaries who believe an initial denial is unfair may be hesitant about proceeding to a formal ALJ hearing if they cannot find or afford legal counsel. A great deal of responsibility for protecting the rights of such claimants will lie with the Social Security Administration. Applicants who are not satisfied should fully understand their right to appeal. The pressures and strains brought about by reduced staffing may mean that employees at all levels may have neglected to stress applicant's rights.

The hearing step has always presented the longest delay in the appeal process. For this reason, we wholeheartedly endorse the requirement in your bill that Administrative Law Judges schedule hearings within three months after a hearing application is filed and then render decisions within 30 days of completion of the hearing. Decisions take no longer to dictate and review immediately than they do three to six months later.

While endorsing a speed-up of the appeals process, we want to be certain that claimants are not put at risk by too little a time between initial application and ALJ decision. Social Security disability benefits are paid only for long-term disability. Claimants whose conditions have not lasted or are not expected to last for at least twelve months are denied benefits because their conditions do not meet the duration requirement of law. Under the present system, there is no risk of receiving a final administrative decision in less than a year after onset of disability. However, if ALJ decisions ever are routinely issued six to nine months after initial applications and disabled claimant's condition has failed to improve as predicted, benefits could be inappropriately denied. A simplified system should be provided for reopening such a decision and obtaining a reversal.

CONCLUSION

Mr. Chairman, legislation to restore vitality and fairness to the administration of this country's most important domestic program is urgently needed. Individuals entitled to benefits also are entitled to prompt, accurate, and courteous service.

The challenge to the organization is not that foreboding. What is needed is stability, strong leadership, a commitment to serve the public, and accountability to the taxpayers of this country.

An independent agency is the first major step in the restoration of the Social Security Administration to an exemplary government agency.

Thank you, Mr. Chairman for the opportunity to comment.

PREPARED STATEMENT OF WITOLD SKWIERCZYNSKI

My name is Witold Skwierczynski, I am President, National Council of SSA Field Operations Locals (NCSSAFOL), American Federation of Government Employees (AFGE) AFL-CIO. NCSSAFOL represents approximately 28,000 SSA employees who work in 1100 district offices, branch offices, resident stations, and teleservice centers.

I appreciate the opportunity to address the Senate Finance Committee, Social Security Subcommittee, regarding the staffing crisis in SSA. The Social Security Administration has withstood a planned reduction in staff since FY 84. The result of this downsizing strategy has been to reduce Full Time Equivalent Employment (FTE) from 79,951 in FY 84 to 62,365 in FY 90. This staff reduction plan has caused serious disruptions in the delivery of service by the Social Security Administration.

The Agency justified some of the staffing cuts by asserting that the implementation of an automated claims modernization plan would reduce staffing requirements. Unfortunately this so-called Claims Modernization Plan/Field Office Systems Enhancement (CMP/FOSE) has not resulted in any less work for the remaining SSA employees. In fact, experience has shown that due to systems inefficiencies, it takes more time for a claims representative to complete a claim under the CMP/FOSE system than under the previous system.

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Automated claims have not created the panacea that the Agency promised. Instead, according to a recent 3/90 SSA report to the House and Senate Appropriations Committees, pending workloads have increased substantially. During the period of 12/88 to 12/89, Field Office disability pending workloads have increased 9.99%. SSI Aged Claims pending are up 46.47%. SSI Blind and Disabled pending claims have increased 13.66%.

In the Program Centers, the Retirement and Survivors (RSDI) claims workload pending is up 21.07%. Office of Disability Operations (ODO), claims workload is up 45.99%. Pending earnings records requests for all claims at the Office of Central Record Operations (OCRO) have increased 9.18% during the period from 12/88 to 12/89.

The reason these pending workloads have substantially increased during a one year period is that SSA employees do not have sufficient time to process their work. Severe backlogs have developed and these backlogs will only deteriorate absent a substantial infusion of staff in SSA. Current staff cannot handle the workload.

Post entitlement workloads have also increased. These are considered second priority to claim workloads by SSA Management. The GAO reported in GAO/HRD-89-106 BR that pending workloads in the following post entitlement areas have increased from 1984 to 1988:

Workload item	Increase in pending from 1984 1986 Percent)
RSDI Reconsiderations	20
SSI Reconsiderations	36
RSDI Representative Payee	134
SSI Representative Payee	234
SSI Redetermination of Eligibility	16
Supplemental Medical Insurance Payment Activity	140

In 3/90 retiring Deputy Commissioner Herbert R Doggette wrote Commissioner Gwendolyn King to express his concerns about these increased pending workloads. He warned that there are signs of serious "deterioration in levels of service" and that the SSA system could be "overwhelmed" because of the staff cuts. Mr Doggette pointed out that not only have pending workloads increased but processing times are also up. The aforementioned 3/90 report to the House and Senate Appropriations Committees on the level of service provided shows that processing times have increased in the last year for Disability claims, all SSI claims, and Disability Reconsiderations. (Processing time for RSHI claims is down only due to the fact that teleclaims have substantially increased. In most instances, SSA does not count the time from initial telephone contact to receipt of application as processing time. Thus, increases in teleclaims result in a false presumption that processing time has decreased. In actuality, time spent processing the claim *prior* to receipt is not counted.)

Mr. Doggette asserted in his memorandum to Commissioner King that these increases in processing time and the rise in pending claims are signs of service decline. News reports (N.Y. Times, 4/26/90, "Warning Signs at Social Security") indicate that Mr. Doggette feels that a minimum of 70,000 full time workers are needed to provide good service. This would translate into a FTE of over 72,000.

Not only has the evidence shown growing deterioration in SSA's statistical performance, but staffing cuts have resulted in SSA shifting its service delivery from localized face-to-face and telephone service to an anonymous 800# service. AFGE does not oppose the potential enhanced service option that can be the result of a well planned limited toll free telephone service system. AFGE does oppose the shifting of staff resources away from field offices to the teleservice centers. One cannot establish an entirely new service delivery vehicle like toll free telephone service and simultaneously reduce staff. AFGE also opposes the failure of SSA to staff the teleservice centers (TSC's) adequately despite the fact that TSC staffing levels were enhanced at the expense of the field offices. The fact that TSC staffing is inadequate is evidenced by the substantial busy rates experienced by the public when trying to access the 800# system. Data provided by the Agency to the Union show the following busy rates since the toll free service was expanded nationwide:

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Month	Calls Attempted	Percent Busy
10/89	5.7 Million	30
11/89	8.3 Million	51
12/89	4.2 Million	14
1/90	12.5 Million	52
2/90	9.3 Million	47
3/90	5.3 Million	34

The Commissioner has attempted to alleviate this problem of lost calls by redirecting staff from the Program Center to the T5C's. In addition, some calls are being re-routed back to field offices. These actions certainly allow more calls to be answered. However, due to overall staffing shortages, such actions have resulted in increased work backlogs in the Program Centers and field offices. When basic staff shortages exist, shifting resources to plug holes simply results in the opening of new chasms. The essential problem is the lack of staff has not been alleviated in SSA.

These chronic staffing shortages have caused SSA local management to engage in practices which are the antithesis of public service. It is common for SSA to discourage claimants from walking into an office to file a claim. Often such walk ins are asked to set up an appointment through the toll free service. These appointments are frequently backed up for weeks. We have received reports from the Seattle Region that SSI appointments are backlogged over 60 days. These SSI clients presumable need immediate assistance and are in dire need.

Managers in the New York and Kansas City Regions have resorted to reducing office hours due to the lack of sufficient staff available to service the public from 9 a.m. to 4:30 p.m.

Managers in the Chicago Region are ordering employees to conduct group interviews for SSI redeterminations. Such cattle-like procedures are demeaning to beneficiaries and forces them to disclose information protected under the Privacy Act in a group setting.

We have identified offices that have no clericals on their staffs. Thus, GS-10 employees must do typing, filing, answer phones, etc.

Many offices are shifting the claims taking burden to clients. The public is asked to fill out their own forms, provide their own translators if they cannot speak adequate English, and secure their own documents without SSA assistance. For years these services were provided by SSA workers as part of the function of a social service agency which provides benefits for senior citizens, the poor, and the disabled. Now staffing pressure's have caused us to ask the public to fend for itself in many instances.

As was widely publicized, thousands of SSI recipients were inappropriately suspended from the benefit roles without being provided due process rights due to heavy workload pressures on management. (N.Y. Times, 12/8/90, "Staff is Cut, Many Lose Social Security"). In one study, SSA found that 84% of SSI beneficiaries who were suspended from the benefit roles were done so without appropriate dropped from the rolls were eventually reinstated.

Such practices, while inexcusable, can be understood as management reacts to the day to day stress and tension of attempting to process huge workloads with insufficient staff support. Commissioner King is understandably outraged by such abuses and has demanded a refocusing of the Agency's traditional mandate of providing quality service in a humane manner. Her action in suspending numeric performance standards is an attempt to restore personal service and eliminate the abuses which can result from the pursuit of numerical standards and goals. This effort is laudable and is applauded by the Union. However, it is only a part of what needs to be done to restore SSA's role as a true public service Agency. The crisis in the Agency will not be alleviated until proper staff support is provided.

In SSA's FY 91 Budget, the Agency proposes an FTE increase of 510. The entire increase is projected to be from part time rather than full time workers. In testimony before the Senate Special Committee on Aging, Commissioner King was asked if she would accept an infusion of $120 million in the administrative budget for the purpose of increasing staff by 4000 FTE's. Ms. King Stated that the Agency requires a period of stability. She asserted that staffing imbalances exist. These imbalances need to be rectified but additional staff is not required at this time.

In view of the alarming statistical data regarding increased pending workloads, longer processing time, 800 number lost calls, and the severe morale problem that exists among Agency workers as evidenced by surveys conducted by SSA, the Management Association and the Union, it is untenable to argue that the problem is

confined to staffing imbalances. The Union questioned the Agency at a 3/90 Labor-Management meeting regarding this point. SSA was asked to identify any offices that were overstaffed. SSA could provide no listing of overstaffed offices.

In fact, overstaffing does not exist in SSA. All that exists is understaffing. The so-called imbalances mean that some offices were reduced in staff more than other offices. However, all offices were cut and most were cut severely. Thus, staffing imbalances in SSA is just a euphemism for saying that some facilities are worse off than others. The bottom line is that *all offices* are suffering shortages to some degree.

The Commissioner established a strike force to try to deal with those offices that were suffering from particularly egregious problems. This strike force was empowered to provide immediate staffing assistance to those offices that had severe shortages. An example of the strike force's actions occurred in the New York region. The region was asked to identifie 47 offices. The strike force replied that his was an excessive list and had to be reduced to half the number or to whatever could be visited in 2 days.

The strike force staffing effort is a patchwork solution to a much greater problem. The strike force can provide a handful of staff to field offices to stave off collapse. However, the need for massive infusions of staff cannot be addressed through the strike force methodology.

The Commissioner has also emphasized SSI outreach. Over 50% of individuals presumably eligible for SSI have not filed applications. Thus, Commissioner King wishes to initiate a broad scope outreach program which places much of the burden of outreach on community organizations rather than SSA personnel. During the aforementioned Labor-Management meeting, the Commissioner was asked whether she would agree to stop the erosion of the Field Representative (FR) position which is a position whose function is to perform outreach, public education, and public information work. (In FY 84 there were 1175 Field Representative assigned to field offices in SSA. As of 12/19 only 579 FR's remain on staff. Most of these FR's are assigned claims representative (CR) duties for 2 or 3 days a week due to CR staffing shortages. In 1985, 246 staff years were utilized for public information activity. By 1988 this had been reduced to 149 staff years.) The Commissioner refused to commit SSA to stop that erosion of the FR job. She also was unwilling to agree that a Field Representative would not be assigned to CR functions. Thus, the Commissioner has established an SSI outreach program but is assigning insufficient staff support to allow this program to succeed.

Another matter of extreme concern is the Agency's ability to process a new workload mandated as a result of a Supreme Court decision, *Sullivan* v. *Zebley*. The *Zebley* case will require the Agency to review between 280,000 and 560,000 SSI disability cases that were initially denied. (These are SSA's estimates. The plaintiff estimates that 1 million cases will need review). These cases must be reviewed for new disability determinations as well as for total reconstruction of affected individuals eligibility factors retroactively for up to 7 years. The SSA is a complex, labor intensive workload. The impact will be felt beginning in late 1990. If SSA accretes the Zebley workload with no addition of staffing resources, the result can only be disaster. Sufficient personnel must be hired and promoted substantially before the implementation of Zebley so that they can be properly trained. If serious staffing shortages exist today, the impact of the Zebley workload will adversely affect SSA's ability to deliver service to an ever greater degree. To date, SSA has not disclosed its plan for accomplishing this workload.

Another issue which needs to be addressed in SSA is the serious morale problem among the SSA workforce. This morale problem is exacerbated by the continual increases in workload while staffing levels decrease. An AFGE nationwide survey conducted in 1989 showed that 63.1% of workers characterized their morale as poor or extremely poor. 77.2% of employees characterized their coworkers morale as poor or extremely poor. 69% of respondents would not recommend SSA as a place to work to their friends. An amazing 44.8% were actively seeking outside employment. 87% disagreed that there was sufficient staff to carry out SSA's mission. 84% Stated that non-clerical employees were performing clerical duties due to staffing shortages. 64.2% of respondents stated that management was performing non-management duties.

The Management Association and SSA have conducted similar surveys and found comparable results. A 2/90 Management Association National Managers Survey found that 86% of managers were performing non-management duties for over 12 months. 81% Stated that their normal Management/Supervisory duties had significantly suffered because of time spent on operational duties. 88% Stated that they donated unpaid overtime every week. 68% Stated that they were unable to conduct effective quality reviews due to staffing shortages. 57% use unorthodox methods to

get work cleared. 49% Stated that they were unable to handle all workloads. 83% felt that they were losing ground in processing Post Entitlement work. 78% Stated that they could not conduct effective SSI outreach.

Commissioner King is actively seeking to improve employee morale. However, moraie can never be sufficiently enhanced when employees are continually faced with the stress of accomplishing their jobs without sufficient staff support. As workloads back up, a solution to the dilemma appears impossible. Thus, unless staff resources are enhanced, the poor morale of SSA employees will continue.

SOLUTION

What is the solution to the crisis is SSA? Obviously increased staffing is part of the solution. Senator Moynihan's Social Security Reconstruction Act would provide part of the answer. 7000 additional FTE's would be roughly equivalent to the staffing levels recommended by former Deputy Commissioner Doggette. Since SSA has been unwilling to implement.report language regarding staffing in appropriations legislation, specific legislation is necessary mandating a staffing floor. Sufficient money should also be appropriated for training any additional staff and for providing proper space and facilities, e.g., ergonomic furniture and computer terminals.

An infusion of untrained staff will not pay immediate dividends. However, after such personnel is properly trained, the Agency will have the resources to implement the renewed focus that Commissioner King is trying to restore to SSA.

Thank you very much for giving AFGE the opportunity to express our concerns regarding the issue of staffing in SSA.

AFGE SURVEY:

EFFECTS OF STAFFING CUTS ON SERVICE DELIVERY AND ON EMPLOYEES WORKING IN SOCIAL SECURITY ADMINISTRATION FIELD OFFICES

Compiled by the
American Federation of Government Employees, AFL-CIO
80 F Street, N.W.
Washington, D.C. 20001
(202) 639-6423

EXECUTIVE SUMMARY

The American Federation of Government Employees, AFL-CIO, strongly believes that the Social Security Administration (SSA), in continuing its program to decrease staff and increase automation, is not only failing to adequately serve those who depend on SSA support in their daily lives, but is shortchanging the American taxpayer as well.

The union came to its conclusions after analyzing the results of a statistically valid sampling of conditions in SSA field offices, nationwide. Of the 83 field offices selected to participate in the survey conducted from August through October, 1988, 79 replied, yielding a substantial response rate of 95.2 percent.

AFGE represents nearly 60,000 employees in 1,300 district and field offices, nationwide. These workers deal directly with the public, answering questions, processing claims, and resolving problems concerning the well-being of SSA claimants.

In answering the questionnaire, a significant 80 percent of the employees in the field offices said that generally, staffing shortages were the major reasons why SSA was plagued with excessive backlogs, earnings posting errors, lengthy waiting room lines and busy telephone signals. These responses closely match those obtained from a survey of similar questions conducted by SSA Commissioner Dorcas Hardy in 1987 of all agency managers.

Here is a summary of AFGE's findings:

- On the quality of services to the public, 73.5 percent of the employees in the field offices said benefits changes are not processed in a timely manner; 58 percent said phone service is not better than it was three years earlier; and 61.6 percent said waiting times are not shorter in field offices than three years earlier.

- On how staff reductions were affecting public services, 87 percent said there is not enough office staff to adequately serve the public; and 69.6 percent said there is not enough time to complete all tasks by the end of each day.

- On working conditions, some 69 percent said they would not recommend SSA to their friends as a good place in which to work; 76.9 percent said SSA is not a better place in which to work than it was a year earlier; and 42.8 percent said they were looking for a new job outside of SSA.

- On how current working conditions are affecting employee morale, 77.2 percent of the employees in the field offices said they believed that the overall morale of their co-workers was "poor" or "extremely poor;" and 63.1 percent believed their own morale was "poor" or "extremely poor."

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BACKGROUND

The American Federation of Government Employees represents some 60,000 Social Security Administration (SSA) employees, nationwide. Among the majority represented are employees working in 1,300 district and branch offices (field offices). These are the workers who deal directly with the public, answering questions, processing claims, and resolving problems concerning the well-being of SSA beneficiaries.

All too often, these SSA employees are the only contact the public has with the U.S. government, and it has been the union's experience that severe staff cuts over the past five years have critically reduced the agency's ability to carry out its mission in an effective and timely manner. This has left a negative impression of the federal government and its employees, who are often just as frustrated in their efforts to provide the best possible services to recipients as they are to receive them.

According to a General Accounting Office study which was based on a survey taken in June 1988 (GAO/HRD-89-37BR) and reported to Congress on February 10, 1989, SSA's largest program -- Retirement and Survivors Insurance -- paid out approximately $192 billion in benefits to about 34.6 million people in fiscal year 1988. It is reasonable to assume that some of these beneficiaries were forced to wait in long lines, listen to consistently busy telephone signals, or were otherwise inconvenienced because SSA staff cuts created a shortage of workers to handle their problems promptly or in a timely manner.

Yet, despite the hardships staff reductions have had on SSA employees and recipients alike, the agency insists that services are just as good or better than before and continues to work tirelessly to achieve its staff reduction goals.

For example, for fiscal year 1990, the agency has set a goal to trim an additional 2,394 from the rolls. Viewed from a congressional standpoint, where staffing levels are set in terms of work years, the 86,213 work years which were funded in 1985 will be slashed to 63,911 in fiscal year 1990, if the Social Security Administration's budget requests are adopted by Congress. That is a reduction of 22,302 work years or 26 percent.

The union continues to oppose these staff reduction levels, and believes that SSA's automated systems which were designed in part to replace workers -- including the Teleservice 800 number network that eliminates the one-on-one personal contact with recipients have not only been unsuccessful but have deepened the agency's inability to adequately serve the public.

Still, the Social Security Administration continues to push for staff cuts and system modernization initiatives, which they contend have resulted in high client satisfaction. Indeed, earlier GAO studies have, in general, substantiated the agency's contention that the public believes SSA is doing an adequate job providing necessary services. But, those "client satisfaction" studies only measured whether SSA employees treated the public courteously. Even so, AFGE believes that GAO came to this conclusion by relying heavily on unverified data furnished by SSA. The union further maintains that most SSA figures dealing with client satisfaction, workloads, and performance are manipulated to support the agency's position.

However, SSA's own 1987 agency-wide survey of managers strongly upholds the union's position that serious problems exist within the agency that affect the quality of services, employee morale, and working conditions.

Of the 9,000 managers surveyed, more than half responded. A considerable proportion expressed dissatisfaction with SSA's staff reduction process. One-third said they rarely leave

the office with a sense of accomplishment, and one-fourth disagree that SSA is providing recipients and beneficiaries with the "best possible service." The SSA managers also indicated that the agency is experiencing serious morale problems. Less than one-fourth would recommend SSA as a good place to work, three-fourths believe SSA is not a better place to work than it was the year before, and only one-tenth thought things would improve in the future.

Although SSA did not include rank-and-file employees in its opinion poll, GAO's June 1988 (GAO/HRD-89-37BR) study of 467 managers and 643 employees in SSA field offices around the country, also yielded statistics showing a steady decline in the quality of services and employee morale.

SURVEY MOTIVES, METHODOLOGY AND OBJECTIVES

AFGE has over the years attempted to win permanent legislation creating a staffing floor of enough workers to keep the Social Security Administration operating at full capacity without excessive backlogs, wage earnings errors, lengthy waiting room lines and busy telephone signals, to name a few.

In fact, the Senate passed such legislation in the past and again in 1988. But, the House disagreed and the provision was deleted in a joint conference committee ironing out the differences in the House and Senate bills

Experiences at the work place made a valid case for the union's argument that as staffing levels dropped and workloads increased, working conditions deteriorated, employee morale plummeted, and the quality of services dwindled to devastating proportions.

To discover how serious these problems were from the employees' viewpoint, AFGE conducted a survey from August through October, 1988, of randomly selected SSA field offices, nationwide. The union picked a number between one and ten at random and selected every tenth office to sample. Of the 83 offices selected, 79 responded to the survey, resulting in a 95.2 percent response rate

The typical SSA field office averaged some 20 employees, which was adequate for a reliable sample of both large and small offices. All non-management field staff within each selected office were asked to complete the questionnaire anonymously. The questionnaires were mailed to an AFGE representative in each selected office, who in turn distributed them to all bargaining unit members. The representative also collected the completed forms and sent them to AFGE's national headquarters in Washington, D.C., for tabulation and analysis. The results reflect the average of the opinions expressed by employees in the 79 field offices.

The union questionnaire was modeled after the one distributed to SSA managers in August, 1987 by SSA Commissioner Dorcas Hardy. Of the 23 questions on the union's survey, ten are virtually the same as those posed to SSA managers. And, of the 1,401 AFGE bargaining unit employees polled, the vast majority who could have completed the questionnaire in each office did so, yielding a healthy response rate of 80 percent.

After the results were tabulated, averaged over the sampled offices, and analyzed, they were compared with the answers given by SSA managers to similar questions in the agency's 1987 managers' survey. There is strong agreement by both employees and managers on a number of questions dealing with such key issues as working conditions, staff reductions, employee morale, and quality of services.

The union's objectives are to give the public an overall picture of working conditions and service delivery in field offices; to use these findings to substantiate the need for legislation restoring SSA staffing levels to full capacity; and to enact a law that will make the Social Security Administration an independent agency.

QUALITY OF SERVICE

Providing the highest quality of service has always been the number one priority of SSA employees in AFGE bargaining units. Because they are the ones who have the most direct contact with beneficiaries and recipients, they are also the ones to spot the areas where services have been weakened or broken down altogether. SSA's Teleservice and other initiatives designed to replace employees as the first line of contact with clients have already been costly in terms of the efficient handling of claims, distribution of information, and other vital services.

The extent of the breakdown is reflected in the union's survey, which clearly shows that 50.8 percent of the employees in the field offices disagreed or strongly disagreed that telephone service was better today than it was three years ago. In addition, some 57.4 percent said they believed phones are put on hold or not answered because there are not enough employees to answer them. According to a 1987 GAO report on the efficiency of SSA's telephone service (GAO/HRD-87-138 Appendix I), 21 percent of those making calls to the agency for information found the lines busy during a one-week period.

Waiting time in SSA field offices is another area where the union survey indicates a sharp decline in services. Although SSA figures show that the average waiting time had dropped from 10.3 minutes to 6.9 minutes within the nine-month period from June 1986 to March 1987, the union survey contradicts those statistics

In fact, some 61.6 percent of AFGE's respondents in the field offices thought waiting times were not shorter in the summer of 1988 than they were three years earlier. Some 38.6 percent of those answering the union survey believe these discrepancies exist because supervisors and employees use different standards to determine the length of time a client actually has to wait for service. Another 64.2 percent of the office staff believe that the agency fails to include all of the time claimants and beneficiaries spend waiting in line as part of the official waiting time count. For example, the union counts waiting time from the moment a client walks through the door, while management begins counting time from the moment a client sees a claims or service representative.

AFGE's survey statistics also challenge SSA's figures on the time it takes to process initial claims. A substantial 71.1 percent of the union sample agreed that SSA's processing time and workload statistics were influenced by practices that improve statistical results but not services. In addition, 73.5 percent of the field office staff disagreed or strongly disagreed with the statement that "all post entitlement workloads are processed timely." Post entitlement actions constitute the vast majority of SSA's work once a claim is initially taken and processed.

Finally, when asked whether they believed that their office would be able to provide high quality services to claimants and beneficiaries during the following year, 58 percent of the union's sample group said no (see Figure 1 and Table I).

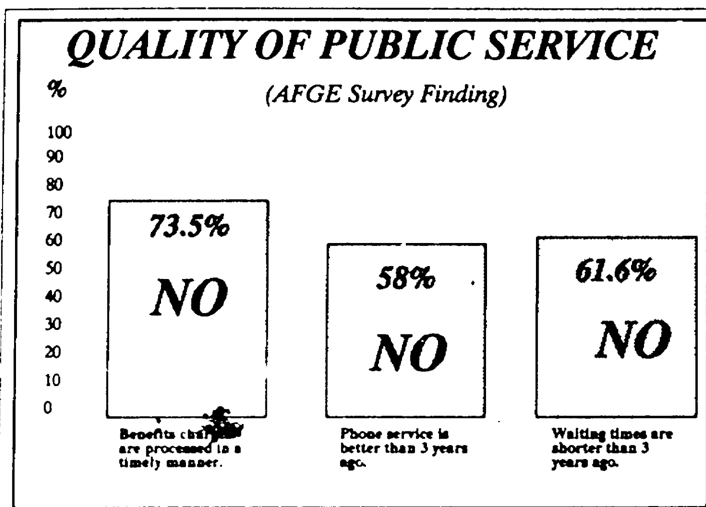

FIGURE 1

RESPONSES TO QUESTIONS RELATING TO QUALITY OF SERVICE

TABLE I

To simplify the table, all answers noted as "agreed" or "disagreed," are a combination of "agreed" or "strongly agreed" and "disagreed" or "strongly disagreed," respectively on the actual survey. There were no corresponding questions in the SSA managers' survey on this subject.

1. All post entitlement workloads are processed timely. (Question 9, AFGE survey.)

   AFGE survey 73.5% disagreed

2. My office will be able to provide high quality services to claimants and beneficiaries during the next year. (Question 11, AFGE survey.)

   AFGE survey 58% disagreed

3. Telephone service is better today than three years ago. (Question 12, AFGE survey.)

   AFGE survey 50.5% disagreed

4. Do supervisors and/or employees follow different practices during the "waiting time" period? (Question 13, AFGE survey.)

   AFGE survey 38.6% yes

5. Does the "waiting time" sampling include all the time claimants and beneficiaries spent waiting in the office? (Question 14, AFGE survey.)

   AFGE survey 35.8% yes

6. Are processing time and workload statistics influenced by practices that improve statistical results but not services? (Question 15, AFGE survey.)

   AFGE survey 71.1% yes

7. Are waiting times shorter today than three years ago? (Question 17, AFGE survey.)

   AFGE survey 61.6% no

8. Are phones put on hold/not answered due to staff shortages? (Question 20, AFGE survey.)

   AFGE survey 57.4% yes

STAFF REDUCTIONS

As the Social Security Administration lobbies Congress to slash another 2,394 work years in fiscal year 1990, it continues to ignore the threats such cuts pose on the agency's ability to fulfill its commitment to the American people.

Such intransigence by SSA administrators flies in the face of agency managers and workers alike who, in responding to credible surveys, vigorously agreed that staff reductions were creating unprecedented backlogs, unreasonable workloads, and the lowest employee morale ever recorded in the agency.

Of those responding to AFGE's survey, 79.7 percent of employees in the field offices disagreed with the way SSA is managing the downsizing process, and another 87 percent were convinced that there was not enough staff to carry out the agency's mission in their respective office. Because of the increased workload caused by staffing shortages, a substantial 69.6 percent said they seldom left the work place feeling that they had thoroughly completed their tasks for the day.

Some 70.9 percent of the SSA managers turned thumbs down on the way the agency was managing the downsizing process. However, staffing shortages led only 33.1 percent of the managers to disagree or strongly disagree that they left work with a "sense of having accomplished something worthwhile."

In addition, the union survey brought to light strong evidence that as personnel levels decline, the agency often requires higher salaried, over qualified managers to carry out the clerical duties of lower salaried workers who traditionally performed the tasks. Some 84 percent of the field office staff responding to AFGE's questionnaire said managers were performing clerical duties, and 64.2 percent said staff shortages were forcing managers to fill in for other non-managerial personnel.

Although Dorcas Hardy's managers' survey did not fully address the affects staff shortages are having on the day-to-day operation of field offices, the 1988 GAO report (GAO/HRD-89-37BR) notes that 47 percent of the managers polled said that reduced staff was the major reason for a decline in SSA's services to the public (see Figure 2 and Table II).

FIGURE 2 ⟶

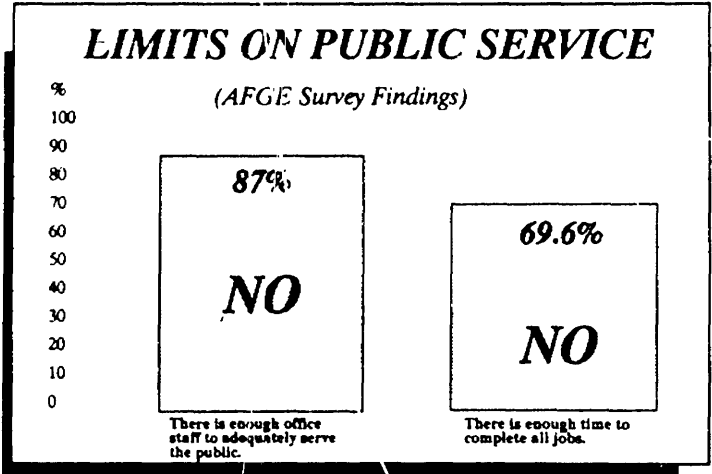

TABLE II

RESPONSES TO QUESTIONS RELATING TO STAFF REDUCTIONS

To simplify the table, all answers noted as "agreed" or "disagreed," are a combination of "agreed" or "strongly agreed" and "disagreed" or "strongly disagreed," respectively on the actual surveys. N/A indicates that the question was not put to the sample group.

1. I am comfortable with the way SSA is managing the downsizing process. (Question 6, AFGE survey; Question 30, SSA managers' survey.)

AFGE survey	79.7%	disagreed
SSA managers	70.9%	disagreed

2. There are enough staff to carry out SSA's mission in my office. (Question 8, AFGE survey.)

AFGE survey	87%	disagreed
SSA managers	N/A	

3. I often leave work with a sense of a job thoroughly done. (Question 10, AFGE survey; Question 23, SSA managers' survey.)

AFGE survey	69.6%	disagreed
SSA managers	33 1%	disagreed

4. Are non-clerical staff performing clerical duties? (Question 18, AFGE survey.)

AFGE survey	84%	yes
SSA managers	N/A	

5. Do managers perform non-management duties? (Question 19, AFGE survey.)

AFGE survey	64 2%	yes
SSA managers	N/A	

AFGE's survey results showed that there is growing concern among SSA field office employees that working conditions -- which have deteriorated over the past five years due to staff shortages and increased workloads -- will continue to go downhill That is why when asked if they were currently seeking employment outside the Social Security Administration, 42.8 percent of employees in the field offices said yes

WORKING CONDITIONS

Further, 69 percent said they would not recommend SSA to a friend as a good place to work, 76 9 percent said SSA was not a better place to work than it was a year ago, 77.3 percent said that working for SSA was no better than it was three years ago; and 64.2 percent said they did not expect it to get any better next year. Asked how they would compare working conditions in SSA with those found in other federal agencies with which they were familiar, only 1 1 percent thought conditions were "substantially better in SSA," and 4 9 percent said they were "somewhat better in SSA" than in other agencies.

SSA managers responding to the same questions came up with similar opinions Some 56 4 percent said they would not recommend SSA as a good place to work, 78 5 percent said they did not believe SSA is now a better place to work than it was a year earlier, and 61 3 percent thought SSA would not improve by the following year. Only 3.3 percent thought working conditions were "substantially better in SSA" than in other agencies while 11.3 percent thought they were "somewhat better in SSA" (see Table III)

TABLE III →

RESPONSES TO QUESTIONS RELATING TO WORKING CONDITIONS

To simplify the table, all answers noted as "agreed" or "disagreed," are a combination of "agreed" or "strongly agreed" and disagreed" or "strongly disagreed" respectively on the actual surveys. N/A indicates that the question was not put to the sample group.

1. I would recommend SSA to my friends as a good place to work. (Question 2, AFGE survey; Question 22, SSA managers' survey.)

AFGE survey	69%	disagreed
SSA managers	56.4%	disagreed

2. SSA is now a better place to work than it was one year ago. (Question 3, AFGE survey; Question 24, SSA managers' survey.)

AFGE survey	76.9%	disagreed
SSA managers	78.5%	disagreed

3. SSA is now a better place to work than it was three years ago. (Question 4, AFGE survey.)

AFGE survey	77.3%	disagreed
SSA managers	N/A	

4. I believe that SSA will be an even better place to work one year from now (Question 5, AFGE survey; Question 25, SSA managers' survey)

AFGE survey	64.2%	disagreed
SSA managers	61.3%	disagreed

5. Have you or are you currently seeking employment outside of SSA? (Question 16, AFGE survey.)

AFGE survey	42.8%	yes
SSA managers	N/A	

6. How do working conditions in SSA compare to those found in other federal agencies with which you are familiar? (Question 23, AFGE survey; Question 8, SSA managers' survey)

AFGE survey	1.1%	substantially better in SSA
	4.9%	somewhat better in SSA
SSA managers	3.3%	substantially better in SSA
	11.3%	somewhat better in SSA

EMPLOYEE MORALE

Employee morale is undoubtedly the number one victim of the Social Security Administration's current policies. Both AFGE's survey and the SSA manager's study showed strong evidence of concern by supervisors and employees alike.

For example, in response to the union's question of how employees perceived the overall morale of their co-workers, 77.2 percent of the field office staff said morale was poor or extremely poor, and 63.1 percent said their own morale fit into those categories. In response to similar questions, 53 percent of SSA managers said they believed morale among their co-workers was poor or extremely poor, and some 42.6 percent characterized their own morale as equally low. The 1988 GAO study (GAO/HRD-89-37BR) corroborated these figures.

On the other hand, both study groups rated their ability to perform their jobs as high. Some 75.1 percent of the employees in the field offices responding to AFGE's poll said they possessed the proper skills and training needed to perform their jobs, but only 22.8 percent agreed that they are given ample encouragement and opportunity to learn and improve upon their job skills and abilities.

This compares closely with SSA managers, who by a high 90.7 percent said they had the skills and training needed to carry out their duties. However, they came in only slightly higher -- 38.8 percent -- than the workers in believing that they were given enough encouragement and opportunity to sharpen their skills and abilities (see Table IV)

TABLE IV

RESPONSES TO QUESTIONS RELATING TO EMPLOYEE MORALE

To simplify the table, all answers noted as "agreed" or "disagreed," are a combination of "agreed" or "strongly agreed" and "disagreed" or "strongly disagreed," respectively on the actual surveys. N/A indicates that the question was not put to the sample group.

1. I possess the skills and training needed to perform my current job (Question 1, AFGE survey; Question 21, SSA managers' survey)

AFGE survey	75.1%	agreed
SSA managers	90.7%	agreed

2. I am given ample encouragement and opportunity to learn and improve upon my job skills and abilities (Question 7, AFGE survey; Question 31, SSA managers' survey)

AFGE survey	62.9%	disagreed
SSA managers	45.1%	disagreed

3. How would you characterize the overall morale of your co-workers? (Question 21, AFGE survey; Question 7, SSA managers' survey)

AFGE survey	44.8%	poor
	32.4%	extremely poor
SSA managers	44.4%	poor
	8.6%	extremely poor

4. How would you characterize your own morale? (Question 22, AFGE survey; Question 9, SSA managers' survey)

AFGE survey	38.4%	poor
	24.7%	extremely poor
SSA managers	35.5%	poor
	7.1%	extremely poor

CONCLUSIONS AND PROJECTIONS

There is growing concern by both rank-and-file employees and managers alike that the Social Security Administration's current course of staff reductions and systems automation programs are not producing the efficient results touted by the agency

The evidence shows that not only are beneficiaries and claimants being shortchanged by the apparent failure of these initiatives, but so are taxpayers and the employees who work for the Social Security Administration

What is worse, if SSA stays on its present course of action, problems are destined to continue. This is particularly true since the population of elderly Americans -- one of the largest groups using SSA benefits -- is growing at the fastest rate in our history. Also we can expect annual changes in the Social Security statute which SSA is required to administer.

It is AFGE's intention, therefore, to continue to hammer away at agency administrators to give up their unrealistic plans and proposals and to rebuild SSA staffing levels to fully accommodate the needs of the public. At the same time, the union will continue to seek increased staffing levels on Capitol Hill as well as step up its fight to enact legislation making the Social Security Administration an independent agency

APGE sincerely believes that only as an independent agency will SSA be able to place the interests of those depending on its services above political considerations of the agency's administrators or any current or future Republican or Democratic Administrations.

An independent SSA could also be expected to better recognize that SSA programs are complicated and require years of study and practice to effectively carry out the mission of the agency. That means hiring enough people to do the job; providing enough training to make them specialists in their field; and rewarding them for their experience, dedication, and hard work.

In the long run, everybody would benefit because Americans will be able to look toward their future with trust in the SSA program and know it is there for them.

Prepared Statement of Lawrence T. Smedly

Mr. Chairman and Members of the Committee: On behalf of the five million senior citizens we represent, I want to thank you for holding this hearing on the Social Security Restoration Act of 1990. Millions of older Americans are dependent upon Social Security benefits for their very survival, and many of them have voiced their concerns to us about the unnecessary politicization of Social Security and deteriorating service at Social Security offices.

We believe that Senator Moynihan's legislation, S. 2453, will do much to repair the damage done to Social Security during the past decade and to restore confidence in the system. In addition, we feel very strongly that, along with the changes included in S. 2453, Congress must move quickly to remove the Social Security Trust Funds from the Gramm-Rudman-Hollings Act and adjust the deficit reduction targets. Only in this way can we truly ensure that Social Security is removed from budget politics.

On that point, we are very encouraged by developments in the House and Senate Budget Committees to move Social Security out of the Gramm-Rudman-Hollings budget calculation, as well as Chairman Rostenkowski's recent call to do the same thing as part of his overall deficit reduction plan. I believe we owe Senator Moynihan a real debt of gratitude for his leadership and vision on this issue.

Mr. Chairman, the time for action on these issues is long past overdue. The National Council of Senior Citizens (NCSC) testified on many of these same issues almost five years ago to the day and still nothing has been done. At that time, the Office of Management and Budget (OMB) had proposed major cutbacks in staffing levels at the Social Security Administration (SSA) and the closure of numerous field offices. In response to the OMB proposal, NCSC predicted that the cutbacks would further overburden SSA employees and would lower the quality of service.

Both predictions have come to pass. Since 1985, over 17,000 staff have been cut and the result has been a marked decline in service and renewed complaints about inaccurate information, constantly busy telephones, arbitrary rulings on eligibility, etc . . . coming from older and disabled Americans.

NCSC has been receiving numerous letters from our members referring to the decline in service at Social Security offices. One woman, Ms. Betty DiRico, writes:

> Recently, I had occasion to call the Social Security office. It took me two days to get through. I literally sat one day with the telephone on my lap for three hours, and dialed every five minutes, and met with a busy signal each time. . . . I think it's a disgrace and something should be done about it.

Another lady, Ms. Beverly Toy of Orange, California, writes:

> I called the number (1-800-234-5SSA) and got a series of recordings and was put on hold for an indefinite period of time, but close to thirty minutes. . . . Seems to me they either need more people or some way of making sure no one is suffering during these long waits.

And, finally, there is this letter from an NCSC member in Pittsburgh, Pennsylvania.

BEST AVAILABLE COPY

I, too, have been trying to call the 800 Social Security number. No luck. I also called the Pittsburgh office and they told me to call the 800 number. I cannot see why we cannot call our local office.

Neither can we. Nor can we excuse the bureaucratic runaround that so many of these people are getting. It is for these people and countless others like them around the country that we are endorsing Senator Moynihan's Social Security Restoration Act of 1990.

In the remaining time, I would like to comment on just a few of the specific provisions included in S. 2453:

1. We believe that Title III of the bill requiring annual Statements from SSA will be extremely helpful in educating Americans about their investment in Social Security. Such mailings should also include general information about Social Security, its benefits and the status of the Trust Funds.

In addition, NCSC strongly urges that the first of these reports includes a Statement that, for all those individuals working after the year 1978, errors may have been made in posting those earnings. As you know, it has been over two and one-half years since the GAO came out with its report showing that SSA had recorded about $58.5 billion less in employee earnings than the Internal Revenue Service. Since that time, very little has been done to notify individuals of this problem, which could mean as much as $17 per month in lost Social Security benefits.

The GAO estimates that the records of 9.7 million Americans, both working and retired, could have uncredited earnings. Therefore, we would strongly recommend that, when SSA sends out its first earnings Statement, it includes a clear mention of this problem and specific suggestions on how participants can verify the accuracy of their wage records.

2. The earnings posting problem is just one by-product of the large staffing cuts that have been made at SSA. Over the past five years, some 17,000 positions have been cut and the results have added to fears and uncertainty about the future of the Social Security program. In our view, these staffing cuts were part of a deliberate effort on the part of the Reagan Administration to undermine confidence in government services. We therefore applaud the provision of S. 2453 that establishes a staffing floor of 70,000 at SSA.

3. As the letters quoted above clearly indicate, one of the continuing problems at SSA is the ability to get through to either a local Social Security office or the nationwide 800 telephone number. In our view, Sec. 601 of the Moynihan bill regarding telephone access will go a long way toward restoring public confidence and support for Social Security.

4. Sec. 702(e)(1) of the bill establishing a position within SSA of beneficiary ombudsmen is of great interest to senior citizen organizations such as ours. In the past, we have tried to act as a kind of "ombudsman" ourselves. But, of course, it is best to have such representation inside the agency as well. NCSC looks forward to the appointment of an ombudsman who can forcefully and effectively represent the interest of beneficiaries.

5. Finally, Mr. Chairman, given the appalling record of reversals of denials of claims for disability benefits and the fact that it often takes two years for a claimant to get through the administrative appeals process, we strongly endorse the provisions of the bill which are intended to make the entire process comprehensible, equitable and expeditious, thus assuring that claimants have adequate opportunity to present their cases.

In conclusion, NCSC believes that, along with increased efficiency, the creation of an independent agency would provide the Social Security system with more stable and continuous administration and leadership. Such independence and continuity would in turn add to public confidence in the system. Treating Social Security like any other government program within the Department of Health and Human Services creates a perception among the public that Social Security is just another part of a vast, monolithic Federal bureaucracy. Creating a separate, independent agency to administer the program offers visible proof to Americans that, as our national retirement system, Social Security is a self-contained, self-financed program, and a lasting compact between the Federal Government and the American people.

Prepared Statement of Eileen P. Sweeney

Mr. Chairman, thank you for inviting me to testify before the Subcommittee today. I appreciate this opportunity to address the problems which exist in the Social Security appeals process.

The National Senior Citizen Law Center is a national legal services support center. We provide support to legal services and aging advocates across the country on the legal problems facing their elderly and disabled low-income clients. I work solely on Social Security and SSI issues.

Because I have been asked to address the problems in the administrative appeals process, I am not addressing in detail here the need for an independent agency nor the very serious problems arising from the cuts in staff. However, I agree that both an independent agency and significant increases in staffing are critically needed.

The provisions in S. 2453 will significantly improve the administrative appeals structure at SSA.[1] Late in 1988, SSA considered a plan to "streamline" the current system by eliminating many of the procedural protections provided to elderly and disabled appellants. S. 2453 takes the correct tact: it streamlines the system keeping in mind the needs and concerns of appellants who are elderly or disabled.

Under the provisions of S. 2453, the appeals process would be administered by a Chief Administrative Law Judge who would report directly to the Board of the independent agency. The Appeals Council and the reconsideration levels of review would be eliminated. In addition, time limitations would be imposed at the administrative law judge level. Hearings would be scheduled within 90 days and decisions issued within the 30 days following the hearing. If SSA decided that it wanted to reconsider its initial decision and thereby possibly avoid an ALJ hearing, it could do so within the time allotted for scheduling and holding the hearing. The clock would continue to run while reconsideration was decided.

In the remainder of my Statement, I would like to address some of the problems which currently exist in the SSA administrative appeals process which necessitate changes. In addition, I will suggest some additional modifications which should be part of any package to improve the administrative appeals process.

1. *The delays in the SSA appeals process are incredible. The average citizen with modest resources can not endure the delays. The indigent citizen with no resources is disadvantaged even more.*

It is critical that changes be made in the process to assure that appellants are able to secure hearings before administrative law judges in a timely manner. In a chart which SSA supplied to its Disability Advisory Committee in 1989 and which they attached to their report,[2] SSA reports that it takes the average case 536 days to go from application through a decision at the ALJ level. When the time at the Appeals Council level is added, this figure soars further, to 696 days. From the date of the notice of appeal at the ALJ stage through the decision, 221 days elapses in the average case. Neither of these figures fully set forth the fact that many cases take even longer to wend their way through the process. In addition, some cases go to court and are subject to one or more remands before benefits are ultimately awarded.

In 1984, the Supreme Court barred the Federal courts from providing systemic relief from the excessive delays in the Social Security appeals process.[3] While a few cases since then have permitted some relief, the basic message from the Supreme Court was that, if changes are to be made, they must be made by the Congress. The provisions in S. 2453 tackle this problem and, with the addition of necessary resources, will substantially reduce the delays which currently exist.

The delays in the administrative review process create incredible problems for individuals with disabilities. In the context of the continuing disability reviews, the Supreme Court has noted:

> *We agree that suffering months of delay in receiving the income on which one has depended for the very necessities of life cannot be fully remedied by the "belated restoration of back benefits." The trauma to respondents, and thousands of others like them, must surely have gone beyond what any one of normal sensibilities would wish to see imposed on innocent disabled citizens . . .*"[4]

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[1] At the appropriate time, it will be necessary to amend the references to "Secretary" in Section 401 to incorporate the relevant positions in the independent agency.

[2] "Percentage of 100 Disability Claims Disposed of and Number of Elapsed Days at Each Level of the Appeals Process (1988)," attached as "Tab D" to the "Report of the Disability Advisory Committee to the Commissioner of Social Security," July 25, 1989. A copy of the chart is attached to this Statement.

[3] *Heckler* v. *Day*, 467 U.S. 104 (1984).

[4] *Schweiker* v. *Chilicky*, 101 L.Ed.2d 370, 385 (1988).

While the ability to seek continuation of benefits through the ALJ level has ameliorated some of this problem for some appellants, those provisions do not apply to individuals who are applying for benefits nor do they apply to individuals whose benefits are terminated for other than medical reasons.[5]

2. The pressures which have been brought to bear upon the SSA ALJ's over the past decade make a very clear case for assuring them greater independence.

Mismanagement at SSA and OHA throughout the 1980's until the middle of 1989 as well as a narrow vision of the mission of the Office of Hearings and Appeals made it increasingly difficult for ALJ's to function independently. Because SSA and OHA control everything in the ALJ's environment, except his/her title and salary, and because there has been a desire to limit the ALJ's' independence, OHA focussed most of its attention on how it could utilize the ALJ's environment to coerce the ALJ into following the administration's misinterpretations and illegal applications of the law.

In the early 1980's, SSA's intentions were very clear. Under the guise of the Bellmon amendment, requiring own-motion review of ALJ decisions by the Appeals Council, SSA decided to review only decisions favorable to appellants. They targeted the ALJ's with the higher allowance rates for review. The clear intent was to pressure high-allowance ALJ's to deny more cases, regardless of the merits.

After Congressional hearings and litigation, OHA backed away from this blatantly illegal policy.[6] However, SSA knew that it had two other tools available to it to coerce ALJ's. First, it controls the staff who assist with writing decisions. (In fact, it appears that these individuals do virtually all of the work on the decisions, a development which the Congress should seriously consider as it clearly undermines the right of the individual claimant to have his/her appeal decided by an independent ALJ.) Second, because it controls everything else about the ALJ's work environment, it can adjust the misery index as it sees fit.

Who writes the decisions? Prior to some point early in the 1980's, ALJ's had staff attorneys and clerks assigned directly to them: each ALJ had staff to assist him/her. Then, in a move termed "reconfiguration" of the offices, OHA decided that it would be better to pool all of the assistants into one group in each office, no longer assigned to each ALJ. It was not long before ALJ's began complaining, publicly, that pooled assistants were ignoring their instructions regarding how particular decisions were to be written. The "independent" ALJ's had staff who were *not* independent and were taking their marching orders from new bosses on the content of the decisions: OHA and SSA.

After awhile, the ALJ's either became resigned to the situation or so overwhelmed with work that they had no choice in the next development: instead of spelling out to the assistant what the decisions should say, the ALJ would simply provide the assistant with some very conclusory Statement regarding what the outcome in the case should be.

This development was spelled out in a videotape which then-Chief ALJ Rucker issued to ALJ's.[7] In the tape, Judge Rucker informed the ALJ's that it is "critical"

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[5] The Social security Subcommittee of the Ways and Means Committee has recently marked-up legislation to make permanent the provision in the 1984 amendments which permits benefit continuation through the ALJ level in continuing disability review cases. Regardless of the action taken on the provisions in S. 2453, it is very important that this provision be made permanent. It should be noted that SSA has taken a very limited reading of the cases in which the provision is applied. Therefore, if it terminates Social Security benefits on the grounds that the person was working, the person is not entitled to continued benefits pending appeal. This is true even though the person's impairment prevented the person from continuing to work and the ALJ will ultimately determine that all or part of the time spent working was an "unsuccessful work attempt" and should not be counted. For these individuals, just as for applicants, the injury caused by delay at the administrative level has not been addressed.

[6] See, for example, "Oversight of Social Security Disability Benefits Terminations," Hearing before the Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, U.S. Senate, 97th Cong., 2nd Sess. May 25, 1982. In *Association of ALJ's* v. *Heckler*, 594 F. Supp 1132, 1142, 1143, (D.D.C. 1984), the court noted that ". . . the evidence as a whole, persuasively demonstrated that the defendants [SSA] retained an unjustifiable preoccupation with allowance rates, to the extent that ALJ's could reasonably feel pressure to issue fewer allowance decisions in the name of accuracy." ". . . [D]efendants' unremitting focus on allowance rates in the individual portion of the Bellmon Review Program created an untenable atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof." In *W.C.* v. *Heckler*, 807 F.2d 1502, 1505 (9th Cir. 1987), the Ninth Circuit found that SSA designed the Bellmon review to alter ALJ decisions and "caused those judges to deny benefits in close cases where benefits might previously have been granted."

[7] "Writing Decisions that Withstand Legal Scrutiny" (SSA Videotape, 1988).

that there be "a communication link" between the ALJ and the decision writer. "It is no longer sufficient to send forth a file with nothing more than . . . "A" or "R" in the corner, or thumbs up or thumbs down or the happy face or the frowning face . . . " He indicated that to give the decision drafter a fair shot, the ALJ will need to give reasonable detail of a rationale, to provide "clues" "to the direction," "the landmarks" to write the decision.

First, it is outrageous that the situation has declined this far. Second, even the remedial instructions with Judge Rucker provided are outrageous: these ALJ's are supposed to be carefully reviewing the file and considering the testimony of the witnesses. Under the current set-up, this is at best an illusion. Major changes are needed. Provided that adequate numbers of ALJ's are hired, the provisions in S. 2453 are exactly what the system needs to force it to change its course back to one in which (a) the SSA ALJ is independent and (b) s/he is responsible for the content of the decisions which are issued over his/her name.

The misery index: During the 1980's SSA found many ways to make the non-conforming ALJ miserable. Secretarial staff would not be replaced. Leave-time to attend national meetings would be denied. Matters such as the availability of office space and size, desks, computer terminals, and other necessary elements of a modern office became contingent how the ALJ behaved, how s/he exercised his/her "independence."

In addition to these tangible indicia, SSA also imposed "goals" for the number of cases ALJ's have to decide monthly. These numbers have been climbing. One ALJ testified in 1982:

> "Meeting the heavy and ever increasing case load has not been without cost. My decisional quality is not as good as it once was. I do not have time to polish decisions. Instead of striving for good to very good decisions, I have to settle for good enough. I have shortened my opening Statements at hearing and do not have time to prepare written questions for the claimant or witness in advance. There is less time to spend on each decision . . . My hearing assistant is preparing about 40 cases per month for hearing and she can no longer screen the cases and prepare the summaries as carefully as she did in the past.[8]

In addition to some of the other problems addressed in this Statement, it is critical to focus on the problems which the lack of staff, the lack of independence, and the lack of time have upon the likelihood that a low-income, unrepresented appellant will receive a full and fair hearing. 20 C.F.R. §404.944 requires that the ALJ "fully" develop the record. This is particularly important in cases where the person is not represented.[9] Right now (and for the past few years), advocates are finding some ALJ's to be fairly hostile to their efforts to fully develop the record at the hearing, due to time pressures. In addition, there seems to be a growing trend in which the ALJ does not call the vocational expert to appear at the hearing and instead sends the expert interrogatories after the fact. This deprives the appellant of the ability to effectively cross-examine the witness. But, in both examples, the ALJ saves time. These problems arise in cases where the person is represented. Even more serious problems arise where the person appears without representation and the ALJ, pressed for time, does not meet his/her obligation to fully develop the record.

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[8] Testimony of Francis J. O'Byrne, Sr., Administrative Law Judge, before the Senate Subcommittee on Oversight of Government Management, cited in Cofer, *Judges, Bureaucrats and the Question of Independence: A Study of the Social Security Administration Hearing Process* (1985).

[9] Justice Marshall noted the importance of this responsibility in his decision (concurring in part and dissenting in part) in *Heckler* v. *Campbell*, 461 U.S. 458, 475, n.3 (1983): "The availability of medical evidence, much of which supported respondent's claim of disability, was no substitute for an examination of the claimant himself. [I]f the hearing is meant to be an individualized inquiry into how this claimant's functioning is impaired by his medical conditions, then the evidence must almost certainly come from the claimant himself, or from people who come in contact with him in his daily life. Since in most hearings no one other than the claimant is there to testify to his daily activities, who does not also have an interest in the success of the claim, it is imperative that ALJ's draw out of the claimant, in great detail, information about how they function with their limitations. This is the crucial arena for credibility judgments by ALJ's. Moreover, it seems clear that such judgments will necessarily be made, whether or not the claimant's situation is fully explored by the ALJ. Subcommittee on Social Security of the House Committee on Ways and Means, Social Security Administrative Law Judges: Survey and Issue Paper, 96th Cong., 1st Sess., 47 (Comm. Print 1979)."

3. SSA will need additional ALJ's in order to properly implement a requirement that the hearings be conducted in a timely manner and decisions issued promptly. Without these additional ALJ's, evidence development will diminish even further and actual decision will be delegated to assistants. These assistants do not have the protections which ALJ's have.

The proposal to limit the time in which SSA must schedule a hearing and issues ALJ decisions will provide very significant reform of SSA's appeals process. It is critical that it be accompanied by a very substantial increase in the number of ALJ's assigned to SSA to hear these cases. Without this infusion of ALJ's, it is inevitable that the quality of the decisions, which is already dubious in many cases, will continue to decline, and that the role of the ALJ as an independent decisionmaker will be further jeopardized.

4. OHA is seriously understaffed and lacking in resources at this time. In addition to staffing and supplies problems, OHA should also have its own budget for ordering consultative exams.

There is increasing evidence that the cuts which have so severely affected staffing throughout the rest of SSA have also had their impact on the Office of Hearings and Appeals. The shortage of funds is manifesting itself not only in staff shortages but also in a lack of supplies. The Acting Chief ALJ for the Chicago Region (Region V) recently acknowledged the severity of the problems. In a letter, dated March 16, 1990, Acting Regional Chief ALJ Stephen Ahlgren Stated:

> "The Office of Hearings and Appeals is, as you know, faced with severe budgetary and staffing shortages and we are consequently unable to continue to provide personnel for the purpose of making copies. As you know, we also face budgetary problems with respect to purchase of paper and it would be extremely helpful and most appreciated if members of the bar, legal aid organizations, and other groups or individuals who frequently use our copy machines would periodically donate several packages of copy paper."

[A copy of this letter is attached.] This is not an agency which is functioning in top form. As this letter reflects, the consequences of a decade of serious mismanagement are being felt at every level of SSA, OHA is no exception. It will be absolutely critical that (1) some of the 7,000 staff positions to be restored under S. 2453 be assigned to OHA, (2) that additional ALJ's be hired, and (3) that OHA (as well as all of SSA) have adequate funds to supply its offices.

One example of how the budget dictates against key evidence development: There are serious problems with the mechanism available to an ALJ when s/he determines that a consultative examination should be ordered. At this level of appeal, such exams are usually ordered to fill in a gap in the medical records. Particularly in the cases of very poor people with disabilities, it is not unusual for there to be very little evidence in the file documenting one or more of their impairments.

Currently, if an ALJ believes that a consultative examination is necessary, he can not simply order it. He must send a request to the State disability determination service which then must order it. This causes a few problems. One is delay. A second is a reluctance by the DDS to order the consultative exam because the cost comes out of its budget. I am aware of two examples of problems. First, in testimony before SSA's Disability Advisory Committee about 18 months ago, the head of the Virginia DDS testified that when he receives a request from an ALJ for a consultative exam (CE), he calls the ALJ and tries to persuade him not to order the CE. This sort of ex parte communication is probably illegal but it also emphasizes the very real limitations on the ALJ's independence and his ability to fully and fairly develop the record.

Second, a couple weeks ago, I participated in a conference in Arkansas where a representative of the Arkansas DDS indicated that the DDS had recently had budgetary problems brought on, at least in part, by the unexpected, large number of consultative exams being ordered by travelling ALJ's. (See discussion of this phenomenon, below.) So, it is not good for the ALJ's and it is not good for the DDSs. Not surprisingly, it also hurts the claimant who needs a consultative exam but gets caught in the crossfire between the two agencies and the two levels of review.

The answer seems relatively simple: the Office of Hearings and Appeals, either in its current form or as reformed under the legislation, should have the authority and the funds to order all of the exams and tests necessary to fully and fairly adjudicate the cases before it.

5. Reliance on "travelling ALJ's" should be eliminated or sharply curtailed.

Apparently in an effort to mimic the ability of corporate America to move employees around the country at will, much like pawns on a game board, over the past few years SSA has relied heavily on the use of "travelling ALJ's." The use of these ALJ's has created all sorts of problems for claimants and their advocates. These problems include:

- Lack of access to the evidence in the case file until immediately before the hearing, when it is too late to be useful.
- Unwillingness by travelling ALJ's to seek the testimony of vocational experts because their presence at the hearing will lengthen time of the hearing and reduce the number of hearings which can be held in one day.
- Lack of understanding of local culture and even local geography, resulting in unwillingness to assist claimants in attending hearings by plane when their are no roads from their villages in places like Alaska.
- Difficulty in keeping track of the case once the ALJ leaves the hearing site, with even greater difficulty in ascertaining when a decision might issue than in the typical case.
- Unwillingness to postpone a hearing when the person has just secured representation right before the hearing, because the judge will not be able to meet his quota of hearings at the hearing site if postponement is granted.

6. Any legislation which enhances the independence of the administrative law judges should specifically set forth procedures for consideration of complaints in the cases of ALJ's who are alleged to be biased against appellants.

While the vast majority of SSA administrative law judges take their legal responsibilities very seriously, there are some who are extremely biased against claimants. This bias manifests itself in different ways. Some may rule for the claimant but make it a habit of humiliating every claimant who appears before them. Advocates have told me that they know the outcome of the case when it is assigned to a specific ALJ just by looking at the color of their client's skin. Most typically, the biased ALJ will misconstrue or ignore testimony provided by the claimant or other witnesses regarding the limitations on the person's activities of daily living, degree and persistence of pain, and depression. They also tend to misread the reports of physicians in order to conclude that the person's impairments are not disabling.

Until very recently, SSA has made no effort to investigate the complaints of appellants and their representatives. Now as a result of a petition to Secretary Sullivan,[10] filed by attorneys in Philadelphia, SSA is investigating the allegations in that one case. And, as a result of two other cases filed in Federal court,[11] it appears that SSA may have additional investigations underway.

These three cases are only the tip of a small iceberg. There are other ALJ's who should not be adjudicating cases any longer. For whatever reason, they have lost touch with the program and the purpose of the program. When they can no longer decide cases fairly and instead resort to blanket rules and biases, it is time for them to be removed.

It will be very important that any legislation specifically State (1) the procedure to be followed in filing a complaint, (2) the procedure to be followed by the agency in investigating the complaint, and (3) that the Board has the authority to file charges against an administrative law judge with the Merit System Protection Board.

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[10] *In re: Petition against ALJ Theodore Stephens.*

[11] *Grant* v. *Sullivan*, 720 F.Supp. 462 (M.D.Pa.1989), class certified at No. 3:CV-88-0921 (M.D.Pa.2/21/90) [challenging bias of ALJ Russell Rowell, class likely to include about 700 individuals whose cases were decided unfavorably by ALJ Rowell] *See also, Small* v. *Sullivan*, No. 89-5262 (S.D.Ill. filed November 29, 1989) [challenging bias of ALJ Robert E. Ritter, based in St. Louis, Missouri; In general, the bias claim against ALJ Ritter, as set forth at paragraph 34 of the Complaint, is as follows: "ALJ Ritter does not decide cases on the basis of the evidence adduced at hearing. Rather, he manipulates the evidence to produce unfavorable decisions. Among other things, he abuses his discretion to make adverse credibility determinations for claimants, their witnesses and doctors; he ignores or misstates medical evidence; he draws impermissible conclusions based on his observation of the claimant by applying the 'sit and squirm' test; he makes ex parte communications with doctors; his leading questioning of claimants presumes the answers; and, for unrepresented claimants especially, he fails to develop the record."

7. Women and minority applicants and beneficiaries are seriously disadvantaged by current rules which make it very difficult for women and minorities to secure appointment in the SSA ALJ corps. The rules should be changed at least temporarily to assure that women and minorities are proportionately represented in the SSA ALJ corps.

In 1988, the General Accounting Office issued a report which found that there were only 40 women employed as ALJ's throughout the entire Federal ALJ corps, which at that time numbered "nearly 1,000." [12] At the same time, 650 of these ALJ's were assigned to the SSA to conduct Social Security and SSI appeals. Even if all the women ALJ's were assigned to SSA they would constitute only 6% of the SSA ALJ corps. In fact, there are even fewer women ALJ's at SSA and their percentage is even lower. There is reason to believe that minority ALJ's are almost as scarce at SSA.

According to the GAO, this skewed representation is the result of the application of the veteran's preference to these positions. Congress needs to seriously consider whether the almost complete absence of women and minorities from the SSA ALJ corps is having a negative impact on the decisions which women and minority applicants and appellants receive from SSA's ALJ corps.

There have already been very strong suggestions in the literature [13] that women who are older and/or disabled are often not properly evaluated and treated by male physicians who discount their problems such as pain, depression, and disorientation and discredit their concerns and Statements. And, there is a growing body of research in the legal world which suggests that women are not treated fairly in State justice systems.[14] Like almost all areas of the law, these State justice systems have continued to be populated largely by male judges.

While there has been no comparable study in the Social Security ALJ setting, it seems reasonable to suggest that this system, in which the medical and the legal dovetail, is highly likely to be subject to exactly the same types of problems. The net result in this context may very well be that many severely disabled women are not receiving the benefits to which they are legally entitled. While the appointment of women ALJ's would not immediately alleviate gender bias, it would certainly help to move the decisionmaking in the correct direction.

The Congress should consider this issue. There are solutions which would help here. One would be to simply give minority and women ALJ candidates the same extra points received by veterans until such time as they are proportionately represented in the ALJ corps at SSA. Another would be to permit SSA greater latitude in choosing individuals from the list of candidates qualified to be ALJ's. This route is noted in the GAO's report as a possible solution.

This issue needs to be acted upon quickly. SSA is already in the process of hiring 115 new ALJ's and plans to hire another 115 in the next fiscal year. Unless the rules are changed, it is highly unlikely that more than a handful of these new ALJ's will be minorities or women.

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[12] "Administrative Law Judges: Appointment of Women and Social Security Administrative Staff Attorneys," GAO/GGD-89-5 (October 1988), page 2.

[13] See, for example, Sally White, M.D., "Combating Ageism and Sexism in Medical Care," *Network News*, National Women's Health Network (March/April 1984). "Older women cannot count on the medical profession. Few doctors are interested in them. Their physical and emotional discomforts are often characterized as post-menopausal syndrome, until they have lived too long for this to be an even faintly reasonable diagnosis. After that they are assigned the category of senility." Robert Butler, *Why Survive: Being Old in America* (NY: Harper-Colophon, 1975), quoted in *The New Our Bodies, Ourselves*, Boston Health Collective, page 456 (1984) See also in that text, "The Politics of Women and Medical Care," pp. 555–597.

[14] For example, in Maryland, the Maryland Special Joint Committee issued its report, entitled *Gender Bias in the Courts* (May, 1989). The Committee was appointed by the Chief Judge of the Court of Appeals of Maryland and the President of the Maryland State Bar Association. It defined gender bias "as it affects the judicial system to include four aspects. Gender bias exists when people are denied rights or burdened with responsibilities solely on the basis of gender. Gender bias exists when people are subjected to stereotypes about the proper behavior of men and women which ignore their individual situations. Gender bias exists when people are treated differently on the basis of gender in situations where gender should make no difference. Finally, gender bias exists when men or women as a group can be subjected to a legal rule, policy or practice which produces worse results for them than for the other group." (page iii) They then concluded that "It is clear to all of the Committee's members that gender bias in all of its forms is found within the judicial system of this State." (*Id.*)

7. It makes sense to both eliminate the Appeals Council and modify substantially the reconsideration level. Consideration should also be given to requiring a face-to-face contact between the adjudicator and the claimant at the initial application or continuing disability review phase.

For years, SSA's Appeals Council has been the ultimate black hole in the appeals system. If a person got this far in the appeals process, his/her case would suddenly disappear, often for a year or more, and then reappear with a decision upholding the agency. It has been a major source of delay and, at best, a way station one had to survive before seeking review in Federal court.

In 1987-1988, the Administrative Conference of the United States conducted a study of the Appeals Council.[15] It concluded that the way in which the Appeals Council functions needed to be altered dramatically. Further, if such changes were not successful, it should be eliminated.

Since about the same time, there have been changes made at the Appeals Council level. However, they are not, in my mind, cause for retaining the Appeals Council. For example, the Appeals Council now stresses assuring that the ALJ's' decisions are written so that they can be defended in court. The focus here is not on the accuracy of the decision but rather how it will be viewed by a court. Second, in its zeal to make decisions defensible, claimants are facing not just one remand, but often two or three remands. Instead of simply reversing the bad decision or making the necessary corrections so that the case can be appealed, appellants are finding themselves caught in a seemingly endless cycle of being bounced back from the Appeals Council to the ALJ's so that they can not seek judicial review in the courts.

While it does appear that there have been some management improvements, such as file tracking and realigning staff so they know to whom they report, there are some fundamental problems with who is making the decisions. At best, in the vast majority of cases, the Appeals Council member's involvement is to sign the final decision, possibly reading a summary before acting. It is my understanding that almost all of the review work and decision-making in disability cases is being done by staff of the Appeals Council.

Over the years, consideration has also been given to including a face-to-face contact between the adjudicator and the claimant at the initial step. It would improve the quality of DDS decisions substantially if the procedures included this requirement.

8. In establishing SSA as an independent agency and moving the Social Security and SSI appeals under the jurisdiction of the new Chief ALJ, it will be especially important that Congress also include provisions which will assure the independence of the ALJ's who will be deciding Medicare cases.

There are equally serious, if not more serious, questions regarding the independence of the ALJ decisionmaking process in Medicare appeals. Currently, these appeals are also handled by SSA's ALJ's. If SSA is made an independent agency, it will be very important to include as part of the transitional provisions protections with regard to how Medicare appeals will be adjudicated and by whom. Without specific statutory instruction, it is very possible that the independence of ALJ's adjudicating these appeals wiil be even further eroded.

Thank you again for inviting me to testify. The changes which are sought in S. 2453, if implemented with proper staffing and funds, will dramatically improve both the quality and timeliness of SSA's appeals procedures.

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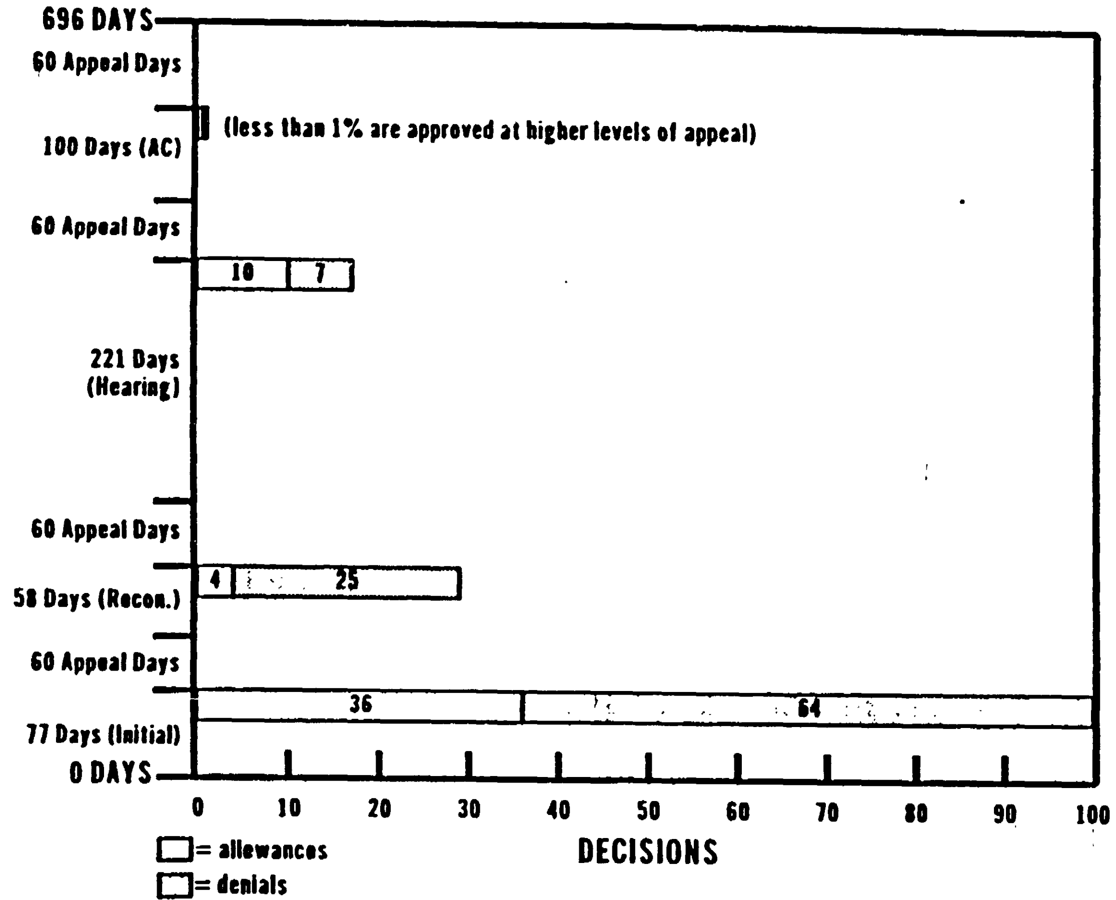
[15] Charles H. Koch, Jr. and David A. Koplow, "The Fourth Bite at the Apple: A Study of the Operation and Utility of the Social Security Administration's Appeals Council" (January 28, 1988)

Percentage of 100 Disability Claims Disposed of and Number of Elapsed Days at each Level of the Appeals Process (1988)



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DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to:

Office of
Hearings and Appeals
13th Floor
105 W. Adams St.
Chicago, IL 60603

March 16, 1990

The Honorable Anthony Leanza
Hearing Office Chief Administrative Law Judge
Statler Office Towers, Room 1150
1127 Euclid Avenue
Cleveland, Ohio 44115

Dear Judge Leanza:

It is my understanding that your office has for sometime been making photocopies of exhibit files at the request of attorneys and representatives. During my recent visit to your office a question was raised as to whether the attorneys and/or representatives could be asked to photocopy files themselves in light of our severe staffing shortages.

It is my opinion that while the Office of Hearings & Appeals has an obligation to make a claimants file available for the review of an attorney and/or representative, we have no express obligation to use our own staff to make copies for members of the bar and/or legal representatives. As you know, most courts charge the bar for copies of exhibits or they make a photocopy machine available to the bar and the bar may then make its own copies. Even in this instance there is many times a charge for the copies.

Henceforth, I request that a photocopy machine be made available to the bar and legal representatives so that they may make copies of files. Personnel of the Office of Hearings & Appeals should not be used to make these copies unless some special circumstance should arise where you, in your capacity as Hearing Office Chief Administrative Law Judge, feel that assistance of our personnel is necessary.

The Office of Hearings & Appeals is, as you know, faced with severe budgetary and staffing shortages and we are consequently unable to continue to provide personnel for the purpose of making copies. As you know, we also face budgetary problems with respect to purchase of paper and it would be extremely helpful and most appreciated if members of the bar, legal aid organizations, and other groups or individuals who frequently use our copy machines would periodically donate several packages of copy paper.

I trust this letter sufficiently answers your questions with respect to this matter. If there are further questions please feel free to direct them to my attention.

Sincerely yours,

Stephen Jon Ahlgren
Acting Regional Chief
Administrative Law Judge

BEST AVAILABLE COPY

Prepared Statement of Louise M. Tarantino

Thank you for the opportunity to speak before you today. I have been a legal services attorney for over eleven years, eight of those years with Neighborhood Legal Services in the District of Columbia and three years at the Greater Upstate Law Project (GULP), a Statewide legal services support center in New York. My practice specializes in Social Security claims and issues. I am a Statewide co-ordinator for the Disability Advocacy Program and work closely with legal services attorneys throughout New York State on disability issues.

Nowhere does the concept that justice delayed is justice denied arise more poignantly than in the cases of applicants for Social Security Disability or Supplemental Security Income benefits. Many disabled people wait patiently while the Social Security Administration takes months, and sometimes years, to process requests for hearings, to hold hearings, to issue hearing decisions and, finally, to implement payment of their claims. While they wait, they grow sicker day by day. Many die before receiving the benefits to which they are justly and legally entitled. The following are examples from legal services programs in New York State that are typical of this problem:

1. Latimer v. Secretary of HHS—No. 87CV1614 (NDNY)

Mr. Latimer was 27 years old in July 1987 when he was represented at an ALJ hearing by an attorney from the Legal Aid Society of Northeastern New York. He had applied for Supplemental Security Income (SSI) in October 1985 suffering from congestive heart failure and sarcoidosis affecting his lungs. His treating physician submitted a report clearly indicating that he was disabled and that he met a listed impairment. Nevertheless, he lost the hearing and was denied benefits by the Appeals Council.

Plaintiff initiated a Federal court action in December 1987. In May 1988 the Assistant U.S. Attorney on the case offered a settlement with an award of benefits. When his attorney telephoned to relay the settlement offered to Mr. Latimer, he found that Mr. Latimer had died of his disease the previous month, April 1988. Mr. Latimer was survived by his wife and two young children.

2. R.C.

R.C. first came to Mid-Hudson Legal Services in March 1987. He initially applied for SSI in April 1986, and had been denied. He was denied again at reconsideration and had requested a hearing. The client had a history of heart problems since he was in school, and had contracted rheumatic fever early in life. He was thirty eight years old. Medical reports showed that R.C. had been hospitalized several times for rheumatic heart disease, aortic insufficiency, stenosis, ischemia, rapid heart rate and loss of consciousness. He had not worked in several years because of his illness.

R.C. attended a hearing in June 1987 at which the ALJ denied benefits. His representative appealed to the Appeals Council which remanded R.C.'s case back to the ALJ because of the ALJ's error of law in failing to consider the treating physician rule. The client's two treating physicians had Stated that R.C. was "completely disabled and unfit for employment of any nature." R.C. attended another hearing in August 1988, and the ALJ issued a decision in October 1988. The decision was favorable, with an award of benefits back to the client's filing date. However, the ALJ Stated that R.C.'s eligibility for SSI ended as of September 1988, because "his disability had ceased." R.C. was eligible for a retroactive award of $11,687. In January 1989 R.C. died from a heart attack. He died before his retroactive check could be mailed to him.

Those of us advocates for the disabled who are less patient have sought to accelerate the Social Security Administration's handling of administrative appeals of denials or terminations through litigation. Although the Supreme Court held in Heckler v. Day, 467 U.S. 104 (1984), that, absent a clear signal from Congress, the Courts could not establish deadlines adjudicating disability in Social Security cases, the Supreme Court did not preclude the lower courts from remedying delays in individual cases through injunctive relief.

A District Court judge in the Southern District of New York recently issued injunctive relief in Sharpe v. Sullivan, 79 Civ. 1977 (S.D.N.Y.), a class action originally filed before the Heckler v. Day decision. In Sharpe, the judge ordered the Social Security Administration to send individualized notices to claimants who presented a disability claim and who had not received a hearing decision with 120 days of the date that a hearing was requested.

The notices are to State the reasons for the delay, identify by job title and telephone number a Social Security employee to whom the claimant can direct a request that the case be expedited, and advising the claimant of the right to seek

relief from unreasonable delay (including interim benefits) in district court. A similar notice is to be sent to claimants presenting non-disability issues when a hearing decision is not issued within 90 days of the hearing request. Furthermore, the Court ordered interim benefits to be paid to successful claimants not on public assistance who have not received payment of their benefits within 75 days of the date of the decision.

The Sharpe class consists of New York State residents with Supplemental Security Income claims or concurrent claims for Supplemental Security Income and Social Security Disability benefits. Although the Social Security Administration filed a notice of appeal from the district court judge's order on May 7, 1990, the government has indicated its intention to start complying with the order.

The language proposed in the Social Security Restoration Act of 1990 (requiring hearings within 90 days of a request and decisions within 30 days of the completion of the hearing) would make lawsuits such as Sharpe unnecessary in New York and throughout the nation. This bill illustrates Congress' intention to remedy the chronic problem of delay in the administrative process on more than an individualized level. The bill would protect unrepresented claimants for whom the right to go to court to seek relief from inordinate delays is almost meaningless. Without an aggressive advocate, these claimants simply wait for the Social Security Administration to resolve their cases, their patience making them prey to a bureaucracy that fights tooth and nail to preserve a system that accepts delay as the norm. With this legislation, Congress is indicating its willingness to act as the aggressive advocate for all disabled people.

Delays in Social Security and Supplemental Security Income cases also occur when a claimant's case file is not made available to the claimant's advocate sufficiently before the hearing to allow proper time for preparation, resulting in a request for a postponement of the hearing. New York State advocates brought a lawsuit against the Social Security Administration on this issue, arguing that timely access to files pre-hearing was necessary to allow for adequate preparation and to minimize the number of requests for postponements.

In Miller v. Bowen, Civil Action No. 87-1393T (W.D.N.Y), the Social Security Administration entered into a stipulation agreeing to circulate to all Regional Chief Administrative Law Judges, Hearing Office Chief Administrative Law Judges and Administrative Law Judges nationwide a memorandum from Chief Administrative Law Judge James R. Rucker Jr. that embodied the agency's policy on providing access to the exhibit file before the hearing. The memorandum directed Office of Hearing and Appeals staff to make every effort to comply with an advocate's request to review the file before the hearing, including sending a copy of the file directly to the representative, if necessary. The memorandum further directed Administrative Law Judges to consider a representative's inability to review the file before the hearing under the good cause criteria in the Social Security regulations for changing the time of the hearing. The result of this lawsuit is to cut down on the number of instances where a claimant's hearing is delayed because the representative needed to seek a postponement to prepare for the hearing.

Timely access to files becomes even more critical when the Social Security Administration is under Congressional mandate to hold hearings within a specified time, as this bill would require. Giving claimants the right to have their cases heard within 90 days of their request is pointless if their representatives are not allowed to review the exhibit files and prepare the cases well before the 89th or 90th day. The Miller stipulation gives advocates the means by which to make significant use of the language in this bill.

It is abundantly clear to the advocate community that, although litigation against the Social Security Administration on delay issues is usually fruitful, litigation results in limited relief to a limited number of claimants in a limited geographic area. What is necessary is a master quiltmaker to pull together the patchwork pieces of successful, and unsuccessful, court actions and to produce a uniform set of timelines that the Social Security Administration must follow in all cases. The Social Security Restoration Act of 1990 provides the blanket protection that all Social Security claimants need to get their cases through the administrative process expeditiously. This bill will ensure that these claimants suffer no further denial of justice because of delays in adjudicating their cases.