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SOCIAL SECURITY ADMINISTRATION OVERSIGHT: EXAMINING THE INTEGRITY OF THE DISABILITY DETERMINATION APPEALS PROCESS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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SOCIAL SECURITY ADMINISTRATION OVERSIGHT: EXAMINING THE INTEGRITY OF THE DISABILITY DETERMINATION APPEALS PROCESS

Tuesday, June 10, 2014

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:33 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, DesJarlais, Gowdy, Farenthold, Woodall, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Clay, Connolly, Speier, Duckworth, Kelly, Davis, Horsford and Lujan Grisham.

Staff Present: Brian Blase, Senior Professional Staff Member; Molly Boyl, Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; Caitlin Carroll, Press Secretary; Sharon Casey, Senior Assistant Clerk; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Christopher Hixon, Chief Counsel for Oversight; Mark D. Marin, Deputy Staff Director for Oversight; Emily Martin, Counsel; Laura L. Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Andrew Shult, Deputy Digital Director; Katy Summerlin, Press Assistant; Sharon Meredith Utz, Professional Staff Member; Peter Warren, Legislative Policy Director; Rebecca Watkins, Communications Director; Jaron Bourke, Minority Director of Administration; Aryele Bradford, Minority Press Secretary; Jennifer Hoffman, Minority Communications Director; Elisa LaNier, Minority Director of Operations; Juan McCullum, Minority Clerk; Suzanne Owen, Minority Senior Policy Advisor; Brian Quinn, Minority Counsel; and Dave Rapallo, Minority Staff Director.

Chairman ISSA. The committee will come to order. The oversight committee exists to secure two fundamental principles: First, Americans have a right to know that the money Washington takes from them is well spent—well, at least that we are trying to have it well spent; and second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold gov-

ernment accountable to taxpayers because taxpayers have a right to know what they get from the government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

This is our mission statement. And, Senator, I only did that one because we are pleased to have you here today. We will do our opening statements after your testimony. Take the time you need. The fact is that there is no better watchdog in Congress, either side of the Capitol, than you have been, and the hearing we are going to have later today really is the result of the hard work you have done to bring this issue, this growing multibillion-dollar issue to the American people.

So my friend, and Senator from Oklahoma, you are recognized.

STATEMENT OF THE HON. TOM COBURN, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA

Senator COBURN. Well, thank you, Mr. Chairman and Representative Cummings. I appreciate the invite. I would correct your statement. Actually all this comes about because loyal Americans who work for the Social Security system have raised the issues that we looked at and found to be credible.

Most of us know that the Social Security Disability Trust Fund is in precarious shape. At the end of this year, we will go into 2015, probably in this last year, where we don't have to make cuts. And there are some pretty significant rules about whether we can transfer money to that Disability Trust Fund. Our research says we can't, which means the 11 million Americans who are presently in need of those payments will receive a cut.

I have been investigating this for about the past 4 or 5 years, and, again, it came on the basis of whistleblowers who actually work for the Federal Government. I look forward to reviewing the findings of your report, and that we continue to have an ongoing investigation. The first report we put out was bipartisan. We will continue to do that in bipartisan. Senator Levin and I have been very interested in making sure we know what the rules are, how the program works, how it is supposed to work, and whether or not there is compliance with that.

What we do know is the size of the program is staggering. We spent $137 billion on this program last year. Senator Carl Levin and I did a review. My staff initially reviewed 300 random cases that were selected randomly through a computerized model from Social Security for three different offices, one in my home State. I try to do something for my home State every time to make sure we are not missing it when I am doing oversight.

And what we found was alarming. What we found is 25 percent of those cases—and I personally read the medical history on about 100 of these cases as a practicing physician. But what we found is 25 percent of the cases should never have been approved for benefits based on Social Security's own rules and procedures. So we had 25 percent where their own administrative law judges didn't follow their own rules. Interesting, they shared with us that their own internal review showed that they found 22 percent of like cases of

their own ALJs not following the procedures and rules that have been set up.

We specifically looked in our investigation at Huntington, West Virginia, because the problems that we came to find were similar to those we found in our prior investigation, only much, much worse. And this got our attention because this office processed more disability cases than any other office in the Nation, and so when we looked at it, much of that could be accounted to one attorney, Eric C. Conn. In spite of practicing in a town of 500 people, he had become the third highest payment, Social Security, receiving over $4 million in agency fees in 2010.

When we looked more closely at Mr. Conn's operations, we found reasons for serious concern. Some of what Mr. Conn did was outright fraud; at times, he was simply able to exploit loopholes in the program. Both of those should be a concern for us in Congress given the precarious nature of the trust fund.

To ensure that Mr. Conn's cases were approved and keep his fees flowing, Mr. Conn colluded with an ALJ in Huntington, West Virginia, by the name of David Daugherty. The two worked together to award billions of dollars in fraudulent disability claims. Their plan involved several calculated steps. First, in order to make sure Mr. Conn's cases were approved, Judge Daugherty needed to make sure Mr. Conn's cases got in front of him. Normally, agency rules require that the oldest case goes to the first available ALJ. He bypassed that, and I won't go into details. It is in my written testimony on how he did that. But he inappropriately reassigned cases when they weren't assigned to him by going into a computer system and reassigning them to himself.

The next thing he would do is he would call the attorney's office with a list of names and Social Security numbers telling Mr. Conn what he needed in terms of either a medical or physical or psychological impairment to be able to approve the case. And it wasn't really that difficult because Mr. Conn had prefilled out all the forms. He had about 30 different forms, and he would just randomly put one, whether it had any connection whatsoever to the patient's history at all. And so he would assign one of those.

Mr. Conn also collected a number of doctors who actually conspired to do what he wanted done at his bidding, and paid out millions of dollars to these doctors, many of whom had lost licenses in other States and had significant histories that would render their regular practice of medicine questionable. He paid around $500 per review, which sometimes took less than 15 minutes. So you can see that there was motivation for money with the physicians as well.

In one instance our committee determined that 97 of Mr. Conn's claimants approved by Judge Daugherty had the exact same residual functional capacity, a statistical impossibility, which showed that he was using preset forms to get the answers that he wanted. Judge Daugherty would then write a boilerplate decision to approve the claim for benefits, always finding that the information and evidence provided by Mr. Conn outweighed any and all other evidence in the file, most of which was never, ever looked at.

Mr. Conn made millions, as I said. The committee also discovered that Judge Daugherty had deposited in his bank account $100,000 in unexplained cash deposits over this period of time. But

Judge Daugherty wasn't only approving Mr. Conn's cases. In just the last 5 years working for the agency, Judge Daugherty awarded more than $2.5 billion and had an approval rate in excess of 95 percent.

If that is not bad enough, the breakdown in the management of the Social Security system was evident as well. Judge Charlie Andrus—and Judge Daugherty could have been stopped by Judge Andrus. He chose not to do that. He chose not to discipline him. He chose not to reprimand him. He chose not to do what he had in his powers, the chief judge.

He allowed Judge Daugherty to approve a high number of claims, and, because of this, Judge Andrus was touted and sent around the country on how to do things by the Social Security system. Mr. Andrus did nothing to stop Mr. Conn or Judge Daugherty. He looked the other way. At one point it became obvious that Judge Daugherty was no longer bothering to even hold any hearings. They were all done on the record.

The other thing that we know is that Judge Daugherty would come in, sign in, leave the Social Security office, come back in the afternoon, sign out and leave. He wasn't even there.

The other thing that we found was that Mr. Andrus colluded with Mr. Conn to target a whistleblower in his office. That is a big charge. When he was questioned about this by our staff, he said he couldn't recall whether or not he instructed someone to do certain things.

However, he wasn't happy about losing the top position in his office, so he teamed up with Mr. Conn to target a whistleblower trying to—when there was work from home on one Sarah Carver. What they did was spy on her, try to photo her, proving that she wasn't actually working from home so that they could terminate Ms. Carver.

Judge Andrus, after lying to the committee, later confessed to the plan, explaining what he and Mr. Conn were trying to do. He had asked a Ms. Sarah Nease to call one of Mr. Conn's employees on the days Ms. Carver was scheduled to work from home, and then he would have one of Mr. Conn's employees follow her and track her and stalk her to make sure during the work hours she wasn't doing anything but work. And, of course, Sarah was a great employee. She actually did her work from home. That is why she was a great whistleblower.

He was not truthful with the committee. Twenty-four months after he—correction, a few months after he lied to the committee, he had a sudden remembrance of the facts and confessed to exactly what happened, and signed a 24-page sworn statement to the agency, and he confirmed what I just laid out.

After that Mr. Andrus was put on paid administrative leave and filed a claim with the Merit Systems Protection Board. This is after he admitted to conspiring with Mr. Conn to target one of his own employees. He voluntarily retired, according to a decision from the Merit Systems Protection Board. The system charged him with conduct unbecoming an ALJ, engaging in apparent conflict of interest, lack of candor—in other words lying—and unauthorized disclosures.

Despite these charges he had a settlement agreement, that this agency did nothing. He retired today with full pension intact. So there was no consequence.

The final point I would make is when we finished our investigation on Huntington, the entire package was sent to the Department of Justice. To date nothing has happened. Mr. Conn has not been indicted; Judge Daugherty has not been indicted; Judge Andrus has not been indicted.

So something has to change in terms of the enforcement of our laws and the rule of law if, in fact, we are to change Social Security system. We have a lot of great employees at the Social Security system, and we have a lot of people with true needs. If we don't fix this through both oversight and legislative changes, this system will not be available to the extent it is today for those that are truly disabled in this country.

I would be happy to take any questions you might have for me.

Chairman ISSA. Thank you.

The Senator has agreed to take a few questions. I am going to yield first to the ranking member Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

Senator, thank you very much for being here. I have the utmost respect for you, and I thank you for looking into these kinds of matters.

I must say that the Social Security Administration is based in my district, headquarters, and I am thankful that you said that we have a lot of great employees, because sometimes we can give this broad brush. And all those people who are working overtime and busting their butts, they get painted with the brush. So I am glad you said that.

And I find, as a lawyer, the comments that—the descriptions that you gave, if people are doing those types of things, and I have no reason to believe they are not, it is reprehensible. And we are better than that, and we should be.

I want to see if we can come to some areas. You know, a lot of times we have hearings, and in the words of my former sharecropper mother, she says, you have motion, commotion, emotion and no results. And so I want to see if we can find areas of agreement, and I want to ask you just three questions.

The Social Security Administration is supposed to conduct continuing disability reviews every 3 years. These reviews ensure that individuals continue to have the disabilities that qualify them for disability assistance, that they are not receiving payments improperly. But there is currently a backlog of 1.3 million CDRs.

During our investigation witnesses told us these reviews are highly cost effective, and I know that is a big deal for you, cost effectiveness, and for me, too. They estimate that every dollar spent on the CDR saves $9 in improper payments. The inspector general testified that if the backlog in CDRs were eliminated, we could save more than $2 billion per year.

The problem he identified is a lack of adequate funding. In our previous hearing, Congresswoman Duckworth asked the inspector general if there was any reason for this backlog other than adequate funding. This was his response: No, because we can pretty much show from all the work that we have done is when Social Se-

curity dedicates the resources of doing it, and the dedication is coming from their funding, they will reduce the backlog.

Question: Dr. Coburn, Senator, do you believe that Congress should fully fund continuing disability reviews to eliminate the current backlog, and did your research go into that at all?

Senator COBURN. Not under the way it is done today, because a lot of CDRs are just a postcard mailed to somebody that says, are you still disabled? And they fill it out and send it back, so there is no real investigation with a lot of them.

What needs to happen, I believe, is those people who we know are going to be permanently disabled, you know, the medical science and the medical record would show there is not going to be a way for them to get into the workplace, those should never have a continuing disability review. We shouldn't waste any resources on it.

What we should do is recategorize those who get disability, ones with what should be a short-term, ones that have a chance, and then ones that have no chance, and then concentrate that, but it needs to be a CDR. So I am all for funding a real CDR at adequate levels, but you are fixing the wrong problem.

Chairman ISSA. Yeah.

Senator COBURN. The problem is a census report—the Senate report came out. The approval rates dropped precipitously because the judges weren't, in uniform, following their own regulations. So if you put people on disability who are not truly disabled, and you send a postcard saying, are you still disabled, they are going to answer yes. So it is not going to do anything. So I agree that we should fund it, but we need major changes.

I would make one other point: Remember, when somebody comes before an ALJ, they have already been turned down twice by people very knowledgeable in the system. Two separate Social Security employees have looked at either the grid or the medical history, looked at the law and the requirements, and have said no. The key thing we need is that input, since the judges routinely won't read their input, into the trial hearing, into the disability determination so that the input of the paid professionals working for Social Security is actually heard.

There is a lot of other gimmicks and loopholes that Eric Conn used to change the medical record falsely so that the most recent piece of information would be there and only arrive a day before a hearing, and that is what routinely happens today. So we need structural change within how we do this, and we need continued oversight.

If we do good work over the next year or so in terms of fixing this, and we don't oversight it afterwards—you know, the reason this happened is because we weren't doing good oversight routinely. What is your approval rate? Are you following the regulations? Are you doing the continuing disability reviews? So I would say if we have a good system, we ought to fund it adequately to make sure it can work.

Mr. CUMMINGS. I had said three questions, I am just going to ask you one more. The inspector general said that we should fully fund antifraud efforts because he believes that we can save a lot of money generally in Social Security. I mean, do you agree with that?

Senator COBURN. Yeah, I do, but the antifraud efforts have to look at those ALJs that are fraudulent as well. So you have to look inside as well as outside.

Mr. CUMMINGS. Again, I really appreciate you being here.

Senator COBURN. Thank you, sir.

Mr. CUMMINGS. Thank you.

Chairman ISSA. Senator, our report found that 191 ALJs, administrative law judges, had allowance rates in excess of 85 percent, and these are people, as you said, that were turned down once or twice by the previous reviews, 85 percent over the past decades. These ALJs collectively awarded more than $150 billion in lifetime benefits. Does that seem about consistent with what you had seen during your investigation?

Senator COBURN. It is, yes.

Chairman ISSA. Now, in the Senate it takes 51 people to pass something.

Senator COBURN. No, it takes 60.

Chairman ISSA. It seems to take 51 lately, but okay. It takes 60 to get a vote and 51 to pass. How many people got to vote on what these judges got to do? How many got to second-guess them? Were these effectively administrative law judges that each time they said yes when they should have said no, they were writing a $300 million appropriation of the taxpayers' money—$300,000. I am sorry, $300,000.

Senator COBURN. I actually don't put the blame on the administrative law judges. I put it on us. You know, until we had whistleblowers come forward, we weren't doing the due diligence that we are supposed to be doing. We weren't having a hearing to see what was going on.

Chairman ISSA. You have got Judge Huntington, who effectively was the Duke Cunningham of ALJs, wasn't he? Similar to our colleague who took bribes in order to do appropriations, he was taking money in order for a lawyer to make a few hundred thousand dollars, a few tens of thousands of dollars, but a client to receive $300,000 over a lifetime. He was essentially selling for a few thousand dollars millions or billions of dollars' worth of yours and my money.

Senator COBURN. Well, to be fair to Judge Daugherty, we don't know where he got the cash. So the assumption would be——

Chairman ISSA. He may have simply colluded with this guy for free.

Senator COBURN. Yeah.

Chairman ISSA. That is an incredible level of generosity.

Senator COBURN. Either way, the fact is the system is broken. We are not following the guidelines. It is improving as we've improved our oversight. But we have not done the oversight, and that is why I am thankful that you all are doing this. What needs to come forward—we are working with the disability community right now to try to make the major reforms with the truly disabled to make sure we don't put anything we do at peril for them, but at the same time exclude those that want to game the system. So we are trying to work with that. We have offered to work with your committee in terms of trying to formulate and then get it to the appropriate committee of jurisdiction what needs to be done.

I want to tell you one other story. There is a gentleman in Oklahoma that has been in a wheelchair his whole life. He works for the State Disability Determination Unit, and he has put over 300 people who are totally disabled to work in the last 2 years, full time, paying jobs with health insurance. So, you know, that is the better answer is if we are going to spend money, let us spend money on helping people become productive members of the society with their disability.

And so I think we need to do it all, but there certainly needs to be a continuing oversight, a continuing IG. The other question you should ask yourself, and this is no reflection on the IG that is there presently, is why wasn't the IG catching some of this before, before it became a story through whistleblowers' leaks through a newspaper?

So we have real work to do, and it is not just in Social Security disability; it is throughout government.

Chairman ISSA. I appreciate it.

Real quick follow-up. In the case of Judge Daugherty, do you believe he should be prosecuted? You suggested——

Senator COBURN. Absolutely.

Chairman ISSA. —referral, you sent it. The statute of limitations probably hasn't expired for it. He could still be prosecuted as we speak.

Senator COBURN. I believe he should be prosecuted, I believe Judge Andrus should be prosecuted, and I believe Mr. Conn should be prosecuted.

Chairman ISSA. Now, I was just in Oklahoma this weekend, and the one thing I figured out quickly in Oklahoma is you love your football.

Senator COBURN. We do.

Chairman ISSA. And my understanding is when you win or lose a game, the coach doesn't get to come out the next day and say, you know, what I needed was more players, or I needed to pay my players more. He gets to have——

Senator COBURN. We don't pay players in Oklahoma like California, like some of the other States.

Chairman ISSA. Well, minor versus major. But the—don't the Texans laugh. Don't even think about it. It was a Texan that built that big stadium in Oklahoma, so just get over it. I have got a lot of Texans here, and I have only got one great Oklahoman. I think he is right down there.

But the fact is that the IG recommends basically a whole lot more money for a lot more people, a bigger team. Do you believe if that team were reviewing the excesses of these ALJs, the cases that were allowed that should not have been allowed, isn't that the low-hanging fruit? Couldn't you have basically moved the ball a lot of yards down the grid if, in fact, you were able to just simply look at people over 85 percent and say, let us look at those cases again? And if we look at those cases, those are the people we ought to go find out if they are really disabled. Would you agree with that?

Senator COBURN. Well, I think, to some extent. But remember, you have had this swelling application because we have created the predicate that it is so easy to get disability, and you have lawyers advertising all the time telling them, we will get you taken care of.

So you have a workload there. And in that mix, 50 percent in that mix are people who are really disabled, and if we don't attend to that, we are not.

So I would agree that we ought to review where the outliers are, but we also ought to fund appropriately and also have the judges really pay attention to the career Social Security people who are making these determinations in the first place. Almost all of them get appealed to a judge. And then after two professionals within Social Security have said, no, you are not eligible, even now 50 percent of them get overridden by a judge who isn't looking at the whole record. The professionals inside Social Security look at the whole record. The judges rarely do.

You know, some of these stacks are this thick. Let me just give you a little bit of history. Michael Andrus was approved—Astrue was approved to be head of Social Security. The message Congress gave him is, get rid of the backlog. Guess what? He did. He didn't do it right, but he got rid of a lot of the backlog while he was head of Social Security. Sloppy work. And that became their impetus. It is not whether they are disabled or not, it is to get rid of the case, and we created that demand on him. So Congress, again, we need to look at our own House, and we need to do continuing oversight, not just bullet oversight. We start it, and we continue it.

Chairman ISSA. Thank you, Senator.

Mr. Lankford, do you have a quick question?

Mr. LANKFORD. I do have a quick question.

Chairman ISSA. Senator, we understand you are going to have to leave shortly, so we are on your schedule.

Mr. Lankford.

Mr. LANKFORD. Just a quick question. We have obviously had multiple hearings on this, as you have in the Senate as well. One of the things that comes up over and over again, the Social Security Administration says there is no way to be able to address to the CDRs overturning any of these cases because they can't show medical improvement because of the way the opinion was written by the ALJ, that they don't have anything.

One quick note from one that is just an illustration, you have tracked all those well, the focused review—and I am going to pull out one judge's focused review—said during the hearing, he asked the claimant if he had difficulty walking. They responded in the affirmative, and so he said he had degenerative disc disease, though there was nothing in the medical record that actually said it.

Now, CDR doesn't matter on that because you are not going to show medical improvement because they can't show there is any medical problem at the beginning. How widespread have you seen that is, and what is the difficulty there with this evaluation on showing medical improvement when they can't show there was a medical problem in the first place?

Senator COBURN. What you are talking about is an incompetent ALJ that didn't look at the record, because unless it is in the record and you have scientific proof for it, you have no basis to take the statement. Every one of us is disabled in a certain way, and so all of us could claim a certain disability for some aspect of our health, but the fact is is there is a record, and if the record isn't looked at, you can't ever get the right answer.

Mr. LANKFORD. And trying to overturn that, no matter what your CDR is, you can't show medical improvement if you can't show there was a medical problem in the first place. So you are permanently stuck in the disability system without any way to be able to come out of it.

Senator COBURN. Well, here is the other problem with it. If you put somebody in disability that is not truly disabled, what you did is put a ceiling on their ability to achieve, perform, grow, succeed. And they carry that label as, "I am disabled, and I can't," rather than "I am not disabled, I have problems, but I can." And so not only do we have an impact financially in our country, we take all these people's—their hopes and aspirations and say, we confirm you can't, instead of saying, we believe you can.

And that is what is so great about Jason Price in Oklahoma is he has taken people who have real hard disabilities and showed them how they could. And that is what we need to do more of.

Mr. MICA. [Presiding.] Thank you, Mr. Lankford.

We will let Ms. Speier—I think she had a quick question.

Ms. SPEIER. Thank you, Mr. Chairman.

And thank you, Senator, for the outstanding work that you and Senator Carper have done in the Senate on this issue.

Chairman Lankford and I have worked closely together in a bipartisan fashion in the subcommittee hearings that we have had on this issue. One of the things that is most disturbing to me is that even with the mountains of evidence against the ALJ Daugherty and Eric Conn, no action has been taken against either of them, and, in fact, my understanding is that Eric Conn is still handling cases in the Huntington office on behalf of claimants.

So the inspector general—I think Patrick O'Carroll has done an outstanding job. I mean, I think he is top drawer, and his investigation with over 130 interviews suggests that there is plenty of evidence. Now, the Attorney General has not taken any action. The Social Security Administration has been waiting for a prosecution, and just yesterday both Mr. Lankford and I signed a letter to the U.S. attorney in the Eastern District in Kentucky to request an independent evaluation, because nothing is happening on these cases.

In your reviews is there anything the Social Security Administration can do independent of waiting for a legal prosecution to take place? What administrative action do you think they still have the ability to take against both Judge Daugherty and Eric Conn?

Senator COBURN. Well, I am not a lawyer, and so I really don't know. What I can tell you is they can sanction Mr. Conn if they wanted to. I mean, the evidence is out there in the report that Senator Levin and I published along with Senator Carper and Senator McCain. They could sanction him; say, you can no longer practice before the Social Security Administration. They could do that.

Now, there would be a fight, because he is going to fight that because he is making millions of dollars a year off of it, but they could do that. And that is called leadership. That is setting an example to send the same example to other law firms that are abusing the system. We are in the midst of taking a good look at another large law firm right now that specializes in this.

And the whistleblowers, the story they tell is not pretty: cheating, misinformation, nonauthenticated facts, not including pertinent facts in the records even though they assert that they do.

So there is a lot of things they can do, but if Justice Department isn't going to do anything, and Social Security isn't going to do anything, it is not going to matter what we do if we don't do something. We have to ask them to do that.

And I am truly frustrated. We sent a very well-packaged case to the Justice Department on this with stuff under oath, documented, the facts laid out, and no action has been taken on them.

Ms. SPEIER. So from a legislative perspective, I mean, I am with you 100 percent in terms of our responsibility in terms of oversight and that it has to be consistent and not just a drop in the bucket. But what legislative remedies would you recommend that we embrace to fix this problem? Now, in fairness to ALJs generally, there is 1,500 of them——

Senator COBURN. Yes.

Ms. SPEIER. —and we cannot suggest that 1,500 of them are not doing their job.

Senator COBURN. No, that is not true at all.

Ms. SPEIER. In fact, the vast majority are doing their jobs.

Senator COBURN. As a matter of fact, a lot of the information we got was from very good ALJs saying, here is what is going on. They would see it in their colleagues.

Ms. SPEIER. So——

Senator COBURN. And they would say, how in the world could somebody do this when I am struggling to get through all these records every day and make a real determination? How can somebody do that?

Ms. SPEIER. Right.

Senator COBURN. So this is not to impugn all ALJs, but we have a large number of ALJs who are improving now, now that the story is out.

Here is the answer: If we write a reform bill on Social Security, we have to be very specific about what we expect. Here is what Congress typically does. We pass a law, and we say, you figure out how to implement it, and what we need to do is start being very specific on what we mean and what we want to be implemented. Here is the standards. In other words, not let the bureaucracy set the standards; we will set the standards in statute so that they have to comply.

Ms. SPEIER. So what would your standards be?

Senator COBURN. My standards would be is, number one, a continuing review of ALJs to see that they are actually looking at the record; number two, continuing review of lawyers before the ALJ court to see if, in fact, they are abusing the privileges of practicing before that court, not submitting all the information. That is routine today. Pertinent medical information is excluded from the record on purpose, because if it was in there, they would not get their disability; adding new material after the case is set for docket, in other words, finally finding a doctor that will say what they want them to say and then that being the latest piece of information. So the system is gamed.

So we have to write a bill, and we have to put the rules and the specs, commonsense stuff. Not stuff—we want to err on the side of giving somebody disability that doesn't have disability, because if we don't, we are going to miss some people who are truly disabled. So a small percentage of that would be commonsensical, but we can't do what we are doing today, and so what I would recommend is having Social Security before you, what are you doing to change this? How are you changing it? How are things improving? What is your approval rate? What is your denial rate? What is happening? What are you doing on late evidence? What are you doing to lawyers who bring up cases and don't put the information in the medical record; in other words, exclude bad information. And that happens routinely right now.

Ms. SPEIER. Thank you. I yield back.

Chairman ISSA. [Presiding.] Thank you.

Senator, I want to thank you for the generosity of your time. You stayed far longer than we thought you were going to be able to.

Senator COBURN. Well, I just appreciate you all looking into this. We have got to fix it, because the people who truly are disabled in this country are depending on this system, and it is belly up in a year.

Chairman ISSA. Thank you.

We will take a short recess and just set up for the second panel. Thank you.

[recess.]

Chairman ISSA. The committee will come back to order.

The Social Security Disability Insurance Program and the Supplemental Security Insurance Program have both seen explosive growth over the last decade. Through these programs nearly 20 million people received $200 billion of annual benefits. At this rate, however, the program is financially unsustainable. The SSDI program is set to go bankrupt in 2016, when the trust fund is finally depleted. Those who have genuine disabilities who depend on this program will be hurt the most.

It is no secret that serious problems within the disability programs are contributing to the insolvency. Today's hearing will focus on the role of administrative law judges, often referred to as ALJs, and concerns about the agency's lack of oversight for these key actors.

ALJs work in the executive branch. They are, in fact, executive or, if you will, nonjudges in the sense of the other branch. They work for the President and for the administration. These quasi-independent government adjudicators are responsible for determining whether or not a person who has already been denied disability benefits should, in fact, receive those benefits.

Every case that comes before an ALJ has already been denied at least once, and often twice. Yet ALJs overturn a shocking number of these denials. Between 2005 and 2013, two-thirds, 66 percent, of all applicants who appealed benefit denial decisions to an ALJ were awarded benefits and placed on Federal disability.

During this time period seven different ALJs went an entire year where they approved every single case that came across their desk. Some even repeated this dubious feat, receiving 1,000 batting average, if you will, for another year. In a previous hearing ALJs told

this committee that denying a claim requires more paperwork to justify the decision and invites scrutiny. This gives ALJs a bureaucratic incentive to approve cases.

ALJs also told the committee that they felt pressured to meet quota of decision each year. The judges testified that they received training from the agency to speed up their decisionmaking, including instructions to set an egg timer, limiting reviews to no more than 20 minutes per case. And again, that is 20 minutes per case that might be, as the Senator said, 2 feet high.

Prior to 2011, the only metrics the Social Security Administration used to evaluate ALJs was the number of cases the judges decided; in other words, the measure of quantity but not quality in their review. In 2010, the agency finally decided to publish allowance data. These are statistics about how often ALJs reverse denials and/or allow benefits. Tellingly, the national allowance rate began to fall after the agency made the data public. Again, it was not known; once it was known, the rate of approval began falling. During the time after it was made public, not a single ALJ received a perfect batting average.

As we see time and time again, transparency and access to information improves governing. The fact that ALJ allowance rates declined so rapidly in such a short period of time raises serious questions about the high national allowance rate prior to 2010, meaning prior to 2010 it is likely that hundreds, thousands or even millions of individuals who were not disabled received that lifetime benefit of approximately $300,000 in disability payments.

On 60 Minutes last fall, one administrative law judge stated that "if the American public knew what was going on in our system, half would be outraged, and the other half would apply for benefits." Today's hearing is an opportunity for the American people and the American public to see just what exactly is going on in these disability programs and how much it is costing the American taxpayer each year.

The four administrative law judges who join us here today have approved an average of more than 95 percent of disability cases they have received combined. These ALJs have awarded more than $11 billion in lifetime benefits in just over the last decade. Internal agency reviews of their decisions shows significant and frequent problems in both decisions they made and the hearings they conducted.

The reviews raise serious concerns about how many of the individuals they awarded benefits to actually met the criteria for disability compensation. The committee staff report released today found evidence the ALJs disregarded established procedures for deciding cases. Some examples: Instead of following procedures to inform applicants in writing after all evidence had been considered, ALJs sometimes made it their practice to immediately tell applicants when they testified that they would be awarded benefits.

Vocational experts hired by the Social Security Administration to provide professional expertise during hearings were sometimes ignored, not permitted to testify, or even only permitted to testify after the ALJ had proclaimed the conclusion granting the disability. Some ALJs actually discussed, perhaps even bragging to

applicants during proceedings, about how many cases they heard and approved.

In short, and despite the fact that every appeal they heard had been denied at least once before, some ALJs rubber-stamped for approval almost every single case that came before them. For a program that is staring down bankruptcy, this lack of accountability is unacceptable and must be changed. I am looking forward to today's testimony as we try to get to the bottom of the problem before us and restore integrity to these important programs.

I now recognize the ranking member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I truly thank you for holding this hearing today. I think it is a very, very important hearing. And today the committee begins 2 days of hearings to examine the actions of administrative law judges who determine whether individuals with disabilities qualify for financial assistance under the Social Security Disability Insurance Program.

Congress created this program in the 1950s as a lifeline for millions of Americans who pay their taxes and show up at their jobs every day, but experience disabilities that stop them from working. Recently there have been allegations of criminal fraud by one particular judge. These actions are reprehensible, and they diminish the confidence that most Americans have in this program.

Yesterday our colleague Jackie Speier, the ranking member of the Subcommittee on Energy Policy, Health Care, and Entitlements, sent an important letter to the U.S. Attorney for the Eastern District of Kentucky. She asked them to evaluate evidence of criminal activity committed by an administrative law judge there. I want to thank her for these efforts, and I ask that her entire letter be included in the hearing record.

Mr. LANKFORD. [Presiding.] Without objection.

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

I also want to thank Senator Carper, who was supposed to be here, who I also had a chance to talk to, and Senator Coburn, who was here with us today, for their role in exposing the details of this case.

Today's hearing does not concern allegations of criminal activity, but rather claims that some judges simply approve too many disability cases. Today the majority has invited four judges with allowance rates higher than 90 percent. This means that on an average they find disabilities and award financial aid in 90 percent of the cases they hear.

I believe that it is appropriate to review the actions of individual judges not to compromise their independence, but to ensure that they are following agency policy. It is interesting that Senator Coburn said that there are some judges that don't even follow agency policy; said that in 25 percent of the cases that he looked at, that was the case. That is most unfortunate.

All four judges here today received attention from the Social Security Administration long before this committee ever got involved. They received in-depth reviews of their decisions and training to address problems identified by the agency. In fact, the Social Security Administration is in the process of removing one judge, one of our judges here, from his job to a filing with the Merit Systems Protection Board.

Although I support these individual reviews, I strongly oppose the broad condemnation of all administrative law judges. As Senator Coburn said, a lot of the information that he got, and others, in looking at these cases came from those administrative law judges who do their jobs and follow the rules. The 4 judges here today are not representative of the 1,500 judges who work at the Social Security Administration. Even they admit that they are outliers.

According to the Social Security Administration, last year the entire pool of administrative law judges had an average allowance rate of 57 percent. That is the lowest overall allowance rate since 1979. The fact is that over the last decade, the Social Security Administration has significantly improved its efforts to collect and analyze data about judges' decisions. It has expanded training, improved performance, sharpened disciplinary procedure and enhanced efforts to combat fraud.

But if more needs to be done, we have to make sure it is done. We cannot continue to have this kind of situation where 90 percent of the cases are being approved. But those efforts have been hindered by failure of Congress to provide adequate funding. Right now the agency cannot hire enough judges to hear cases. So individuals now wait more than a year for disability hearings, and it is even getting worse. We even received testimony during our investigation about people dying while they waited for their benefits.

Congress has also underfunded antifraud programs to save taxpayers money. There is a huge backlog of continuing disability reviews, for example, which are supposed to be conducted every 3 years to make sure beneficiaries continue to have the disabilities that make them eligible. Again, Senator Coburn said we should do that, but we should find a way to make it more effective and properly funded, and I agree with him. These reviews save taxpayers $9 for every $1 they cost, but Congress has not provided enough funding to conduct them.

Congress has also failed to fully fund inspector general's antifraud investigating units, so they simply do not exist in nearly half the country. This is the price of austerity. When we starve an agency of resources, it affects not only my constituents in Baltimore, but the constituents of every member of this committee in the House. If we care about improving this program, we need to invest in its success.

Let me close by noting the inaccuracy of claims that judges with high allowance rates are contributing to the insolvency of the Disability Insurance Trust Fund. The projected insolvency of the fund was forecast in 1995 by the chief actuary of Social Security, and the cause has brought demographic changes across the country. As he explained, Congress can address this issue by passing a modest reallocation of payroll taxes to extend benefits by decades as Congress has done several times before.

And with that, Mr. Chairman, I look forward to hearing our witnesses, and I yield back.

Mr. LANKFORD. Thank you.

I will do a brief opening statement as well, and then I will yield to the ranking member on the subcommittee.

Mr. LANKFORD. As you know, my subcommittee has held three hearings over the past year on the problems with Federal disability programs. It is clear that the growth of these programs is unsustainable for the Nation's taxpayers and it threatens the livelihood of the truly disabled who face large benefit cuts in the future if the program is not reformed.

The Social Security Board of Trustees and the Congressional Budget Office estimated that without reform the Social Security Disability Insurance Trust Fund will be depleted in 2 years. At the outset, let me state that I appreciate the bipartisanship which my subcommittee has been able to approach this in all of our oversight. Ranking Member Speier and I both recognize there are significant problems with these programs and that reform is needed. I thank her very much for her work and our partnership on this issue.

For all practical purposes the decision to allow benefits is an irrevocable commitment of taxpayer funds, since favorable decisions are not appealed and less than 1 percent of disability beneficiaries ever return to the workforce. Therefore, it is a decision which must be made with great care and proper consideration of all the evidence. It appears some ALJs are being very benevolent with other people's money.

In June last year, my subcommittee heard testimony from two former and two current Social Security administrative law judges. That hearing showed that the agency's emphasis on processing cases quickly likely had the unintended consequences of ALJs putting too many people onto a program who are able to work. We learned that many ALJs use shortcuts and don't have time to consider all the evidence prior to rendering a decision.

In addition to discussing problems within the appeals process, my subcommittee has also explored problems with the agency's continuing disability review process. The agency allowed a huge backlog of CDRs to develop. Moreover, the agency's current medical improvement standard is so flawed that a claimant who is not disabled and wrongfully received benefit initially cannot be removed from the program. This was part of my conversation with Dr. Coburn earlier.

Today's detailed staff report and the hearing continues the committee's important oversight. I would like to add into the record the staff report for this. Without objection.

Mr. LANKFORD. Here are some of the central facts explained in the committee report. First, Jasper Bede, regional chief administrative law judge for the agency, testified that it raises a red flag when ALJs allow benefits at a high rate, which he defined as over 75 or 80 percent. Between 2005 and 2009, over 40 percent of ALJs had an allowance rate in excess of 75 percent and over 20 percent of ALJs had an allowance rate in excess of 85 percent.

Second, between 2005 and 2013, over 1.3 million individuals were placed onto disability by an ALJ with an allowance rate in excesses of 75 percent.

Third, the raw numbers also suggest that the historic problem of ALJ decision making has been one-sided. For instance, 191 ALJs had a total allowance rate in excess of 85 percent between 2005 and 2013. Only a single ALJ had a total allowance rate below 15 percent during this same time period.

Fourth, prior to 2011, the agency failed to assess the quality of ALJs' decisions in any way. The agency even failed to monitor whether ALJs were appropriately awarding benefits when ALJs awarded benefits without holding hearings. Instead, it appears that the only metric used by the agency to evaluate ALJs was the number of cases processed.

Fifth, a 2012 Social Security Administration internal report confirmed this "A strong relationship between production levels and a decision quality on allowances. As ALJs' production increases, the general trend for decision quality is to go down."

A committee analysis of 30 internal agency reviews of high-allowance ALJs confirms this. The 30 reviews showed troubling patterns in judicial decision making, particularly how ALJs with high allowance rates failed to utilize medical and vocational experts in their hearings, how they improperly assessed drug and alcohol abuse in their decisions, and how they improperly assessed whether individuals can work.

Tragically, evidence suggests that the agency's emphasis on high-volume adjudications over quality decision making has eroded the credibility of the disability appeals process, and, as a result, a large number of people are inappropriately on disability.

In addition to the problems the excessive growth has on the truly disabled, these programs have too often limited people from reaching their full potential. According to a 2010 paper published jointly by the liberal Center for American Progress and the left-of-center Brookings Institute, the Social Security disability insurance program provides strong incentives to applicants and beneficiaries to remain permanently out of the workforce.

I look forward to these two hearings today and tomorrow, and I hope to facilitate a productive discussion about how we can fix the systemic problems in the Federal disability programs so that precious taxpayer dollars are preserved for the truly disabled and those that we need to work and be engaged in work in our economy for their families are also incentivized to be able to return to the workforce.

And with that, I recognize the ranking member on the subcommittee, Mrs. Speier.

Ms. SPEIER. Mr. Chairman, thank you, and thank you for your outstanding leadership on this issue.

During the course of the committee's oversight of Social Security Administration we have learned that there is room to do disability insurance better. We need to have more program integrity, more prevention of improper payments, and more commitment to improving quality. While the agency has taken steps towards reform, it has become clear that some of the concerns can only be addressed by Congress with additional resources for quality assurance and program integrity efforts.

In April of this year, Chairman Lankford and I sent a bipartisan letter to the Social Security Administration that outlined several reforms and recommendations to improve the disability adjudication and review process to restore confidence in Federal disabilities programs. Just yesterday, I sent a letter to the U.S. Attorney for the Eastern District of Kentucky requesting an independent review for prosecution of the evidence Social Security Administration has

gathered with regard to an administrative law judge and a claimant's representative who allegedly colluded with fraudulent medical evidence to obtain disability benefits awarded to some thousands of individuals. And Senator Coburn has provided us with ample evidence of those cases.

The American people expect and deserve action. I am concerned that justice has been long delayed in this case. Administrative actions against the judge and the lawyer have been put on hold pending a possible criminal prosecution. White the Inspector General has conducted over 130 interviews, examined bank and phone records, reviewed decisions, and collected thousands of documents to build a case, we have heard nothing—I repeat, nothing—from the U.S. Attorney in West Virginia. It is long past time to prosecute this case.

I would like to acknowledge the work of Chairman Carper and Ranking Member Coburn of the Senate Committee on Homeland Security and Government Affairs for its investigation into these matters and reported findings released in a committee staff report. To echo the words of Chairman Carper, while we don't have any evidence that this is more than an isolated case, one example of inappropriate actions of this nature is one too many.

Our oversight has also determined that the vast majority of administrative law judges are hardworking and strive to be compliant with the policies and regulations of the Social Security Administration. I do not believe that the judges invited to testify today are representative of the judge corps. Today the committee has invited a panel of current ALJs with extraordinarily high allowance rates. They are not reflective of the 1,500 judges nationally whose allowance rates averages are much lower.

Some of today's invited judges also have alleged personal conduct issues that also raise concerns. All four of these judges have been evaluated by Social Security for their conduct and performance and have received additional training and counseling to help them become more compliant and responsive to the policies of the agency. Two of the judges are facing or have faced disciplinary actions for persistent conduct or performance problems.

I don't know what this panel of witnesses can tell us. But I would alert all members that no one should appear at this hearing to try and influence how the Social Security Administration conducts its actions regarding the discipline of these specific judges. We should not thwart, influence, or sway the legal actions that are pending against these judges.

Social Security disability benefits are an important lifeline for millions of American taxpayers with disabilities. It is critical that this lifeline is preserved. Our investigation is focused on identifying improvements to ensure that only those who meet the eligibility guidelines receive benefits so that the truly disabled can access this important lifeline and the American public can have confidence in the disability determinations process.

Tomorrow, during Part II of this oversight hearing, we will hear testimony from Social Security officials on the efforts to enhance its abilities to oversee ALJs to ensure consistent and quality decisions. Our investigation has shown that Congress has not provided the

funding the agency needs to fulfill its mandate to effectively monitor program integrity and save taxpayer dollars.

We know continuing disability reviews, CDRs, yield a return of $9 for every $1 spent. Social Security Administration and the OIG have also established cooperative disability investigations programs to coordinate and collaborate on efforts to prevent, detect, and investigate fraud in Federal disability programs. Those efforts pay for themselves many times over. Yet for some reason Congress has refused to fully fund the Inspector General and the agency to carry out its program integrity efforts.

I hope all of my colleagues would agree that given the results of various quality improvement measures and program integrity efforts we should ensure that the agency has sufficient funds to address alleged ALJ misconduct, review ALJ decisions for errors and policy compliance, and conduct all its scheduled continuing disability reviews and continue other program improvements.

I look forward to hearing the testimony from today's witnesses as well as tomorrow's testimony from the Social Security Administration officials on improving the disability appeals process and how Congress can support and enhance these efforts.

With that, I yield back.

Mr. LANKFORD. And I would like to add that I also concur, this is not a judicial proceeding today, this is a congressional hearing. So this is not about trying to pull out additional information that may be used by the Social Security Administration in the days ahead on any actions they may take.

Members will also have 7 days to submit any other opening statement they would like to put on the record as well.

I would like to welcome our second panel of witnesses today. Mr. Harry C. Taylor II is an administrative law judge for the Social Security Administration, Office of Disability Adjudication and Review, in Charleston, West Virginia.

Mr. Charles Bridges is an administrative law judge for the Social Security Administration, Office of Disability Adjudication and Review, in Harrisburg, Pennsylvania.

Mr. Charles Krafsur is an administrative law judge for the Social Security Administration, Office of Disability Adjudication and Review, in Kingsport, Tennessee.

And Mr. James A. Burke is an administrative law judge for the Social Security Administration, Office of Disability Adjudication and Review, in Albuquerque, New Mexico.

Gentlemen, thank you for being here.

Pursuant to committee rules, all witnesses are sworn in before they testify. If you would please rise, raise your right hand.

Do you solemnly swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you. You may be seated.

Let the record reflect the witnesses have answered in the affirmative.

In order to allow time for discussion, I will ask each of you to limit your testimony to 5 minutes. Of course, your entire written statement will be made part of the record.

I'd Like to recognize Mr. Taylor for an opening statement.

STATEMENT OF HARRY C. TAYLOR II

Judge TAYLOR. I'm Harry C. Taylor, the——

Mr. LANKFORD. Mr. Taylor, can I have you push the—there's a talk button right in front you. Apologize for that.

Judge TAYLOR. I'm sorry.

Mr. LANKFORD. No, that's fine. This is new for everybody on it. There's a little button that's in front of you. If you'll hit that when you talk and that will put your microphone on. When you finish, if you'll turn that off, and we'll make sure that we're not getting your side conversations as well.

Mr. Taylor, you're recognized.

Mr. TIERNEY. I'm Harry C. Taylor II. I'm a United States administrative law judge currently assigned to Charleston, West Virginia. I was asked to provide input concerning the role of the administrative law judge and how decisions are made.

Basically, the ALJ is the third layer in the administrative process which a claimant must go through in order to apply for Social Security disability benefits. Additionally, it's the only level where the claimant has a right to a due process evidentiary hearing in order to present his or her case.

The ALJ will conduct an evidentiary hearing wherein the claimant has certain due process rights to present evidence on his or her behalf, to cross-examine expert witnesses, to appeal an adverse decision, and to obtain counsel, as well as experts to assist in the presentation of his or her case. Due process involves giving the claimant every opportunity to prove his or her entitlement to benefits and perhaps to help him or her obtain evidence helpful in their case, if unrepresented.

On the ALJ's part, due process involves being open minded until the evidentiary hearing and the record are closed. After the hearing is closed, the record is closed, the ALJ must make a written decision as to the claimant's entitlement to benefits or whether he or she should be denied. In so doing, the ALJ has help from clerical staff, paralegal and attorney writers, medical experts, and vocational experts. The ALJ must consider the facts of each case, the applicable agency regulations, and of course the applicable law. One's experience is also helpful in making an informed decision.

A decision adverse to the claimant may be reviewed by the Appeals Council in Falls Church, Virginia. A decision adverse to the claimant that is affirmed by the Appeals Council may be appealed, too, and reviewed by the claimant's geographical Federal district court. If adverse again, the decision may be reviewed by the pertinent Federal appeals court.

Although most appeals stop here, it's possible that the United States Supreme Court may review the adverse decision. And of course there's no restriction on a claimant filing again for benefits and going through the process again.

In my case, I prefer to review a case assigned to me as early as possible in the process. This allows me to identify the issues in the case and make notes, both written and mental, to determine what is needed to complete the record and to determine the need for experts, such as medical, psychological, or vocational. I make a point to stay balanced and keep an open mind on each case until it's closed and ready for a decision.

In making a decision as to disability, the Social Security ALJ must always use the sequential evaluation process as defined by Social Security regulations. This process involves a logical way of thinking for the ALJ who must make a decision as to disability. And the sequential evaluation process includes five steps.

The first step is referred to as what we refer to as substantial gainful activity. Is the claimant engaging in substantial gainful activity? If the claimant is engaging in SGA, this is an automatic denial, and the process stops there. If the claimant is not engaging in SGA, the ALJ will then go on to step two. As to what constitutes SGA, it is a level which is changed every year.

Second step involves determining whether the claimant has a, quote/unquote, "severe impairment." A severe impairment is by definition one that has significant impact on one's life and which decreases a person's RFC or MRFC to perform SGA. If the claimant does not have a severe impairment, the claimant is found to be not disabled and the process stops there.

If, however, a severe impairment is found, then the process goes to step three. Studies have shown, of course, that not a lot of claims are denied at this step. Step three involves a finding of whether the claimant's impairment or impairments meet one of our listed impairments in the CFRs, or whether the impairment/impairments in combination would equal any of our listed impairments.

An ALJ may decide whether there is a meeting of a listing. Often, though, listed impairments are those medical or mental conditions deemed to be so bad by experts that those conditions meet the severity would be considered to be totally disabled and unable to work.

If the claimant meets or equals the listing, the claimant is found disabled and the process stops there. If the claimant does not meet or equal the listings, the process goes to step 4.

Step 4 involves whether a claimant can return to past relevant work, or PRW, as we call it. In other words, if a claimant's impairment is such that he or she can return to past relevant work, the claimant is denied benefits and the process stops there. If, however, a claimant's impairments are such that he or she is precluded from being able to perform past relevant work, then the process continues to step 5.

Step 5 involves whether there is any other work which exists in significant numbers which the claimant can do despite his or her limitations. At this step, if the claimant cannot do past relevant work, the burden shifts, at step 5, shifts to the Commissioner to show that there are jobs that exist in significant numbers which the claimant can do despite his or her impairments.

In its decision, the Fourth Circuit, of which West Virginia is part, has stated that vocational experts are necessary at step 5. I don't know about any other location, but if we're going to deny one at step 5 in West Virginia, we need a vocational witness at step 5.

A hypothetical question to the VE will include all the claimant's limitations and impairments. If the VE finds no jobs, the process is complete and the claimant is found disabled at step 5. If the VE finds there are jobs which the claimant can do based upon his or

her limitations, the VE will state what those jobs are, what the number of those jobs are in the national economy, and whether his or her testimony on those jobs is consistent with the Dictionary of Occupational Titles.

The claimant's counsel is permitted to cross-examine the VE. If there are no jobs available and if the ALJ agrees with the vocational witness, the claimant is found not disabled at step 5. By regulation, the sequential evaluation process must be used in all cases involving disability.

Certain cases can be decided at step 5 using our vocational rules, our so-called Grid Rules, which I'm sure the committee is aware of. Grid Rules are rules set forth in the CFRs wherein if a claim is limited to a certain RFC, have had a certain set of skills during their life, or are of a certain age, then the particular Grid Rule will dictate a finding of disabled.

Mr. LANKFORD. Mr. Taylor, can you wrap up this part of it fairly quickly?

Judge TAYLOR. With regard to my own bio, as humble as it is, I was born and raised in Wheeling, Ohio County, West Virginia, ranking second in my high school class. I went to West Virginia University, there graduating as an honor student. I received an academic scholarship to attend the George Washington University here in Washington, D.C. I spent a year in D.C. studying here. I got a master's. In between serving 5 years as a military officer, I was able to earn my law degree from the law school at West Virginia University and my doctorate of philosophy degree from the graduate school at West Virginia University.

I've always been a person driven to work, with very few hobbies except those of my children. My dedication and attention has always been on my workdays, nights, and even weekends. I enjoy work. Even though I have always felt the need to work, I have never failed to include my family time in my thoughts and efforts. People would call me a workaholic.

I believe this need to work came from the times in which I was raised. At the end of World War II, Americans knew that if they wanted to make something of their lives they had to work hard, get an education, and above all be a loyal American. This is how I was raised and this is how I live.

I would like to make a note that when I was in private law practice, my background was in medical legal issues. I was largely involved in personal injury, workers' compensation, Social Security. And I have completed certain continuing education classes in those issues and have completed two 6-week classes in medical terminology.

Mr. LANKFORD. Thank you, Mr. Taylor.

[Prepared statement of Judge Taylor follows:]

The federal administrative law judge (ALJ) is the third layer in the administrative process a claimant must go through in order to apply for social security disability benefits; additionally, it is the only level where the claimant has a right to a due process evidentiary hearing in order to present his or her case.

The ALJ will conduct an evidentiary hearing wherein the claimant has due process rights to present evidence on his or her behalf, to cross examine expert witnesses, to appeal an adverse decision, and to obtain counsel as well as experts to assist in the presentation of his or her case. "Due process" involves giving the claimant every opportunity to prove his or her entitlement to benefits, and perhaps, to help him or her to obtain evidence helpful in their case if unrepresented. On the ALJ's part, due process involves being open minded until the evidentiary hearing and the record are closed.

After the hearing is closed and the record is closed, the ALJ must make a written decision as to the claimant's entitlement to benefits or whether he or she should be denied. In so doing the ALJ has help from clerical staff, paralegal and attorney writers, medical experts, and vocational experts. The ALJ must consider the facts of each case, the applicable agency regulations, and the applicable law. One's experience is also helpful in making an informed decision.

A decision adverse to the claimant may be reviewed by the Appeals Council in Falls Church, VA. A decision adverse to the claimant that is affirmed by the Appeals Council may be appealed to, and reviewed by the claimant's geographical federal district court. If adverse again, the decision may be reviewed by the pertinent federal appeals court. Although most appeals stop here, it is possible that the United States Supreme Court will review the adverse decision. There is no restriction on a claimant filing again for benefits and going through the process again.

In my case, I prefer to review a case assigned to me as early in the process as possible. This allows me to identify the issues in the case and make notes both written and mental to determine what is needed to complete the record and determine the need for experts such as medical, psychological, or vocational.

I make a point to stay balanced and keep an open mind on each case until it is closed and ready for decision.

In making a decision as to disability, the social security ALJ must always use the Sequential Evaluation Process as defined by social security regulations. This process provides a logical way of thinking for the ALJ who must make decisions as to disability. The Sequential Evaluation Process includes five (5) steps.

The first step is referred to as Substantial Gainful Activity (SGA). Is the claimant engaging in Substantiated Gainful Activity? If the claimant is engaging in SGA, this is an automatic denial, and the process stops there. If the claimant is not engaging in SGA, the ALJ will go on to Step 2.

Step 2 involves determining whether the claimant has a "severe" impairment. A severe impairment – by definition – is one that has significant impact on one's life and which decreases a person's RFC or MRFC to perform SGA. If the claimant does not have a "severe" impairment, the claimant is found to not be disabled and the process stops here. If a "severe" impairment is found then the process goes to Step 3. Studies have shown that not a lot of claims are denied at this step.

Step 3 involves a finding of whether a claimant's impairment or impairments meet one of our own listed impairments in the CFR, or whether the impairment/impairments in combination would equal any of our listed impairments. An ALJ may decide whether there is a meeting of a listing. Often listed impairments are those medical or mental conditions deemed to be so bad

By experts that those conditions meet the severity of the listings would be considered to be totally disabled and unable to work. If a claimant meets or

equals the listings, the claimant is found disabled, and the process stops here. If a claimant does not meet or equal the listings the process continues to Step 4.

Step 4 involves whether a claimant can return to past relevant work (PRW). In other words, if a claimant's impairment is such that he or she can return to PRW, the claimant is denied benefits, and the process stops here. If, however, a claimant's impairments are such that he or she is precluded from being able to perform PRW, then, the process continues to step 5.

Step 5 involves whether there is any other work which exists in significant numbers which the claimant can do despite his or her limitations. At this step, if the claimant cannot do PRW, the burden at Step 5 shifts to the Commissioner to show that there are jobs that exist in significant numbers which the claimant can do despite his or her impairments. In it's decision , the 4th Circuit (of which WV is a part) has stated that Vocational Experts are necessary at Step 5. In a hypothetical question which the ALJ asks a VE, the expert will state that there are or are not jobs which the claimant can do despite his limitations. The hypothetical question to the VE will include all the claimant's impairments. If the VE finds no jobs, the process is complete and the claimant is found disabled at Step 5. If the VE finds that there are jobs which the claimant can do based on his or her limitations, the VE will state what those jobs are, what the number of those jobs are in the national economy, and whether his or her testimony on the jobs is consistent with the Dictionary of Occupational Titles (DOT). Claimant's counsel is permitted to cross-examine the VE. If there are no jobs available and if the ALJ agrees with the VE, the claimant is found not disabled at Step 5.

By Regulation, the Sequential Evaluation Process must be used in all disability cases.

Certain cases may be decided at Step 5 using our Grid Rules. Grid Rules are rules set forth in the CFR's wherein if a claimant is limited to a certain RFC, have had a certain set of skills during their life, and are of a certain age, the particular grid rule will dictate a finding of disabled. If applicable the Grid Rule usually kicks in at age 491/2.

In addition to the foregoing and the parts of the case, the ALJ may also use agency regulations and federal court decisions to assist him or her in deciding a case. The 4th Circuit has some very good decisions about analyzing pain, applying the hearing physician rule, and about analyzing evidence.

I was born and raised in Wheeling, Ohio County, WV. Ranking second in my high school class I went on to West Virginia University and there graduating as an honor student. I received an academic scholarship to attend The George Washington University in Washington, DC, receiving a Masters Degree. In between serving five years as a military officer I was able to earn my Law Degree from the Law School at West Virginia University and Doctorate of Philosophy from the West Virginia University Graduate School. I practiced law in the state of WV for several years prior to becoming an ALJ. I have always been a person driven to work. With very few hobbies except those of my children, my dedication and attention has always been on my work days, nights, and even weekends. Even though I have always felt the need to work, I have never failed to include my family time in my thoughts and efforts.

It is said that I am a "workacholic". I believe that this need to work come from the times in which I was raised. At the end of World War II Americans knew that if they wanted to make something of their lives that they had to get work hard, get an education, and be a loyal American. That is how I was raised and that is how I have lived.

Harry C. Taylor, ALJ Charleston Hearing Office Social Security

Mr. LANKFORD. Before we move on, we are obviously well aware that we have some storms in the area. There is flooding and everything else that is happening. Someone's phone is notifying them frequently. If that happens to be yours, if you could try to silence that as quick as you can when that goes off so that we do not enjoy the reminder every few seconds here that we are having storms in the area.

Mr. Bridges, you're recognized.

STATEMENT OF CHARLES BRIDGES

Judge BRIDGES. Good morning, members of the U.S. House of Representatives Committee on Oversight and Government Reform.

My name is Charles Bridges. I am an administrative law judge for the Social Security Administration, Office of Disability and Review, located in Harrisburg, Pennsylvania.

I want to start off by saying a hearing before the ALJ is de novo and impartial. This is required by the Federal Administrative Procedures Act, known as the APA. The ALJ has been granted independence to render decisions under the APA without agency interference and a decision is issued in his own signature on behalf of the Commissioner of SSA.

This hearing is not, however, adversarial. The ALJ considers the full record, has access to medical, vocational, and psychological experts, as well as treating sources and any other sources he or she may deem necessary in order to render informed decisions. More importantly, the judge is given an opportunity to observe the demeanor and candor of witnesses and make credibility assessments.

The decisions of the ALJs at this level are appealable to the SSA Appeals Council. The decision may be appealed directly to the United States District Court. The Appeals Council renders a post-decision review of a judge's decision. I have been recently reviewed with no adverse findings.

At the hearing at the office level the HOCALJ is responsible for supervising and distribution of disability appeals cases to subordinate judges. However, HOCALJs do not physically perform this function. Since the electronic age, cases are distributed rotationally as far as practical by lower management officials called GS's. The GS's distribute those cases. There are exceptions to this process. The exceptions are factors that involve terminal illnesses of a claimant, military personnel injured in Active Duty, and also claimants who have dire need.

The Group Supervisors are also responsible for the match-up, assembly, collection, organization, and preparation of the claimant's file for the judge to hear. This is called working up a file.

Recently, I was referenced in a Harrisburg, Pennsylvania, CBS local affiliate television station which reported waste, fraud, and abuse in government. This report came inaccurate, false, and misleading numbers concerning my record as a judge and misconceptions concerning the Social Security disability and supplemental insurance program.

I have been specifically mentioned in prior testimony before this committee by employees of the Social Security Administration. This Harrisburg CBS affiliate reported a figure of $4.6 billion dollars of taxpayers' money—how erroneous a statement was that—and was

contributed to my record. The numbers were not verifiable, factually inaccurate, in my opinion an unfortunate example of irresponsible and sensationalist journalism.

Further, significant points I wish to make, emphasize here, that at the conclusion of the Inspector General report in August 2008, pursuant to request of Honorable Michael R. McNulty, House of Representatives, Chairman, Subcommittee on Social Security, Committee Ways and Means, concerning "Administrative Law Judge and Hearing Office Performance," called as Congressional Response Report #A–O7–O8–28094, which was dated August 8, 2008. That report provided significant review of the roles of the poor performance of administrative law judges with SSA. The central problem addressed by this Congressional report was to reduce the backlog of SSA cases. Congressional Report #A–07–08–29094 concluded in its executive summary the following things. SSA was facing the highest number of pending cases, highest average of cases of processing time, ever since the inception of the disability program. As of April of 2008, there were over 755,000 cases awaiting decisions at the hearing levels. Furthermore, in fiscal 2008, ALJ processing time averaged 505 days in April 2008. While the average number of cases processed for ALJ has increased from fiscal year 2005 to fiscal year 2007, some ALJs continue to process cases at levels below agency expectations to increase ALJ productivity.

Congressional Report, I repeat, #A–07–08–29094 further concluded: Our interviews disclosed that ALJs have varying levels of productivity due to factors such as motivation, number one, and work ethic. In fact, our interviews with RCALJs, regional chief administrative law judges, disclosed that motivation, number one, and work ethic were one of the main factors that contributed to higher or lower productivity of ALJs.

The reference of the 2008 congressional response report is supportive of two essential points that I want to make here today. The first point is there are many factors affecting the productivity of SSA administrative judges. However, the 2008 congressional report cited motivation and work ethic as the main factors in this area.

A highly productive judge would necessarily have more cases on which a sample may be taken. I have been a highly productive judge in the Social Security Administration because of my motivation and work ethic. According to statistics produced by administrative law judges and hearing office performance audit of 2007 of the Harrisburg, Pennsylvania, office, under supervision myself, we had an average processing time of 265 days. This processing time was the best SSA time in the United States. And, in fact, this fact placed the Harrisburg office as one of the most well run offices during my tenure at HOCALJ.

The second point I wish to make, it is clearly misleading and factually inaccurate to suggest that there is or should be a numerical basis on which to compare administrative law judges on their outcomes on the adjudication and the disposition of Social Security appeals. When the public hears statements that a judge approves X percentage of cases assigned to him or reverses a denial of benefits X percent of the time, these figures are misleading to the public. They are simply contrary to the law, in violation of the Federal Administrative Procedures Act and United States Constitution for an

administrative law judge to make an adjudication of the entitlement to Social Security benefits on the basis of any factors that are outside the record of that particular case.

As noted, judges apply the facts to the law and the record before him or her and concludes whether or not that claimant meets the legal requirements of disability. Any judge who considers factors outside the record of that case would commit, in my opinion, a gross violation of the rights of that claimant. When any person uses a numerical figure which to compare judges and the outcomes, that suggests an impermissible and unlawful use of quotas, q-u-o-t-a-s, quotas.

In conclusion, after the claimant is successful in receiving an award of benefits, there is a process in place and funded for a post-audit review to determine if those conditions resulted in award still exist. It was apparent that post-audit reviews were not being conducted. That is an issue not of the ALJ's concern. That is agency issue and a powers—a separation of powers issue to be concerned with that.

That's why a preposterous figure of $4.6 billion was tossed out in my particular case because there evidently and could not have been any post-audit reviews. Because if you consider one's lifetime, starting about 25 to go up to about 80, and figuring some figure, I don't know how it could be determined $300,000, this is preposterous. We hear no cases, set of cases that has these kind of specific parameters. There are too many changed circumstances by which we cannot make a determination that no one fits that particular parameter at all.

And all I can say is that those two factors come into place, work ethic and motivation. Without those—those are the driving factors. And that was found by this Congress—not this Congress, but a previous Congress in their report. And this was what they said was the factors that are motivating the judges to do what they do.

And I have been reviewed. And the APA gives the administrative law judge the independence, the independence to make those decisions. That's why we see those disparity. But, evidently, the Congress decided when it passed the APA that we would have these disparities, that those disparities was not outweighed by the public good of providing good service to the public—to the public.

Thank you, distinguished committee, for your time and my testimony.

Mr. LANKFORD. Thank you, Mr. Bridges.

[Prepared statement of Judge Bridges follows:]

Testimony Before The U. S. House of Representatives Committee on Oversight and Government Reform
June 10, 2014

PREPARED TESTIMONY OF CHARLES BRIDGES

GOOD MORNING, MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM.

My name is Charles Bridges. I am an Administrative Law Judge with the Social Security Administration, Office of Disability Adjudication and Review. I am an Administrative Law Judge with the Social Security Administration, Office of Disability Adjudication and Review. I am employed in this capacity in the Harrisburg, Pennsylvania office.

I have served in the capacity of Administrative Law Judge since on or about June 4, 2010. Prior to my service as an administrative law judge, I was Hearing Office Chief Administrative Law Judge (HOCALJ) for the Harrisburg, Pennsylvania office. I served as HOCALJ for the Harrisburg, Pennsylvania office from May, 2004 until June 4, 2010.

Before serving in the Harrisburg, Pennsylvania office, I was Chief Judge for the Office of Disability Adjudication and Review office in Hartford, Connecticut from 2002 until 2004. I started my career with the Social Security Administration as administrative law judge in the Hattiesburg, Mississippi office.

I am a native of Baltimore, Maryland, having graduated from Baltimore City College High School (with honors). I attended Morgan State University on scholarship and graduated with a degree in Chemistry.

I am a veteran whose military career includes service in Vietnam as a First Lieutenant in the U. S. Army. I also served in the Gulf War with the 24th Infantry Division (Rapid Deployment Force). My active and reserve service in the military includes numerous awards and decorations which I refer to in more detail in my Biographical Sketch that is attached to my Testimony. My last rank was that of Lt. Colonel.

After military service I attended law school at the Cleveland State University, Cleveland, Ohio, and received my Juris Doctorate. I continued with my education and have attained a Master's Degree and Doctorate in Theology from the Andersonville Theological Seminary, Camilla Georgia.

I wish to provide the following, two caveats to my Testimony presented today:

First, the views expressed in this Testimony are mine, in my personal capacity as a private citizen. In this Testimony, I do not represent the views of the Social Security Administration or the United States Government. I am not acting as an agent or representative of the Social Security Administration or the United States Government in this activity. There is no express or implied endorsement of my view or activities by either the Social Security Administration or the United States Government.

Second, I wish to disclose that I am currently involved in litigation concerning my employment with the Social Security Administration. See Bridges v. Astrue, *et al.*, Civil Action No. CV-2316 (E. D. Pa. 2012); also Bridges v. Astrue, *et al.*, Appeal No. 14-1580 (3rd Cir.

2014). My Testimony will not deal with and I will not comment upon any issues or matters that are involved in this litigation.

The Office of Disability Adjudication and Review

As the Committee may know, the Social Security Administration, Office of Disability Adjudication and Review (ODAR) is established pursuant to the Social Security Act to adjudicate entitlement to Social Security disability and supplemental income benefits when claimants who have been denied these benefits by a local office decision elect to appeal that denial.

The decision-making process for a grant of social security benefits begins at the field office level. A claimant files an application at a Social Security local field office. An employee in the local office determines if the applicant meets the non-medical requirements for benefits (age, work credits, relationship to the insured worker, etc.). If the non-medical requirements are met, the application is sent to the Disability Determination Services (DDS) for medical review, or transferred to the office in the state where the applicant resides. This office, upon receipt of a recommendation from the DDS, makes an initial decision whether an individual is disabled or, otherwise, eligible for benefits under the Social Security law. 42 U. S. C. §§ 416;423.

If the claimant is denied, he/she may, with limited exceptions, appeal this denial to ODAR. Each claimant who elects to appeal a denial is entitled to a hearing before an administrative law judge. This hearing must be *de novo* and impartial. At this hearing, the judge is required to make a decision, based on the record established before him/her, as to whether the claimant meets the requirements of the Social Security law for receipt of benefits, and the level of benefits. See 42 U. S. C. §§ 201, *et seq.*

The record on which the judge must base his/her decision consists of medical evidence concerning the claimant and the work history (previous jobs held) of the claimant. At the hearing, the judge is given the opportunity to observe the demeanor of the claimant, and make an assessment regarding the truthfulness and candor of the claimant. The information before the judge commonly includes medical reports wherein experts make recommendations as to whether the claimant has a physical or a mental impairment that prevents this individual from engaging in substantial gainful activity in the workplace.

The medical reports may be reports of the claimant's treating physician, or of a medical expert specifically retained for the case. Also, the testimonies of vocational and medical experts are available at the hearing.

The hearing before the Social Security administrative law judge is the first opportunity for the claimant to confront any adverse considerations involved in the field office's conclusion to deny benefits. The ODAR hearing is where the first open "due process" occurs.

Administrative Law Judges Operate in a Quasi-Judicial Capacity

Social Security Administration administrative law judges, by law, act in a quasi-judicial role to schedule hearings at which they receive evidence, evaluate testimony, apply the law, and issue a decision.

A judge is required by the federal Administrative Procedures Act (APA), 5 U. S. C. §§ 554; 556; 557; also 5 U. S. C. § 3105; 5 C. F. R. §§ 930.201-930.211, to exercise complete

independence in his/her review and adjudication of a case. See Butz v. Economou, 438 U. S. 478 (1978).

After the administrative law judge issues a decision, a claimant may seek review of this decision by the Social Security's Appeals Council. The Appeals Council may also engage in selected, post-decision review of a judge's decision. I have recently been the subject of such a review of my decisions with no adverse findings concerning my decisions.

A denied claimant may also seek federal court review before a United States district court. 42 U. S. C. § 405(g); See Brownawell v. Comm. Social Security, 554 F.3d 352 (3rd Cir. 2008); also Truglio v. Astrue, Civil Action No. 4:10-CV-2129 (M. D. Pa. 2011); 2011 U.S. Dist. LEXIS 129462.

When a decision of the Social Security Administration is appealed to federal court, that court will exercise plenary review of any legal issues that are raised. Findings of fact in the decision are reviewed by the court as to whether they are supported by substantial evidence.

At the ODAR office, the HOCALJ has overall managerial oversight and responsibility for the performance of that office. While the HOCALJ has managerial oversight responsibility for supervising the distribution of appeal cases to subordinate judges, the HOCALJ, and the judges themselves, are removed from the mechanical and physical performance of this function. The process by which judges receive cases for their adjudication is implemented through case intake technician personnel.

Since the electronic age, cases are distributed rotationally and electronically, as far as practicable, by support management officials called "Group Supervisors" (GS). Non-electronic cases are rotationally distributed, as far as practicable, by Case Intake Technicians (CITs) based on managerial directives.

The primary objective of case assignment is to assign cases to judges on a "first-in, first out basis." There are, however, exceptions to this process. Exceptions are based on factors such as a terminal illness of a claimant, military personnel injured in active duty, or claimants who are in "dire need." Cases of these categories may take priority in assignment.

The Group Supervisors have the primary responsibility for the match-up, assembly, collection, organization, and preparation of the claimant's file for the judge to hear. This process is generically called, the "working up" of the case or, preparation of the case for the scheduling of hearings with a judge.

Administrative Law Judges submit requests for cases to be assigned to him/her on a form - "Optional Form 67," subject to HOCALJ approval. Cases are assigned to group ALJs by the GS staff based on the scheduling calendars received from the HOCALJ.

There have been recent, managerial directives to limit the amount of cases assigned to administrative law judges. Currently, and according to managerial directives, judges are limited to 840 cases per year, or, 70 cases per month.

Comparison of Cases Among Judges is Misleading and Contrary to Law Recently, a

Harrisburg, Pennsylvania CBS affiliated local television station aired a report which referenced me and in so doing cited several factually inaccurate numbers that the report

associated with my record as a judge.1 I have also been specifically mentioned in prior testimony before this Committee by employees of the Social Security Administration.

The Harrisburg CBS affiliate report has cited a figure of $4.6 billion in, "taxpayer money," that is attributed to my record as a judge. The numbers cited in this report are not verifiable, are factually inaccurate and, in my opinion, are an unfortunate example of irresponsible and sensationalist journalism.

As a threshold consideration, the length of time it takes for adjudication of a Social Security appeal has been the subject of recent Congressional inquiry. In August, 2008, the Inspector General, pursuant to the request of the Hon. Michael R. McNulty, House of Representatives and Chairman, Subcommittee on Social Security Committee Ways and Means, issued a report, "Administrative Law Judge and Hearing Office Performance." This report is cited as Congressional Response Report #A-07-08-28094 (August 8, 2008). The report provided a significant qualitative and quantitative review of the Social Security Administration offices' performance and the roles of judges.

The object of the Congressional Response Report #A-07-08-28094 was stated as follows:

> . . . to address the requests of Congressmen Michael R. McNulty and Sam Johnson regarding administrative law judge (ALJ) and hearing office performance. Specifically, the Congressmen requested information on (1) factors that affect ALJ and hearing office performance, (2) Office of Disability Adjudication and Review (ODAR) management tools, and (3) Social Security Administration (SSA) initiatives . . .

Congressional Report #A-07-08-28094, concluded in the Executive Summary, the following:

> SSA is facing the highest number of pending cases and highest average case processing times since the inception of the disability programs. As of April 2008, there were over 755,000 cases awaiting a decision at the hearings level. Further, Fiscal Year (FY) 2008 ALJ processing times averaged 505 days, as of April 2008. While the average number of cases processed per ALJ has increased from FY 2005 to FY 2007, some ALJs continue to process cases at levels below Agency expectations to increase ALJ productivity.

Congressional Report #A-07-08-28094 further concluded: "Our interviews disclosed that ALJs have varying levels of productivity due to factors such as motivation and work ethic. (Emphasis Charles Bridges). In fact, our interviews with RCALJs disclosed that motivation and work ethic were one of the main factors that contributed to higher or lower productivity. (Emphasis supplied) In fact, one RCALJ we interviewed stated a lower producing ALJ was not motivated to process more cases despite oral and written counseling, written directives, and reprimands. . ."

The extensive references to the 2008 Congressional Response Report are supportive of the first point that I present to the Committee:

First:, It is misleading and factually inaccurate to suggest that there is or should be a numerical basis on which to compare administrative law judges in their decisional outcomes in the adjudication and disposition of social security appeals.

The 2008 Congressional Response Report has properly found that motivation and work ethic are some of the main factors that affect the productivity and processing times of judges. A more motivated judge with a high work ethic will likely be a more productive judge concerning the volume of cases that he/she is able to address in any fiscal year. A highly productive judge will, necessarily, have more cases on which a sample may be taken. I have been a highly productive judge in the Social Security Administration because of motivation and work ethic.

According to statistics compiled during an Administrative Law Judge and Hearing Office Performance Audit, for fiscal year 2007, the Harrisburg, Pennsylvania office, under the supervision of myself, while HOCALJ, had an average case processing time of 265 days. This 265 day processing time was the best of any Social Security Administration office in the United States. This fact placed the Harrisburg office among the most well-run in the nation during my tenure as HOCALJ. Processing time for other offices throughout the United States ranged from 291 days for the Midddlesboro, Kentucky office, to 900 days for the Atlanta, Georgia office.

Based on the foregoing, motivation and work ethic are significant factors which may be addressed regarding the productivity of administrative law judges as a basis of comparison.

Second: Apart from the issue of productivity of administrative law judges is the substantive question of decisional outcomes.

It is improper and contrary to the Administrative Procedures Act and the United States Constitution to engage in a comparison of decisional outcomes of judges. See Grant v. Shalala, 989 F.2d 1332 (3rd Cir. 1993), citing, inter alia, United States v. Morgan, 313 U.S. 409 (1941).

It is misleading and factually inaccurate to suggest to this Committee or to the public that there is or should be a numerical basis on which to compare administrative law judges in their decisional outcomes regarding the adjudication and disposition of social security appeals.

When the public hears statements that a judge approves X% of cases assigned to him/her, or reverses a denial of benefits X% of the time, these figures are misleading to the public. They are also contrary to law.

Any judge who renders a decision on a social security appeal and considers any factors outside of the record before that judge would commit, in my opinion, a gross violation of the constitutional rights of the claimant. As the Committee is aware, the Constitution guarantees its citizenry the equal protection of the laws and due process of law. See, generally, Bowen v. New York, 476 U. S. 467 (1986). Consideration of factors outside of the record would violate these rights of the claimant and, invariably, suggests actionable bias on the part of the judge who would engage in such an act.

Under the well-established principles of separation of powers2, the judge's role is to apply the facts to the law in the record before him/her and conclude whether the applicant meets the requirements for disability under the Social Security law.

When any person uses a numerical figure on which to compare judges in their decisional outcomes, this suggests an impermissible and unlawful use of quotas.

CONCLUSION

There are mechanisms in place to insure the integrity of the social benefits provided to United States citizens under Social Security. After a claimant is successful in receiving an award of benefits there is a process in place and funded for a post-award audit and review to determine if the conditions that resulted in the award still exist.

Whether there are additional measures that may be implemented is a political question which is within the province of the Congress. I thank the Subcommittee for the opportunity to present this Testimony.

Date: June 10, 2014 Signed: _____
Charles Bridges

Mr. LANKFORD. Mr. Krafsur.

And by the way, I don't know who still has that phone going off, but if we could identify it somewhere.

Judge BRIDGES. I am the guilty party. I have done something about it.

Mr. LANKFORD. Thank you.

Mr. Krafsur.

STATEMENT OF GERALD I. KRAFSUR

Judge KRAFSUR. Good morning. I am here because of a friendly subpoena kindly issued by this committee. I am here also to report to this committee and the Congress of the United States that SSA, and in particular ODAR, has seriously interfered with my First and Fifth Amendment rights. The SSA has been harassing me with a series of Merit System Protection Board disciplinary complaints, the first of which has been recently dismissed. I will be filing a complaint with the Office of Special Counsel in this matter for retaliation and whistleblowing through my attorney, Charlton R. DeVault.

My name is Gerald I. Krafsur. I am an administrative law judge assigned to the Social Security Administration position in Kingsport, Tennessee, ODAR office.

I want to give you my adult background. I served in United States Army. Thereafter, I graduated from Babson Institute, now known as Babson College, in Wellesley, Massachusetts, in June of 1959, with a bachelor of science degree in business administration.

In May 1962, I received my master's degree in business administration from Wayne State University in Detroit, Michigan, where I assisted faculty in Teaching Management Line and Staff. In 1962, I began my employment with the Ford Division Ford Motor Company, in its Product Planning Office and varied other company activities.

In 1968, I was encouraged by Ford executives to apply for law school. In June 1971, I was awarded a doctorate degree in jurisprudence from Wayne State University. Shortly thereafter, I entered the practice of law, during which I was co-counsel on several major cases, among those Bass v. Spitz in the Wayne County Circuit Court, Detroit, Michigan, and Michael Baden v. Mayor Edward Koch, in the Eastern Federal District in New York.

After 20 years of litigation in the private sector, I was awarded the opportunity to serve as an administrative law judge. On July 18th, 1991, I was officially appointed administrative law judge, the Office of Appeals, Social Security Administration, Department of Health and Human Services, assigned to the OHA office in Detroit, Michigan.

In the mid-1990s, the Social Security Administration Office of Hearings and Appeals, now known as ODAR, directly came under control of SSA. Thereafter, the functions of line and staff began to merge contrary to sound management practice.

I will now describe what was and has always been since July 18, 1991, my constitutional duties as administrative law judge. During ALJ training in July and August of 1991, we were taught what is commonly known as the three hats.

The first hat is my responsibility to perform my constitutional duties, uphold the Constitution of the United States, administer the Federal rules and regulations as they apply to SSA, and administer SSA rules and regulations together with Federal court decisions as they apply to SSA cases and conduct fair and impartial hearings.

Second hat. This hat involves protection of claimants' rights before, during, and after their application for disability benefits. This is performed in a nonadversary formal hearing by matching claimant testimony with medical and vocational testing records presented by representatives and/or individual claimants.

Third hat. To represent the best interests of the Social Security Administration to protect the integrity of the Trust Fund. That hat is why I believe I was originally requested to appear before this committee. SSA has never provided me with evidence of disability that I could personally verify. I am restricted from deposing any and all individuals who generated the records provided me. ODAR hearings are the only forum where one side presents evidence and the other side, namely the SSA, fails to provide the same.

In order to overcome the deficiency, I have requested SSA to perform a series of medical, psychological, and psychiatric tests on various claimants. I realize the cost of this may be expensive. If these functions cannot be completed as described, then SSA should enable me to depose any and all parties who generate any document which is presented to me in the formal hearing. SSA may believe written interrogatories are effective, but any litigator knows cross-examination under oath and live testimony are critical. I believe if I had the authority as outlined, my favorable decisions versus unfavorable as a percentage would be diminished.

Now I would like Congress to investigate the mismanagement and misconduct of SSA officials in authorizing secret job evaluations in violation of the Administrative Procedures Act by conducting what is known as post-effectuation reviews of final decisions. SSA is using this secret process to listen to tapes and analyze decisions in violation of the Privacy Act and the APA. The SSA then uses the information to seek removal of ALJs from service.

Before closing, I have three recommendations. First, ODAR be physically separated from SSA and function independently with a separate budget. Secondly, have all ALJs present and in the future attend the National Judicial College to be taught the three hats. The college would be required to seek input by SSA and other organizations necessary to undertake the task as mandated by Congress and watched over by an independent body. Thirdly, on record reviews by the Appeals Council of favorable decisions should be abolished and replaced by a direct appeal to the appropriate Federal district court prevent SSA from getting a second bite of the apple.

Having heard thousands of disability cases, I have never had any case returned by the Appeals Council because the claimant was not disabled.

In closing, I would like to thank each and every one of you for my kind invitation.

Mr. LANKFORD. Thank you, Mr. Krafsur.

[Prepared statement of Judge Krafsur follows:]

STATEMENT TO BE PRESENTED BY
ADMINISTRATIVE LAW JUDGE, GERALD I. KRAFSUR

Good Morning

I am here because of a friendly Subpoena kindly issued by this committee.

I am also here to report to this committee and the Congress of the United States that SSA and in particularly ODAR has seriously interfered with my First and Fifth Amendments rights. The SSA has been harassing me with series of Merit System Protection Board disciplinary complaints, the first of which has been recently dismissed. I will be filing a complaint with the Office of Special Counsel in this matter for retaliation and whistle blowing though my Attorney Charlton R. DeVault.

My name is Gerald I. Krafsur, I am an United States Administrative Law Judge assigned to the Social Security Administration and positioned at the Kingsport, Tennessee ODAR office.

I want to give you my adult background. I served in the United States Army. Thereafter I graduated from Babson Institute, now known as Babson College in Wellesley, Massachusetts in June of 1959 with a Bachelor of Science Degree in Business Administration.

In May 1962 I received my Masters in Business Administration from Wayne State University in Detroit, Michigan where I assisted faculty in Teaching Management Line and Staff.

In June 1962 I began my employment with the Ford Division Ford Motor Company in its Product Planning Office and varied other company activities.

In 1968 I was encouraged by my Ford Executives to apply for Law School. In June of 1971 I was awarded a Doctor Degree in Juris Prudence from Wayne State University.

Shortly thereafter I entered the practice of law during which I was co-counsel in several major cases among them Bass v. Spitz in Wayne County Circuit Court, Detroit, Michigan and Michael Baden v. Mayor Edward Koch in the

Eastern Federal District Court in New York.

After twenty years of litigation in the private sector, I was awarded the opportunity to serve as an United States Administrative Law Judge. On July 18, 1991 I was officially appointed an United States Administrative Law Judge in the office of hearings and appeals, Social Security Administration, Department of Health and Human Services assigned to the OHA office in Detroit, Michigan.

In the mid-nineties the Social Security Administration office of hearings and appeals, now known as ODAR, directly came under control of SSA.

Thereafter the functions of Line and Staff began to merge contrary to sound management practice.

I will now describe what was and always has been since July 18, 1991 my constitutional duties as an United States Administrative Law Judge.

During ALJ training in July and August 1991 we were taught what is commonly known as the "three hats."

The First Hat

It is my responsibility to perform my constitutional duties, uphold the Constitution of the United States, administer the Federal Rules and Regulations as they apply to SSA and administer SSA rules and regulations together with Federal Court Decisions as they apply to SSA cases and conduct fair and impartial hearings.

The Second Hat

This hat involves the protection of claimants' rights before, during, and after their application for disability benefits. This is performed in non-adversary formal hearing by matching claimant testimony with medical and vocational testing records presented by Representatives and/or individual claimants.

The Third Hat

To represent the best interests of the Social Security Administration to protect the Trust Fund. This hat is why I believe I was originally requested to appear before this committee. SSA has never provided me with evidence of

disability that I could personally verify. I am restricted from deposing any and all individuals who generated the records provided me. ODAR hearings are the only forum where one side presents evidence and the other side, namely the SSA, fails to provide any verifiable evidence.

In order to overcome the deficiency, I have requested that SSA perform a series of Medical, Psychological and Psychiatrist tests on various claimants. I realize the cost of this may be expensive. If these functions cannot be completed as described then SSA should enable ALJs to depose any and/or all parties who generated any document which is to be presented at the formal hearing. SSA may believe written interrogatories are effective but any litigator knows cross-examination under oath and live testimony are critical.

I believe if I had the authority as outlined, my favorable decisions v. unfavorable decisions as a percentage would be diminished.

Now I would like Congress to investigate the mismanagement and misconduct of SSA officials in authorizing secret job evaluations in violation of the Administration Procedures Act by conducting what is known as "post effectuation reviews of final decisions." SSA is using this secret process to listen to hearing tapes and analyze decisions in violation of the Privacy Act and the APA. The SSA then uses the information to seek removal of ALJs from service.

Before closing I have three recommendations. First, ODAR be physically separated from SSA and function independently. Secondly, have all ALJs present and in the future attend the National Judicial College to be taught "the three hats." The College would be required to seek input by SSA and other organizations necessary to undertake the task as mandated by Congress and watched over by an independent body. Thirdly, On Record Reviews by the Appeals Council of favorable decisions should be abolished and replaced by a direct appeal to the appropriate Federal District Court to prevent SSA from "getting a second bite of the apple."

Having heard thousands of disability cases, I have never had any case returned by the Appeals Council because the claimant was not disabled.

Mr. LANKFORD. Mr. Burke.

STATEMENT OF JAMES A. BURKE

Judge BURKE. Mr. Chairman, members of the committee,colleagues, first of all, I want to congratulate my colleagues for their excellent opening statements. I am Judge Jim Burke, from Albuquerque, New Mexico.

First and foremost, I want to object to the fact that we are here following Senator Coburn excoriating a dishonest situation in Huntington, West Virginia. As Mr. Cummings mentioned, it's not right to paint us with the same broad brush following a case like that. If I were in court representing a client behind a terrible case like that, I would get a continuance so it wouldn't spill over on us. So I don't want anybody in this committee putting us together with that situation in Huntington.

My personal background is I was born on Welfare Island in New York City in 1943. My father was James Joseph Burke, he was the son of Irish immigrants. He was killed in action in March of 1945 when my sister and I were babies. My mother, Madeleine Burke, raised us with her hard work, veterans' benefits, and Social Security benefits. So we know how important those benefits are.

I got to go to a municipal college in New York, Hunter College in the Bronx. After I graduated, I went into the Army. I served in the armored division in—the armored brigade in West Berlin. And when I got out, I applied to Hastings College of Law in 1968 and got my law degree in 1972. I graduated with honors, top 10 percent. I wrote a Law Review article about suing the United States Government by individual citizens.

In my practice, I represented people in employment—working people—in employment litigation, workers' compensation, insurance problems, personal injury, and Social Security disability. As part of that representation, I learned the close-up dynamics of the legal practice concerning injuries and disease, including scrutinizing medical records under the pressure of a busy and contentious plaintiffs' practice.

I also learned of the dynamics that illness and injury and mere unemployment have on individuals and their families. That's a breadth of experience that many ALJs don't have. I was appointed in July 2004—next month is my 10-year anniversary—during the Bush Administration. I served in Spokane and now in the Albuquerque office. But I am comfortable in the 10 years of my judgeship and in the 30 years of my practice in quickly and with particularity evaluating claimants' testimony, witness statements, and medical records as my high pressure trial practice trained me for in New Mexico.

Now, we have heard a lot about people getting benefits when they weren't entitled to that. But we see a lot of benefits being denied below, and I am happy to make decisions reversing that process. One egregious case was a gentleman who lost his leg and an eye to a Viet Cong booby trap and was told that he was too fat and if he lost some weight he wouldn't have to take off his artificial leg during the daytime. I was very, very honored to be involved in that case. And that is not fraud, but it certainly does speak to the other side of your concern about the integrity of the program.

I think the other gentlemen have done a very good job of informing you about the Social Security procedure. And I have got a couple of seconds left. I would like to introduce my daughter, Johanna Conroy. She is a 9/11 survivor, and she has been with the Office of Emergency Management and in that area since 9/12. And I am very happy to have her come down from New York to give us some support.

Thank you.

Mr. LANKFORD. Thank you.

[Prepared statement of Judge Burke follows:]

STATEMENT
BY JAMES A. BURKE, UNITED STATES ADMINISTRATIVE LAW JUDGE

House of Representatives of the U.S. Congress
of the United States of America
Committee on Oversight and Government Reform

June 1, 2014

Thank you for inviting me to testify before this committee.

I was born in Metropolitan Hospital, Welfare Island, New York City-now called Roosevelt Island. My father, James Joseph Burke, was the son of Irish immigrants. He was killed in action in Italy in March 1945. My mother, Madeleine, was the daughter of second generation Americans. She was left to raise my sister and me on her hard work supplemented by VA and Social Security.

I passed the test for admittance to Stuyvesant High School. I graduated from Hunter College in the Bronx in 1964.

I entered the Army upon my college graduation and served in West Berlin in the Tank Company until June 1966. Upon discharge, I worked as an insurance claims adjuster in NYC. In dealing with lawyers I discovered an interest in law so I used my G.I. bill to attend Hastings College of Law in San Francisco. I graduated in 1972 in the top 10% of my class, and was on law review.

New Mexico became my home when Supreme Court Justice LaFel Oman hired me as his law clerk. Later I served as first counsel for the newly created New Mexico Organized Crime Prevention Commission.

I worked as a legal aid lawyer in Northern New Mexico until 1980, and the New Mexico Taxation and Revenue for two years. I opened my solo private practice in Santa Fe in 1982.

I represented working people and disabled people in a variety of civil cases, most involving litigation in state, federal or administrative courts. The cases included personal injury, consumer issues, workers compensation, insurance disputes, employment litigation and social security disability.

The practice was not as lucrative as other avenues available to me but I felt honored to represent people from similar economic backgrounds as I had known and to use my legal skills to give back in recognition of what good fortune I had been granted.

As part of that representation I learned up close the dynamics of legal practice concerning injuries and disease, including scrutinizing medical records, examining doctors and witnesses. I also learned the up front dynamics that an illness or injury or mere unemployment can have on individuals and their families.

I was advised to apply for the ALJ position by another ALJ who was a hard nosed Assistant U.S. Attorney with whom I had locked horns frequently–but we both had an honorable mutual respect for each other and for the law. I was appointed ALJ in July 2004 in the Bush Administration .

I have served in Spokane and Albuquerque offices. In the Spokane office from 2004 to 2008, I decided, I believe, over 1,000 cases a year, for the agency was committed at that time to address and confront a backlog of some 600,000 cases. The Spokane staff and the Region 10 chief judge were happy to give me as many cases as I could handle.

When I got to Albuquerque, in Region 6, dockets were limited to 70 cases a month. Recently ALJ's were limited again to 800 a year. The backlog has not disappeared but there is no encouragement to address it.

I am comfortable in seeking and performing more work because after thirty years of private practice, I can evaluate medical records, claimants' testimony, witnesses statements quickly, as my high pressure practice required in order to survive in a highly contentious environment.

Mr. Chairman, I am concerned about Americans who work hard and earn disability coverage. When they become disabled, they wait 3 years to get the coverage they earned. Lives and families are destroyed. I see their medical records and hear their testimony. I am trained to make legal and factual decisions. I am confident that I make the right decisions.

I am concerned about the future, Mr. Chairman, with respect to the backlogs and waiting times–something the VA is belatedly confronted with–with respect to the Iraq and Afghanistan veterans who will be filing for disability

for any manner of physical or psychological impairments–many of which do not surface for years.

I don't want Social Security to become another delayed service agency like the VA, if it has not already.

Respectfully submitted,

James A. Burke
United States Administrative Law Judge

Mr. LANKFORD. And thank you to all of you for being here.

I will try to honor the 5-minute clock time for our questions, make sure that all of us have the opportunity to be able to ask questions today. And then we will have a second round if time permits as well to be able to go through that, and I will try take the lead on that.

Judge Taylor, let me start with this. You did a good outline of the sequential evaluation process on this. I think that some of the questions that we have, because we interact with individuals that met the qualifications for disability, but when we interact with them don't see the same sequential process to be there. Three years ago I had the opportunity to be able to interact with a gentleman at an event. He was very active, he was very involved. He was asking me questions about Social Security. I asked him if he was on Social Security disability. He told me yes. He was about 26 years old. He was very engaged in what was happening that day. And he told me he was on ADHD medication, so he was on Social Security disability for, I assume, for life on that.

So as we interact with individuals like that, the question rises up immediately, how did they not meet the—all these severe impediment, the listings, the past relevant work, any other work that they can do in the economy becomes a challenge for many of us that interact with people as well as individuals that we interact with at home. So the challenge is, as you work through this vocational grid, how much pertinence do you put on this fifth one, they can't do any other work in the economy?

Judge TAYLOR. Every step in the process is important. Most of our cases are ended up being decided at step 5. At least I think back in West Virginia, back in the Fourth Circuit, I think most are.

I remember when I was in private law practice, the first case, the first Social Security case that I ever——

Mr. LANKFORD. By the way, I hate to interrupt you, but keep your answers short because we are going to try to keep to this 5-minute clock.

Judge TAYLOR. Okay. We try to analyze the evidence as best we can. I use my background in medical terminology to try to determine what the doctors are saying. But if you have a claimant who is a young man like you mentioned, he might have diabetes. And if he has diabetes, he might have diabetic retinopathy. If he has diabetic retinopathy, he might be going to Johns Hopkins clinic to get laser treatments for his eyes. If he's getting laser treatments for his eyes, he might be under a 5-pound weight-lifting restriction.

Mr. LANKFORD. Okay. I understand all that, except for my aunt, who has been in a wheelchair for 35 years, who lost her right leg to cancer, who is a diabetic, who is also blind in one eye, has worked as a receptionist for 35 years. She just retired at 69 last year. Excuse me for saying a lady's age out loud. That makes sense in that sense except for the transition to work. The requirement is any other work in the economy. And that is the grand challenge that a lot of us face. And there's a lot of individuals that have capability, they have skills, they have assets to be able to give much to their family and the economy, they seem to be slipping through this.

Mr. Taylor, have you received some awards of excellence over the past couple of years? You have submitted to our staff some of those awards.

Judge TAYLOR. Sir, I did include those. The agency has got to be very careful in doing that. Judges are not supposed to accept awards. We are not supposed to be allowed to work overtime. We are not allowed a lot of things. But on those particular occasions, yes, I got a few letters.

Mr. LANKFORD. It seemed that the letters and awards seemed to be about either processing time or disposition of cases or the number of cases. That seems to be what the agency was affirming, was the number of cases. Was that consistent for you as well?

Judge TAYLOR. Yes, sir.

Mr. LANKFORD. Mr. Bridges, can I ask you a question as well? I went through some of the focused review on some of your cases. As I walked through them, a couple of them popped out to me. This one in particular. This one said, the bench decision check list stated—I'm going to leave the names out on this—filled out an employability assessment form September 2011 advising the claimant was temporarily disabled due to degeneration of his lumbar. However, no such medical opinion evidence or employability assessment form was actually in the record. Neither the ALJ nor the representative asked the claimant any questions regarding his impairments. Rather, the ALJ asked the representative whether the claimant had a gait and had difficulty walking, which the representative answered in the affirmative, and then was actually, that person was found there.

Have you had moments that you have not seen medical evidence in the file, but you have interacted with someone and made a judgment call in medical history, though there was not a medical record in the file?

Judge BRIDGES. Well, it's sometimes difficult to match up, that you may not see it at that particular time, but that evidence constantly flows back and forth. What I think needs to be done is that there needs to be a better system of matching up evidence, the flow of evidence to the file, because many times evidence, particularly with the new electronic age, evidence is not coming till after proceedings or you don't get it before or other times, but sometimes you do get it, you get it in——

Mr. LANKFORD. So let me just ask this because we are about to run out of time. So you don't have all the evidence at the time of the decision-making time, or the time of the actual hearing. How do we actually compel that? Because you don't need to make a decision until you actually have all the evidence to be able to gather that. Or you're making a judgement call on something you don't have medical evidence in front of you.

Judge BRIDGES. Well, sometimes you are—in order to expedite cases, you are—you know that the evidence is there. The attorney cite to the evidence or he will try to get the evidence or I will get the evidence to you.

But what we do many times, it's very difficult because of the fast flowing of information. There needs to be better cutoff times, times set for the receipt of evidence, and that comes into the file.

I can't state specifically as to this case what happened. But the thing is that evidence should be there when I look at it. If it is a bench decision, bench decisions were approved by the Social Security Administration as a way of cutting down the backlog for judicial economy and efficiency and that is done at a hearing. A bench decision means bench. It is a decision that is done over the bench, which you conduct a trial and all the legal requirements are there when you make the decision.

Mr. LANKFORD. Thank you, Mr. Bridges.

Judge BRIDGES. I am saying it must have been there or I can't recall every specific case. But we do look for that particular evidence. And sometimes the reviewing group make mistakes as well.

Mr. LANKFORD. I understand. I understand. I didn't mean to cut you off because I want to pass this on. Just the concern is, is that the people that were before you have made a decision on this. When it came to you at times it seems like some of the medical evidence wasn't there, whatever it may be that was coming is not in a file, and you have a 93 to 95 percent overturn rate. And that is the concern.

Let me pass this on to Mr. Cummings. Recognize Mr. Cummings.

Judge BRIDGES. Well, can I say, I can't say specifically to every case because we hear a lot of cases. But what I am saying is that we do—I do look at the evidence. And I go through—I work very hard and I view the evidence when I do it.

Now, as I said before, the Administrative Procedures Act, each individual case is peculiar to that person. And what we do is we make a very diligent and careful effort to make sure that that person gets due process. We don't put everybody into one category and say that everybody——

Mr. LANKFORD. I understand.

Judge BRIDGES. As I said before, that could be a quota. But we decide that, well, only 30 percent of the people should get disability. Each and every individual is entitled to his own disposition of his case.

Mr. LANKFORD. Sir, I'm going to interrupt you for just a moment because I want to continue to pass this on. We understand that very well. We're just trying to find out today how we are following the process that is stated by SSA.

Judge BRIDGES. Well, I just want——

Mr. LANKFORD. Sir, sir, sir, hold on. You will have plenty of moments to be able to respond. I want to be able to make sure I honor everyone's time on the dais.

Mr. Cummings is recognized.

Mr. CUMMINGS. Mr. Burke, I listened to all the testimony very carefully. And we face a problem here, and I think—I'm asking you because I could—I think I need to ask you this because you came at the end. Do you agree that, I mean, that at some point—we got a problem. We want judges to have independence, which they should have.

But do you agree that at some point questions should arise if procedures are not being properly followed by those judges? Because we want equal protection under the law, we want due process for all people. I mean, are you there?

Judge BURKE. Mr. Cummings?

Mr. CUMMINGS. Yes.

Judge BURKE. Yes.

Mr. CUMMINGS. If you can make your answer as brief as you can. I know it's a tough question.

Judge BURKE. Procedures, as a matter of law and procedures, they can be reviewed by the agency. But the principle of judicial independence which we have under the Administrative Procedure Act and of which I was assured when I left my practice to come to this job is very important.

There are countries south of our border where the society has lost faith in their judges because they are seen to be under the thumb of the government. Now, you might get some bad choices when you hire an ALJ and want to regret it. But it is the best system that we can devise, just like democracy in general. It doesn't always work, but there is nothing better.

If you——

Mr. CUMMINGS. But would you that agree that you have got to have some procedures and those procedures should be followed? I mean, I just was listening to Mr. Bridges and I was just—it sounded like he was saying that there is evidence that may come in later after the hearing that you then might consider. I mean, is that——

Judge BURKE. Sure, yes.

Mr. CUMMINGS. So that happens?

Judge BURKE. Yes.

Mr. CUMMINGS. All right.

Judge Krafsur, I want to thank you for being here. I think you know that you were invited today because you have a record of awarding disability benefits over 90 percent of the time. Have you ever been told by the Social Security Administration the way you make disability determination decisions does not comply with agency policy?

Judge KRAFSUR. Yes.

Mr. CUMMINGS. And what did you—what did they tell you?

Judge KRAFSUR. They just arbitrarily said that. Didn't explain why they disagree with it. They just don't agree with it. And if you see this form here, this is the form that I fill out and review every case before me. It's right here. It has 186 different ailments on it. I have—and you see marked in yellow just——

Mr. CUMMINGS. What is that form?

Judge KRAFSUR. This is a form that I use when I——

Mr. CUMMINGS. This is your personal form?

Judge KRAFSUR. This is a personal form.

Mr. CUMMINGS. Okay. This is not something that was put out by the Social Security Administration?

Judge KRAFSUR. That is correct.

Mr. CUMMINGS. All right. Well, let me go on.

Now, at the present time, you are subject to disciplinary action, are you not?

Judge KRAFSUR. That's correct.

Mr. CUMMINGS. And, Judge, we have an agency's complaint against you, which says this: "Respondent conducts hearings and makes decisions in accordance with his own theories rather than the process required by the agency." Is that true? And do you have your own theories for awarding benefits?

Judge KRAFSUR. No, sir, I don't have that at all.

Mr. CUMMINGS. All right.

Judge KRAFSUR. I use—there is something called diagnosis produces this illness. I use what is known—same thing. I call it cause and effect.

Mr. CUMMINGS. Okay. So you're saying you do follow procedure.

Judge KRAFSUR. Exactly.

Mr. CUMMINGS. Okay. And if you followed the agency—let me ask you this. Let me read again from the complaint. It says that during a hearing in 2011 you said this: "Every certifying nurse assistant I ever had had the same thing you have. They are all female. They are all fibromyalgia, or what I call post-traumatic stress syndrome, 100 percent of them because of what happened as a child."

Did you say that?

Judge KRAFSUR. Well, what basically happens, these people are nervous when they appear before me. So to make them more relaxed, I told them that. - that's my evidence. I have 5,000 or 6,000 women, some of them are CNAs who are before me, every one, fibromyalgia, has been caused by some post-traumatic stress syndrome.

Mr. CUMMINGS. So you went on to say—let me make sure we get the whole picture in here—at another hearing, you said this: "One hundred percent of certified nurse assistants have been abused. Anyone that is a CNA has automatically been abused."

Judge KRAFSUR. No. They took it out of context. And that's the people that appear before me, not everyone in the United States.

Mr. CUMMINGS. But 100 percent of the—you were saying that 100 percent of the certified nurse assistants that have appeared before you——

Judge KRAFSUR. That's correct.

Mr. CUMMINGS. —were abused.

Judge KRAFSUR. That's correct.

Mr. CUMMINGS. You said that.

Judge KRAFSUR. That's correct, because I have evidence to show it. I have testimony in every case I have had when CNAs were there to show what I just got through saying, what you just got through addressing.

Mr. CUMMINGS. Okay. I understand that the agency conducted what is called a focused review of some of your decisions. This was followed by a consultation with you and additional training. Were you instructed to stop using your own theory for determining medical impairments?

Judge KRAFSUR. Not in those exact words.

Mr. CUMMINGS. Yeah. Yeah. Did they tell you to do it differently?

Judge KRAFSUR. No.

Mr. CUMMINGS. They didn't say you could continue to do what you were doing, did they?

Judge KRAFSUR. No, but they——

Mr. CUMMINGS. Then what did they tell you?

Judge KRAFSUR. They basically told me at the time that I couldn't use cause and effect. And I tried to explain to them it wasn't cause and effect, just my terminology to make it simple was diagnosis resulting in ailments. That's all it is. Same thing.

Mr. CUMMINGS. Did you stop applying your theory for determining medical impairment?

Judge KRAFSUR. I never had a theory. It's not my theory.

Mr. CUMMINGS. And—okay.

Judge Burke.

Judge BURKE. Yes, sir?

Mr. CUMMINGS. And then I am finished, Mr. Chairman.

When you have a situation where a person has taken a lot of cases—it sounds like Coburn, Senator Coburn talked about the former head of Social Security kind of pushing cases in, we got to get these cases done—do you think that has an impact on—I mean, what impact did that have?

Mr. Bridges seemed like he thought that it has some type of impact on getting judges to move cases along. And what impact does it have on the decisions, though, and the percentage of decisions?

The thing I am also worried about is the chilling effect that these hearings will have on people who have legitimate problems.

Judge BURKE. Yes.

Mr. CUMMINGS. Go ahead.

Judge BURKE. You are absolutely right, Mr. Cummings. Until 2008, 2009, we were told that there was a backlog of 600,000 people for whom—who had been waiting longer than the tolerant waiting measures of Social Security. We were told to try to address that 600,000 people.

Since 2011 or 2012, Chief Judge Bice advised us that we could only do 800 cases a year. What happened to those 600,000? They are still there. They are still waiting inexcusably long periods of time. In Albuquerque, 3 years between application and hearing is not unusual. And that's not right.

I know you have to try to save the government money, but you should also look to the fact that hiring new—more ALJs with more support staff is one good way of not only addressing that problem, but also helping to support more uniformity in the ALJ corps.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. LANKFORD. Mr. Issa. Sorry. Mr. Mica.

Mr. MICA. He has a bigger nose.

Mr. LANKFORD. Yes.

Mr. MICA. Thank you.

First of all, let me ask a couple of questions in general. I guess you all get the same salary. How much are you earning?

Mr. Taylor?

Judge TAYLOR. I am not sure.

Mr. LANKFORD. Microphone.

Mr. MICA. What's your annual salary?

Judge TAYLOR. I'm sorry. I am not sure what that is right now.

Mr. MICA. Do you know, Mr. Bridges, what your salary is? Annual salary.

Judge BRIDGES. One sixty-five.

Mr. MICA. One sixty-five. About the same—Mr. Krafsur, do you get more because you have been on the bench longer? All the same?

Judge KRAFSUR. All the same.

Mr. MICA. Is it a lifetime appointment?

Judge TAYLOR. Yes.

Mr. MICA. Lifetime appointment.

Judge KRAFSUR. Yes, it is. Until the MSPB reviews our cases and may remove us.

Mr. MICA. Now, you are on suspension, Mr. Krafsur.

Judge KRAFSUR. No, administrative leave.

Mr. MICA. Administrative leave. You getting paid while you're on administrative leave?

Judge KRAFSUR. That's correct.

Mr. MICA. Okay. You're reviewed from time to time. How often? Is everyone reviewed the same? When was your last review, Mr. Taylor, your performance?

Judge TAYLOR. I'm thinking within the last——

Mr. MICA. Focused review. When was that done?

Judge TAYLOR. I'm thinking within the last 2 years, sir.

Mr. MICA. Mr. Bridges?

Judge BRIDGES. What are you talking about?

Mr. MICA. Your focused review.

Judge BRIDGES. Focused review.

Mr. MICA. Yes. When they write you up. I've got some of the copies of——

Judge BRIDGES. Okay. I did receive a focused review in February that is a matter of litigation.

Mr. MICA. Okay. But that was your last one. Yours was about a year and a half, 2 years ago? You get a copy of those when they are issued, right?

Mr. Taylor, did you get one? Do you get to see them?

Judge TAYLOR. I did not.

Mr. MICA. Did you get to see yours, Mr. Bridges?

Judge BRIDGES. I saw it, but I felt it didn't follow due process.

Mr. MICA. And you have challenged that.

Judge BRIDGES. Yes, I did, because I think I violated the Administrative Procedures Act.

Mr. MICA. Mr. Krafsur, when did you have your last review?

Judge KRAFSUR. I never had a review.

Mr. MICA. What?

Judge KRAFSUR. Never had a review.

Mr. MICA. You have never had a focused review?

Mr. LANKFORD. Mr. Krafsur, I'm sorry. Can you turn your microphone on?

Judge KRAFSUR. I never had a review because it's against the Administrative Procedures Act, right, I have a code right here. We're exempt from these reviews.

Mr. MICA. The other two just said they had a review.

Have you had one, Mr. Burke?

Judge BURKE. I had a focused review offered. I did not accept or reject the criticisms. I know the law better than the staff people who did the focused review back in Falls Church.

Mr. MICA. That really would be the only basis for somebody reviewing your performance, would that be correct? I don't know that much about the procedure.

Is that right, Mr. Taylor?

Judge TAYLOR. I think that would be right.

Mr. MICA. And, Mr. Bridges, you agree?

Judge BRIDGES. I disagree. I think that that is illegal act——

Mr. MICA. My question wasn't an evaluation of what kind of an act it was. It would be that is the only review that's conducted of your performance, right? You are not subject to election, you are not——

Judge BRIDGES. We're not——

Mr. MICA. How could you be removed? Impeached?

Judge BRIDGES. We're not subject to review.

Mr. MICA. How can you be removed? Does anyone——

Judge BRIDGES. Through the Administrative Procedures Act. But we're not subject to those kind of reviews.

Mr. MICA. That's what they're going through with Mr. Krafsur.

Judge KRAFSUR. Let me answer this. I can answer this. They have—they accused me, they filed a complaint with the MSPB. They actually have filed three complaints. Two have been dismissed. We are now on the third. We have a chance to answer. We have asked for discovery.

Mr. MICA. But you just told me you didn't have any.

Judge KRAFSUR. I'm talking—if you're talking about the background of my office doing that, no. But if it crossed the secret—the secret one—they do a secret one.

Mr. MICA. Okay. Well, I have copies here of two reviews, your latest, March 7, 2014. Have you seen that?

Judge KRAFSUR. No.

Mr. MICA. Here's another one, November 22, 2011. So you have had these done?

Judge KRAFSUR. I never saw those.

Mr. MICA. And you've never seen these?

Judge KRAFSUR. Correct.

Mr. MICA. Well, again, we're here because it appears that you all have an extraordinary amount of approval of some of these disabilities claims that have previously, either one or two times, been rejected. You have a 99 percent approval rate; is that right, Judge Krafsur?

Judge KRAFSUR. That's correct, and none of them have ever been reversed by the Appeals Council.

Mr. MICA. And, Mr. Bridges, a part of the process, I think, is also you reviewing all the documentation, et cetera. Mr. Bridges, you had an overall allowance rate exceeding 95 percent, and you awarded benefits in cases without holding a hearing 9,000 times—or 7,000 times between 2005 and 2013. Did you want to comment on, again, your 95 percent approval rating overturning these awards?

Judge BRIDGES. My comment is, I don't think that—there are too many variables for that to be acceptable. I would have to know a breakdown of what was considered and what it constitutes. As I said in the congressional——

Mr. MICA. But you didn't hold a hearing 7,000 times——

Judge BRIDGES. I'm not aware of that. And I certainly wasn't counting. What I do is I focus on specifically on the case that I deal with and make it the right decision.

Mr. MICA. But we did, and we have questions about 7,000 times overturning these without holding a hearing.

Judge BRIDGES. I—I——

Mr. MICA. It appears to be——

Judge BRIDGES. I'm not aware of that.

Mr. MICA. Well, that's what this hearing is doing is making the committee and public aware of your performance.

Judge BRIDGES. Well, I'm not—that—I dispute that because I'm not aware of—I was not counting times that we're holding hearings. I was concentrating on the person who I was making a determination of.

Mr. MICA. Thank you, Mr. Chairman.

Mr. LANKFORD. [Presiding.] Ms. Speier.

Ms. SPEIER. Thank you, Mr. Chairman.

Thank you, gentlemen, for appearing today.

Mr. Taylor, let me ask you a few questions. Is it true that on February 20, 2009, while you were presiding over a hearing, you fell asleep?

Judge TAYLOR. No, ma'am.

Mr. LANKFORD. Microphone, please.

Judge TAYLOR. No, ma'am.

Ms. SPEIER. No.

It appears that you were reprimanded by the Chief Administrative Law Judge, Jasper Bede, for sleeping while on duty. Is that true?

Judge TAYLOR. That's been several years ago.

Ms. SPEIER. Well, you were reprimanded?

Judge TAYLOR. Not for that, no, ma'am.

Ms. SPEIER. So I have the hearing transcript here. "Hearing begins at 10:06. At 10:23, attorney is questioning the claimant. During claimant's testimony, snoring is heard in the background."

Judge TAYLOR. Uh-huh.

Ms. SPEIER. "Attorney: I just want to put on the record"—this is at 10:24—"that it appears as though the administrative law judge is sleeping at the moment."

Judge TAYLOR. Uh-huh.

Ms. SPEIER. "No response. The ALJ apparently continues sleeping. Attorney: I think—do you have anything else you need to say because I'd like to call the other witness at this time? Claimant says he has nothing else to say. Attorney then directs claimant to move to another seat and says, I will call Mr. Temple. Approximately 40 to 45 seconds of silence as attorney leaves the room to get witness. ALJ does not speak and is apparently sleeping. No sound is heard until attorney brings witness into the room. 10:25 some banging is heard and sound of someone breathing or sighing. 10:25, Judge, I think we need to swear in a new witness."

Judge TAYLOR. Uh-huh.

Ms. SPEIER. All of that transpired, correct?

Judge TAYLOR. Ma'am, I don't recall the specifics of that hearing.

Ms. SPEIER. All right. You know, it's one on which you've been reprimanded, and there's an action right now to suspend you because of that, and you don't remember it?

Judge TAYLOR. I don't remember that specific date.

Ms. SPEIER. Well, all right. Okay. Let's forget the date.

Judge TAYLOR. Uh-huh.

Ms. SPEIER. Have you ever slept on the job?

Judge TAYLOR. Some years ago with my medication, yes.

Ms. SPEIER. All right. And what kind of medication were you on?

Judge TAYLOR. I was on some—the effects of some medication that I was using to make sure that I got enough sleep at night, and it was keeping me drowsy in the morning.

Ms. SPEIER. Now, on September 13 of 2010, you made a statement to a Charleston head office employee, Richard Triplett, regarding another employee within the Charleston office, Christine Boone, and to the effect you said, Isn't she a looker? Is that correct?

Judge TAYLOR. No, ma'am, I did not.

Ms. SPEIER. You didn't say that? You're under oath. You appreciate that?

Judge TAYLOR. I understand, ma'am, and I do know that.

Ms. SPEIER. On September 13, you made a statement again to employee Richard Triplett about Christine Boone to the effect, Don't worry, she will keep her hands to herself, she's married. You don't recall that either?

Judge TAYLOR. Ma'am, not only do I not recall it, I didn't make it.

Ms. SPEIER. And then on that same date you said again to Mr. Triplett, She's a hot one. And you have no recollection of that either?

Judge TAYLOR. Not only do I have no recollection, I didn't say it.

Ms. SPEIER. And you never made a nonverbal gesture of thumbs up to Mr. Triplett regarding Ms. Boone?

Judge TAYLOR. No, ma'am.

Ms. SPEIER. And you've never used your hands to make a clawing, catlike gesture towards Ms. Boone?

Judge TAYLOR. No, ma'am.

Ms. SPEIER. So everyone is writing falsehoods about you, it appears.

All right. Let's move on. Between 2005 and 2013, you completed more than 8,000 decisions with an average award rate of 93.8 percent. Almost 6,000 of these decisions were on-the-record decisions——

Judge TAYLOR. Uh-huh.

Ms. SPEIER. —decisions in which the judge decides not to hold a hearing. Can you explain the high number on-the-record decisions you've completed? I mean, that's virtually three-quarters of the cases. You don't need to have a hearing?

Judge TAYLOR. Ma'am, in the year 2002——

Ms. SPEIER. I'm not asking about 2002. I'm asking about 2005 to 2013. And let's restrict ourselves to a discussion of those 8,000 decisions and the fact that 6,000 of them were made on the record.

Judge TAYLOR. The first two hearing office chief judges during that period of time approached me about whether I would be willing to take some cases off the docket, look at those cases to determine whether they could be done on the record in order to meet our office productivity goals. I indicated that I would do that.

From that period of time up until last year, I would receive lists of cases from our hearing office staff indicating a particular claimant, indicating a particular Social Security number. I would then review the case to determine whether it could be done on the record.

Ms. SPEIER. But three-quarters of the cases you handled between those dates, three-quarters of them were on the record. You never

had a hearing. I mean, I can't imagine that in three-quarters of the cases coming before you, you don't find compelling evidence or questions that would require a hearing. Because the reason why many ALJs say their relevance is so important is because the first two hearings are done without the benefit of spending any eyeball-to-eyeball time with the claimant, but in three-quarters of your cases, you never sat down with the claimant. You never had a hearing.

Judge TAYLOR. If that's what the statistics show. It's going to depend upon the case—upon the specifics of each case to determine whether it could be done on the record.

Ms. SPEIER. Mr. Chairman, I know my time has expired, but if I could just ask one more question.

On average, how many pages are there in a file for a claimant?

Judge TAYLOR. There are some of them that are quite lengthy; there are some of them that don't have very many pages at all.

Ms. SPEIER. Well, but by the time they get to an ALJ, they've got lots more paper than they had when they were first reviewed by the first Social Security official and then the second Social Security official.

Judge TAYLOR. It's possible.

Ms. SPEIER. It's possible. It's more than possible. It has to be because there's going to be more documentation, correct?

Judge TAYLOR. Yes.

Ms. SPEIER. So give me—are we talking about 300 pages of documents?

Judge TAYLOR. Probably not that many.

Ms. SPEIER. Two hundred?

Judge TAYLOR. Could be.

Ms. SPEIER. So on average, if you're looking through 4 cases a day, that means you're looking through 800 pages a day and doing it in a timely and thorough fashion?

Judge TAYLOR. Yes, ma'am.

Ms. SPEIER. All right. I yield back.

Mr. LANKFORD. Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Judge Krafsur, I'm going to read you a quote, and you tell me whether or not you know who said this, okay?

"A hundred percent of the women at call centers have been abused. It's an atmosphere of abuse. Any time we see a call center person, female, all have been abused." Do you know who said that, Judge?

Judge KRAFSUR. I did, but it was taken out of context.

Mr. LANKFORD. Sir, your microphone. Can you repeat that, sir?

Judge KRAFSUR. Yes.

Mr. GOWDY. Well, you said that was taken out of context. Well, let's put that in context, Judge. Did somebody testify to that at a lower level? Was that in the record?

Judge KRAFSUR. No, sir. That was my experience.

Mr. GOWDY. Did you rely on a learned treatise? You made a point of saying in your opening statement how much respect you pay to the Federal Rules and the Constitution. Was that a learned treatise you relied upon, Judge?

Judge KRAFSUR. That was my experience over 20 years.

Mr. GOWDY. So you made yourself a witness even though the Federal Rules are very clear that judges are not witnesses; is that what your testimony is, Judge?

Judge KRAFSUR. That was my opinion, not——

Mr. GOWDY. "A hundred percent of female employees at call centers have been abused."

Judge KRAFSUR. I didn't say that. A hundred percent of the people that came before me have been abused.

Mr. GOWDY. And you relied on no learned treatise, no testimony at a lower level, just your innate sense of medicine?

Judge KRAFSUR. No. That's been my experience having hearings over 20 years.

Mr. GOWDY. Well, let me ask you about another one of your experiences, Judge. I want to read you another quote and ask you whether or not you recognize who said this, okay?

Judge KRAFSUR. Uh-huh.

Mr. GOWDY. "How did your family discipline you? Did they hit you on the butt? I'm starting to do some analysis. It's starting to be when women are hit at an early age, they start developing problems in their twenties, late teens and twenties. My ex-wife told me about this. There's something in a girl that's a sexual thing. It arouses certain things." Did you say that, Judge?

Judge KRAFSUR. Yes, I did, based upon——

Mr. GOWDY. Did you rely upon a learned treatise in reaching that determination?

Judge KRAFSUR. No, I relied on——

Mr. GOWDY. Did you rely on something at a lower level? A hearing? A witness testified to that?

Judge KRAFSUR. No, I relied on my experience hearing cases over 20 years.

Mr. GOWDY. Judge, I hasten to add, because you made a point of saying in your opening statement that your first responsibility is to the Constitution and the Federal Rules of Evidence, are you aware that judges can't be witnesses? Are you familiar with that, Judge?

Judge KRAFSUR. I don't consider myself a witness.

Mr. GOWDY. You just testified to your own personal experience. If that's not a witness, what is it?

Judge KRAFSUR. That's a personal opinion.

Mr. GOWDY. Judges can't express personal opinions either. That's why we have something called experts.

Judge KRAFSUR. That's why——

Mr. GOWDY. Did an expert testify to that, Judge?

Judge KRAFSUR. That's called a First Amendment right.

Mr. GOWDY. You're considered—so you have a First Amendment right to say whatever the hell you want in a hearing; is that what you're saying?

Judge KRAFSUR. No, sir.

Mr. GOWDY. And you can rely upon that when you're spending taxpayer money?

Judge KRAFSUR. No, sir. But that's an isolated case. You——

Mr. GOWDY. Well, it can't be an isolated case. I just cited two, and my colleagues cited others.

Judge KRAFSUR. Yeah. Yeah, but you're taking isolated cases. I've had——

Mr. GOWDY. Well, let's go a little broader than that, Judge. What is your reversal rate of the hearing officer? Is it in excess of 90 percent?

Judge KRAFSUR. Yes, it's based upon testimony given——

Mr. GOWDY. All right. And it has to be adjudicated twice before it gets to you, right?

Judge KRAFSUR. That's correct.

Mr. GOWDY. And only if it's denied does it get to you. So 90 percent of the time the people under you are wrong.

Judge KRAFSUR. No. I want to be able to cross examine them——

Mr. GOWDY. Well, it has to be or you wouldn't be reversing them. They've denied benefits, Judge, and you've reversed their denial. That means that you're hiring some really dumb people to be hearing officers because they're wrong 90 percent of the time.

Judge KRAFSUR. No, sir. I want to be able to cross examine the people from Social Security——

Mr. GOWDY. I'm glad you mentioned cross examination. I can't tell you how glad I am.

Judge KRAFSUR. Yeah.

Mr. GOWDY. Because in every other court proceeding, there is someone cross examining the witnesses, but it's not a judge. It's an attorney. And that's true in misdemeanor crimes; that's true in felony crimes; that's true in civil cases. So what I think you need, Judge, is I think you need an advocate and an attorney for the taxpayer in the hearing room, because I don't want you cross examining witnesses.

If you really think that paddling a child leads to sexual issues, I don't want you doing the cross examination. And if you really think that 100 percent of CNAs have been abused and 100 percent of females in call centers have been abused, I don't want you doing the cross examination, Judge.

Judge KRAFSUR. Sir, we wear three hats. One hat is a Social Security hat; the other hat is the claimant's hat; the other hat is my—is the Social Security hat.

Mr. GOWDY. Where's the expert witness hat? You just said you were an expert witness.

Judge KRAFSUR. We have an adversary system, and I have the right——

Mr. GOWDY. It's not an adversary system. There's no advocate for the taxpayer that's in the courtroom.

Judge KRAFSUR. We have a nonadversary system, sir. It's a nonadversary system, and I have to wear three hats.

Mr. GOWDY. It can't be too adversarial, or you would not reverse the hearing officer 90 percent of the time. And some of your colleagues, 99 percent of the time they reverse a hearing officer. And we mistakenly, Judge, thought it was because you were eyeballing the witnesses so you could assess credibility, but we learn from your colleague Mr. Taylor that that's not even true. You don't even have a hearing. You just do it on the paper.

Judge KRAFSUR. Sir, it's not eyeballing the witness. I take testimony. I've had here this sheet——

Mr. GOWDY. And who does the cross examination?

Judge KRAFSUR. It has 186 analysts on it.

Mr. GOWDY. And who does—well, that's your document. Mr. Cummings just exposed that that's your document.

Judge KRAFSUR. No, no. I'm—the attorney also provides one for me.

Mr. GOWDY. The attorney for whom?

Judge KRAFSUR. For the claimant.

Mr. GOWDY. That's my point. There is no attorney for the taxpayer.

We're going broke—Mr. Chairman, I know I'm out of time, but I'm going to tell you a story from Spartanburg real quick. I had a judge call me—he's apolitical—and he said, I just sentenced someone for crawling under people's houses and stealing their copper. And he said, what really struck me as being unusual, Trey, is he is 100 percent disabled in the back.

I want you to think about that, Judge, and I want you to think about one other thing, too. I went on a tour of something called a workability center where people with special needs value work enough that they go to work every single day. And there was one man who was confined to a wheelchair, had no use of his hands or legs, but his job was to encourage his fellow employees.

There is inherent value in work, and one reason your backlog may be so big is because it's so damn easy to get benefits.

Judge KRAFSUR. Not for me. Not for me. I hear every case. I see every person that's ever appeared before me. Every one.

Mr. GOWDY. You reversed the hearing officer over 90 percent of the time, Judge. Ninety percent of the time, the person at the first level is wrong in your judgment, and you are citing your own version of medicine, 100 percent of the people are abused, that if you paddle a little girl she's going to wind up with sexual issues, despite the fact it's not in the record, Judge.

Judge KRAFSUR. Well——

Mr. GOWDY. You may be a judge, but you're not God.

Judge KRAFSUR. Let me explain to you, if I had this person in front of me that was down below, I could examine him on behalf of Social Security, and that would allow the claimant's——

Mr. GOWDY. Well, then why don't your colleagues have hearings? Why don't they do it on the paper? If it's that important to eyeball the witness and assess credibility and cross examine, why are you doing it on the paper?

Judge KRAFSUR. That's what I said in my remarks here. We need—we need the ability to be able to have the witnesses who give any comment down below should be up here before me so I can examine them, and they can be cross examined by the——

Mr. GOWDY. I want them being cross examined by an advocate for the taxpayer, Your Honor, with all due respect, not a judge.

Judge KRAFSUR. Well, then you need an adversary system, which we don't have today.

Mr. LANKFORD. Mr. Horsford.

Mr. HORSFORD. Thank you, Mr. Chairman. And I want to first start by saying that I know you and other members of this full committee, we serve on the subcommittee where we've had repeated hearings on this same issue. And while today's hearing is about getting some facts out, I think we need to be careful not to

use the panel that's here before us today as the full representation of the administrative law judges in general, because to do so, I think, would be going against the publications that we have received in prior hearings. The Social Security Administration's publication, the national hearings decisional allowance and denial rates through fiscal year 2013 don't support or align with some of the testimony that we're hearing from a select group of panelists that appears the majority may have intended to only give one perspective of how the system is not working efficiently.

And, Mr. Chairman, as I think I've indicated to you before, one of the reasons I asked to be on this committee is because I think we should be finding ways to reform government and to make it work more efficiently, but for some reason, this committee only focuses on the oversight function, and it never gets to the reform side. Where is the legislation? Where are the proposals to enact the change that's necessary so that we can improve the delivery of services to our constituents? I think ultimately, when I hear from my folks back home in Nevada, that's what they want.

We can sit here and argue back and forth among ourselves. It doesn't fix anything. I think the Veterans Administration is a very clear indication of that.

Mr. LANKFORD. Mr. Horsford, would you yield? We can hold your time.

Sometime when we're offline on that, Ms. Speier and I can get a chance to lay out a whole series of things. We met with Social Security Administration ALJs and others to be able to develop the long list of how we actually reform the system. We've done some of that in hearings and the gathering of our fourth hearing and a lot of it offline as well, and we'd be glad to be able to share that with you, because you're exactly correct; it's not just a matter of exposing the problem, it's about solving it.

I yield back.

Mr. HORSFORD. Thank you, Mr. Chairman. And I respect that, and, again, I know, having served on the subcommittee with you and Ms. Speier as well as the ranking member on other topics, that we all together are concerned with certain aspects. But fundamentally for me, the Social Security Administration is about providing a vital mission to our constituents, and that's not being discussed here today.

What I hear is a perspective by some of my colleagues on the other side who say that every person regardless of disability should be working. Well, that's just not the case, and we need to have a balanced perspective of what this process should really be about.

So I want to ask each of the panel if you would tell me about the training that you receive and whether the training that has been offered by the SSA to address some of the compliance areas, the issues that have been identified, whether that has improved the management flow and focused an area for review based on the training that has been offered. Have each of you gone through training through the SSA, yes or no?

Judge KRAFSUR. Yes.

Judge TAYLOR. Yes.

Mr. HORSFORD. And has that training addressed policy compliance issues?

Judge KRAFSUR. No.

Judge TAYLOR. Yes.

Mr. HORSFORD. You say no?

Judge TAYLOR. Yes.

Mr. LANKFORD. Could the witnesses turn the microphones on to respond?

Judge KRAFSUR. Excuse me, the answer is no. It just trained me to be a writer. To be a writer. I'm an ALJ. I had 6 weeks of training in 2013, and it had to do with how to write a decision, and it wasn't addressed about an ALJ—it wasn't addressed from ALJ, it was how to write a decision——

Mr. HORSFORD. Okay.

Judge KRAFSUR. —to use the FIT program.

Mr. HORSFORD. The rest of you, did each of you attend the required training?

Judge BRIDGES. We attended a required training, but it looks like the regulations need to be updated and modernized. There are too many loopholes and too many—what you have is variable interpretations, and these interpretations are because the regulations are too loose and not focused. We as judges do what we do as judges. We don't make policy, but we have to respond to the policy that's there. For instance, the transferability of skills should have been changed 20 years ago, should have been updated, has not been updated.

I don't think that the solution is the beating up upon judges. If the Social Security wants a different result, then you have to define clearly what it is that you want, and then we can respond to that. We will apply the laws. But the way the laws and regulations are now, they haven't been updated, they're subject to interpretations, and then you have all kinds of repercussions because those rules are not followed. What we——

Mr. HORSFORD. And we've heard that before, that there's too much ambiguity.

Judge BRIDGES. Well, I think that's true. If you've heard that then——

Mr. HORSFORD. Let me ask the last judge at the end if he would respond.

Judge TAYLOR. Yes. I think every year——

Mr. LANKFORD. Mr. Taylor, I'm sorry, can you turn your microphone on?

Judge TAYLOR. I'm sorry about that. I apologize.

Every year the ODAR takes about a third to a fourth of us and gets us all together for about a week of refresher training to try to bring us up to date with regard to new things that are going on, some recent court decisions, and they usually have some people there to talk to us about issues like paying the mental disorders and so forth.

Mr. HORSFORD. Okay. So I'll close, Mr. Chairman, because I know my time has expired. Again, I look forward to us getting to the point where we're actually debating policy and bills to reform what's broken, not bringing a select few of cherry-picked judges to make some type of a political statement about what's broken. We know things are broken, but it's time for us to fix it.

Mr. LANKFORD. Dr. Gosar.

Mr. GOSAR. Thank you very much.

Mr. Bridges, I have to compliment you on your tie. I think we have the same vision of today.

Judge BRIDGES. I think I'm part Irish.

Mr. GOSAR. Mr. Burke, I enjoyed your introductory statements. Would you say that it gives you a bias?

Judge BURKE. No, sir.

Mr. GOSAR. Why not?

Judge BURKE. Because I apply the facts to the law in an unbiased situation. I do have life experience, just like any other person that——

Mr. GOSAR. So you would have to be very careful; would you not?

Judge BURKE. Yes, sir.

Mr. GOSAR. Okay. Mr. Taylor, do you have a medical degree?

Judge TAYLOR. No, sir.

Mr. GOSAR. Can you push the button, please? You're constantly missing that.

Judge TAYLOR. Sorry, sir.

No, I do not have a medical degree.

Mr. GOSAR. So when you go through this, as you said, sequential evaluation——

Judge TAYLOR. Yes, sir.

Mr. GOSAR. —you said always has to happen, right?

Judge TAYLOR. It's mandated by our regulations, yes, sir.

Mr. GOSAR. So all these five steps you take with every single complainant?

Judge TAYLOR. Yes, sir.

Mr. GOSAR. So the majority of people that you see, they've gone through a rigorous background, because most the people that have done visual at the State level, the majority of them are actually included in disability from what the people at the State level see, right? So you're getting the hard of the hard cases.

Judge TAYLOR. That's correct.

Mr. GOSAR. Okay. That's great.

Oh, by the way, I forgot to tell you, I'm a dentist.

Do you understand about diagnosis?

Judge TAYLOR. Yes, sir.

Mr. GOSAR. How do you perform a diagnosis?

Judge TAYLOR. It's where a doctor examines an individual, performs tests on the individual, does some kind of interview.

Mr. GOSAR. Oh, I want to stop you right there. I'm glad you said that, because you said that you're making decisions, and your bench cases, over half of them are that way, that you didn't really look at the medical benefits because, in your opinion, you're making those decisions. So what gave you that right to the degree of medical? I mean, you told me you didn't get a medical degree, did you?

Judge TAYLOR. No, sir, I didn't get a medical degree.

Mr. GOSAR. So, how do you make that assertation without going to an expert witness? I mean, my colleague Mr. Gowdy actually brought this forward with another one of the bench witnesses.

Judge TAYLOR. Uh-huh.

Mr. GOSAR. So why wouldn't you rely on a face-to-face empirically, and number two is ask for expert witness? Because you didn't do that.

Judge TAYLOR. In some cases, that's correct. I didn't.

Mr. GOSAR. How did that—I mean, that's a violation by your own standards here, the five steps of constant evaluation that have to be followed through. You violated right now in your own terms, you violated that rule.

Judge TAYLOR. No, sir.

Mr. GOSAR. Oh, please, share it with us. Please, share us with your diagnosis.

Judge TAYLOR. No, sir, it wasn't my diagnosis. One of the things that we have to work with in the fourth circuit is a so-called treating physician room, and that came forth in a case by the Fourth Circuit Court of Appeals several years ago. I don't have the date for you. But the Commissioner issued an acquiescence ruling, I believe, and the rule says that unless rebutted by credible evidence of record——

Mr. GOSAR. Well, I've got to stop you there because you're getting the hardest of hard cases, and you're rebutting it on your jurisdiction, not with an expert witness. So the people actually on the State level have been doing a visual and have actually seen an eye-to-eye, and you're defying that without an expert witness because you don't have a medical degree.

Mr. Bridges, the review stated that you only consider the opinions of medical experts in 4 percent of your cases. Do you have a medical degree?

Judge BRIDGES. No, and I dispute that.

Mr. GOSAR. You don't like being asked questions, do any of you?

Mr. Taylor, you don't like being cross examined, do you? I mean, I see a hostility all the way across here.

How about you, Mr. Bridges? You don't like answering questions either?

Judge BRIDGES. Yes, I do, but I honestly said I dispute that.

Mr. GOSAR. Okay. Mr. Krafsur, you don't like being cross examined either?

Judge KRAFSUR. It depends where the questions are being——

Mr. GOSAR. Oh, come on, now. I'm a dentist.

Mr. LANKFORD. Can you turn your microphone on, as well, sir?

Judge KRAFSUR. I want to be cross examined providing the questions are fair and impartial.

Mr. GOSAR. How about you, Mr. Burke?

Judge BURKE. I'm happy to answer any questions by members of this committee.

Mr. GOSAR. Do you believe you periodically ought to have calibration?

Judge BURKE. Say again?

Mr. GOSAR. Do you believe that you should have periodic calibration, a kind of renewal to kind of get you back to square one?

Judge BURKE. I think that's reasonable management, too.

Mr. GOSAR. Mr. Krafsur, do you believe that, calibration?

Judge KRAFSUR. Yes. Yes.

Mr. GOSAR. How about you, Mr. Bridges?

Judge BRIDGES. Would you ask the question again?

Mr. GOSAR. Yeah. Do you believe in recalibration; you know, getting together kind of recalibrating?

Judge BRIDGES. I think it's reasonable.

Mr. GOSAR. We're human, right?

Judge BRIDGES. Right. I think that's a reasonable thing to do.

Mr. GOSAR. How about you, Mr. Taylor?

Judge TAYLOR. Yes, I do.

Mr. GOSAR. Do you understand why we're having such a problem here is that the methodical aspects of these cases have gone to the State level, where they actually visually looked at this individual, they compiled the data, and they've rejected it twice looking them in the eye. And yet you, in many cases, and your colleagues don't even look at them and make a bench decision without even making an assertation of the merits. And that's why I was asking about diagnosis, because if you can't look at the patient, you can't see a medical doctor, you can't make a decision. You cannot make a decision.

Judge TAYLOR. Uh-huh.

Mr. GOSAR. And the hearsay that I'm seeing from down the list here is absurd to me. This is problematic. Wouldn't you agree based upon what I've just talked to you about, Mr. Taylor?

Judge TAYLOR. Sir, with all due respect, could I mention something?

Mr. GOSAR. Sure. Keep it brief.

Judge TAYLOR. Certainly. The first two steps in our process are done by something called the State agency. Their regulations are far different from ours. They have different regulations.

Mr. GOSAR. Wait a minute, stop right there, because the majority of these cases of people actually getting on disability actually happen there in the first two steps, because they actually look at the client, they looked at the claimant and saw them personally. Half the time we don't even see that from you, do we?

Judge TAYLOR. Usually in the first two cases, they have reviewed some documentation.

Mr. GOSAR. And they look the person in the eye, right?

Judge TAYLOR. In the case of a consultative——

Mr. GOSAR. So let me ask you a question. So you can actually make a diagnosis without seeing the complainant?

Judge TAYLOR. No, no, I couldn't do that.

Mr. GOSAR. That's my whole point is you're making these decision without even seeing the patient and actually having a credible, medical testimony. I mean, you said—I mean, the gentleman over here, I didn't see you do anything but nod, was in agreement. You hold three hats. Well, part of it is justice. A blindfolded lady—my good friend Mr. Gowdy makes a perfect comment. A blindfolded lady, she doesn't see who she's giving justice to; she's weighing information presented to her. That's the most important thing is justice.

Judge TAYLOR. Uh-huh.

Mr. GOSAR. Okay. Weighing the information. You're not credible as a medical technologist or a physician. You need to have that expert testimony, and not having it is a dereliction of duty.

Number two is not seeing a person and making a claim is despicable about the process particularly of those people down below

at the State level who have actually done service. This is rightful that we are actually exposing this.

I disagree with my colleague Mr. Horsford, because you have to show the problem in order to fix the problem, and this is what exactly is shown. I hope America's watching because it's sad.

I yield back the balance of my time.

Mr. LANKFORD. Ms. Lujan Grisham.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman.

And I agree that this is a critical hearing, and, in fact, we're going to have another hearing this week talking about the staffing shortages. So if we're really going to talk about getting these issues addressed, and we're going to have physicians who are already difficult to see to do the diagnosis, to provide the information, the expert testimony that they're required to have on the initial applications, and have them always be available for in-person hearings on the appeal level, then we better be prepared as a body to put the right resources into the Social Security Administration.

And like every Member here, I certainly want a system that's objective and fair. We want the judges to meet the highest level of professional standards. And as I'm listening to some of the issues that have been identified and to some of the—my colleague Mr. Horsford talk about training, I know there's some peer review here. There probably needs to be much more peer review at the ALJ level as diagnoses and disability issues actually change, given a newer technology and better tools for diagnosis.

So I want to make sure that we're even, too. I want accountability in a system. I want accountability not only from the claimant level, from everybody who's making decisions in the Social Security system, but I also recognize that many of these systems were actually created in reverse, which means that the practice is to deny the benefits up front, and then you hope that the claimants don't have the wherewithal, the ability, the stamina to continue the process.

And State programs, then, are left with significant behavior health issues, homelessness, a whole host of domestic issues that we are trying to figure out how to fund. I can tell you that New Mexico, and given that Mr. Burke, you're from Albuquerque, my district, I know that you're aware that we have one of the most significant disability and behavioral health problems in the country per capita.

Now, I'm not suggesting that every person that applies for Social Security benefits is actually eligible, and that some of those people—maybe we could make it simple and put it in two categories. Some of them mean to defraud the government. Some of them do not mean to defraud the government, but believe their disability is tantamount to an award under Social Security.

But I have plenty of practice with that situation where you are trained to deny up front, because that is one way to manage resources, no question. So I hope at this hearing that we figure out exactly that, accountability in a system for both the individuals working to use Social Security inappropriately; making sure we have accountability in the administration by the judges at all levels; making sure that we have appropriate training, but be very clear about what resources we're going to need, when I think, Mr.

Burke, you testified it takes currently 2 years for someone to be able to get through the process for a potential award.

Is that still your—2 years, did I get that right?

Judge BURKE. Representative, that's about the case in Albuquerque. In northern New Mexico, which is the most depressed part of the State, people wait 3 years on a regular basis.

Ms. LUJAN GRISHAM. All right. And Mr. Burke and anyone else in the panel, given my opening statements—and, again, I'm not trying to diminish any of the accountability issues here—but do you believe that in your experience as a lawyer or judge that the problems with underfunding and understaffing, does that deter legitimate claimants from appealing their cases and receiving benefits?

Judge KRAFSUR. Yes, ma'am.

Ms. LUJAN GRISHAM. Anybody else agree with that statement?

Judge BURKE. Representative, I agree with that statement, but you're talking about training, and your neighbor Representative Mr.——

Ms. LUJAN GRISHAM. Horsford.

Judge BURKE. —and Mr. Lankford mentioned before, and Senator Coburn, trying to get people back to work who have suffered an impairment or a disability. Now, the disability unit that makes these decisions before they get to us is a part of the New Mexico Department of Vocational Rehabilitation. In three States where I've practiced or been a judge, State of Washington, State of Tennessee and New Mexico, I see very, very little activity on the part of the Departments of Vocational Rehabilitation in getting disabled people back to work, and I think it's definitely a question of funding and resources. I do suggest that this committee look toward the question of getting vocational rehabilitation——

Ms. LUJAN GRISHAM. And, Your Honor, I really appreciate that very much, that statement, and I'm running out of time. And I don't mean to be so rude as to interrupt you, but I want to make sure that we focus on and I want to end with a statement on the record about the balances here.

I agree that anybody who wants to work should have the opportunity to work, and given my 30-plus years experience with the disability population, I think most individuals, irrespective of a disability, desire to work. But supportive employment and training programs, and employment access, and those tools and resources are not but almost completely gone; not just diminished, they don't exist in so many States and programs, that includes DVR.

But what I would like to suggest, given the testimony that we've heard today, that we need strong oversight mechanisms. We need to ensure that benefits are not incorrectly approved and not incorrectly denied, and that we have to create a criteria where both those things are achieved. Congress needs to fully invest in reducing the backlog, because right now this program is failing to provide timely service, support and due process to individuals who desperately need it, and I am looking forward to that focus in these hearings as well. Thank you.

I yield back.

Chairman ISSA. [Presiding.] Thank you.

We now go to Mr. DeSantis for 5 minutes.

Mr. DESANTIS. Thank you, Mr. Chairman.

Mr. Krafsur, you, in 2011, when the agency reviewed your decisions, your decisions were found to have consistently failed to provide a substantive evaluation of medical evidence or rationale to support their findings in that when you would evaluate cases—when they evaluated your cases, that the theories that you were using were not in compliance with Social Security Administration regulations.

Now, between 2005 and 2013, while you're rendering decisions which this review said failed to provide a substantive evaluation of medical evidence or rationale to support the findings, nevertheless, during that whole time, your allowance rate was 99 percent. And so that would mean that claimants who come before you, they've been denied twice by and large at the State level, and then almost all of them, 99 percent, you're overruling that without providing substantive justifications.

And so my question to you is if you're overruling the State 99 percent of the time, you're not really evaluating the evidence or providing the justifications, is it just obvious that all these cases are wrong? How is it that 99 percent of the cases at the State level on those two reviews are incorrect?

Judge KRAFSUR. First of all, I'm reviewing all the medical records, not the ones just the DDS happens, because I've seen many times DDS people don't even agree with each other. So I have to take and consider all the records, the ones put in by the representative or the claimant, and take everything as a fact that's put before me. So I review every piece of paper that's medically in front of me.

So I would show——

Mr. DESANTIS. That doesn't mean just because, you know, you read it, they're saying your decisions are not justified in a substantive way. It seems like you're intent to find one way. And I do take a little bit of issue, because I think it was a little misleading when you were in a colloquy with Mr. Gowdy and you said that 99 percent of your decisions have never been reversed on appeal. But isn't it the case that if you award a claimant, if you find for the claimant, then there is no appeal, correct?

Judge KRAFSUR. That is why——

Mr. DESANTIS. Is that correct?

Judge KRAFSUR. Right now, yes.

Mr. DESANTIS. That is correct. So to say that 99 percent of your cases that you haven't been reversed, yeah, because it's a factual impossibility for you to have been reversed. And so I don't understand how you could posit that as some type of justification for your decisionmakings. I mean, it may fool somebody who's not familiar with the system, but those cases are done. As Gowdy said, there's not a taxpayer advocate who then will appeal beyond that.

Now, let me—you mentioned when you were talking with Gowdy, when he asked you about some of the theories that you had been injecting into these cases, you essentially are making yourself a witness, and he called you on that, and your response was that you have a First Amendment right to speak in those cases. And to me that just is a fundamental misunderstanding of the First Amendment. No one is saying that you're going to be prosecuted for say-

ing; the question is is that the correct role of someone in your position to be injecting their own theories?

And I know you have this cause-and-effect theory, and I just want to read this quick snippet. "Claimant said, I worked in a slaughter house wrapping meat. You said, exposed to blood, right? Claimant says, yes. And then you say, I call this the effect, and what we try to do is find the cause. We found the cause today. Once you find a cause, it's easy to pay a case. It's impossible to pay a case if you can't find the cause. My job is to just get enough information to do what I have to do."

So my question to you is is the cause and effect in the reviews that have been done, or other folks, has that been determined to be consistent with Social Security Administration guidelines for adjudicating these cases, or is that a test that you developed yourself?

Judge KRAFSUR. No, that is developed by Social Security. And if you notice my presentation, I said on-the-record reviews by the Appeals Council, a favorable decision should be abolished and replaced by direct appeal to the appropriate Federal court to prevent the SSA from getting the second bite. So if the State should be allowed to take—if they think my case is incorrect, should be sent to Federal court for their review, and if the Federal court deems it incorrect, send it back for another hearing. But SSA gets a second bite from the Appeals Council.

Mr. DESANTIS. Look, Mr. Krafsur, I think we're concerned here. I agree with Dr. Coburn. People are disabled. We want to make sure, we even err on the side of paying too much. But when you see figures like this and taxpayer dollars going out the door without substantive reviews, billions and billions of dollars, it's a tremendous cause for concern.

And I yield back to the chairman.

Judge KRAFSUR. May I interrupt, please, Mr. Chairman?

Chairman ISSA. Yes, please. You can finish your response.

Judge KRAFSUR. I see every one of those people that appear before me. Everyone who appears before me I've seen physically. I've seen their ailments. I've seen their pain, I've seen everything. I don't give on-record decisions. I actually see these people. And I see their pain right in front of me. I can visually see the pain. That—maybe the panel doesn't understand that, but I see the pain. I'm looking at them very carefully to make sure that I see something in their system that's a pain.

I review every case I've ever had, except for the ones that may be on record because they can't appear because of another disability. But I've seen every case since 1991. I've never, never had a case that I gave an on-record decision to.

Chairman ISSA. Would the gentleman yield?

Mr. DESANTIS. Yes.

Chairman ISSA. So you're saying that you award because you see their pain?

Judge KRAFSUR. No, no. It's matched—it's matched with the record. It's matched with the record of the disability that I see from the physicians or from down below. Everyone is matched. It's matched through the attorneys, who give—who take my sheet that lists all the evidence. They give me exhibit numbers, and I match

every one very carefully to make sure that they match what the claimant is testifying to during the hearing.

Chairman ISSA. I'll use my own time in a minute, but it is interesting, and I hope you'll be prepared to answer, why the people beneath you who initially say no are nearly 100 percent wrong, in your opinion. So be prepared to answer that when it comes on my time.

We now go to the gentlelady from Illinois Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

I just wanted to say that the topic of today's hearing is critically important for every American worker. Social Security disability programs provide a modest benefit, $1,140 a month for the average SSDI recipient, and just $537 a month for the average SSI recipient. But these modest payments make all the difference when Americans face a life-changing disability or illness. It's often the difference between making ends meet and facing deep poverty and potential homelessness. It's vital that we make sure this program that workers are paying into each month continues to be there for them when the worst thing happens: They get hurt.

Now, given how important this program is, there's absolutely no excuse for those who seek to defraud or take advantage of it. We can and must redouble our efforts to combat waste, fraud and abuse in the system and make sure that Social Security has the resources it needs to maintain the program integrity.

In reviewing all four of today's witnesses, I notice you all have something in common with each other that makes you different from the typical judge in the Social Security Administration. The typical judge has an allowance rate of 57 percent. We touched on this—my colleagues touched on this a little bit earlier, and I'd like to explore this further.

That's a national average rate with which judges award disability benefits in the cases that they hear. The large majority of the ALJ corps is close to the national rate of 57 percent, but the judges here today have an average rate between 33 and 99 percent.

For each of you, why do you think that all the other judges with allowance rates nearer to 57 percent have such a vastly different performance from you? And remember that, you know, Judge Krafsur, what you said about you see their pain and every one of their pain, that can't be the reason, because you and Judge Taylor have very different approaches. If you see everyone, but he does not see most of his folks, you still have the same allowance rate.

So could each of the four panelists discuss why do you think that your rates are so much higher than the others, and what is it that the other judges are doing that they only have an allowance rate of 57 compared to your 99 percent—93 to 99 percent? Thank you.

Mr. Burke, do you want to start, and we'll just go down the row.

Judge BURKE. I think one factor in that, I think a factor that I think the four of us share, is that we have some experience in personal injury representation, representing injured people, and litigating cases, and being able to, as I say, read medical records, take depositions of medical personnel, and use the fact-finding process that we've learned in adversary situations.

I think many and most of the ALJs coming now have been—worked for government agencies in a relatively—and military—in

a relatively sterile environment that doesn't have that human connection and awareness of the various forces and interest in the various medical people and that sort of thing that we have learned as trial lawyers.

Ms. DUCKWORTH. So you're saying that because you have a history of representing folks, that makes you more apt to give awards more generously?

Judge BURKE. I think—I think it helps your perception, yes.

Ms. DUCKWORTH. Okay. I find that somewhat troublesome, because I think that's a bias that should not be there as a judge.

But, Mr. Krafsur?

Judge KRAFSUR. Yes, ma'am. I—I once—I asked the DDS to provide me with medical, psychological and psychiatric tests, which they refuse to do. And they won't provide it. So I have to—so what I'm asking for to be able to do is bring the DDS people who have made these recommendations down below to appear before me so I can examine them and have them be cross examined by the claimant rep.

Ms. DUCKWORTH. Okay. I only have a minute left, so I'm going to have to cut you off. I apologize. Are you saying that you're the only one—that these other judges that are 57 percent have access to these people, and that's why they're giving less, and you're giving more because you don't? I mean, you're the only judge—or these four judges are the only four that don't have access? Is that what you're saying? Because that doesn't make sense.

Mr. Bridges?

Judge BRIDGES. I can't speak for any other judge but myself. When I've applied all my knowledge, my training to the case in front of me, this is what I get. So I'm satisfied that I've done the best I can with all the facts of that particular case that's unique to that person. I can't address what any other judge has done, but to do what I can do to the cases that I have.

Ms. DUCKWORTH. Mr. Chairman, could we allow Mr. Taylor to do the final?

Chairman ISSA. Please. Take such time as you need. Go ahead.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. Taylor?

Judge TAYLOR. If I understand your question correctly, there are obviously some cases that I've done, as I mentioned, and in some of those cases it's obvious that sometimes the judge's hands are tied. If they're of a certain age, they have a certain RFC, a certain work background, a certain goodwill kicks in, there's really nothing you can do about it.

If the committee will note, beginning last year, the agency began an initiative to limit each judge to 80 cases a month, and this is all that judges are given now. There's no on-the-records, or at least very few that are being issued at the present time. I know that I can't think of any that I've issued since about this time last year, because we really can't. There's 80 cases being assigned to each judge. We are supposed to make our 5- to 700, but based upon that, as well as make an effort to reach our productivity goals.

Ms. DUCKWORTH. But the judges here average more than 1,000 decisions in a given year, and one of you actually completed more than 2,000 decisions in multiple years, and yet the average is 500

to 700 for those who get the 57 percent. So maybe the common denominator here is that you're just pushing these through and not really reviewing them. I don't know.

Mr. Chairman, I'm out of time. Thank you.

Chairman ISSA. Thank you.

Mr. Taylor, I've been told it's 70 a month, 840 a year. Do you get a different number?

Judge TAYLOR. Your Honor—excuse me, Mr. Chairman, I've been told 5- to 700. Now, maybe I'm wrong. If I'm wrong, I will admit it. I haven't seen that number.

Chairman ISSA. Well, for all of you, if you're reversing the lower decisions by 90-some percent, in your opinion does that mean that, in fact, the denials are inherently overzealous, wrong; that the people beneath you that are saying no are by definition almost always wrong?

Judge BRIDGES. I'm not—I wouldn't say that, but I would say that they are not legally trained.

Chairman ISSA. Well, but you're reversing them 90-some percent, right?

Judge BRIDGES. All I can say is that they are not legally trained.

Chairman ISSA. No, no.

Judge BRIDGES. And that is—and we are also seeing——

Chairman ISSA. Well, but, Mr. Bridges, we're kind of funny about our questions here. We're fairly nuanced. Are you reversing them 90-some percent?

Judge BRIDGES. I really don't know, because I don't pay attention to those figures. All I do is concentrate on each case, one at a time.

Chairman ISSA. Okay. So you don't know that you've been awarding as a reversal of earlier claims over 90 percent of the time?

Judge BRIDGES. I don't look at those figures because it may influence me.

Chairman ISSA. Mr. Bridges, you mean that you don't notice——

Judge BRIDGES. No.

Chairman ISSA. —that you're essentially saying approved, approved, approved almost all the time?

Judge BRIDGES. I don't notice because I don't want to be influenced. Each individual is due his just and accurate decision, so I don't want to be influenced by that, so I take each case at a time.

Chairman ISSA. That is the most astounding thing I've ever heard in this here. That's sort of like saying that you don't look at the speed limits signs because you don't want to be influenced by what speed is safe on the highway.

Mr. Taylor, you've been distinguished by multiple awards for your work; isn't that true?

Judge TAYLOR. Some, yes, sir.

Chairman ISSA. And were those awards based on volume?

Judge TAYLOR. Yes, sir.

Chairman ISSA. So all four of you were brought here—three of you, not you, Mr. Taylor—but three of you under subpoena, involuntarily, if you will. And we want to be fair to you, but we're obviously disappointed in the performance overall of this disability claim system. But I just want to make sure I make for the record very clear: You're awarding almost all the time a reversal granting this roughly 300,000 per person in benefits for disability, reversing

the lower decision, but you're being given awards because the only thing your bosses care about, at least in those awards, is volume; is that correct?

Judge TAYLOR. I don't think that's the only thing that they care about. That's not the reaction that I get. The thing that we have to meet is these goals that we've had over the years, and the goals have changed a little bit since I came in, but they've always gone up. And, of course, last year the goals were taken off, and they are no more. I don't think that's the most important thing. But we do have a set of goals that we're supposed to meet, a set of productivity goals.

Chairman ISSA. Mr. Bridges, Mr. Krafsur and Mr. Burke, have you, any of you, received similar quality awards—quantity awards? Have you received any awards for the work and the volume that you're pumping through your——

Judge BRIDGES. No, it would be illegal for us to receive awards.

Chairman ISSA. So Mr. Taylor illegally receives an award?

Judge BRIDGES. ALJs should not receive awards for——

Chairman ISSA. Mr. Taylor, you're shaking your head yes. Do you think your award was illegal?

Judge TAYLOR. It was just a letter, sir.

Chairman ISSA. Okay. Any of the rest of you receive letters saying good things about your work based on quantity?

Judge KRAFSUR. Just the whole office, not just the individual judge.

Chairman ISSA. Okay. So there was an "attaboy" based on volume.

Mr. Burke?

Judge BURKE. No, sir.

Chairman ISSA. Okay.

Mr. Burke, I'm concerned, in one case you decided in October 2012, you found an established offset date of 2002, even though in the filing the earliest treatment records were 2009. Do you remember that case?

Judge BURKE. No, sir, I don't.

Chairman ISSA. It was in your focus review. Your reviewer reviewed it, and I guess the question is, isn't it true that people are only entitled to retroactive disability payments to the point at which they can substantiate the onset of whatever made them unable to work?

Judge BURKE. Correct.

Chairman ISSA. So it's extremely important to get that date right, because if it's 7 years earlier, that's a lot of money, isn't it?

Judge BURKE. No, sir. You can only be paid a year prior to your Title 2, your Social Security application. So if you apply, say, in 2008, with an onset date of 2002, you're still not going to get paid prior to 2007.

Chairman ISSA. Have you discussed the focus review with anyone?

Judge BURKE. No, sir.

Chairman ISSA. Okay. Now, we are the Committee on Oversight and Government Reform, and people often don't see the reform, so let's go through the numbers a little bit. I asked Mr. Bridges; he doesn't keep track of them. I'll go to you, Mr. Taylor.

If you're reversing 100 percent, then doesn't that inherently mean that either you're wrong, or the people beneath you are saying no when they should be saying yes a lot of times? Because, I mean, you're the first to say that you're handling too many cases, but if cases are coming to you at almost 100 percent you're reversing them, then wouldn't that inherently mean that these cases should not come to you because they should be approved at a lower level, in your opinion?

Judge TAYLOR. That's a hard question to answer, sir. I can only talk about some of the cases I've received. I know very little about the general overall picture as to what other judges are getting.

Chairman ISSA. Well, let me ask you a question. I know Mr. Bridges said he doesn't even look at the number, but those are your numbers up on the screen. So let's just take, you know—I don't know, we'll take the first date, 2005, 95.2 percent.

Judge TAYLOR. Uh-huh.

Chairman ISSA. In each of those years in which you ran in the '90s until 2013, which is, I believe, when sort of we started changing, 2011, 2012, 2013, those numbers are coming down for you down to 74 percent now.

Judge TAYLOR. Uh-huh.

Chairman ISSA. During that time, did you ever write any letters or do anything to try to ask, why am I getting 90 percent misdecisions that I have to reverse?

Judge TAYLOR. No, sir.

Chairman ISSA. Why not?

Judge TAYLOR. I never really thought that at the time I was getting the cases, which I got to look at from the standpoint of on the records, I never really thought that those were given to me in an extraneous manner. Looking at them, I could tell why a senior staffer might have referred that case to me to look at. But of course I didn't grant everything that was on the list of recommendations. I might have found earnings after onset, I might have found subsequent reports that went in the record after the staffer reviewed it.

Chairman ISSA. Now, you particularly made a lot of decisions without ever having hearings. How do you justify that I need a judge to do that rather than simply another bureaucratic review?

Judge TAYLOR. It's interesting you should mention that. We have, at least we used to have at our office, three senior attorneys who—well, one of their jobs was to review cases to determine whether they could be done on the record. For one reason or another, now we only have one there now, at least one full-time. And that is part of their job, to look at these cases from the standpoint of whether they can be done on the record and perhaps to refer it to a judge to determine whether it can be.

Chairman ISSA. Well, those lawyers that were pumping through those for those determinations, weren't those just part of the productivity, part of getting more volume out?

Judge TAYLOR. They are part of ODAR, yes, sir.

Chairman ISSA. Okay. Well, that may be why they have less of them, is that they weren't achieving better decisions, just more volume.

Now, I share with Ms. Duckworth the concern about the backlog, and that is still an area that I am very, very concerned about. But

let me ask you a question. The ranking member and I authored a bill called the DATA Act that now has been signed into law. Part of the intent was to organize data to make it more useful. The nature of many of the points that are part of your decision, aren't those, in fact, data points that are codified in law, they're not discretionary? In other words, what Mr. Burke said about how far back you can award based on when the application was, when the document onset is, and so on, aren't those points that should be essentially loaded into computers and absolutely determined away from the judge's decision? Because they are decisions of fact, that in fact you don't need to take human error into account, you need to make sure that the law is complied with? Would you agree with that?

Judge TAYLOR. That would be very helpful, sir, very helpful.

Chairman ISSA. The rest of you? Would that be helpful, if all the data points of fact and law would already be put in so that you wouldn't be, in a sense, trying to make a judgment call about those kinds of things and having to remember, like Mr. Burke, what the details of how far back you go or what the effect would be?

Mr. Cummings, do you have additional questions?

The gentleman is recognized.

Mr. CUMMINGS. Let me ask you this. Senator Coburn talked about—Mr. Burke—Judge Burke—you referred to this. Senator Coburn talked extensively about this judge in Oklahoma, administrative law judge, who was able to get people back to work. I think that's what he said. And, you know, I think when you talk about no other job—a person not being able to do another job, I'm just trying figure out, do you think—and then you said that there is so—there is not sufficient resources and support systems to even accomplish those things.

So how is that done normally? I mean, how would it be—that this fellow be able to do it in Oklahoma and then some people probably, that if they—maybe if they were a truck driver and maybe they had an injury and maybe they would be in a position to do something else. And I'm just curious. Talk about that for a minute.

Judge BURKE. In the best of all possible worlds, the continuum between employment and total disability should go from employment to unemployment to partial disability to full disability and then to vocational rehabilitation to put the person back to work. They should dovetail. But in my experience in those three States I have practiced in, the vocational rehabilitation part of it is forgotten. It is funded by the Social Security Act or regulated by the Social Security Act, but apparently the appropriations are—it doesn't get the attention that it should.

Another factor about going back to work for disabled people is the level of skill that they had when they were injured or became sick. A skilled individual is much more likely to be able to be retrained or to have a skill level that they can exercise at a more sedentary level.

In northern New Mexico, where I am from, there's a high degree of lack of skill, manual labor jobs. There is no industry in northern New Mexico to speak of. So in that situation you get a lot of straight total disability cases.

Mr. CUMMINGS. So if you have an area where you have got a lot of people doing laboring type work, then you are more likely to see higher rates of approved disability claims? Is that——

Judge BURKE. Yes, sir. And the Social Security regulations, for instance that grid, talks about whether or not a person is skilled or semi-skilled or has transferrable skills that can be used at a light or sedentary level. That is what the vocational experts advise us on.

Mr. CUMMINGS. So basically some of these people have no skills.

Judge BURKE. Yes, that's quite correct.

Mr. CUMMINGS. So there's nothing to really fall back on.

Mr. BURKE. Exactly.

Mr. CUMMINGS. Interesting.

All right. Thank you.

Chairman ISSA. Thank you.

We are going to stand in recess. And I would expect that if there are no votes by 1:30, if we don't come back, that we will have you dismissed.

So what I'd say is we will be in recess for at least 20, 25 minutes, if you want to get a bite to eat. And then if you will come back here, we will give you a final determination. Thank you.

[Whereupon, at 12:38 p.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

DARRELL E. ISSA, CALIFORNIA
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Congress of the United States
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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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VACANCY

June 9, 2014

The Honorable Kerry B. Harvey
U.S. Attorney for the Eastern District of Kentucky
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612

Dear Mr. Harvey,

I am writing to request that the United States Attorney for the Eastern District of Kentucky conduct an independent evaluation of the evidence and claims alleging Administrative Law Judge David B. Daugherty and claimant representative Eric C. Conn engaged in a conspiracy to defraud the Social Security Disability Insurance program.

A *Wall Street Journal* article, Senate investigation and Inspector General investigation have all found substantial evidence of "inappropriate collusive efforts" involving Judge Daugherty and Mr. Conn.[1]

According to the Senate staff report, Judge Daugherty improperly assigned Mr. Conn's cases to himself and awarded benefits to 3,143 of Mr. Conn's clients.[2] Between 2005 and 2011, Judge Daugherty never once denied benefits to a claimant represented by Mr. Conn.[3] Mr. Conn allegedly procured physicians to provide false or poor quality medical opinions.[4] On the basis of

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[1] *Disability-Claim Judge Has Trouble Saying 'No'*, Wall Street Journal (May 19, 2011) (online at http://online.wsj.com/news/articles/SB10001424052748704681904576319163605918524).

[2] Staff Report, U.S. Senate Committee on Homeland Security and Governmental Affairs, *How Some Legal, Medical, and Judicial Professionals Abused Social Security Disability Programs for the Country's Most Vulnerable: A Case Study of the Conn Law Firm*, (Oct. 7, 2013) (online at www.hsgac.senate.gov/download/?id=0B4A6130-EC07-4D20-860B-88994B20E79A).

[3] *Id.*

[4] *Id.*

new medical testimony ordered by Mr. Conn, Judge Daugherty awarded benefits to an individual who had recently been denied benefits by another judge.[5]

Senate investigators also found that Mr. Conn collected over $4.5 million from fees paid on claimants approved by Judge Daugherty. Judge Daugherty's bank accounts show unexplained cash deposits totaling $69,800.[6] Additionally, Senate investigators found that during a two-year period when few deposits were made to Judge Daugherty, cash deposits totaling $26,200 were made to the account of Daugherty's daughter.[7] At the time Daugherty's daughter was a candidate for Cabell County, West Virginia Magistrate and her records show that, on most occasions after receiving the cash deposit, she wrote a check to her campaign manager and treasurer.[8] The Senate's investigation was unable to determine the origin of the cash deposits and Judge Daugherty refused to explain the origin or source of the cash deposits.

The Office of Inspector General (IG) has informed me that they have conducted over 130 interviews; examined bank and phone records; examined personnel records and management information related to Judge Daugherty's decisions; reviewed random disability decisions by Daugherty for cases submitted by Conn; conducted computer forensic analysis and collected thousands of documents pertaining to Mr. Conn and Judge Daugherty.[9] The IG has also indicated that the Internal Revenue Service, Criminal Investigation has joined the IG's investigation.

Additionally, two whistleblowers working in the Huntington, WV hearing office filed a complaint under the federal False Claims Act against Mr. Conn and Judge Daugherty in the Eastern District of Kentucky.[10] The complaint alleges that Daugherty sought out cases involving Conn's clients, conducted sham proceedings, and awarded those clients benefits they were not entitled to receive, while Conn collected attorney's fees for those claims.[11]

But justice in this case appears to be long delayed. Judge Daugherty retired in 2011 and has not faced any legal or administrative consequences for his alleged conduct. Mr. Conn continues to represent disability claimants and collect attorney fees from the federal government.

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[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] Social Security Administration Office of the Inspector General, Fact Sheet: Huntington, West Virginia Hearing Office Investigation (Mar. 6, 2014).

[10] *United States of America ex rel. Jennifer L. Griffith and Sarah Carver v. Eric C. Conn, et al.*, Civil No. 11-157-ART, United States District Court Eastern District of Kentucky (filed on Oct. 11, 2011).

[11] *Id.*

Physicians involved in the fraud are still practicing and have not had their medical licenses revoked nor faced any criminal penalties. It is my understanding that agency administrative action against Daugherty and Conn was suspended pending a criminal investigation by the U.S. Attorney of the Southern District of West Virginia. But that inquiry has yielded no appreciable action.

In light of this information, I request that your office conduct an independent evaluation of the evidence against former Judge Daugherty and Mr. Conn to determine if any violations of criminal and civil laws have occurred. Investigation of this alleged conspiracy and related crimes belongs within the jurisdiction of the United States Attorney for the Eastern District of Kentucky because more than 93% of the cases of potential fraud involved residents of Kentucky; Mr. Conn himself is a resident of Kentucky; his law offices are located in Kentucky, and the Social Security Administration office where Mr. Conn's cases were heard by Judge Daugherty is also located in Kentucky.[12]

If you have any questions about this request, please contact Brian Quinn or Jaron Bourke of the Minority Staff at (202) 225-5051. Thank you for your consideration of this request.

Sincerely,

Jackie Speier
Ranking Member
Subcommittee on Energy Policy,
Health Care and Entitlements

[12] Information provided by the Social Security Administration to House Oversight and Government Reform Committee

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Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Hearing on "Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process"

June 10, 2014

Thank you, Mr. Chairman. Today, the Committee begins two days of hearings to examine the actions of administrative law judges who determine whether individuals with disabilities qualify for financial assistance under the Social Security Disability Insurance program. Congress created this program in the 1950s as a lifeline for millions of Americans who pay their taxes and show up at their jobs every day, but experience disabilities that stop them from working.

Recently, there have been allegations of criminal fraud by one particular judge. These actions are reprehensible, and they diminish the confidence that most Americans have in this program.

Yesterday, our colleague Jackie Speier, the Ranking Member of the Subcommittee on Energy Policy, Health Care and Entitlements, sent an important letter to the U.S. Attorney for the Eastern District of Kentucky. She asked him to evaluate evidence of criminal activity committed by an administrative law judge there. I want to thank her for these efforts, and I ask that her entire letter be included in the hearing record.

I also want to thank Senator Carper and Senator Coburn, who is here with us today, for their role in exposing the details of this case.

Today's hearing does not concern allegations of criminal activity, but rather claims that some judges simply approve too many disability cases. Today, the majority has invited four judges with allowance rates higher than 90%. This means that, on average, they find disabilities and award financial aid in 90% of the cases they hear.

I believe it is appropriate to review the actions of individual judges—not to compromise their independence, but to ensure that they are following agency policy. All four judges here today received attention from the Social Security Administration long before this Committee got involved. They received in-depth reviews of their decisions and training to address problems

identified by the agency. In fact, the Social Security Administration is in the process of removing one judge from his job through a filing with the Merit Systems Protection Board.

Although I support these individual reviews, I strongly oppose the broad condemnation of all administrative law judges. The four judges here today are not representative of the 1,500 judges who work at the Social Security Administration. Even they admit that they are outliers.

According to the Social Security Administration, last year the entire pool of administrative law judges had an average allowance rate of 57%. That is the lowest overall allowance rate since 1979.

The fact is that, over the last decade, the Social Security Administration has significantly improved its efforts to collect and analyze data about judges' decisions. It has expanded training, improved performance, sharpened disciplinary procedures, and enhanced efforts to combat fraud.

But those efforts have been hindered by the failure of Congress to provide adequate funding. Right now, the agency cannot hire enough judges to hear cases, so individuals now have to wait more than a year for disability hearings, and it is getting worse. We even received testimony during our investigation about people dying while they waited for their benefits.

Congress has also underfunded anti-fraud programs that save taxpayers money. There is a huge backlog of continuing disability reviews, for example, which are supposed to be conducted every three years to make sure beneficiaries continue to have the disabilities that make them eligible. These reviews save taxpayers $9 for every $1 they cost, but Congress has not provided enough funding to conduct them. Congress has also failed to fully fund the Inspector General's anti-fraud investigating units, so they simply do not exist in nearly half the country.

This is the price of austerity. When we starve an agency of resources, it affects not only my constituents in Baltimore, but the constituents of every Member of this Committee and the House. If we care about improving this program, we need to invest in its success.

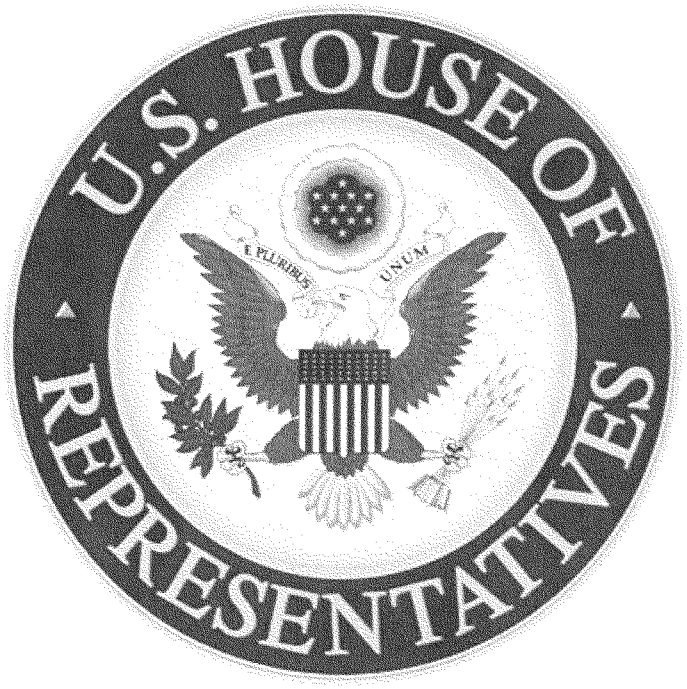
Let me close by noting the inaccuracy of claims that judges with high allowance rates are contributing to the insolvency of the Disability Insurance Trust Fund. The projected insolvency of the fund was forecast in 1995 by the Chief Actuary of Social Security, and the cause is broad demographic changes across the country. As he explained, Congress can address this issue by passing a modest reallocation of payroll taxes to extend benefits by decades, as Congress has done several times before.

Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman



Systemic Waste and Abuse at the Social Security Administration: How Rubber-Stamping Disability Judges Cost Hundreds of Billions of Taxpayer Dollars

STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
113th CONGRESS
JUNE 10, 2014

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Social Security Administration

Karen Ames
Director, Division of Quality Service, Office of Disability Adjudication and Review

Charlie Andrus
Hearing Office Chief ALJ (HOCALJ), Huntington, WV Hearing Office
October 31, 1997 to June 8, 2011

Mr. Andrus was the direct supervisor for ALJ David Daugherty.

Jasper Bede
Regional Chief ALJ for Region 3
2006 to present

As Regional Chief ALJ (RCALJ) for Region 3, Mr. Bede supervises 17 hearing offices and roughly 180 ALJs. Mr. Bede has served the Social Security Administration in various capacities since 1975. The Committee conducted a transcribed interview with RCALJ Bede on October 22, 2013.

Debra Bice
Chief ALJ
January 2011 to Present

As Chief ALJ (CALJ), Ms. Bice supervises 162 hearing offices and approximately 10,000 employees, including about 1,500 ALJs. Prior to serving as Chief ALJ, Ms. Bice was the Hearing Office CALJ in Kansas City, MO, for two years. She has served the Social Security Administration in various capacities from 1976 to 1995 and from 2000 to the present. Between 1995 and 2000, Ms. Bice worked as a disability claimant attorney. The Committee conducted a transcribed interview with Chief Judge Bice on May 13, 2014.

Charles Bridges
ALJ, Harrisburg, PA Hearing Office
May 2004 to Present

Mr. Bridges has served as an ALJ for 15 years, serving as HOCALJ of the Harrisburg, PA, Hearing Office from May 2004 until June 4, 2010. RCALJ Bede removed Mr. Bridges as Harrisburg's HOCALJ for improper conduct. Prior to serving as HOCALJ in Harrisburg, Mr. Bridges served as HOCALJ in Hartford, CT.

Theodore Burock
HOCALJ, Harrisburg, PA Hearing Office
September 2010 to present

Mr. Burock previously served as the HOCALJ for the Charleston, WV, Hearing Office, from January 2003 until September 2010. As Charleston's HOCALJ, he was the direct supervisor for ALJ Harry Taylor. He is now the direct supervisor for ALJ Charles Bridges.

Frank Cristaudo
Associate Chief ALJ
January 2011 to Present

Mr. Cristaudo was the CALJ between 2006 and 2010. Prior to serving as the CALJ, Mr. Cristaudo was the Regional CALJ for Region 3 between 1996 and 2006. He has served the Social Security Administration in various capacities for over twenty years. Prior to joining the Social Security Administration, Mr. Cristaudo worked as a disability claimant attorney. The Committee conducted a transcribed interview with Mr. Cristaudo on May 16, 2014.

David Daugherty
ALJ, Huntington, WV Hearing Office
1990 to June 2011

Lisa De Soto
Deputy Commissioner, Office of Disability Adjudication and Review
2006 to December 2008

Greg Hall
Hearing Office Director, Huntington, WV Hearing Office
1973 to August 2011

Harry Taylor
ALJ, Charleston, WV Hearing Office
1988 to Present

Mr. Taylor has served as an ALJ for over 25 years.

Private Sector

Eric C. Conn
Founder, The Conn Law Firm & Associates

Mr. Conn is a claimant representative in Stanville, Kentucky. Mr. Conn allegedly engaged in an inappropriate collusive effort with ALJ Daugherty to improperly award benefits to Mr. Conn's clients.

Executive Summary

The Social Security Administration (SSA) administers two large federal disability programs: the Social Security Disability Insurance program (SSDI) and the Supplemental Security Income program (SSI). There are currently about 19.4 million individuals receiving about $200 billion in benefits through these two programs.[1] In addition to the direct cash benefit, individuals enrolled in SSDI for two years are automatically enrolled in Medicare.[2] Medicare currently spends about $80 billion on SSDI beneficiaries.[3] Moreover, individuals enrolled in SSI are automatically eligible for Medicaid.

When an individual applies for disability benefits, their case is initially adjudicated by examiners in a State Disability Determination Service (DDS) office.[4] In 40 states plus most of California, an applicant may appeal to a different reviewer in the same office if they are denied benefits.[5] If this second reviewer denies granting benefits, then the applicant can appeal to a Social Security Administrative Law Judge (ALJ). Therefore, a case typically only reaches an ALJ if it has already been denied twice. When an ALJ awards disability benefits, for all practical purposes, the decision is final, as awards are not appealable. If an ALJ denies benefits, the individual still has two levels of appeal for reconsideration—SSA's Appeals Council and the federal courts.[6]

The average lifetime disability benefit, including the benefit from programs linked to enrollment in a disability program, is estimated at $300,000.[7] Therefore, ALJs have enormous spending authority, magnifying the consequences of any improper decision-making. If an ALJ improperly awards disability benefits to just 100 people, they increase the present value of federal spending by $30 million. Between 2005 and 2013, ALJs placed over 3.2 million people on federal disability programs at a total cost of nearly one trillion dollars.

ALJs' principal responsibilities are to issue policy-compliant decisions that cite sufficient evidence to warrant the decisions. In order to determine claimant credibility, ALJs are required to consider the entire case record, including objective medical evidence, statements and other information provided by treating or examining physicians, the individual's own statements about symptoms, and any other relevant evidence in the case record or adduced at a claimant hearing.

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[1] *See* Social Security Administration, Social Security Online Beneficiary Data, *available at* http://www.socialsecurity.gov/cgi-bin/currentpay.cgi, *see also* Social Security Administration Research, Statistics, & Policy Analysis, Monthly Statistical Snapshot, April, 2014 *available at* http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/#table2.

[2] Social Security Administration, "Disability Planner: Medicare Coverage If You're Disabled." *available at* http://www.socialsecurity.gov/dibplan/dapproval4.htm.

[3] Congressional Budget Office: CBO Testifies on the Social Security Disability Insurance Program, *available at* http://www.cbo.gov/publication/43996.

[4] 20 C.F.R. § 416.1015.

[5] 20 C.F.R. § 416.1407.

[6] 20 C.F.R. § 1423, 20 C.F.R. § 416.1467.

[7] DAVID H. AUTOR & MARK DUGGAN, SUPPORTING WORK: A PROPOSAL FOR MODERNIZING THE U.S. DISABILITY INSURANCE SYSTEM 8 n.10 (2010), *available at* http://www.americanprogress.org/wp-content/uploads/issues/2010/12/pdf/autordugganpaper.pdf.

Frank Cristaudo, SSA's Chief ALJ from 2006 through 2010, testified that ALJs do not have discretion to ignore relevant evidence in an applicant's file.[8]

During a June 27, 2013, hearing of the Oversight and Government Reform Subcommittee on Energy Policy, Health Care and Entitlements, two former SSA ALJs and two current SSA ALJs testified about their concerns of the agency's stewardship of disability programs.[9] Former SSA ALJ J.E. Sullivan testified that speedy decision-making and high volume dispositions were the agency's **exclusive** focus during her time as an agency employee.[10] According to many other ALJs, the agency prioritized speed of processing cases over accuracy, resulting in many ALJs awarding benefits to claimants who do not meet program requirements, since allowances are much easier to issue than denials, and allowances, unlike denials, are not appealed.[11]

Prior to the publication of ALJ disposition data for the first time in 2010 and critical reporting by the *Wall Street Journal* in 2011[12], the agency made no effort to monitor whether its ALJs were considering the entire case record and making policy-compliant decisions. Among its many stewardship failures, the agency failed to use ALJ allowance rates or total number of dispositions as an indication of whether an ALJ was properly evaluating evidence.[13] The agency even failed to monitor whether ALJs were appropriately awarding benefits when ALJs awarded benefits without holding hearings. Instead, it appears that the only metric used by the agency to evaluate ALJs was the number of cases processed by an ALJ in a given time period.

As a result of the agency's emphasis on high volume adjudications over quality decision-making, the credibility of the disability appeals process has been eroded. Genuinely disabled individuals are harmed from the programs' explosive growth and face large future benefit cuts as the SSDI trust fund is scheduled for bankruptcy in two years[14] because the program has too many beneficiaries who do not meet the disability programs' requirements. Moreover, the tens of millions of Americans who pay taxes to finance federal disability programs have seen their hard-earned tax dollars squandered because of the agency mismanagement that potentially has led to hundreds of billions of dollars of improper payments.

Although ALJs only review cases for claimants who had been previously denied for benefits, typically twice, the national ALJ allowance rate exceeded 70 percent prior to 2010.[15]

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[8] *See* transcribed interview with former CALJ Frank Cristaudo at 9 (May 16, 2013).

[9] *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Government Reform*, 113th Cong. (June 27, 2013).

[10] *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Government Reform*, 113th Cong. (June 27, 2013) (testimony of ALJ J.E. Sullivan).

[11] *Id.*

[12] Damian Paletta, *Disability-Claim Judge Has Trouble Saying 'No'*, WALL ST. J., May 19, 2011, http://online.wsj.com/news/articles/SB10001424052748704681904576319163605918524.

[13] *See supra* note 8 at 124.

[14] The Congressional Budget Office, *2012 Long-Term Projections for Social Security: Additional Information*, October 2012.

[15] Publicly available ALJ adjudication data as well as ALJ adjudication data provided by the Social Security Administration *available at* http://www.oregonlive.com/special/index.ssf/2008/12/social_security_database.html and http://www.socialsecurity.gov/appeals/DataSets/archive/archive_data_reports.html.

Between 2005 and 2013, more than 1.3 million individuals were placed on a federal disability program (at a total cost of nearly $400 billion) by ALJs with an allowance rate in excess of 75 percent in the year that individual was awarded benefits.[16] Tellingly, the national allowance rate has fallen after the agency *finally* made ALJ allowance data public in 2010 and the agency received criticism from Congress and the media.

The agency ignored ALJ allowance rates and disposition totals despite widespread recognition within the agency that ALJs cannot properly evaluate the evidence if they are deciding too many cases. For example, Jasper Bede, a Regional Chief ALJ (RCALJ) for SSA, testified that allowance rates in excess of 75 percent or 80 percent raise a "red flag" about the quality of ALJs' decisions.[17] RCALJ Bede also testified that "it was generally felt that anything over 700 [dispositions] brought into question whether or not the judge was properly handling cases" and that "[i]f you're well over 700 [dispositions], you know, if you're doing 1,000, and I think that's almost *prima facie* evidence that you're not doing a good job and you should be looked at."[18] A 2012 SSA internal report confirmed a "strong relationship between production levels and decision quality on allowances. As ALJ production increases, the general trend for decision quality is to go down."[19] A Committee analysis of 30 internal agency reviews of high allowance ALJs reveals troubling patterns with the manner in which high allowance ALJs decide cases.[20]

The Committee has obtained detailed information on the actions of three ALJs: ALJ Charles Bridges, former ALJ David Daugherty, and ALJ Harry Taylor, who have been inappropriately awarding disability benefits for years. These ALJs awarded benefits in nearly every decision they made, issued an extremely large number of allowances without holding a hearing, and were subject to numerous complaints from employees within their offices. In addition to discussing the agency's poor management and stewardship of federal disability programs, this staff report presents case studies for each of these ALJs. In total, over the last decade alone, these three ALJs awarded lifetime benefits amounting to nearly $10 billion, and two of them are still deciding a full load of cases.

ALJ Charles Bridges

Charles Bridges has served as a SSA ALJ for 15 years, and was Hearing Office Chief ALJ (HOCALJ) of the Harrisburg, Pennsylvania office from May 2004 to June 2010. From 2005 to 2013, ALJ Bridges had an overall allowance rate exceeding 95 percent, and he awarded benefits in cases without holding a hearing nearly 7,000 times.[21] In the last eight years, ALJ

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[16] *Id.*

[17] Transcribed interview with RCALJ Jasper Bede at 75 (Oct. 22, 2013). Defined by Mr. Bede as "certainly anything over … 75 or 80 percent. Several years ago, that might have been [defined as] 85 percent, when everyone, as a whole, nationally and regionally, were reversing cases in the 65 percent range."

[18] *Id.*

[19] Social Security Administration Memo on Production Levels and Decision Quality (Sept. 7, 2012) [Request 4 – 00001-5].

[20] Committee staff analysis of focused reviews of ALJs provided by the Social Security Administration on Jan. 17, 2014 and May 9, 2014.

[21] *See supra* note 15.

Bridges awarded benefits to 15,787 individuals at a total cost to taxpayers of approximately $4.5 billion.[22]

In 2007, complaints from colleagues and supervisors about his high production and low quality work led SSA to commission three separate reports, all of which revealed serious problems with ALJ Bridges as an ALJ and as a manager of the Harrisburg hearing office. Despite the reports' negative findings, ALJ Bridges was never disciplined and remained in his leadership role as HOCALJ for another two years. In 2013, another review of ALJ Bridges' work found that 60 percent of a sample of ALJ Bridges' decisions were not supported by substantial evidence and contained no specific findings regarding the claimant's credibility or the weight of the opinion evidence.[23] ALJ Bridges has not yet been disciplined and still decides a full case load for the agency.

ALJ David Daugherty

David Daugherty served as a SSA ALJ for over 20 years. From 2005 to his retirement in mid-2011, ALJ Daugherty awarded disability benefits to 8,413 individuals, the equivalent of approximately $2.5 billion in federal lifetime benefits.[24] ALJ Daugherty had the seventh highest allowance rate in the country between 2005 and 2011, awarding benefits in nearly 99 percent of his decisions.[25] Of his decisions in this period, roughly half were allowances made without a hearing.[26]

Allegations of Daugherty's misconduct were ignored by SSA management for decades. ALJ Daugherty violated time and attendance policies, conducted sham hearings, rarely questioned vocational experts, and colluded with a claimant representative to award benefits in **all** the representative's cases.[27] The agency failed to take any disciplinary action, or even investigate wrongdoing until after a *Wall Street Journal* article exposed ALJ Daugherty's long-running scheme with the claimant representative. Daugherty resigned, but he has not yet been held accountable for his alleged crimes. ALJ Daugherty continues to collect full federal retirement benefits.

ALJ Harry Taylor

Harry Taylor has served as a SSA ALJ for over 25 years. Between 2005 and 2013, ALJ Taylor awarded disability benefits to 8,227 individuals, the equivalent of approximately $2.5 billion in federal lifetime benefits.[28] During this period, ALJ Taylor had an overall allowance rate of nearly 94 percent and allowed 68 percent of his decisions without holding a hearing.[29] A

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[22] *Id.*
[23] Fiscal Year 2013 Focused Review of Charles Bridges (Jan. 15, 2014) [Request 1 – 000109].
[24] *See supra* note 15.
[25] *Id.*
[26] *Id.*
[27] *See* STAFF OF S. COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 113TH CONG., HOW SOME LEGAL, MEDICAL, AND JUDICIAL PROFESSIONALS ABUSED SOCIAL SECURITY DISABILITY PROGRAMS FOR THE COUNTRY'S MOST VULNERABLE: A CASE STUDY OF THE CONN LAW FIRM (Oct. 7, 2013).
[28] *See supra* note 15.
[29] *Id.*

2013 review showed that ALJ Taylor dismissed state DDS findings without proper analysis and that the majority of his cases contained opinions and assessments from medical experts that were inconsistent with his findings of disability.[30]

At least since 2007, ALJ Taylor's colleagues and local management expressed concerns about his personal conduct, and RCALJ Bede testified that ALJ Taylor does "sloppy work."[31] In addition to multiple allegations of personal misconduct, ALJ Taylor slept at work *and during hearings* many times.[32] Four years after the first documented allegation that ALJ Taylor was sleeping at work, he was finally disciplined with a 14-day suspension.[33] However, ALJ Taylor continued to violate agency policies, and was recommended for another suspension in April 2013.[34] More than a year later, the recommendation for his suspension is still pending and ALJ Taylor continues to decide a full load of cases.

[30] Focused Review of ALJ Harry Taylor (May 15, 2013) [Request 1 – 000033].
[31] *See supra* note 17 at 133.
[32] Memorandum from HOCALJ Theodore Burock to ALJ Harry Taylor (Aug. 2008) [Request 4 – 001568].
[33] Settlement agreement between SSA and ALJ Harry Taylor (May 11, 2011) [Request 4 – 009436].
[34] Letter from RCALJ Jasper Bede to CALJ Debra Bice (April 19, 2013) [Request 4 – 004596].

Findings

- Between 2005 and 2013, SSA ALJs issued about 4.9 million decisions, awarding benefits to approximately 3.2 million claimants. The overall allowance rate for ALJs between 2005 and 2013 was 65.8 percent, a seemingly excessive rate since ALJs are only deciding cases for claimants who had been denied, generally twice, in previous agency reviews.

- Jasper Bede, a Regional Chief Administrative Law Judge for the agency, testified that when ALJs allow benefits at a high rate, which he defined as over "75 or 80 percent," "it raises a red flag" about the quality of their decisions. Between 2005 and 2009, over 40 percent of ALJs had allowance rates in excess of 75 percent and over 20 percent of ALJs had allowance rates in excess of 85 percent.

- Between 2005 and 2013, over 1.3 million people were placed on the program by ALJs with an annual allowance rate in excess of 75 percent and over 650,000 people were placed on the program by an ALJ with an annual allowance rate in excess of 85 percent.

- The agency failed to assess the quality of the decisions of ALJs with high disposition totals despite widespread recognition within the agency that ALJs cannot properly evaluate the evidence if they are deciding too many cases.

- The agency failed to assess the quality of the decisions of ALJs with high allowance rates, including ALJs who were allowing a large number of decisions without hearings.

- From 2005 to 2013, ALJ Charles Bridges had an overall allowance rate of over 95 percent. During this period, he awarded benefits to 15,787 individuals, equaling approximately $4.5 billion in lifetime benefits. In addition, he awarded benefits 6,983 times without holding a hearing.

    - A 2013 internal review of a sample of ALJ Bridges' decisions found that 60 percent were not supported by substantial evidence.

    - One law firm created a "Bridges Policy," in which the firm accepted any individual as a client if their case was assigned to ALJ Bridges, regardless of the evidence. An internal review noted that "This policy appropriately illuminates Judge Bridges' alarming pay-rate despite underdevelopment of the record and general lack of support for his findings, as determined in this study."

    - ALJ Bridges improperly rotated cases in the hearing office so that he could decide more cases. In response to an OIG report with these findings, Chief ALJ Frank Cristaudo wrote "I don't see a lot in the attached report that evidences much more than an ALJ who puts in incredible hours and is very efficient."

    - ALJ Bridges bragged in hearings and in interviews with news organizations about his hearing office's high ranking for number of dispositions, and awarded a trophy each month to the ALJ with the highest dispositions.

- One disability decision writer in ALJ Bridges' office described ALJ Bridges as an "embarrassment" and another said she is "not proud of what she does" in writing his decisions.

- From 2005 to his retirement in mid-2011, ALJ David Daugherty had an overall allowance rate of nearly 99 percent. During this period, he awarded benefits to 8,413 individuals, equaling approximately $2.5 billion in lifetime benefits. During this period, he awarded benefits 4,184 times without holding a hearing.

  - A 2011 internal review showed that out of a random sample of 128 decisions, ALJ Daugherty only held one hearing that lasted longer than five minutes. The review also found that the same four paragraphs were generally cut and pasted into every decision.

  - For decades, colleagues and supervisors complained about ALJ Daugherty's office behavior and the quality of his judicial decision-making. Complaints included violating time and attendance policies, conducting sham hearings, rarely questioning vocational experts, and colluding with a claimant representative to award benefits in all the representative's cases.

  - The agency failed to take any disciplinary action against ALJ Daugherty until a *Wall Street Journal* article was written about ALJ Daugherty's long-running scheme with the claimant representative.

- From 2005 to 2013, ALJ Harry Taylor had an overall allowance rate of nearly 94 percent. During this period, he awarded benefits to 8,227 individuals, equaling approximately $2.5 billion in lifetime benefits. During this period, he awarded benefits 5,982 times without holding a hearing.

  - A 2013 internal review of a sample of ALJ Taylor's decisions showed that he dismissed initial state determinations without proper analysis and that the majority of his cases contained opinions and assessments from medical experts that were inconsistent with his findings of disability.

  - For years, ALJ Taylor's colleagues and local management reported that ALJ Taylor repeatedly slept at the office and during claimant hearings. No disciplinary action was taken against ALJ Taylor until May 2011, four years after the first documented allegation that ALJ Taylor was inappropriately sleeping on the job.

  - ALJ Taylor continues to violate agency policies, and was recommended for another suspension in April 2013. More than a year later, this recommendation is still pending and ALJ Taylor continues to decide a full load of cases.

I. Hundreds of SSA ALJs Awarded Disability Benefits to the Vast Majority of Claimants over the Past Decade

The Social Security Administration (SSA) administers two large federal disability programs: the Social Security Disability Insurance program (SSDI) and the Supplemental Security Income program (SSI). SSDI is the federal disability program for adults under age 65 who meet work and payroll tax contribution requirements and for their dependents. SSI is the federal disability program for children under age 18 and adults aged 18 to 64 who meet specified income and asset requirements and who lack significant work history.[35]

Over the past 25 years, the number of disabled workers enrolled in SSDI has grown by 6.1 million people, from 2.8 million to over 8.9 million people.[36] As a result of this growth, there are now 6.2 disabled workers on SSDI for every 100 workers in the United States, compared to 2.4 disabled workers on SSDI for every 100 workers 25 years ago.[37] In addition to disabled workers, about 2.1 million spouses and children of disabled workers also receive SSDI benefits.[38]

As the number of individuals enrolled in SSDI has increased, so has program spending, which amounted to more than $143 billion in 2013.[39] A decade ago, SSDI payroll tax revenue exceeded program outlays by 17 percent, but this year, program spending will be 30 percent more than dedicated payroll tax revenue.[40] The Social Security Board of Trustees[41] and the Congressional Budget Office[42] estimate that, without reform, the SSDI trust fund will be depleted in 2016. Growth in SSDI enrollment also increases Medicare spending since individuals enrolled in SSDI for two years are automatically enrolled in Medicare.[43] The Medicare program spent $80 billion on SSDI beneficiaries in 2012.[44]

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[35] Social Security Administration document, Supplemental Security Income (SSI), *available at* http://www.ssa.gov/pubs/EN-05-11000.pdf

[36] Social Security Administration, Social Security Online Beneficiary Data, *available at* http://www.socialsecurity.gov/cgi-bin/currentpay.cgi. At the end of 1988, 2,830,284 people were enrolled in SSDI as a disabled worker. At the end of 2013, this number reached 8,942,584.

[37] *Id.*, and Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, *available at* http://www.bls.gov/cps/cpsaat01.htm. There were 116,104,000 workers at the end of 1988 and 143,929,000 workers at the end of 2013.

[38] Social Security Administration Research, Statistics, & Policy Analysis, Monthly Statistical Snapshot, April, 2014 *available at* http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/#table2.

[39] Social Security Administration, Data on Disability Insurance Trust Fund, 1957-2013, *available at* http://www.ssa.gov/oact/STATS/table4a2.html

[40] Social Security Administration, Data on DI Receipts and Expenditures, *available at* http://www.ssa.gov/oact/STATS/table4a3.html.

[41] Social Security Administration, "2012 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds," *available at* http://www.ssa.gov/oact/TRSUM/index.html.

[42] The Congressional Budget Office, *2012 Long-Term Projections for Social Security: Additional Information*, October 2012.

[43] Social Security Administration, "Disability Planner: Medicare Coverage If You're Disabled." *available at* http://www.socialsecurity.gov/dibplan/dapproval4.htm.

[44] Congressional Budget Office: CBO Testifies on the Social Security Disability Insurance Program, *available at* http://www.cbo.gov/publication/43996

Currently, 8.4 million people are enrolled in SSI,[45] at a cost to the federal government of nearly $56.5 billion in 2013.[46] The number of participants in SSI has nearly doubled over the last 25 years.[47] Growth in SSI enrollment also increases Medicaid spending since individuals enrolled in SSI are automatically eligible for Medicaid.

Once individuals are enrolled in a federal disability program, they almost never go back to work. Less than one percent of those who were on SSDI at the beginning of 2011 have returned to the workforce.[48]

Concerns with federal disability programs have been the subject of several critical media stories recently, including a *60 Minutes* segment last year. While *60 Minutes* focused on problems in the Huntington, West Virginia disability office, SSA ALJ Marilyn Zahm, the Vice President of the Association of Administrative Law Judges, stated on the program that "if the American public knew what was going on in our system, half would be outraged and the other half would apply for benefits."[49] [emphasis added] For the last year-and-a-half, the Committee on Oversight and Government Reform has conducted extensive oversight into the widespread problems with the management of the federal disability programs, particularly problems within the disability appeals process.

Numerous current and former SSA ALJs support ALJ Zahm's view that there are serious problems in the disability appeals process. For example, during a Subcommittee hearing on June 27, 2013, two former SSA ALJs and two current SSA ALJs testified about their concerns.[50] Former SSA ALJ J.E. Sullivan testified:

> A judge's production, or ''making goal'' is SSA management's singular and exclusive focus in its administration and oversight of SSA's disability hearings process. For SSA management, ''making goal'' is more important than the adjudicatory process, the quality of a judge's work, and any considerations in making that decision.
>
> Instead of managing a meaningful Federal adjudication program, SSA management has substituted a factory-type production process. Judging is not a factory work process, but SSA has taken that approach for speed and high volume results. As a result, SSA management can present to Congress and the American

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[45] *See supra* note 4 at Table 3.

[46] Social Security Administration, Supplemental Security Income Program Fiscal Year 2015 Budget Justification, *available at* http://www.ssa.gov/budget/FY15Files/2015SSI.pdf.

[47] *See* Annual Report of the Supplemental Security Income Program at Table IV.B9 at 43, *available at* http://www.ssa.gov/oact/ssir/SSI13/ssi2013.pdf .

[48] Chana Joffe-Walt, *Unfit for Work: The Startling Rise of Disability in America* (2013), *available at* http://apps.npr.org/unfit-for-work/.

[49] Disability, USA, *60 Minutes*, (CBS News television broadcast Oct. 6, 2013), *available at* http://www.cbsnews.com/2102-18560_162-57606233.html (last visited Nov. 1, 2013).

[50] *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Government Reform*, 113th Cong. (June 27, 2013).

> people with some impressive production statistics, but these statistics have been achieved by causing incalculable damage to the adjudication process at SSA.[51]

For a variety of reasons, ALJs have a greater incentive to award benefits than to deny benefits. First, ALJs have historically been subject to greater agency scrutiny when they deny benefits, since denials are often appealed and approvals of benefits are never appealed. Second, SSA OIG has found that since ALJs are required to fully document denial decisions, they are usually longer than approval decisions.[52] According to ALJ Zahm, "because not as much rationale is needed, because the cases are not appealed, because the decision is quick, because the drafting of the decision is quick, it's just a whole lot easier [to issue approvals than denials]."[53]

Former SSA ALJ Drew Swank, in a law review article and in testimony before Congress,[54] agreed with ALJ Sullivan's sentiments that the agency's central focus on deciding cases quickly corrupted due process and quality decision-making:

> [T]he Social Security Administration leadership, being most concerned about the ever-growing backlog of disability cases, has prioritized the speed of processing cases over accuracy. It has become increasingly clear the Social Security disability programs, instead of only awarding benefits to adults who are unable to work, is granting benefits to those who can work—effectively giving away money for nothing.
>
> ...
>
> As long as eliminating the hearing backlog is the single, overriding concern of the Agency, Social Security disability programs will continue awarding money for nothing.[55]

Accurate disability determinations are crucial given that the lifetime value of federal benefits per program beneficiary, including benefits in programs linked to disability program participation, is an estimated $300,000.[56] Moreover, each individual inappropriately awarded benefits raises the likelihood that deserving claimants will see their benefits cut when the trust fund is bankrupt.

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[51] *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Government Reform*, 113th Cong. (June 27, 2013) (testimony of ALJ J.E. Sullivan).

[52] E-mail from OIG to Committee Staff (May 22, 2014).

[53] *Easier to approve a disability case than deny it?*, Interview with Marilyn Zahm, CBS NEWS (October 6, 2013), *available at* http://www.cbsnews.com/videos/easier-to-approve-a-disability-case-than-deny-it/.

[54] Judge Drew A. Swank, *Money For Nothing: Five Small Steps to Begin the Long Journey of Restoring Integrity to the Social Security Administration's Disability Programs*, 144 HOFSTRA L. REV. 155 (2012) (submitted testimony for hearing in *supra* note 16).

[55] *Id.* at 158, 179.

[56] DAVID H. AUTOR & MARK DUGGAN, SUPPORTING WORK: A PROPOSAL FOR MODERNIZING THE U.S. DISABILITY INSURANCE SYSTEM 8 n.10 (2010), *available at* http://www.americanprogress.org/wp-content/uploads/issues/2010/12/pdf/autordugganpaper.pdf.

When a claimant applies for disability benefits, their case is initially decided by examiners in a State Disability Determination Service (DDS) office.[57] In 40 states plus most of California, an applicant may appeal to a different reviewer in the same office if they are denied benefits.[58] Therefore, cases typically only reach an ALJ after the State DDS denies a case twice. When an ALJ awards disability benefits for an individual, for all practical purposes, the decision is final, and allowances are not appealed. If an ALJ denies benefits, the individual still has two levels of appeal for reconsideration – the Appeals Council and the federal courts.[59]

While SSA ALJs perform some similar functions as an Article III federal judge, ALJs are employees of the executive and not the judicial branch and do not enjoy the same privileges as federal judges. Unlike Article III judges who are appointed for life under the Appointments Clause,[60] ALJs are hired by executive officials, and are subject to discipline and removal within the executive branch. While decisions made by an Article III judge can only be reversed within the federal appeals process, an agency can reverse an ALJ's decision in its totality.[61]

Given that allowances awarded by ALJs are generally final decisions, the vast majority of individuals who receive benefits never return to the workforce, and because of the substantial value of lifetime benefits, ALJs have enormous spending authority. This enormous spending authority magnifies the consequences of improper decision-making. For example, ALJs who improperly award benefits, on net, to 100 people increase the present value of federal spending by approximately $30 million.

Although a case only reaches an ALJ after it has been denied (often twice), hundreds of ALJs routinely allowed more than 80 percent of DDS denials, with more than 100 ALJs routinely allowing more than 90 percent of DDS denials each year over the last decade. During a transcribed interview with the Committee, Jasper Bede, a Regional Chief Administrative Law Judge (RCALJ) for the agency, testified that when ALJs have a high allowance rate,[62] which he defined as over "75 or 80 percent," "it raises a red flag" about the quality of their decisions.[63]

According to Richard Pierce, a George Washington University law professor who has studied administrative law for 35 years and is an expert on the Social Security disability process, the primary cause of "an increasingly and unsustainably generous rate of granting disability benefits" is that "ALJs, on average, have granted benefits to many applicants with less severe mental illness or pain than ALJs considered sufficient to qualify for disability benefits in the recent past."[64]

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[57] 20 C.F.R. § 416.1015.
[58] 20 C.F.R. § 416.1407
[59] 20 C.F.R. § 1423, 20 C.F.R. §416.1467
[60] U.S. CONST. art. II, § 2, cl. 2.
[61] See 5 U.S.C. § 557(b) (2006) ("On appeal from or review of the [ALJ's] initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.").
[62] An allowance is when an ALJ overturns the denial decision of a state DDS and allows an individual onto a disability program. Synonymous with allowance are the terms "approval", "award", or "reversal.".
[63] *See supra* note 17 at 75.
[64] *Securing the Future of the Disability Insurance Program Before the Subcomm. on Social Security of the H. Comm. on Ways and Means*, 112th Cong. (June 27, 2012)(Statement of Richard J. Pierce, Jr.).

Table 1: Individuals Placed on Disability by ALJs with High Allowance Rates

ALJ Allowance Rate In Excess Of	Decisions	Allowances	On-The-Record Allowances	Total Spending on Allowances
75%	1,545,697	1,312,096	327,095	$394 Billion
80%	1,094,936	962,868	261,697	$289 Billion
85%	699,373	637,115	195,350	$191 Billion
90%	379,819	357,878	127,977	$107 Billion
95%	156,672	151,908	62,738	$46 Billion

Note: The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJ decision data from between fiscal year 2005 and fiscal year 2013. On-the-record allowances are allowances made without a hearing. Total spending on allowances was estimated by multiplying the number of allowances and $300,000 – the estimated total federal government expenditure of an individual gaining eligibility for a federal disability program. The values in each row represent the number of decisions, allowances, and on-the-record allowances in a given fiscal year issued by an ALJ with an allowance rate in excess of the allowance rate in the first column in that fiscal year.

Table 1 shows the number of individuals placed on SSDI or SSI between 2005 and 2013 by an ALJ with a high annual allowance rate.[65] According to Table 1, between 2005 and 2013, more than 1.3 million individuals were placed on a federal disability program by an ALJ who had an allowance rate in excess of 75 percent in the year those individuals were awarded benefits. The cost to the federal government of these 1.3 million allowances is nearly $400 billion. For the purpose of this report, the Committee calculated allowance rates by excluding dismissals issued by ALJs, which is identical to the way the agency currently calculates allowance rates.[66]

Table 1 also shows the number of individuals placed on the disability program and the number of individuals awarded benefits without a hearing (on-the-record allowances), by an ALJ with annual allowance rates in excess of 80 percent, 85 percent, 90 percent, and 95 percent.[67] Between 2005 and 2009, more than 40 percent of ALJs allowed at least 75 percent of their decisions, more than a fifth of ALJs allowed at least 85 percent of their decisions, and about six percent of ALJs allowed at least 95 percent of their decisions.[68] While an extraordinary number of ALJs were allowing the vast majority of their decisions, there were only a few ALJs disallowing the vast majority of their decisions. For example, between 2007 and 2010, only 0.5 percent of ALJs allowed less than 20 percent of their decisions.[69]

Table 7 and Table 8, in the appendix, show the decisions and allowances for ALJs with an *overall* allowance rate in excess of 85 percent between 2005 and 2013. Table 7 is sorted by allowance rate, and Table 8 is sorted by ALJ last name. These tables exclude ALJs with less than 150 decisions during this time period. Overall, there were 191 ALJs who had a *total* allowance rate in excess of 85 percent during this time period. These 191 ALJs awarded more than $150 billion in lifetime benefits between 2005 and 2013. As an indication of the

[65] *See supra* note 15.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*

disproportionate nature of the problem, only one ALJ had a *total* allowance rate below 15 percent between 2005 and 2013, and that ALJ has not decided any cases since 2008.

The national adjudication data suggests a large scale problem. However, because of specific allegations made at the Committee's June 2013 hearing, the Committee's initial oversight work focused on Region 3, the region made up of 18 hearing offices located in Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia. The three ALJs in Region 3 who allowed the greatest number of individuals onto SSDI and SSI between 2005 and 2013 were ALJ Charles Bridges, ALJ David Daugherty, and ALJ Harry Taylor. With their high allowance rates and excessive number of decisions, between 2005 and 2013 alone, ALJ Bridges, ALJ Daugherty, and ALJ Taylor committed the federal government to approximately $9.5 billion in present and future spending.

This report presents three case studies focusing on ALJ Bridges, ALJ Daugherty, and ALJ Taylor. On its face, the adjudication data of these three judges – extremely high disposition numbers, allowance rates, and favorable decisions without hearings – indicates that these ALJs were not following SSA rules about properly considering all the evidence in an applicant's file and conducting meaningful hearings. Former Commissioner Astrue has stated that ALJs producing an extremely large case load "invariably means the quality of the review is low or nonexistent."[70] In essence, these judges rubber stamped nearly every claimant before them for a lifetime of benefits at taxpayer expense.

In addition to the extremely troubling disposition data, there were long-standing concerns with each of these ALJs regarding their conduct in hearings and in the hearing office, as well as numerous complaints from other employees. For each of these three ALJs, the agency took virtually no action and allowed their behavior to go unpunished, wasting billions of taxpayer dollars and inflicting untold human damage in the process. The failure of the agency to take appropriate action with any of these three ALJs raises serious questions about its stewardship of federal disability programs. SSA's decision to emphasize the rate at which decisions were processed, while paying virtually no attention to the quality of those decisions, further exacerbates the problem. It is important to realize that these three ALJs only represent the three ALJs with the *most* skewed adjudication data in only one of the nation's ten regions.

II. Case Study of ALJ Charles Bridges

ALJ Bridges served as Hearing Office Chief ALJ (HOCALJ) for the Harrisburg, Pennsylvania, hearing office from June 2, 2004 to June 4, 2010.[71] As HOCALJ, ALJ Bridges had the responsibility to rotate cases so that every ALJ within his office received proportional numbers and types of cases.[72] He was also responsible for overseeing other ALJs and was expected to decide a full load of cases in addition to his managerial duties.[73] ALJ Bridges was

[70] Brent Walth and Bryan Denson, *Paying out billions, one judge attracts criticism*, The Oregonian (Dec. 30, 2008) *available at* http://www.oregonlive.com/special/index.ssf/2008/12/paying_out_billions_one_judge.html.
[71] Email from RCALJ Jasper Bede to Region 3 Staff (June 7, 2010) [Request 4 – 008360].
[72] HALLEX I-2-0-5 A.
[73] *Id.*

appointed to this post by Frank Cristaudo, the former Chief ALJ (CALJ).[74] Table 2 shows the adjudication data of ALJ Bridges from 2005-2013. The data shows that ALJ Bridges allowed benefits in over 95 percent of his decisions, and awarded benefits without holding a hearing (on-the-record decisions) in nearly 7,000 cases since 2005.

Table 2: ALJ Bridges' Adjudication Data, 2005-2013

Fiscal Year	Decisions	Allowance	On-the-Record Allowances	Allowance Rate
2005	2,168	2,088	1,347	96.3%
2006	2,374	2,310	1,433	97.3%
2007	2,368	2,285	1,340	96.5%
2008	2,122	2,019	1,072	95.1%
2009	2,093	1,988	828	95.0%
2010	1,855	1,785	571	96.2%
2011	1,088	1,017	308	93.5%
2012	866	777	47	89.7%
2013	853	768	37	90.0%
Total	**15,787**	**15,037**	**6,983**	**95.2%**

Note: The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJ Bridges' decision data from between fiscal year 2005 and fiscal year 2013. The 'Allowance' column includes both fully favorable awards and partially favorable allowances. On-the-record allowances are allowances made without a hearing. The 'Allowance Rate' was obtained by dividing the 'Allowance' column by the 'Decision' column.

SSA Quality Reviews Show Serious Deficiencies in ALJ Bridges' Decision-Making

SSA commissioned two "focused" reviews of ALJ Bridges' decisions: one in late 2011 and another in late 2013. Both reviews show that ALJ Bridges is not suited to be a SSA ALJ.

The 2011 review stated that one law firm created a "Bridges Policy," in which the firm accepted any individual as a client if their case was assigned to ALJ Bridges, regardless of the evidence.[75] The review noted that "This policy appropriately illuminates Judge Bridges' alarming pay-rate despite underdevelopment of the record and general lack of support for his findings, as determined in this study."[76] The 2011 review contains multiple examples of ALJ Bridges' poor decision-making, such as obtaining testimony from vocational experts that is "irrelevant" or "insufficient," relying on subjective complaints without evaluating them for credibility, and using disability listings when not supported by the evidence.[77]

The results of the 2013 review are more explicit. For the first time, the reviewers conducted a *de novo* review of 25 of ALJ Bridges' cases, including a review of the medical and

[74] When ALJ Bridges was eventually removed from his position as HOCALJ, he remained an ALJ and continued to decide a full load of cases for the agency.
[75] Focused Review of ALJ Charles Bridges (Oct. 2011) [Request 1 – 000106].
[76] *Id.*
[77] *Id.*

opinion evidence, as well as an audit of the hearing.[78] The review found that 60 percent of the 25 sampled decisions were not supported by substantial evidence.[79]

The review also found that 76 percent of ALJ Bridges' hearings took less than 20 minutes, and his bench decisions[80] did not comply with agency policy.[81] For example, ALJ Bridges "provided limited citations to the record, little rationale for the limitations assessed and no specific findings regarding the claimant's credibility or the weight of the opinion evidence."[82] Additionally, the review categorized his hearings as "underdeveloped," because his hearings included little or no testimony from the claimant, and the narrative provided by ALJ Bridges was generally "identical" to the bench decision checklist which is completed by the claimants' attorney.[83]

Current CALJ Debra Bice, who assumed former CALJ Cristaudo's role in January 2011, testified that as a result of this review, ALJ Bridges was required to undergo a ten-day training course.[84] According to CALJ Bice, ALJ Bridges has not yet shown improvement. Other measures, such as additional discussions with ALJ Bridges, are currently being considered by management.[85] ALJ Bridges continues to decide a full load of cases each year and award benefits in virtually all of them.

ALJ Bridges' Troubled Tenure as Hearing Office Chief ALJ

From May 2004 to June 2010, ALJ Bridges' served in a leadership role within the agency, as HOCALJ for the Harrisburg office. Throughout his tenure as HOCALJ, multiple ALJs complained to ALJ Bridges' supervisor, Jasper Bede, the Regional Chief ALJ (RCALJ) and CALJ Cristaudo that Bridges was "stealing cases" and engaging in other judicial misconduct.[86] Former HOCALJ Reana Sweeney submitted a lengthy complaint in August 2007, stating that it was widely known that ALJ Bridges pays benefits contrary to the law; she noted that one claimant representative smiled broadly while acknowledging that her income had gone up significantly since Bridges became HOCALJ.[87] In an email to RCALJ Bede on August 14, 2007, ALJ Sweeney wrote:

> You spoke of the problems with Bridges as 'complicated' and then referred to how well Harrisburg and the region is doing with its numbers. Although the backlog is a significant problem and it is the obligation of all judges to address it, empowering any judges in any region to delete full due process hearings,

[78] Fiscal Year 2013 Focused Review of Charles Bridges (Jan. 15, 2014) [Request 1 – 000109].
[79] *Id.*
[80] The administrative law judge (ALJ) oral (bench) decisions are abbreviated wholly favorable decisions that are entered into the record of the hearing proceedings. The oral (bench) decision provides an alternative procedure for the ALJ to use when issuing the written decision.
[81] Bridges focused review, *supra* note 78..
[82] *Id.*
[83] *Id.*
[84] Transcribed Interview with CALJ Debra Bice at 68 (May 13, 2014).
[85] *Id.*
[86] E-mail from former HOCALJ Reana Sweeney to Pat O'Carroll, Inspector General, SSA, et al. (Aug. 24, 2007) [Request 4 – 021667].
[87] *Id.*

> disregard established procedural law with regard to dismissals, and, therefore, to issue thousands of dispositions per judge should be categorically unacceptable to any judge, agency component and agency that believes in due process of law.[88]

RCALJ Bede acknowledged ALJ Bridges' unusually high production numbers to his supervisor, CALJ Cristaudo, in an undated memo.[89] RCALJ Bede wrote that ALJ Bridges issued 2,665 dispositions between July 2006 and June 2007, or an average of 10.7 cases per workday.[90] RCALJ Bede noted that ALJ Bridges' dispositions exceeded any other Region III ALJ by 1,331 cases, and that the FY 2007 national average disposition rate was 2.13 cases per day.[91] He wrote that "such a high disposition rate is rightfully a subject for inquiry and scrutiny."[92]

In response to these complaints, SSA conducted three major reviews of ALJ Bridges in late 2007: 1) a report by the Office of Quality Performance analyzing the quality of his decision-making;[93] 2) an Administrative Review analyzing his management of the office as HOCALJ;[94] and 3) a report by the SSA Office of Inspector General.[95] All three reports raised major red flags about ALJ Bridges' performance as a manager and as an ALJ. In a disservice to the Nation's taxpayers and to due process of law, the SSA took no meaningful action as a result of the reports. ALJ Bridges was allowed to serve in his leadership role as HOCALJ for two more years, and still decides a full load of cases.

Report #1: Office of Quality Performance Report

The Office of Quality Performance (OQP) Report[96] showed significant problems with ALJ Bridges' judicial decision-making. The usefulness of OQP's report is limited, because OQP did not conduct a *de novo* review and did not evaluate the actual evidence in the claimant's file. Instead, OQP simply reviewed whether ALJ Bridges cited any evidence to support his decisions. As a result, it is impossible to determine from the OQP report whether Judge Bridges' decisions were actually supported by the evidence. Moreover, OQP found that ALJ Bridges conducted a disturbingly high number of on-the-record decisions[97] (81 out of the 110 cases reviewed, or 74 percent).

When ALJ Bridges held hearings, the average hearing time was 13 minutes and eight seconds. Only two out of the 29 sampled hearings lasted over 20 minutes. CALJ Bice testified that scheduling hearings for less than 30 minute intervals would signal that the ALJ might need

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[88] E-mail from former HOCALJ Reana Sweeney to RCALJ Jasper Bede (Aug. 14, 2007) [Request 4 – 006080].
[89] Memorandum from RCALJ Jasper Bede to former CALJ Frank Cristaudo (2007) [Request 4 – 006082].
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] OQP Report on the Results of a Special ODAR Review on former HOCALJ Charles Bridges [Request 4 – 021624].
[94] Administrative Investigation Report on Harrisburg, Pennsylvania Office of Disability Adjudication and Review (ODAR) Hearing Office [Request 4 – 012137]
[95] Memorandum from Assistant Inspector General for Audit, SSA, to Lisa DeSoto, SSA (June 2, 2008) [Request 4 – 021819].
[96] OQP Report, *supra* note 23.
[97] On the record decisions are decisions made by the ALJ without a claimant hearing.

to be reviewed for failing to issue quality decisions, and that it is more common to schedule hearings every hour.[98]

OQP found that ALJ Bridges' hearings were "unlike those of most other judges" and that ALJ Bridges tended to be "unorthodox" in the way he conducted hearings.[99] In many cases, ALJ Bridges did not use vocational experts (VE) properly. For example, OQP found that some VEs did not participate until after ALJ Bridges made the decision to allow benefits.[100] According to OQP, "there were even cases in which ALJ Bridges questioned the VE after indicating that a medical listing was met," telling the VE "since you are here, I might as well use you."[101]

In addition to short hearing times, unconventional methods of questioning, and many on-the-record decisions held generally, OQP found that ALJ Bridges also discussed irrelevant and inappropriate topics during his hearings. For example, ALJ Bridges discussed "personal and hearing office productivity" during hearings, which OQP noted could be "misinterpreted, leading to questions about how ALJ Bridges adjudicates his cases."[102] In every favorable decision examined by OQP, contrary to agency policy, at the end of the hearing ALJ Bridges informed claimants in person that he was awarding benefits. OQP noted that this was inappropriate because it may be subsequently determined that the claimant is not disabled or is ineligible to receive benefits.[103]

OQP recommended that ALJ Bridges be counseled on several topics, including SSA's "sequential evaluation process," appropriate questioning of VEs and the application of the borderline age provision.[104] It is unclear whether RCALJ Bede or anyone at SSA ever counseled ALJ Bridges in accordance with these recommendations.

Report #2: Administrative Investigation Report on Harrisburg, Pennsylvania, Office of Disability Adjudication and Review (ODAR) Hearing Office

The SSA Administrative Investigation Report[105] revealed serious problems with ALJ Bridges' management of the hearing office and his conduct as an ALJ. SSA's investigation team interviewed all 39 employees within the Harrisburg office. Ultimately, the report concluded that the Harrisburg hearing office was "dysfunctional and is devoid of good leadership."[106]

The report found that ALJ Bridges' actions and management style "intimidated the majority of employees and caused confusion, frustration, concern and low morale for many in the office."[107] ALJ Bridges' religious statements, which some employees characterized as

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[98] Bice interview, *supra* note 84 at 21.
[99] OQP report, *supra* note 93.
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] SSA report, *supra* note 94.
[106] *Id.*
[107] *Id.*

"preaching," also caused concern.[108] RCALJ Bede testified that "there were complaints against him having to do with what was felt to be religious … he made references to doing God's work and that sort of thing."[109] The report noted that "the majority of employees are concerned about the large numbers of cases ALJ Bridges produces and his overwhelmingly favorable pay rate. … Some employees are uncomfortable with their assignments and fearful of repercussions if it is ever determined that Bridges' decisions are found to be legally non-supportable."[110]

In addition to these general findings, the report pointed to several "red flags"[111] regarding ALJ Bridges:

- ALJ Bridges was "overly concerned" with high dispositions. ALJ Bridges "bragged" in hearings and in interviews with news organizations about Harrisburg's high ranking for dispositions. ALJ Bridges even awarded a trophy to the ALJ with the most dispositions for the preceding month.[112] ALJ Bridges responded to a question about his high proportion of the office's total dispositions by saying that "You have to do whatever you have to do to succeed."[113]

- Staff morale and general office atmosphere were poor under ALJ Bridges' leadership, partly due to increased tension and stress among the staff from processing the office's enormous case output.[114]

- Two writers in ALJ Bridges' group stated they had specifically been told not to go to ALJ Bridges if they felt there was insufficient medical evidence to support his instruction for a fully favorable decision.[115] One decision writer described ALJ Bridges as an "embarrassment" and another said she is "not proud of what she does."[116]

The report concluded that ALJ Bridges "cannot be exonerated for his management actions and for the dysfunctional situation that exists in Harrisburg."[117] The report recommended several actions, including leadership and sensitivity training, mentoring for ALJ Bridges, implementing the OQP report recommendations, and giving ALJ Bridges the option to transfer to another hearing office as HOCALJ.

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[108] *Id.*
[109] Bice interview, *supra* note 84 at 92.
[110] SSA report, *supra* note 94.
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*

Report #3: Office of the Inspector General Report: "Assignment of Claims in the Harrisburg Hearing Office"

SSA's Office of the Inspector General (OIG) conducted a review of how ALJ Bridges was rotating cases among all the ALJs in his office.[118] The OIG investigated allegations that ALJ Bridges was "stealing cases" or improperly assigning cases to himself, and that by doing so, he "altered his dispositions to his professional advantage."[119] The OIG found that ALJ Bridges failed to properly rotate cases in accordance with SSA policies.[120]

Under SSA rotational policy, each ALJ should dispose of a similar percentage of claims in various age categories. However, in the Harrisburg Office, the OIG found that the proper rotation among ALJs had not occurred.[121] The OIG also found that the Harrisburg Office's rate of on-the-record decisions (or decisions made without a hearing) was 33 percent, more than twice the national average.[122] Moreover, Bridges alone handled 77 percent of those on-the-record decisions, which the OIG found to be improper.[123]

The OIG recommended that "the matter of assigning claims should be further investigated to determine why the claims are not being assigned on a rotational basis."[124] In response to a question from ODAR Deputy Commissioner Lisa DeSoto about what they should do in light of OIG's findings, CALJ Cristaudo wrote "I'm going to ask the region to provide comments but other than the children's cases I don't see a lot in the attached report that evidences much more than an ALJ who puts in incredible hours and is very efficient."[125] Ms. DeSoto replied "OK – it's in your hands."[126]

SSA Management's Inadequate Response to ALJ Bridges' Reports

Despite three critical reports detailing flaws with his management and judicial decision-making, the agency essentially took no action to prevent ALJ Bridges from continuing to improperly award benefits. CALJ Cristaudo and officials within ODAR, the office responsible for the first two reports, initially contemplated removing him from his position as HOCALJ.[127] Karen Ames, Director of ODAR, considered ALJ Bridges' history of filing Equal Employment Opportunity (EEO) complaints when evaluating the proper action: "The strategy here is that we show that we are giving him opportunities and not just removing him at the first chance we get. In the end when he files his EEO, we will have documented that we tried."[128] Other than

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[118] OIG memo, *supra* note 95.
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] E-mail from former CALJ Frank Cristaudo to Lisa DeSoto, SSA, et al. (June 3, 2008) [Request 4 – 012320]
[126] E-mail from Lisa DeSoto, SSA, to former CALJ Frank Cristaudo, et al. (June 3, 2008) [Request 4 – 012320]
[127] E-mail from former CALJ Frank Cristaudo to Karen Ames, Director, Division of Quality Service, et al. (Jan. 21, 2008) [Request 4 – 021662].
[128] E-mail from Karen Ames, Director, Division of Quality Service, to former CALJ Frank Cristaudo (Feb. 24, 2008) [Request 4 – 006779].

directing RCALJ Bede to draft a "counseling memo" to ALJ Bridges, SSA management took no action to curtail ALJ Bridges.

Given the troubling findings in these three reports, the agency abdicated its responsibility as a steward of tax dollars by allowing ALJ Bridges to continue as an ALJ and allowing him to retain his leadership role with the agency for more than two additional years. The agency even appointed ALJ Bridges as a "mentor" for new ALJs multiple times throughout 2008 and 2009.[129]

RCALJ Bede testified that ALJ Bridges' high production numbers were highly problematic, but as ALJ Bridges' direct supervisor there was nothing he could do about it.[130] RCALJ Bede stated that "just looking at his incredible production, it was an embarrassment, and I was trying -- basically talking to him to bring those numbers down, and you can see they came down very slowly until the last 2 years."[131] He testified that CALJ Cristaudo had "nothing to offer than what I was doing, which was try to talk [to ALJ Bridges]."[132]

ALJ Bridges was finally removed from his HOCALJ position on June 4, 2010 because he took a case from another ALJ's desk and awarded benefits.[133] RCALJ Bede testified that "looking into that, there was indication that he might have done that in more than one case."[134] Tellingly, RCALJ Bede's email notifying the hearing office of ALJ Bridges' removal thanked him for his years of "energetic service" as HOCALJ, a potential signal to office employees that the quantity of decisions issued by an ALJ mattered far more than the quality of those decisions.[135]

In the years following his removal as HOCALJ, ALJ Bridges applied for multiple open HOCALJ positions throughout the country, although SSA never appointed him as HOCALJ.[136] After several rejections, ALJ Bridges filed and ultimately lost an EEO complaint against RCALJ Bede, alleging that he was not selected for additional HOCALJ positions because of racial discrimination.[137]

After ALJ Bridges was removed as HOCALJ, complaints about his judicial misconduct continued. In June 2011, CALJ Bice received allegations via email that ALJ Bridges was pulling cases from the master docket and assigning them to himself.[138] Emails also reveal that SSA employees alleged that ALJ Bridges violated agency policy regarding the protection of

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[129] *See* e-mail from Helena Quinn, SSA, to RCALJ Jasper Bede, et al. (July 14, 2008) [Request 4 – 012335], *see also* e-mail from ALJ Charles Bridges, SSA, to Edward Brady, et al. (Sep. 29, 2009) [Request 4 – 002774].
[130] Bede interview, *supra* note 17 at 75.
[131] *Id.* at 144.
[132] *Id.* at 147.
[133] *Id.* at 145.
[134] *Id.*
[135] E-mail from RCALJ Jasper Bede to former CALJ Frank Cristaudo, et al. (June 7, 2010) [Request 4 – 008360].
[136] *See* memorandum from RCALJ Jasper Bede to CALJ Debra Bice, et al. (June 1, 2012) [Request 4 – 009959], *see also* e-mail from RCALJ Jasper Bede to ALJ Charles Bridges (Nov. 9, 2012) [Request 4 – 018808], *see also* memorandum from RCALJ Jasper Bede to CALJ Debra Bice, et al. (Jan. 14, 2013) [Request 4 – 010736].
[137] *See* affidavit of RCALJ Jasper Bede with EEO Investigator (April 3, 2013) [Request 4 – 010041], *see also* *Bridges v. Colvin*, PHI-13-0181-SSA (2013)(final agency decision) [Request 4 – 010224].
[138] E-mail from Renee Gibbs, SSA, to James Julian, SSA, et al. (June 17, 2011) [Request 4 – 018450], e-mail from Amy Prether, SSA, to CALJ Debra Bice, et al. (June 17, 2011) [Request 4 – 018454].

personally identifiable information.[139] The new HOCALJ in the Harrisburg Office, ALJ Theodore Burock, twice wrote RCALJ Bede about ALJ Bridges' poor quality work product, and RCALJ Bede passed on the comments to CALJ Bice.[140] As a result, CALJ Bice recommended ALJ Bridges for several focused reviews, discussed earlier, which showed critical errors in his judicial decision-making."[141] Despite these findings, ALJ Bridges continues to decide a full load of cases.

Between 2008 – the date of the initial three critical reports – and 2013, ALJ Bridges placed more than 8,300 people on either SSDI or SSI at a total present and future cost to the federal government of approximately $2.5 billion. ALJ Bridges' disposition numbers, combined with the focused review findings, conclusively prove that he allowed many, and possibly most, of his cases without following proper procedures and as a result of sloppy work. The agency's decision to not remove ALJ Bridges, despite repeated opportunities, has harmed both taxpayers and the truly disabled and reflects very poorly on the agency's stewardship of federal disability programs over the past decade.

III. Case Study of ALJ David Daugherty

From 2005 to his retirement in mid-2011, ALJ Daugherty awarded disability benefits to 8,413 individuals, the equivalent of approximately $2.5 billion in federal lifetime benefits.[142] Table 3 shows the disposition data for ALJ Daugherty, the ALJ with the seventh highest overall allowance rate (98.6 percent) in the country between 2005 and 2011. This case study will show that SSA failed to take action, despite evidence of ALJ Daugherty's poor judicial decision-making and a collusive scheme with a claimant representative, until news attention embarrassed the agency. Evidence suggests that ALJ Daugherty's high production numbers, which helped his hearing office reach its production goal, isolated ALJ Daugherty from disciplinary action.

ALJ Daugherty's Collusive Scheme with Claimant Representative Eric Conn

In 2013, the U.S. Senate Committee on Homeland Security and Governmental Affairs released a staff report (Senate Staff Report) which uncovered a number of improper practices and an "inappropriate collusive effort" in SSA's Huntington, West Virginia, Office of Disability Adjudication and Review (ODAR) involving ALJ Daugherty and the Eric C. Conn Law Office.[143] ALJ Daugherty assigned Mr. Conn's cases to himself and approved benefits for

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[139] E-mail from Michelle Hall, SSA, to HOCALJ Theodore Burock (Nov. 30, 2012) [Request 4 – 010082], e-mail from Janet Landesberg to HOCALJ Theodore Burock, et al. (Mar. 27, 2013) [Request 4 – 010086].

[140] E-mail from HOCALJ Theodore Burock to RCALJ Jasper Bede (Oct. 28, 2013) [Request 4 – 019875], e-mail from HOCALJ Theodore Burock to RCALJ Jasper Bede (Nov. 22, 2013) [Request 4 – 19906].

[141] E-mail from CALJ Debra Bice to Jim Borland, SSA (Nov. 1, 2013) [Request 4 – 019878].

[142] The present value of federal benefits from gaining eligibility in SSDI, which includes benefits from other programs that an individual has been made eligible for because of enrollment in SSDI, has been calculated at $300,000.

[143] STAFF OF S. COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 113TH CONG., HOW SOME LEGAL, MEDICAL, AND JUDICIAL PROFESSIONALS ABUSED SOCIAL SECURITY DISABILITY PROGRAMS FOR THE COUNTRY'S MOST VULNERABLE: A CASE STUDY OF THE CONN LAW FIRM (Oct. 7, 2013).

Table 3: ALJ Daugherty's Adjudication Data, 2005-2011

Fiscal Year	Decisions	Allowances	On-the-Record Allowances	Allowance Rate
2005	955	905	428	94.8%
2006	1,147	1,114	591	97.1%
2007	1,248	1,233	683	98.8%
2008	1,390	1,379	635	99.2%
2009	1,415	1,410	692	99.6%
2010	1,375	1,371	649	99.7%
2011	1,003	1,001	506	99.8%
Total	**8,533**	**8,413**	**4,184**	**98.6%**

Note: The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJ Daugherty's decision data from between fiscal year 2005 and fiscal year 2011. The 'Allowance' column includes both fully favorable awards and partially favorable allowances. On-the-record allowances are allowances made without a hearing. The 'Allowance Rate' was obtained by dividing the 'Allowance' column by the 'Decision' column.

virtually all of the claimants represented by Mr. Conn.[144] In total, ALJ Daugherty awarded half a billion dollars of benefits to Mr. Conn's clients between 2005 and mid-2011.[145] Mr. Conn, who
collected nearly $23 million in total attorney fees from the federal government by representing persons claiming disability, allegedly provided kickbacks to physicians who falsified medical records and possibly to ALJ Daugherty as well.[146]

Despite agency rules that require rotational case assignment, as early as 2003, SSA employees observed ALJ Daugherty manipulating SSA's case assignment system to re-assign Mr. Conn's cases to himself.[147] Each month, Mr. Conn called ALJ Daugherty with a new list of his clients and their social security numbers.[148] Many of these cases involved claimants who had previously been denied benefits by another ALJ in the Huntington office, but had filed new claims.[149] ALJ Daugherty took extreme measures to ensure that he decided the cases on Mr. Conn's "DB List"—referring to ALJ Daugherty's nickname— including re-assigning the cases to himself, against agency policy, even when other ALJs had already begun developing the cases and had scheduled hearings for them.[150]

ALJ Daugherty was able to assign cases to himself because of an unknown technical problem in SSA's internal system. CALJ Bice testified that the "glitch" allowed ALJs to subvert the normal case rotation process and assign cases to themselves, although it was against SSA policy.[151] The glitch was not discovered until ALJ Daugherty's scheme became public

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[144] *Id.* at 2.
[145] *Id.* at __
[146] *Id.* at 57-58, __
[147] *Id.* at 2.
[148] *Id.* at 5.
[149] *See id.* at 35.
[150] *Id.* at 5.
[151] *See* Bice interview, *supra* note 84 at 34-8.

knowledge in June 2011; CALJ Bice testified the glitch was in place since at least 2005 and SSA does not know how many other ALJs assigned cases to themselves during that time period.[152]

The Senate Staff Report uncovered additional evidence indicating that ALJ Daugherty wasted taxpayer dollars to perpetuate his scheme with Mr. Conn. For example, on September 5, 2002, ALJ Daugherty cancelled 30 hearings that were scheduled for three days later that month and issued favorable decisions (without hearings) for all of them.[153] Nearly all of these cases involved Mr. Conn's clients. Frank Cristaudo, who at the time was the RCALJ for Region 3, reported ALJ's Daugherty's actions to the Associate Commissioner: "Judge Daugherty stated that he took this action to help the office attain numerical goals. ...To state that 30 hearings were cancelled and 30 on-the-record decisions issued to help the agency meet performance goals suggests possible impropriety and flawed decisions."[154] RCALJ Cristaudo drafted a letter of reprimand based on ALJ Daugherty's conduct but "could not get my headquarters to take action," and ALJ' Daugherty's possibly "flawed decisions" were not investigated.[155]

Multiple employees notified Huntington's Hearing Office Chief ALJ (HOCALJ) Charlie Andrus and Hearing Office Director Greg Hall of evidence that ALJ Daugherty was re-assigning Mr. Conn's cases to himself and awarding benefits to many claimants without holding a hearing.[156] Despite a memo from HOCALJ Andrus to the entire Huntington hearing office in July 2006 regarding proper case-rotation policy, ALJ Daugherty continued to re-assign Mr. Conn's cases to himself for many years with the apparent knowledge of HOCALJ Andrus and Mr. Hall. The Senate Staff Report details numerous examples of HOCALJ Andrus and Mr. Hall ignoring complaints against ALJ Daugherty.[157]

In addition to his manipulation of the case-rotation system, SSA employees and other ALJs regularly reported that Daugherty was conducting sham hearings that only lasted a few minutes before he approved claimants for benefits.[158] In 2007, one ALJ in the hearing office documented that ALJ Daugherty had "[p]eople coming in and out of the hearing room in five minute intervals after being told that their case would be granted."[159] ALJ Daugherty rarely took testimony from vocational experts (VE) during his hearings, although agency policy required them to be paid a set amount per hearing.[160]

SSA Quality Reviews Show Serious Deficiencies in ALJ Daugherty's Decision-Making

An August 15, 2011, draft report by SSA's Division of Quality (DQ) showed that ALJ Daugherty essentially rubber-stamped claimants onto the federal disability programs.[161] DQ

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[152] *Id.*
[153] *See supra* note 143 at 45.
[154] *Id.* at 46.
[155] *See* Cristaudo interview *supra* note 8 at 145.
[156] *See supra* note 143.at 37-44.
[157] *Id.* at
[158] *Id.* at 2.
[159] *Id.* at 108.
[160] *Id.*
[161] *See* Draft: Report of the Division of Quality's Review of Decisions Issued by the Huntington, WV Hearing Office (August 15, 2011) [Request 1 – 000073].

reviewed a random sample of 128 of ALJ Daugherty's decisions from one month in early 2011.[162] ALJ Daugherty approved all 128 claimants for benefits, and approved 62 cases without holding a hearing.[163] Forty-nine hearings lasted two minutes or less, and another 16 hearings lasted between two and five minutes.[164] Only one hearing lasted longer than five minutes.[165]

Fifty-eight cases, or 45 percent of the sample, involved claimants represented by Mr. Conn, and the reviewers determined that ALJ Daugherty assigned all of those cases to himself.[166] He only held hearings in two out of Mr. Conn's 58 cases.[167] DQ determined that ALJ Daugherty was deficient in discovering a number of areas of important evidence during the hearings.[168] The reviewers found that in all 58 of the cases involving Mr. Conn, ALJ Daugherty based his findings of disability solely on medical evidence submitted by the claimant representative (Mr. Conn) and did not address any other evidence.[169] The reviewers also found that an identical four paragraphs were cut and pasted into every decision.[170]

Despite Numerous Allegations, SSA Failed to Take Action until News Media Exposed ALJ Daugherty's Scheme

In December 2010, a West Virginia blogger wrote an article about the disproportionate number of Mr. Conn's cases that ALJ Daugherty decided favorably.[171] In response to this blog post, Joseph M. Lytle, a director in the Office of CALJ Debra Bice, wrote to Associate Chief ALJ (ACALJ) Paul Lillios and CALJ Bice: "I don't believe this is a new issue and Judge Bede and Nick Cerulli (Regional Atty) can likely provide valueable [sic] insight and history. Also, I'm sure Judge Andrus has helpful information as well."[172] In e-mails between HOCALJ Andrus and *Wall Street Journal* reporter Damian Paletta, HOCALJ Andrus acknowledged that he was notified three times over several years that ALJ Daugherty assigned or re-assigned Mr. Conn's cases to himself.[173]

Following the *Wall Street Journal's* May 19, 2011, article on ALJ Daugherty's collusive scheme,[174] SSA's OIG opened an investigation into the entire Huntington hearing office. Facing public embarrassment and intense media scrutiny, the agency finally took its first disciplinary action against ALJ Daugherty, many years after the allegations against him were first reported, by placing him on administrative leave. ALJ Daugherty told the *Wall Street Journal* that he had

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[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.* at 000074.
[170] *Id.*
[171] Jack Swint, *Is the Social Security Appeals Process Beyond Repair*, W. VA. NEWS, (Jan. 3, 2011), http://westvirginianews.blogspot.com/2010/11/has-social-security-appeals-process.html.
[172] E-mail from Joseph Lytle to CALJ Debra Bice,et al. (Feb. 8, 2010) [Request 4 – 017710].
[173] E-mail from HOCALJ Charlie Andrus to Damian Paletta, Reporter, WALL ST. J. (May 5, 2011) [Request 4 – 009432].
[174] Damien Paletta, *Disability-Claim Judge Has Trouble Saying 'No'*, WALL ST. J., May 19, 2011, http://online.wsj.com/news/articles/SB10001424052748704681904576319163605918524.

no idea why he was placed on leave and that it was temporary.[175] He also stated that it was a "coincidence" that he had approved 100 percent of the cases he decided in the first six months of FY 2011. SSA removed his supervisor, Mr. Andrus, from his HOCALJ position on June 8, 2011, and Mr. Daugherty retired on July 13, 2011. Despite the evidence collected by the OIG and the Senate investigators, as well as whistleblower testimony, the U.S. Attorney for the Southern District of West Virginia has yet to bring any criminal charges against either Mr. Daugherty or Mr. Conn.

ALJ Daugherty's High Production Numbers May Have Protected Him from Agency Scrutiny

Although ALJ Daugherty's adjudication data and complaints from other office employees should have prompted agency action, agency officials left him undisturbed to continue rubber-stamping individuals onto the program. Evidence suggests that the agency failed to properly deal with ALJ Daugherty because SSA officials approved of his high production numbers, which helped the Huntington office make its disposition goal. For example, RCALJ Bede testified that ALJ Daugherty's production may have protected him:

> Whether [high production numbers] protected him from Judge Andrus, in retrospect, knowing what we know now, I can't say. It appears that it might … the actions of the Judge Daugherty, some of which were not connected with his production, went unnoticed, and I don't know why.[176]

Other ALJs in the Huntington office knew that ALJ Daugherty was largely responsible for the hearing office making its disposition targets. In 2006, ALJ William H. Gitlow in the Huntington hearing office explained to a colleague: "[a]mazing how it takes a[n] … ALJ in an office to make numbers each month. We have Judge Daugherty here who scans the master docket each month, pays 90% and gets out 80 to 100 cases each month. So we make our numbers each month. Without him we would not. Ever."[177] [emphasis added]

An internal agency review concluded that the Huntington office management team was in "disarray," lacked policy compliance, and was solely focused on the number of dispositions.[178] Since the agency placed such a priority on meeting the production goals and regularly praised hearing offices and regions that achieved the goals, it appears that HOCALJ Andrus and other agency employees choose to ignore ALJ Daugherty's poor decision-making and contemptible, if not unlawful, conduct in order to meet the agency's production goal.

Given the numerous warning signs about ALJ Daugherty and opportunities for the agency to take corrective action, including accounts of whistleblowers in the Huntington office, it is telling that the agency failed to take any action until *after* the *Wall Street Journal* published the article. ALJ Daugherty's extremely high allowance rates and excessive number of dispositions should have signified years earlier that he was not producing quality decisions. If

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[175] Damien Paletta, *Disability Judge Put on Leave From Post*, WALL ST. J., May 27, 2011 http://online.wsj.com/news/articles/SB10001424052702303654804576347790598676096.
[176] *See* Bede interview, *supra* note 17 at 109.
[177] *See supra* note 27 at 38.
[178] The Huntington Success Story (July 2013) [Request 4 – 010132].

the agency had properly handled ALJ Daugherty when the problems were first apparent, SSA probably would have saved the taxpayers well over $1 billion dollars between 2005 and 2011.

IV. Case Study of ALJ Harry Taylor

Between 2005 and 2013, ALJ Taylor awarded disability benefits to 8,277 individuals, the equivalent of approximately $2.5 billion in federal lifetime benefits.[179] Table 4 shows the disposition data for ALJ Taylor. He had an overall allowance rate of nearly 94 percent and awarded benefits to nearly 6,000 people without a hearing. This case study will show that SSA did nothing to stop ALJ Taylor from wasting taxpayer dollars for years, even after there was clear evidence of personal misconduct and non-compliance with agency policies.

Table 4: ALJ Taylor's Adjudication Data from 2005-2013

Fiscal Year	Decisions	Allowances	On-the-Record Allowances	Allowance Rate
2005	999	951	623	95.2%
2006	1,017	969	681	95.3%
2007	1,086	1,049	879	96.6%
2008	1,084	1,041	893	96.0%
2009	924	893	719	96.6%
2010	1,015	944	675	93.0%
2011	1,023	946	696	92.5%
2012	886	805	506	90.9%
2013	736	629	310	85.5%
Total	**8,770**	**8,227**	**5,982**	**93.8%**

Note: The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJ Taylor's decision data from between fiscal year 2005 and fiscal year 2013. The 'Allowance' column includes both fully favorable awards and partially favorable allowances. On-the-record allowances are allowances made without a hearing. The 'Allowance Rate' was obtained by dividing the 'Allowance' column by the 'Decision' column.

SSA Reviews Found Significant Problems with ALJ Taylor's Decisions

Regional Chief ALJ (RCALJ) Jasper Bede testified that ALJ Taylor, who was under his supervision, does "sloppy work."[180] ALJ's Taylor's immediate supervisor, Hearing Office Chief ALJ (HOCALJ) Burock, also expressed concerns about the quality of Taylor's work product:

> An update: out of 100 cases in unwr [unassigned writing status], 83 cases are Taylor's and 17 are those of the other 8 judges. Most, if not all, of these Taylor cases will be fully favorable with the majority being on the record decisions. <u>If the quality of his analyses for these cases is at his usual level there will be work</u>

[179] The present value of federal benefits from gaining eligibility in SSDI, which includes benefits from other programs that an individual has been made eligible for because of enrollment in SSDI, has been calculated at $300,000.

[180] Bede interview, *supra* note 17 at 133 (Oct. 7, 2013).

> after onset issues ignored or missed, prior applications which could be reopened but ignored or missed and generally a lack of evidence to support his decisions. Judge Cristaudo's e-mail of today indicates that low productivity by a judge is not cause for action. What about total incompetence?[181] [emphasis added]

A 2011 formal review confirmed the suspicions that ALJ Taylor's work was "sloppy" and "incompetent." For example, ALJ Taylor made a large number of allowances without hearings in which little or no new evidence received after the DDS denial.[182] The review stated that "even in cases where the evidence may have supported a finding of disability, those cases were decided OTR [on-the-record] with medical evidence seven months to a year prior to the hearing."[183] When ALJ Taylor held hearings, the review found that he never elicited testimony from medical experts. The report found that an "overreaching problem" with the reviewed decisions "was a lack of rationale. … There would be little evaluation of the evidence and no function by function assessment of the claimant'[sic] abilities."[184]

Two years after the initial review, SSA's Office of Appellate Operations Division of Quality (DQ) completed a focused review of his decisions.[185] This review found that ALJ Taylor's work product continued to be of poor quality and out of compliance with agency policies:

> Many of the cases reviewed contained little to no evidence after the State agency (DDS) determination, but were still issued as favorable decisions. More than 50% of the cases we reviewed were issued on-the-record. In at least two instances, Senior attorneys screened the cases and decided not to issue an OTR decision, however, the ALJ subsequently issued an OTR decision in those cases. Even in cases where evidence was received after the DDS determination, it was often not discussed in the decision, irrelevant to the issues in the case or immaterial to the finding of disability. … The majority of the cases contained opinions and assessments from DDS medical and psychological consultants that were inconsistent with the ALJ's finding of disability. These assessments and opinions were dismissed without proper analysis.[186] [emphasis added]

The review also found that ALJ Taylor's decisions often contained onset dates that were not supported by the evidence, meaning that he approved claimants to receive benefits for periods of time before the alleged disability onset date. There were also substantial problems with ALJ Taylor's evaluation of drug abuse and alcoholism evidence.[187] Despite these findings, ALJ Taylor continues to decide a full load of cases for the agency.

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[181] E-mail from HOCALJ Theodore Burock to Jasper J. Bede, Regional Chief ALJ, SSA (April 23, 2010) [Request 4 – 008356].
[182] Focused review of ALJ Harry Taylor [Request 1 – 000060].
[183] *Id.*
[184] *Id.*
[185] Memorandum from OAO Division of Quality to ODAR Executive Staff: Focused Review of ALJ Harry Taylor (May 15, 2013) [Request 1 – 000033].
[186] *Id.*
[187] *Id.*

ALJ Taylor Engaged in Years of Personal Misconduct in the Hearing Office

Since at least 2007, SSA management expressed concerns about ALJ Taylor's misconduct in the hearing office. In July 2007, Charleston, West Virginia, HOCALJ Theodore Burock drafted a counseling memo for ALJ Taylor after he left an inappropriate message on a female employee's voice mail, and the memo threatened future disciplinary action if the misconduct occurred again.[188] HOCALJ Burock also expressed concern for ALJ Taylor's personal and professional well-being and urged him to seek professional assistance for any personal problems he might have been experiencing.[189] HOCALJ Burock informed RCALJ Bede that ALJ Taylor believed that other ALJs were trying to "control" his hearings by using signals in the court room, but that HOCALJ Burock did not find ALJ Taylor's accusations credible.[190]

Throughout 2008, ALJ Taylor exhibited additional misconduct which should have led to discipline or removal. First, ALJ Taylor was caught making inappropriate calls to a claimant representative firm. HOCALJ Burock had problems getting written statements about the incidents because the representative "indicated some fear of getting on the wrong side of Taylor. [He], quite bluntly, pointed to Taylor's high pay rate and his wish to be able to have Taylor decide his cases."[191] Second, ALJ Taylor acted inappropriately toward a female SSA employee.[192] In December 2008, HOCALJ Burock drafted a counseling memo, but the agency failed to discipline ALJ Taylor about his behavior.[193]

Third, ALJ Taylor repeatedly slept in his office, during staff meetings, *and during hearings*.[194] ALJ Taylor initially denied sleeping in his office when HOCALJ Burock confronted him, offering several excuses, including that he was "only pretending to sleep."[195] In a May 27, 2009, memo to RCALJ Bede, HOCALJ Burock described that he had witnessed ALJ Taylor sleeping on duty twice, once in the hearing room while he was holding video hearings, and another time in his office.[196] He also recounted numerous other sleeping incidents witnessed by other SSA employees and court officials.[197] He recounted one employee's statement that "Judge Taylor's snoring was the subject of discussion/humor among the writers whose offices are nearby" and that he could "be heard snoring just about every other day."[198] HOCALJ Burock noted that "[e]ach incident was witnessed by more than one individual. As such, ALJ Taylor's excuses and explanations are not credible."[199] In response, the agency merely issued a reprimand letter to ALJ Taylor on July 6, 2009.[200]

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[188] E-mail between HOCALJ Theodore Burock and Howard Goldberg (July 5, 2007) [Request 4 – 021385].
[189] *Id.* at 000573.
[190] *Id.*
[191] E-mail from HOCALJ Theodore Burock to Helena Quinn, Acting Regional Attorney, SSA (June 26, 2008) [Request 4 – 007046].
[192] *Id.*
[193] *Id.*
[194] Memorandum from HOCALJ Theodore Burock to ALJ Harry Taylor (Aug. 2008) [Request 4 – 001568].
[195] *Id.*
[196] Memorandum from HOCALJ Theodore Burock to RCALJ Jasper Bede (May 27, 2009) [Request 4 – 012895].
[197] *Id.*
[198] *Id.* at 012897.
[199] *Id.*
[200] Letter from RCALJ Jasper Bede to ALJ Harry Taylor (July 6, 2009) [Request 4 – 012911].

However, this reprimand did not curtail ALJ Taylor's behavior, and his continued sleeping on the job became an "office joke," according to HOCALJ Burock.[201] Instead of suspending ALJ Taylor, HOCALJ Burock held a Weingarten meeting—an investigative meeting between management officials and bargaining unit employees[202]—with ALJ Taylor to discuss his sleeping on the job. During this meeting, HOCALJ Burock played ALJ Taylor a CD recording of an August 2009 hearing when his snoring was audible.[203] In an e-mail to RCALJ Bede about the meeting, HOCALJ Burock relayed that ALJ Taylor stated that "if he were brought before the MSPB [Merit Systems Protection Board], he would prefer to resign."[204] Between June 2010 – when ALJ Taylor allegedly threatened to resign if he was brought before MSPB – and the present, ALJ Taylor placed about 3,000 additional individuals onto disability, at a cost of approximately $900 million dollars in lifetime benefits.[205]

By December 17, 2010, ALJ Taylor's actions caught the attention of high-ranking agency officials. Helena Quinn, Acting Regional Attorney, wrote RCALJ Bede that "executives in the DC's office are very concerned that Judge Taylor be given a directive in writing regarding sexual harassment (in addition to whatever discipline comes out of the sleeping/harassment charges that are currently being 'polished' up for OGC by DQS.) They are SO [sic] concerned that they are actually volunteering to send us the directive which should be given to him."[206] SSA finally recommended a 14-day suspension to the MSPB on February 16, 2011,[207] and ALJ Taylor signed a 14-day suspension settlement agreement on May 11, 2011[208] — *four years* after the allegations of sleeping and other inappropriate conduct first occurred.

After his suspension, ALJ Taylor continued to violate agency policies, and, on April 19, 2013, RCALJ Bede wrote to CALJ Bice recommending a 60-day suspension because ALJ Taylor "attempted to directly contact a represented claimant; discussed the claimant's PII [personally identifiable information] with a third party who was not the claimant's representative; and failed to give statements to the HOCALJ responsible to investigate the situation."[209] RCALJ Bede mentioned another inappropriate conversation ALJ Taylor had with a female coworker on April 26, 2012, and noted, "[T]his repeat of inappropriate conduct toward a female co-worker occurred less than 10 months after [ALJ Taylor's] 14-day suspension. It appears a much more severe penalty is necessary in order to impress upon [ALJ Taylor] the gravity of his misconduct."[210] CALJ Bice testified that Bede's April 2013 recommendation of a 60-day suspension for ALJ Taylor is still pending.[211]

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[201] E-mail from HOCALJ Theodore Burock to Gary Guy, SSA (May 10, 2010) [Request 4 – 014990].
[202] 5 U.S.C. § 7114(a)(2)(A),(B) (2012).
[203] E-mail from HOCALJ Theodore Burock to RCALJ Jasper Bede (June 11, 2010) [Request 4 – 008361].
[204] Memorandum from HOCALJ Theodore Burock to RCALJ Jasper Bede [Request 4 – 008390].
[205] *See* Table 4. Also, ALJ Taylor has allowed at least 257 individuals onto disability in FY 2014 (September 28, 2013 through April 25, 2014)
[206] E-mail from Helena Quin, SSA, to RCALJ Jasper Bede, et al. (Dec. 17, 2010) [Request 4 – 008644].
[207] *SSA v. Taylor*, M.S.P.R. docket number CB 7521-11-0006-T-1 (Feb. 16, 2011) [Request 4 – 017123].
[208] Settlement agreement between SSA and ALJ Harry Taylor (May 11, 2011) [Request 4 – 009436].
[209] Letter from RCALJ Jasper Bede to CALJ Debra Bice (April 19, 2013) [Request 4 – 004596].
[210] *Id.*
[211] Bice interview, *supra* note 84 at 219.

SSA Refused to Act, Despite Evidence of Poor Decision-Making and Repeated Misconduct

Although ALJ Taylor's adjudication data and complaints from other SSA employees about his inappropriate conduct should have prompted agency action, SSA officials left him undisturbed to continue rubber-stamping individuals into the program. Similar to ALJs Bridges and Daugherty, evidence suggests that the agency failed to act because ALJ Taylor's high production improved the overall disposition numbers of Charleston's hearing office. For example, after RCALJ Bede visited the Charleston Hearing Office on May 22, 2008, he wrote a memo praising its adjudication data, including its high average processing time and dispositions per day per ALJ.[212] ALJ Taylor's disproportionately large caseload was chiefly responsible for these high numbers.

Based on deficiencies found in his decisions during the May 2013 focused review, ALJ Taylor was ordered to complete a 10-day in-house remedial training program. RCALJ Bede reported to the HOCALJ on September 3, 2013, that "[i]t is still too early to determine if there has been substantive improvement" from Taylor after his focused review meeting and training.[213]

In December 2013, RCALJ Bede's office summarized five new allegations of misconduct by ALJ Taylor including another charge of sleeping during a hearing on November 21, 2013, and several new incidents of inappropriate conduct toward female employees.[214] These allegations are part of an open investigation. ALJ Taylor's high decision total, high number of decisions without hearings, and excessive allowance rate, combined with his personal misconduct, demonstrate that ALJ Taylor should not be deciding disability cases. However, ALJ Taylor continues to decide a full caseload, and awards benefits to nearly every claimant before him.

V. SSA Lacked Quality Metrics to Evaluate ALJs

An ALJ's "principal responsibilities are to hold a full and fair hearing and issue a legally sufficient and defensible decision."[215] ALJs also "have a duty to ensure that the administrative record is fully and fairly developed."[216] ALJs develop the record by holding a hearing and obtaining evidence from the claimant as well as appropriate medical and vocational experts. Since disability hearings are non-adversarial, ALJs are the only government representative present at the claimant hearing. As such, it is important that ALJs carefully consider all evidence, particularly evidence submitted by the claimant and his or her attorney. The Social Security Act requires that the ALJ base his or her decision on "evidence adduced at the hearing."[217] SSA ALJs are required to consider the entire case record when assessing an individual's claim, particularly in assessing claimant credibility:

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[212] Memorandum from RCALJ Jasper Bede to Charleston Hearing Office (May 22, 2008) [Request 4 – 001489].
[213] E-mail from RCALJ Jasper Bede to Amy Prether, SSA, et al. (Sep 3, 2013) [Request 4 – 019411].
[214] Document regarding allegations towards ALJ Harry Taylor [Request 4 – 005240].
[215] *See* HALLEX I-2-0-5 B, *available at* http://www.ssa.gov/OP_Home/hallex/I-02/I-2-0-5.html.
[216] *See* HALLEX I-2-6-56, note 2, *available at* http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-56.html.
[217] *Id.*

> In determining the credibility of the individual's statements, the adjudicator must consider the entire case record, including the objective medical evidence, the individual's own statements about symptoms, statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record.[218]

Moreover, former CALJ Frank Cristaudo, who supervised the ALJs, testified that ALJs do not have discretion to ignore relevant evidence.[219] Mr. Cristaudo testified that ALJ decisions should be legally sufficient, which he defined as decisions that were "policy-compliant and have sufficient evidence to warrant the factual conclusions that are reached."[220]

Until 2011, the requirement that ALJs consider the entire case record before reaching a decision was essentially meaningless because SSA did not even monitor, much less ensure, that decisions were policy compliant. The agency did not monitor how many cases ALJs decided without a hearing. For example, from 2005 to 2013, ALJ Bridges, ALJ Daugherty, and ALJ Taylor allowed 44 percent, 49 percent, and 68 percent of their decisions without hearings, respectively. Since the claim had already been denied (often twice) before it reaches an ALJ, an unusually high number of decisions without hearings should have raised questions.

Perhaps worst of all, the agency did not use ALJ allowance rates or total number of dispositions as an indication of whether the agency should inquire as to whether ALJs were properly evaluating evidence. According to Mr. Cristaudo's testimony, the agency did not look at "individual allowance rates on a systemic basis" when he was chief ALJ.[221] In fact, numerous ALJs have testified before the Committee on Oversight and Government Reform that the agency evaluated ALJs with a single metric: the number of cases processed by the ALJ in a given period of time.[222]

The agency ignored ALJ allowance rates and disposition totals despite widespread recognition within the agency that ALJs cannot properly evaluate the evidence if they are deciding too many cases. For example, in addition to RCALJ Bede's testimony that ALJ allowance rates in excess of 75 percent or 80 percent raise a "red flag" about the quality of ALJs' decisions, he also testified that "it was generally felt that anything over 700 [dispositions] brought into question whether or not the judge was properly handling cases."[223] He stated that "[i]f you're well over 700 [dispositions], you know, if you're doing 1,000, and I think that's almost *prima facie* evidence that you're not doing a good job and you should be looked at."[224]

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[218] Social Security Administration, Policy Interpretation Ruling Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements (1996), *available at* http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-07-di-01.html.
[219] Cristaudo interview, *supra* note 8 at 9.
[220] *Id.* at 93, 94.
[221] *Id.* at 45, 46
[222] *See Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Government Reform*, 113th Cong. (June 27, 2013).
[223] Bice interview, *supra* note 84 at 18.
[224] Bede interview, *supra* note 17 at 20.

However, while he was CALJ, Mr. Cristaudo generally gave ALJs with extremely high allowance rates or total numbers of dispositions the benefit of the doubt, testifying "I really think they were just more efficient in terms of looking at their files," and "I assume[d] they were just reading faster."[225]

Question:	So you assumed the judge doing over 1,000 cases was a fast reader?
Mr. Cristaudo:	Yeah, yeah, or had some other efficiencies that I was not aware of.
Question:	Okay. When you were chief ALJ, were you ever concerned that one of your judges was allowing too many people onto the program?
Mr. Cristaudo:	No.

Mr. Cristaudo's lack of any concern is testament to the agency's failure to be an effective steward of disability programs since more than 20 percent of ALJs allowed benefits in at least 85 percent of their decisions when he was CALJ.[226] These ALJs, by themselves, placed 637,115 individuals on a federal disability program between 2005 and 2013, at a total cost of more than $190 billion.[227]

According to former CALJ Cristaudo's testimony, the agency did not have the resources to monitor ALJ compliance with SSA policy while he was CALJ.[228] However, there is also reason to believe that the agency was singularly focused on the quantity of cases processed, such that ensuring ALJs adhered to the requirements in evaluating claimants' disability files was of relatively minor importance. Disciplining an ALJ for issuing boilerplate decisions or failing to consider all the evidence before awarding benefits would have meant losing that ALJ's ability to decide his or her caseload for a period of time, and would have added to the backlog. As demonstrated by the three case studies in this report, even when the agency had evidence of ALJs violating agency policies, the agency refused to take any meaningful action. Given the agency's failure to take appropriate action in these cases, a lack of appropriate resources seems like a convenient excuse for failing to monitor ALJ compliance with the law.

The agency's general ambivalence about quality decision-making seems the likely explanation for why CALJ Cristaudo was unfamiliar with many ALJs who had extremely high allowance rates and high disposition numbers when he was CALJ.[229] For example, CALJ Cristaudo testified that he was unaware of the large disposition numbers or allowance rates of

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[225] *See* Cristaudo interview, *supra* note 8 at 42.
[226] *See supra* note 15.
[227] *Id.*
[228] *See* Cristaudo interview, *supra*, note 8 at 18.
[229] *Id.* at 115-123.

most of the agency's most problematic "red flag" ALJs.[230] CALJ Cristaudo testified that he did not remember any discussions about whether any ALJs were deciding too many cases without holding hearings while he was CALJ.[231] CALJ Cristaudo also testified that he never attempted to discipline an ALJ for failing to issue decisions supported by the evidence, but that he did discipline an ALJ who "refused to move his cases on a timely basis."[232]

Focused Reviews Show Problematic Patterns With High Allowance ALJs

A 2012 SSA internal report confirmed a "strong relationship between production levels and decision quality on allowances. As ALJ production increases, the general trend for decision quality is to go down."[233] In 2011, the SSA Office of Disability Adjudication and Review (ODAR) finally began reviewing the decisions and adjudication processes of particular ALJs to determine, in large part, if the ALJs' decisions were compliant with SSA policy. The focused reviews were conducted by senior attorneys within the Office of Disability Adjudication and Review.[234] In determining whom to select for focused reviews, the agency considers whether the ALJ is compliant with SSA policies, factoring in high disposition outputs, high allowance rates, and high numbers of on-the-record decisions as causes for concern.[235] To date, 48 ALJs have been subject to an agency focused review.

Of the focused reviews received by the Committee, 30 were of ALJs who had total allowance rates in excess of 75 percent between 2005 and 2013. Of the 30 ALJs, 27 have been deciding cases since at least 2005. After a careful analysis of these focused reviews, some disturbing trends became evident.

Of the 30 judges with allowance rates greater than 75 percent, 21 focused reviews indicated that the ALJ had problems interacting with or using vocational experts (VEs). VEs are important components of the adjudication process because they offer testimony about the type of work a claimant can perform, given the claimants' limitations.[236] Some of the reviewed ALJs never questioned a VE, [237] while other ALJs asked inappropriate questions to the VE. [238]

Another trend evident from the focused reviews is that high allowance ALJs often fail to properly analyze the Residual Functional Capacity (RFC) of claimants. The RFC is defined as "the most [a claimant] can still do despite [his or her] limitations."[239] Proper RFC analysis is crucial in determining whether a claimant is capable of obtaining employment. According to the focused reviews, at least 19 of the 30 ALJs made improper RFC evaluations.[240]

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[230] *See* Cristaudo interview, *supra* note 8 at 124.
[231] *Id.* at 91.
[232] *Id.* at 111-13.
[233] Production Levels and Decision Quality (Sept. 7, 2012) [Request 4 – 00001-5].
[234] *See* Bice interview, *supra* note 84 at 155.
[235] *Id.* at 48-49.
[236] SOCIAL SECURITY, BECOMING A VOCATIONAL EXPERT, http://www.socialsecurity.gov/appeals/ve.html#a0=1.
[237] *See* focused review of ALJ Timothy Trost (Nov. 2012) [14th Production – 000270], *see also*, focused review of ALJ David Carstetter (Oct. 2012) [14th production – 000276].
[238] *See* focused review of ALJ W. Baldwin Ogden (Sep. 23, 2013) [14th Production – 000417], *see also*, focused review of ALJ Ronald Bosch (May 5, 2014) [14th Production – 000203].
[239] 20 C.F.R. § 416.945, *see also* http://www.socialsecurity.gov/OP_Home/cfr20/416/416-0945.htm.
[240] *See supra* note 20.

Additionally, ALJs with high allowance rates often improperly evaluate cases where the claimant has a history of drug addiction or alcoholism (DAA). Of the 30 ALJs subject to a focus review, at least 11 of the 30 ALJs improperly evaluated DAA. SSA policy indicates that "if drug addiction or alcoholism is a contributing factor material to the determination of [a claimant's] disability, [the ALJ] will not find [the claimant] disabled."[241] ALJs who award benefits to claimants with a history of drug abuse or alcoholism without addressing those issues in the statement are likely allowing individuals onto disability contrary to program requirements.

The focused reviews also show a pattern that some high allowance ALJs tend to use boilerplate language or copy and paste language from the claimant representative's briefs directly into their decision.[242] The attorneys reviewing ALJs decisions indicated that six ALJs used boilerplate language in their decisions. At least one ALJ stated that he relies on the claimant representative to do "95% of the work" in developing the case record.[243]

VI. Oversight Efforts Had Positive Effect, But More Agency Progress Needed

As previously discussed, at an Oversight and Government Reform Committee hearing in June 2013, several ALJs testified that the agency created a culture in which quality decision-making did not matter, and ALJs were evaluated almost entirely on how many cases they processed.[244] According to many ALJs, the agency's production goals are inconsistent with ALJs' ability to properly consider the entire record prior to issuing decisions.[245] The evidence suggests that as a consequence of the agency's overwhelming focus on speedy decisions, due process and accurate decision-making have been largely neglected.

In May 2011, the *Wall Street Journal* began publishing a series of articles detailing significant problems within federal disability programs, with a particular focus on ALJ Daugherty's excessive allowance rate and large number of annual dispositions, and widespread waste, fraud, abuse, and mismanagement in Puerto Rico.[246] Prior to the spring of 2011, the agency only scrutinized ALJs if they failed to process cases quickly enough. The agency's overarching focus on processing speed likely fostered an environment that made the corruption with ALJ Daugherty and throughout Puerto Rico less detectable.

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[241] *See* HALLEX I-2-2-99, *available at* http://ssa.gov/OP_Home/hallex/I-02/I-2-2-99.html, *see also* 223(d)(2)(c) of the Social Security Act.
[242] *See* Draft: Report, *supra* note 161 at 000074.
[243] Focused review of ALJ Gerald Krafsur (Mar. 7, 2014) [Request 1 – Supp Prod 000447] at 000450.
[244] *See Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges*, H. Subcomm. on Energy Policy, Health Care & Entitlements of the H. Comm. on Oversight and Government Reform. (June 27, 2013).
[245] *Id.*
[246] *See.* Damien Paletta, *Disability-Claim Judge Has Trouble Saying 'No'*, WALL ST. J., May 19, 2011, http://online.wsj.com/news/articles/SB10001424052748704681904576319163605918524. *See also* Damian Paletta, *Puerto Rico Disability Claims Probed*, WALL ST. J., Sep. 12, 2011, http://online.wsj.com/news/articles/SB10001424053111903532804576564543481258206.

RCALJ Bede testified that ALJs with extremely high allowance rates was "not something that we came to grips with as an organization very quickly."[247] Although RCALJ Bede testified that RCALJs had limited power to deal with ALJs who were likely allowing benefits inappropriately, he testified that the agency had tools available, such as "putting someone on administrative leave while you did an investigation."[248]

Given the information obtained about ALJ Taylor and ALJ Bridges from RCALJ Bede's testimony, the Committee sent a letter to Acting Commissioner Colvin on December 19, 2013, requesting that the agency place both ALJ Bridges and ALJ Taylor on unpaid administrative leave while the agency formally evaluated the quality of their decisions.[249] Acting Commissioner Colvin responded that the agency lacks the authority to place any ALJ on unpaid administrative leave and that the Administrative Procedure Act requires that ALJs receive their full salary and benefits until "good cause [is] established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board."[250]

However, the agency has authority to place ALJs on paid administrative leave, which would prevent ALJs such as ALJ Bridges and ALJ Taylor from erroneously awarding tens, or hundreds, of millions of dollars in additional benefits until the Merit Systems Protection Board makes a ruling. Despite the continued high allowance rates of both ALJ Bridges and ALJ Taylor and two focused reviews of their decisions both showing significant problems and errors in their decision-making, the agency still refuses to take steps to remove them as ALJs.

Although the agency continues to allow many ALJs to rubber stamp claimants onto disability programs without consequence, the agency took two positive steps in response to the *Wall Street Journal* reporting. First, after the *Wall Street Journal* articles, the agency initiated focused reviews to monitor whether ALJ decisions were policy complaint and reasoned. Second, as a way to reduce the inappropriate and unlawful decisions being handed down by ALJs with excessive numbers of dispositions, the agency limited the number of annual dispositions each ALJ could be assigned.[251] For fiscal year 2012, the agency set the cap at 1,200 dispositions a year.[252] For fiscal year 2013, the cap was lowered to 960 dispositions a year, and for fiscal year 2014, the cap was further reduced to 840 dispositions a year.[253] According to former CALJ Cristaudo, the agency acted only after the *Wall Street Journal* brought negative attention to the programs:

> [ALJs with high dispositions] was not something that was hidden. I mean, this was obvious. I mean, there was testimony before Congress about these high numbers. The Advisory Board had been talking about this. The commissioners had talked about it. I mean, it wasn't like something that nobody knew.

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[247] *See* Bede interview, *supra* note 17 at 27.
[248] *Id.* at 131.
[249] Letter from Rep. Darrell Issa, Chairman, H. Comm. on Oversight and Government Reform, et al. to Carolyn Colvin, Acting Commissioner, Social Security Administration (Dec. 19, 2013).
[250] Letter from Carolyn Colvin, Acting Commissioner, Social Security Administration, to Rep. Darrell Issa, Chairman, H. Comm. on Oversight and Government Reform (Mar. 10, 2014).
[251] *See* Bice interview, *supra* note 84 at 101-02; *See also* Bede interview, *supra* note 17 at 29.
[252] *See* Bice interview, *supra* note at 101.
[253] *Id.* at 102-04.

> Everybody knew. Nobody had this idea about just cut that number, just limit that number. When the Wall Street Journal article came out, I think there was a feeling that, well, we have to do something. And they took that action.[254]

As Table 5 shows, ALJs placed over 3.2 million individuals on either SSDI or SSI between 2005 and 2013 with an overall allowance rate equal to 65.8 percent during this period. The national allowance rate for ALJs has decreased over the past four years, from 70.5 percent in 2009 to 55.5 percent in 2013. This phenomenon is likely the result of several factors, including:

- The economic recession and the weak recovery, combined with the perceived ease of gaining benefits in federal disability programs, has led many individuals who are not disabled to apply for benefits.[255]

- The agency's decision to cap the number of dispositions assigned to ALJs since ALJs with large numbers of dispositions were also likely to have high allowance rates.

- Public attention and congressional oversight of ALJs with extremely high allowance rates and the publication of ALJ adjudication data for the first time in 2010[256] likely discouraged many ALJs from approving nearly every claimant for benefits.

Table 5: Allowance Rate Over Time

Fiscal Year	Decisions	Allowances	Allowance Rate
2005	446,681	321,149	71.9%
2006	478,114	342,876	71.7%
2007	463,956	332,708	71.7%
2008	454,272	323,868	71.3%
2009	521,403	367,611	70.5%
2010	585,855	393,516	67.2%
2011	629,291	393,110	62.5%
2012	646,809	373,343	57.8%
2013	638,063	354,282	55.5%
Total ('05-'13)	**4,864,444**	**3,202,463**	**65.8%**

The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJ decision data from between fiscal year 2005 and fiscal year 2013. The 'Allowance Rate' was obtained by dividing the 'Allowances' column by the 'Decisions' column.

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[254] *See* Cristaudo interview, *supra* note 8 at 47-48.

[255] *See* Chana Joffe-Walt, *Unfit for Work: the startling rise of disability in America*, NATIONAL PUBLIC RADIO, http://apps.npr.org/unfit-for-work/ (last visited May 29, 2013).

[256] Archived Public Data Files, FY 2010, ALJ Disposition Data (Cumulative 9/26/09 through 9/24/10) http://www.ssa.gov/appeals/DataSets/archive/archive_data_reports.html.

The large decline in the national ALJ allowance rate *after* the *Wall Street Journal* articles and the publication of ALJ allowance rates is further evidence of a long-standing and systemic problem in the disability appeals process. The agency informed the Committee that the agency failed to collect ALJ adjudication data until 2005. Given the high, relatively stable average allowance rates from 2005 through 2009, it seems likely that ALJs, en masse, were also awarding benefits inappropriately prior to 2005 as well.

Table 6: Magnitude of the Problem From 2005 to 2013

Correct National ALJ Allowance Rate	People Inappropriately Put on Disability	Inappropriate ALJ Spending on Disability
30 percent	1.743 million	$523 Billion
35 percent	1.500 million	$450 Billion
40 percent	1.257 million	$377 Billion
45 percent	1.013 million	$304 Billion
50 percent	770,000	$231 Billion
55 percent	527,000	$158 Billion
60 percent	284,000	$85 Billion

Note: The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJ decision data from between fiscal year 2005 and fiscal year 2013. Between 2005 and 2013, SSA ALJs decided 4,864,444 cases and awarded benefits in 3,202,463, or 65.8 percent, of their cases. This table shows the number of these 4,864,444 people who would not have been placed on disability for a variety of different overall allowance rates. The final column shows the amount of excess spending, using an estimate of $300,000 per allowance.

As Table 5 showed, the overall ALJ allowance rate between 2005 and 2013 was about 66 percent. While it is inappropriate to assign a "correct" allowance rate to any particular ALJ, particularly since there is a subjective element to disability determinations, policy compliant decisions would result in a range of appropriate allowance rates. Table 6 shows the number of people inappropriately placed on disability and the corresponding amount of inappropriate government spending for a different range of national ALJ allowance rates. For example, assume that by following the law and issuing policy compliant decisions, the national ALJ allowance rate should have been 50 percent of total ALJ decisions between 2005 and 2013. Under that assumption, ALJs inappropriately placed about 770,000 individuals, on net, onto SSDI and SSI at a cost of $231 billion, between 2005 and 2013. If the best review of the evidence yields an appropriate national allowance rate of 30 percent, ALJs inappropriately placed more than 1.7 million individuals onto disability between 2005 and 2013 at a cost of over half a trillion dollars.

The rapid growth in the number of individuals enrolled in disability is one of the most pressing problems for federal policymakers to confront. First, it is well established that the growth in disability programs is a major contributor to the decline in the labor force participation rate.[257] Second, individuals without genuine disabilities who have gained access to the program

[257] *See* James Sherk, *Not Looking for Work: Why Labor Force Participation Has Fallen During the Recession*, HERITAGE FOUNDATION, (Sep. 5, 2013) http://www.heritage.org/research/reports/2013/09/not-looking-for-work-why-labor-force-participation-has-fallen-during-the-recession, *see also* Joe Weisenthal, *Read Goldman's Top Economist On Why The Labor Force Participation Rate Won't Keep Plunging*, BUSINESS INSIDER, (May 4, 2014,

because of a fundamentally flawed process harm both taxpayers and the truly disabled. Individuals with disabilities that prevent them from working must wait longer to receive benefits and they are at risk of large benefit cuts because of the projected bankruptcy of the SSDI trust fund in about two years.[258] Fundamental fairness requires that Congress consider measures to increase accountability and transparency in the disability process and properly evaluate individuals who have been placed on disability programs by red flag ALJs, to ensure that only the truly disabled are receiving benefits through federal disability programs.

8:56 AM) http://www.businessinsider.com/goldman-on-the-labor-force-participation-rate-2014-5, *see also* Zach Pandl, *Another look at disability and labor force participation*, (April 7, 2014) http://blog.columbiamanagement.com/another-look-at-disability-and-participation.

[258] SOCIAL SECURITY ADMINISTRATION, 2012 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS (2012), *available at* http://www.ssa.gov/oact/TRSUM/index.html; THE CONGRESSIONAL BUDGET OFFICE, 2012 LONG-TERM PROJECTIONS FOR SOCIAL SECURITY: ADDITIONAL INFORMATION (2012), *available at* http://www.cbo.gov/publication/43648.

Appendix

Table 7: Decision Data for ALJs with Allowance Rates in Excess of 85 Percent

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Brickner, Paul	1,425	1,425	1,425	100.0%	$427,500,000
Garmon, Ollie	351	351	339	100.0%	$105,300,000
Pucci, Louis J.	2,474	2,470	2,350	99.8%	$741,000,000
DeBord, Michael K.	170	169	34	99.4%	$50,700,000
Krafsur, Gerald I.	6,033	5,977	224	99.1%	$1,793,100,000
Wieman, F. Joseph	841	833	352	99.0%	$249,900,000
Daugherty, David B.	8,533	8,413	4,184	98.6%	$2,523,900,000
Wilborn, Ralph	269	264	51	98.1%	$79,200,000
Oboler, Alan D	220	215	217	97.7%	$64,500,000
Smith, Manny	3,672	3,585	2,198	97.6%	$1,075,500,000
Bleecher, Arthur B.	424	413	5	97.4%	$123,900,000
Hooper, Joe R.	712	691	217	97.1%	$207,300,000
Sampson, Victor	601	582	54	96.8%	$174,600,000
Santiago, Jose J	822	795	375	96.7%	$238,500,000
Lawwill, James J	2,311	2,234	363	96.7%	$670,200,000
del Valle, Manuel	5,010	4,843	1,122	96.7%	$1,452,900,000
Bodley, John M.	815	786	154	96.4%	$235,800,000
Mills, Myron D.	2,054	1,980	1,811	96.4%	$594,000,000
Powell, Kenneth M.	1,075	1,036	365	96.4%	$310,800,000
Feiner, Jerome J.	1,202	1,156	669	96.2%	$346,800,000
Kuzmack, Nicholas T.	5,285	5,079	1,295	96.1%	$1,523,700,000
Foley, Patrick J	4,461	4,282	557	96.0%	$1,284,600,000
Vaughn, William C.	1,681	1,610	228	95.8%	$483,000,000
Burke, James A.	7,444	7,126	2,243	95.7%	$2,137,800,000
Love, Verner R.	1,751	1,674	658	95.6%	$502,200,000
Halpern, Joseph	1,748	1,666	664	95.3%	$499,800,000
Ward, Robert E.	3,366	3,208	171	95.3%	$962,400,000
Bridges, Charles	15,787	15,037	6,983	95.2%	$4,511,100,000
Newton, Jr., Francis C.	1,949	1,853	329	95.1%	$555,900,000
Gonzalez, Alberto E.	3,392	3,222	447	95.0%	$966,600,000
Hammond, Glenn B.	1,890	1,793	423	94.9%	$537,900,000
Craig, Joyce Krutick	1,156	1,096	267	94.8%	$328,800,000
Hubbard, David T	3,412	3,233	1,331	94.8%	$969,900,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Crickman, John R.	2,013	1,906	175	94.7%	$571,800,000
Mc Afoos III, Louis G	4,525	4,278	1,476	94.5%	$1,283,400,000
Dring Jr., John P.	365	345	215	94.5%	$103,500,000
Jewell, W. Gary	6,942	6,556	3,263	94.4%	$1,966,800,000
Carstetter, David W.	4,277	4,030	927	94.2%	$1,209,000,000
Chapman, Ronald L.	2,308	2,171	143	94.1%	$651,300,000
Batson, Thomas F.	7,568	7,118	3,689	94.1%	$2,135,400,000
Behuniak, Peter Z.	2,648	2,490	822	94.0%	$747,000,000
LaBoda, Barry C.	2,533	2,381	476	94.0%	$714,300,000
Alden, Nancy	3,848	3,612	1,489	93.9%	$1,083,600,000
Taylor, II, Harry C.	8,770	8,227	5,982	93.8%	$2,468,100,000
Zanaty, Edward S.	4,112	3,850	2,527	93.6%	$1,155,000,000
Oliver, Henry	4,697	4,397	3,021	93.6%	$1,319,100,000
De Pietro, Joseph F.	5,514	5,154	3,679	93.5%	$1,546,200,000
Hood, John	749	700	165	93.5%	$210,000,000
Hill-Maxion, Sanya	1,664	1,554	121	93.4%	$466,200,000
Williams, Paul T.	3,938	3,672	387	93.2%	$1,101,600,000
Molenda, Francis A.	1,518	1,415	143	93.2%	$424,500,000
Piloseno, Jr., Daniel A	5,534	5,157	2,843	93.2%	$1,547,100,000
Peyser, Richard	911	846	112	92.9%	$253,800,000
Ravinski, Catherine	1,267	1,175	705	92.7%	$352,500,000
Yoswein, Leonard E	2,794	2,588	882	92.6%	$776,400,000
Palmer, George	1,011	936	361	92.6%	$280,800,000
Stevens, Mitchell F.	3,438	3,182	1,949	92.6%	$954,600,000
Morris, John R.	6,619	6,113	1,601	92.4%	$1,833,900,000
Gormley III, Matthew J.	1,469	1,355	533	92.2%	$406,500,000
Borowiec, Frank B.	897	827	223	92.2%	$248,100,000
Due, Douglas R.	4,669	4,300	684	92.1%	$1,290,000,000
White, Douglas G.	5,588	5,145	837	92.1%	$1,543,500,000
Karpe, Richard	626	576	268	92.0%	$172,800,000
Barker, Joseph V.	3,617	3,328	1,266	92.0%	$998,400,000
Washington, Calvin	8,340	7,652	1,187	91.8%	$2,295,600,000
Ramirez, Marta	762	699	75	91.7%	$209,700,000
Johnston, Paul L	4,217	3,866	414	91.7%	$1,159,800,000
Harrop Jr, Grenville W	3,201	2,932	408	91.6%	$879,600,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
O'Bryan Jr., W. Howard	10,177	9,315	8,339	91.5%	$2,794,500,000
Sherr, Norman A	819	749	38	91.5%	$224,700,000
Gormley, Patricia M.	404	369	67	91.3%	$110,700,000
Stark, Charles	1,879	1,716	165	91.3%	$514,800,000
Storey, Peter B.	2,285	2,086	406	91.3%	$625,800,000
Lobo, Patricia	3,222	2,940	592	91.2%	$882,000,000
Blanton, Michael C.	1,662	1,516	586	91.2%	$454,800,000
Tease, J. Edward	2,872	2,618	1,828	91.2%	$785,400,000
Lanter, James E.	278	253	24	91.0%	$75,900,000
Kelly III, John T.	3,025	2,748	752	90.8%	$824,400,000
Kaplan, James M	217	197	26	90.8%	$59,100,000
Anzalone, Kerry J.	2,278	2,067	194	90.7%	$620,100,000
Francis Jr., Burt R.	2,011	1,820	113	90.5%	$546,000,000
Quinones, Ramon E	6,082	5,499	1,911	90.4%	$1,649,700,000
Conger, Jr., Paul S.	8,623	7,792	3,022	90.4%	$2,337,600,000
Ryan, Robert P.	352	318	4	90.3%	$95,400,000
Greenstein, Michael P	186	168	18	90.3%	$50,400,000
Jackson, Jr., Robert T.	3,751	3,381	290	90.1%	$1,014,300,000
Riley, Eve M.	4,833	4,356	3,493	90.1%	$1,306,800,000
Swihart, Steven T.	233	210	35	90.1%	$63,000,000
Bork, Nathan A.	870	784	208	90.1%	$235,200,000
Guzzo, Fred J.	453	408	31	90.1%	$122,400,000
Poverstein, Emanuel	1,353	1,218	343	90.0%	$365,400,000
Malakoff, J. Frederick	827	744	171	90.0%	$223,200,000
Freedman, Gerald A.	4,066	3,656	441	89.9%	$1,096,800,000
Heavrin, T. Christopher	1,591	1,430	96	89.9%	$429,000,000
Miller, J. Cleve	1,044	937	329	89.8%	$281,100,000
Mccollom, William G.	458	411	295	89.7%	$123,300,000
Fowler, Wendell C	3,847	3,450	2,255	89.7%	$1,035,000,000
Graham, E. Norman	4,805	4,309	357	89.7%	$1,292,700,000
Benagh, Christine P.	3,298	2,957	799	89.7%	$887,100,000
Holland, Harry T.	415	372	149	89.6%	$111,600,000
Singh, Jag Jit	587	526	165	89.6%	$157,800,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Williams, Jr., Major	3,057	2,736	565	89.5%	$820,800,000
Embree, Glenn M.	3,846	3,440	321	89.4%	$1,032,000,000
McCully, Richard P.	4,092	3,658	1,168	89.4%	$1,097,400,000
Ogden, W. Baldwin	4,734	4,225	967	89.2%	$1,267,500,000
Meyer, John E.	1,686	1,504	260	89.2%	$451,200,000
De Bernardis, Craig	3,489	3,112	177	89.2%	$933,600,000
Ardery, Charles W.	3,059	2,727	144	89.1%	$818,100,000
O'Hara, Hanford	2,491	2,220	613	89.1%	$666,000,000
Lazarus, Robert J	5,209	4,642	710	89.1%	$1,392,600,000
Brooks, Allyn	3,393	3,019	1,195	89.0%	$905,700,000
Kendall, Paul S.	1,212	1,078	117	88.9%	$323,400,000
Morgan, Katherine	4,504	4,002	757	88.9%	$1,200,600,000
Bryant, Leroy C.	2,258	2,004	73	88.8%	$601,200,000
Krainess, Donald P.	1,951	1,730	49	88.7%	$519,000,000
Sax, Carol A.	1,629	1,444	730	88.6%	$433,200,000
Vanderhoef, Jerry M.	1,943	1,722	630	88.6%	$516,600,000
Hoover, E. Russell	6,585	5,832	596	88.6%	$1,749,600,000
Rucker, James R.	367	325	128	88.6%	$97,500,000
Brown, James J.	1,635	1,445	375	88.4%	$433,500,000
Van slate, Jean	788	696	141	88.3%	$208,800,000
Davis, Deborah S.	3,783	3,338	943	88.2%	$1,001,400,000
Trost, Timothy J	2,589	2,284	218	88.2%	$685,200,000
Gill, Robert	3,267	2,881	854	88.2%	$864,300,000
Schwartz, Roger	2,555	2,253	381	88.2%	$675,900,000
Armitage, Paul C.	3,943	3,476	720	88.2%	$1,042,800,000
Corrigan, Brian	2,083	1,836	109	88.1%	$550,800,000
Engel, David W.	7,029	6,189	2,509	88.0%	$1,856,700,000
Augustine, Patrick B.	2,211	1,946	1,475	88.0%	$583,800,000
Gray, William O.	4,520	3,977	771	88.0%	$1,193,100,000
Faraguna, Joseph R	5,844	5,139	2,776	87.9%	$1,541,700,000
Kennedy, Thomas P.	232	204	65	87.9%	$61,200,000
Buel, Sr., Toby J.	4,630	4,070	67	87.9%	$1,221,000,000
Albrecht Jr, Warren H	2,468	2,169	673	87.9%	$650,700,000
Waldman, Ronald L	2,283	2,004	405	87.8%	$601,200,000
Robinson, Thomas	3,207	2,814	325	87.7%	$844,200,000
Williams, H. Scott	2,391	2,097	595	87.7%	$629,100,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Morgan, E. Lee	4,951	4,341	305	87.7%	$1,302,300,000
Harvey, Rosemary	559	490	256	87.7%	$147,000,000
Wilcox, J. M.	1,966	1,721	798	87.5%	$516,300,000
Blaine, Kent R.	1,199	1,049	352	87.5%	$314,700,000
Gautier, Jose R	4,347	3,803	1,511	87.5%	$1,140,900,000
Pickett, John J	3,228	2,824	330	87.5%	$847,200,000
Allen, Denny	1,949	1,705	270	87.5%	$511,500,000
Pedrick, Jr., John L.	686	600	217	87.5%	$180,000,000
Herbert, William S.	3,563	3,113	270	87.4%	$933,900,000
Connor, Carol A	2,934	2,563	244	87.4%	$768,900,000
Adamczyk, Joanne E.	2,897	2,530	505	87.3%	$759,000,000
Villere Jr., Plauche F.	6,596	5,759	951	87.3%	$1,727,700,000
Shelton, Gary R	7,206	6,291	748	87.3%	$1,887,300,000
Stagno, Linda A.	2,420	2,111	387	87.2%	$633,300,000
Barezky, Bonny S.	5,910	5,154	538	87.2%	$1,546,200,000
Clark, Halstead H.	547	477	88	87.2%	$143,100,000
Gajewski, Leonard J	773	674	209	87.2%	$202,200,000
Boltz, Jon D.	2,999	2,613	56	87.1%	$783,900,000
Biloon, Millard L.	4,721	4,112	672	87.1%	$1,233,600,000
Rodnite, Andrew John	502	437	191	87.1%	$131,100,000
Lyman, Phillip C.	4,141	3,601	649	87.0%	$1,080,300,000
McGinn, V. Paul	4,756	4,133	134	86.9%	$1,239,900,000
De bellis, Frank M	204	177	52	86.8%	$53,100,000
D'Alessandro, James J.	4,605	3,995	1,415	86.8%	$1,198,500,000
Barker, John R.	4,880	4,233	727	86.7%	$1,269,900,000
Robison, Robert S.	422	366	174	86.7%	$109,800,000
Gehring, John F.	3,508	3,042	1,027	86.7%	$912,600,000
Cahn, Arthur S	3,519	3,049	621	86.6%	$914,700,000
Galvan, Oscar G.	2,027	1,755	93	86.6%	$526,500,000
Lee, Gary J.	4,424	3,822	745	86.4%	$1,146,600,000
Soto, Eduardo	3,701	3,196	171	86.4%	$958,800,000
White, Charlotte N	4,011	3,461	550	86.3%	$1,038,300,000
Duncan, Gene	3,181	2,744	838	86.3%	$823,200,000
Anderson, G. Roderic	4,198	3,620	1,054	86.2%	$1,086,000,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Ciaravino, James R.	1,706	1,471	868	86.2%	$441,300,000
Paro, Henry M.	331	285	77	86.1%	$85,500,000
Weinberg, Maryellen	2,848	2,451	556	86.1%	$735,300,000
Larocca, Elia M.	3,001	2,580	352	86.0%	$774,000,000
Gautier, Rosael	748	643	5	86.0%	$192,900,000
Wesker, Barry M.	1,122	964	136	85.9%	$289,200,000
Harap, Frederick	1,420	1,219	362	85.8%	$365,700,000
Moore, C. F.	4,745	4,069	2,660	85.8%	$1,220,700,000
Glazer, Eric L.	3,064	2,626	217	85.7%	$787,800,000
Davidson, Joseph	2,789	2,389	501	85.7%	$716,700,000
Falkenstein, C. Wayne	2,170	1,858	538	85.6%	$557,400,000
Shapiro, Mark H.	767	656	88	85.5%	$196,800,000
Givens, Thomas P	620	530	192	85.5%	$159,000,000
Crawley, Brian J	2,568	2,195	272	85.5%	$658,500,000
Baker, Karen H.	2,369	2,023	377	85.4%	$606,900,000
Mandry, Maria Teresa	2,466	2,105	94	85.4%	$631,500,000
Loughry, Daniel F.	2,241	1,912	465	85.3%	$573,600,000
Burton, Alfred	1,230	1,048	353	85.2%	$314,400,000
Lawson, William	6,310	5,375	1,631	85.2%	$1,612,500,000
Sparks, James A	6,949	5,914	2,788	85.1%	$1,774,200,000
Total	**562,045**	**509,062**	**154,977**	**90.6%**	**$152,718,600,000**

Note: The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJs' decision data from between fiscal year 2005 and fiscal year 2013. The 'Allowance' column includes both fully favorable awards and partially favorable awards. On-the-record allowances are allowances made without a hearing. The 'Allowance Rate' was obtained by dividing the 'Allowances' column by the 'Decisions' column. This data is sorted by allowance rates. Total spending on allowances was estimated by multiplying the number of allowances and $300,000 – the estimated total federal government expenditure of an individual gaining eligibility for a federal disability program.

Table 8: Decision Data for ALJs with Allowance Rates in Excess of 85 Percent

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Adamczyk, Joanne E.	2,897	2,530	505	87.3%	$759,000,000
Albrecht Jr, Warren H	2,468	2,169	673	87.9%	$650,700,000
Alden, Nancy	3,848	3,612	1,489	93.9%	$1,083,600,000
Allen, Denny	1,949	1,705	270	87.5%	$511,500,000
Anderson, G. Roderic	4,198	3,620	1,054	86.2%	$1,086,000,000
Anzalone, Kerry J.	2,278	2,067	194	90.7%	$620,100,000
Ardery, Charles W.	3,059	2,727	144	89.1%	$818,100,000
Armitage, Paul C.	3,943	3,476	720	88.2%	$1,042,800,000
Augustine, Patrick B.	2,211	1,946	1,475	88.0%	$583,800,000
Baker, Karen H.	2,369	2,023	377	85.4%	$606,900,000
Barezky, Bonny S.	5,910	5,154	538	87.2%	$1,546,200,000
Barker, John R.	4,880	4,233	727	86.7%	$1,269,900,000
Barker, Joseph V.	3,617	3,328	1,266	92.0%	$998,400,000
Batson, Thomas F.	7,568	7,118	3,689	94.1%	$2,135,400,000
Behuniak, Peter Z.	2,648	2,490	822	94.0%	$747,000,000
Benagh, Christine P.	3,298	2,957	799	89.7%	$887,100,000
Biloon, Millard L.	4,721	4,112	672	87.1%	$1,233,600,000
Blaine, Kent R.	1,199	1,049	352	87.5%	$314,700,000
Blanton, Michael C.	1,662	1,516	586	91.2%	$454,800,000
Bleecher, Arthur B.	424	413	5	97.4%	$123,900,000
Bodley, John M.	815	786	154	96.4%	$235,800,000
Boltz, Jon D.	2,999	2,613	56	87.1%	$783,900,000
Bork, Nathan A.	870	784	208	90.1%	$235,200,000
Borowiec, Frank B.	897	827	223	92.2%	$248,100,000
Brickner, Paul	1,425	1,425	1,425	100.0%	$427,500,000
Bridges, Charles	15,787	15,037	6,983	95.2%	$4,511,100,000
Brooks, Allyn	3,393	3,019	1,195	89.0%	$905,700,000
Brown, James J.	1,635	1,445	375	88.4%	$433,500,000
Bryant, Leroy C.	2,258	2,004	73	88.8%	$601,200,000
Buel, Sr., Toby J.	4,630	4,070	67	87.9%	$1,221,000,000
Burke, James A.	7,444	7,126	2,243	95.7%	$2,137,800,000
Burton, Alfred	1,230	1,048	353	85.2%	$314,400,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Cahn, Arthur S	3,519	3,049	621	86.6%	$914,700,000
Carstetter, David W.	4,277	4,030	927	94.2%	$1,209,000,000
Chapman, Ronald L.	2,308	2,171	143	94.1%	$651,300,000
Ciaravino, James R.	1,706	1,471	868	86.2%	$441,300,000
Clark, Halstead H.	547	477	88	87.2%	$143,100,000
Conger, Jr., Paul S.	8,623	7,792	3,022	90.4%	$2,337,600,000
Connor, Carol A	2,934	2,563	244	87.4%	$768,900,000
Corrigan, Brian	2,083	1,836	109	88.1%	$550,800,000
Craig, Joyce Krutick	1,156	1,096	267	94.8%	$328,800,000
Crawley, Brian J	2,568	2,195	272	85.5%	$658,500,000
Crickman, John R.	2,013	1,906	175	94.7%	$571,800,000
D'Alessandro, James J.	4,605	3,995	1,415	86.8%	$1,198,500,000
Daugherty, David B.	8,533	8,413	4,184	98.6%	$2,523,900,000
Davidson, Joseph	2,789	2,389	501	85.7%	$716,700,000
Davis, Deborah S.	3,783	3,338	943	88.2%	$1,001,400,000
De bellis, Frank M	204	177	52	86.8%	$53,100,000
De Bernardis, Craig	3,489	3,112	177	89.2%	$933,600,000
De Pietro, Joseph F.	5,514	5,154	3,679	93.5%	$1,546,200,000
DeBord, Michael K.	170	169	34	99.4%	$50,700,000
del Valle, Manuel	5,010	4,843	1,122	96.7%	$1,452,900,000
Dring Jr., John P.	365	345	215	94.5%	$103,500,000
Due, Douglas R.	4,669	4,300	684	92.1%	$1,290,000,000
Duncan, Gene	3,181	2,744	838	86.3%	$823,200,000
Embree, Glenn M.	3,846	3,440	321	89.4%	$1,032,000,000
Engel, David W.	7,029	6,189	2,509	88.0%	$1,856,700,000
Falkenstein, C. Wayne	2,170	1,858	538	85.6%	$557,400,000
Faraguna, Joseph R	5,844	5,139	2,776	87.9%	$1,541,700,000
Feiner, Jerome J.	1,202	1,156	669	96.2%	$346,800,000
Foley, Patrick J	4,461	4,282	557	96.0%	$1,284,600,000
Fowler, Wendell C	3,847	3,450	2,255	89.7%	$1,035,000,000
Francis Jr., Burt R.	2,011	1,820	113	90.5%	$546,000,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Freedman, Gerald A.	4,066	3,656	441	89.9%	$1,096,800,000
Gajewski, Leonard J	773	674	209	87.2%	$202,200,000
Galvan, Oscar G.	2,027	1,755	93	86.6%	$526,500,000
Garmon, Ollie	351	351	339	100.0%	$105,300,000
Gautier, Jose R	4,347	3,803	1,511	87.5%	$1,140,900,000
Gautier, Rosael	748	643	5	86.0%	$192,900,000
Gehring, John F.	3,508	3,042	1,027	86.7%	$912,600,000
Gill, Robert	3,267	2,881	854	88.2%	$864,300,000
Givens, Thomas P	620	530	192	85.5%	$159,000,000
Glazer, Eric L.	3,064	2,626	217	85.7%	$787,800,000
Gonzalez, Alberto E.	3,392	3,222	447	95.0%	$966,600,000
Gormley III, Matthew J.	1,469	1,355	533	92.2%	$406,500,000
Gormley, Patricia M.	404	369	67	91.3%	$110,700,000
Graham, E. Norman	4,805	4,309	357	89.7%	$1,292,700,000
Gray, William O.	4,520	3,977	771	88.0%	$1,193,100,000
Greenstein, Michael P	186	168	18	90.3%	$50,400,000
Guzzo, Fred J.	453	408	31	90.1%	$122,400,000
Halpern, Joseph	1,748	1,666	664	95.3%	$499,800,000
Hammond, Glenn B.	1,890	1,793	423	94.9%	$537,900,000
Harap, Frederick	1,420	1,219	362	85.8%	$365,700,000
Harrop Jr, Grenville W	3,201	2,932	408	91.6%	$879,600,000
Harvey, Rosemary	559	490	256	87.7%	$147,000,000
Heavrin, T. Christopher	1,591	1,430	96	89.9%	$429,000,000
Herbert, William S.	3,563	3,113	270	87.4%	$933,900,000
Hill-Maxion, Sanya	1,664	1,554	121	93.4%	$466,200,000
Holland, Harry T.	415	372	149	89.6%	$111,600,000
Hood, John	749	700	165	93.5%	$210,000,000
Hooper, Joe R.	712	691	217	97.1%	$207,300,000
Hoover, E. Russell	6,585	5,832	596	88.6%	$1,749,600,000
Hubbard, David T	3,412	3,233	1,331	94.8%	$969,900,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Jackson, Jr., Robert T.	3,751	3,381	290	90.1%	$1,014,300,000
Jewell, W. Gary	6,942	6,556	3,263	94.4%	$1,966,800,000
Johnston, Paul L	4,217	3,866	414	91.7%	$1,159,800,000
Kaplan, James M	217	197	26	90.8%	$59,100,000
Karpe, Richard	626	576	268	92.0%	$172,800,000
Kelly III, John T.	3,025	2,748	752	90.8%	$824,400,000
Kendall, Paul S.	1,212	1,078	117	88.9%	$323,400,000
Kennedy, Thomas P.	232	204	65	87.9%	$61,200,000
Krafsur, Gerald I.	6,033	5,977	224	99.1%	$1,793,100,000
Krainess, Donald P.	1,951	1,730	49	88.7%	$519,000,000
Kuzmack, Nicholas T.	5,285	5,079	1,295	96.1%	$1,523,700,000
LaBoda, Barry C.	2,533	2,381	476	94.0%	$714,300,000
Lanter, James E.	278	253	24	91.0%	$75,900,000
Larocca, Elia M.	3,001	2,580	352	86.0%	$774,000,000
Lawson, William	6,310	5,375	1,631	85.2%	$1,612,500,000
Lawwill, James J	2,311	2,234	363	96.7%	$670,200,000
Lazarus, Robert J	5,209	4,642	710	89.1%	$1,392,600,000
Lee, Gary J.	4,424	3,822	745	86.4%	$1,146,600,000
Lobo, Patricia	3,222	2,940	592	91.2%	$882,000,000
Loughry, Daniel F.	2,241	1,912	465	85.3%	$573,600,000
Love, Verner R.	1,751	1,674	658	95.6%	$502,200,000
Lyman, Phillip C.	4,141	3,601	649	87.0%	$1,080,300,000
Malakoff, J. Frederick	827	744	171	90.0%	$223,200,000
Mandry, Maria Teresa	2,466	2,105	94	85.4%	$631,500,000
Mc Afoos III, Louis G	4,525	4,278	1,476	94.5%	$1,283,400,000
Mccollom, William G.	458	411	295	89.7%	$123,300,000
McCully, Richard P.	4,092	3,658	1,168	89.4%	$1,097,400,000
McGinn, V. Paul	4,756	4,133	134	86.9%	$1,239,900,000
Meyer, John E.	1,686	1,504	260	89.2%	$451,200,000
Miller, J. Cleve	1,044	937	329	89.8%	$281,100,000
Mills, Myron D.	2,054	1,980	1,811	96.4%	$594,000,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Molenda, Francis A.	1,518	1,415	143	93.2%	$424,500,000
Moore, C. F.	4,745	4,069	2,660	85.8%	$1,220,700,000
Morgan, E. Lee	4,951	4,341	305	87.7%	$1,302,300,000
Morgan, Katherine	4,504	4,002	757	88.9%	$1,200,600,000
Morris, John R.	6,619	6,113	1,601	92.4%	$1,833,900,000
Newton, Jr., Francis C.	1,949	1,853	329	95.1%	$555,900,000
Oboler, Alan D	220	215	217	97.7%	$64,500,000
O'Bryan Jr., W. Howard	10,177	9,315	8,339	91.5%	$2,794,500,000
Ogden, W. Baldwin	4,734	4,225	967	89.2%	$1,267,500,000
O'Hara, Hanford	2,491	2,220	613	89.1%	$666,000,000
Oliver, Henry	4,697	4,397	3,021	93.6%	$1,319,100,000
Palmer, George	1,011	936	361	92.6%	$280,800,000
Paro, Henry M.	331	285	77	86.1%	$85,500,000
Pedrick, Jr., John L.	686	600	217	87.5%	$180,000,000
Peyser, Richard	911	846	112	92.9%	$253,800,000
Pickett, John J	3,228	2,824	330	87.5%	$847,200,000
Piloseno, Jr., Daniel A	5,534	5,157	2,843	93.2%	$1,547,100,000
Poverstein, Emanuel	1,353	1,218	343	90.0%	$365,400,000
Powell, Kenneth M.	1,075	1,036	365	96.4%	$310,800,000
Pucci, Louis J.	2,474	2,470	2,350	99.8%	$741,000,000
Quinones, Ramon E	6,082	5,499	1,911	90.4%	$1,649,700,000
Ramirez, Marta	762	699	75	91.7%	$209,700,000
Ravinski, Catherine	1,267	1,175	705	92.7%	$352,500,000
Riley, Eve M.	4,833	4,356	3,493	90.1%	$1,306,800,000
Robinson, Thomas	3,207	2,814	325	87.7%	$844,200,000
Robison, Robert S.	422	366	174	86.7%	$109,800,000
Rodnite, Andrew John	502	437	191	87.1%	$131,100,000
Rucker, James R.	367	325	128	88.6%	$97,500,000
Ryan, Robert P.	352	318	4	90.3%	$95,400,000
Sampson, Victor	601	582	54	96.8%	$174,600,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Santiago, Jose J	822	795	375	96.7%	$238,500,000
Sax, Carol A.	1,629	1,444	730	88.6%	$433,200,000
Schwartz, Roger	2,555	2,253	381	88.2%	$675,900,000
Shapiro, Mark H.	767	656	88	85.5%	$196,800,000
Shelton, Gary R	7,206	6,291	748	87.3%	$1,887,300,000
Sherr, Norman A	819	749	38	91.5%	$224,700,000
Singh, Jag Jit	587	526	165	89.6%	$157,800,000
Smith, Manny	3,672	3,585	2,198	97.6%	$1,075,500,000
Soto, Eduardo	3,701	3,196	171	86.4%	$958,800,000
Sparks, James A	6,949	5,914	2,788	85.1%	$1,774,200,000
Stagno, Linda A.	2,420	2,111	387	87.2%	$633,300,000
Stark, Charles	1,879	1,716	165	91.3%	$514,800,000
Stevens, Mitchell F.	3,438	3,182	1,949	92.6%	$954,600,000
Storey, Peter B.	2,285	2,086	406	91.3%	$625,800,000
Swihart, Steven T.	233	210	35	90.1%	$63,000,000
Taylor, II, Harry C.	8,770	8,227	5,982	93.8%	$2,468,100,000
Tease, J. Edward	2,872	2,618	1,828	91.2%	$785,400,000
Trost, Timothy J	2,589	2,284	218	88.2%	$685,200,000
Van slate, Jean	788	696	141	88.3%	$208,800,000
Vanderhoef, Jerry M.	1,943	1,722	630	88.6%	$516,600,000
Vaughn, William C.	1,681	1,610	228	95.8%	$483,000,000
Villere Jr., Plauche F.	6,596	5,759	951	87.3%	$1,727,700,000
Waldman, Ronald L	2,283	2,004	405	87.8%	$601,200,000
Ward, Robert E.	3,366	3,208	171	95.3%	$962,400,000
Washington, Calvin	8,340	7,652	1,187	91.8%	$2,295,600,000
Weinberg, Maryellen	2,848	2,451	556	86.1%	$735,300,000
Wesker, Barry M.	1,122	964	136	85.9%	$289,200,000
White, Charlotte N	4,011	3,461	550	86.3%	$1,038,300,000
White, Douglas G.	5,588	5,145	837	92.1%	$1,543,500,000
Wieman, F. Joseph	841	833	352	99.0%	$249,900,000
Wilborn, Ralph	269	264	51	98.1%	$79,200,000
Wilcox, J. M.	1,966	1,721	798	87.5%	$516,300,000
Williams, H. Scott	2,391	2,097	595	87.7%	$629,100,000

ALJ	Decisions	Allowances	On-the-Record Allowances	Allowance Rate	Total Spending on Allowances
Williams, Jr., Major	3,057	2,736	565	89.5%	$820,800,000
Williams, Paul T.	3,938	3,672	387	93.2%	$1,101,600,000
Yoswein, Leonard E	2,794	2,588	882	92.6%	$776,400,000
Zanaty, Edward S.	4,112	3,850	2,527	93.6%	$1,155,000,000
Total	**562,045**	**509,062**	**154,977**	**90.6%**	**$152,718,600,000**

Note: The data in this table were computed using publicly available ALJ adjudication data plus data provided by SSA and represent ALJs' decision data from between fiscal year 2005 and fiscal year 2013. The 'Allowance' column includes both fully favorable awards and partially favorable awards. On-the-record allowances are allowances made without a hearing. The 'Allowance Rate' was obtained by dividing the 'Allowances' column by the 'Decisions' column. This data is sorted by the ALJs' last name. Total spending on allowances was estimated by multiplying the number of allowances and $300,000 – the estimated total federal government expenditure of an individual gaining eligibility for a federal disability program.

SUBCOMMITTEE CHAIRMAN LANKFORD OPENING STATEMENT
for the Full Committee hearing entitled,
"Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process."

Thank you, Mr. Chairman. As you know, my Subcommittee has held three hearings over the past year on the problems with federal disability programs. It is clear that the growth of these programs is unsustainable for the nation's taxpayers and it threatens the livelihood of the truly disabled who face large benefit cuts in the future if the program is not reformed. The Social Security Board of Trustees and the Congressional Budget Office estimate that, without reform, the Social Security Disability Insurance trust fund will be depleted in two years.

At the outset, let me state that I appreciate the bipartisanship on which my Subcommittee has been able to approach this oversight. Ranking Member Speier and I both recognize that there are significant problems with these programs and that reform is needed. I thank her very much for her work and her partnership on this issue.

For all practical purposes, a decision to allow benefits is an irrevocable commitment of taxpayer funds since favorable decisions are not appealed and less than one percent of disability beneficiaries ever return to the work force. Therefore, it is a decision which must be made with great care and proper consideration of all the evidence. It appears some ALJ's are being very benevolent with other people's money.

In June last year, my Subcommittee heard testimony from two former and two current Social Security Administrative Law Judges. That hearing showed that the agency's emphasis on processing cases quickly likely had the unintended consequence of ALJs putting too many people onto the program who are able to work. We learned that many ALJs use shortcuts and don't have time to consider all the evidence prior to rendering a decision.

In addition to discussing problems within the appeals process, my Subcommittee has also explored problems with the agency's continuing disability review process. The agency allowed a huge backlog of CDRs to develop. Moreover, the agency's current medical improvement standard is so flawed that a claimant who was not disabled and wrongfully received benefits initially cannot be removed from the program.

Today's detailed staff report and hearing continues the Committee's important oversight. Here are some of the central facts explained in the Committee report:

First, Jasper Bede, a Regional Chief Administrative Law Judge for the agency, testified that it raise a red flag when ALJs allow benefits at a high rate, which he defined as over "75 or 80 percent." Between 2005 and 2009, over 40 percent of ALJs had allowance rates in excess of 75 percent and over 20 percent of ALJs had allowance rates in excess of 85 percent.

Second, between 2005 and 2013, over 1.3 million individuals were placed onto disability by an ALJ with an allowance rate in excess of 75 percent.

Third, the raw numbers also suggest that the historic problem of ALJ decision-making has been one-sided. For instance, 191 ALJs had total allowance rates in excess of 85 percent between 2005 and 2013. Only a single ALJ had a total allowance rate below 15 percent during this time period.

Fourth, prior to 2011, the agency failed to assess the quality of ALJ decisions in any way. The agency even failed to monitor whether ALJs were appropriately awarding benefits when ALJs awarded benefits without holding hearings. Instead, it appears that the only metric used by the agency to evaluate ALJs was the number of cases processed.

Fifth, a 2012 SSA internal report confirmed a [quote] "strong relationship between production levels and decision quality on allowances. As ALJ production increases, the general trend for decision quality is to go down." [end quote] A Committee analysis of 30 internal agency reviews of high allowance ALJs confirms this. The 30 reviews show troubling patterns in judicial decision-making, particularly how ALJs with high allowance rates fail to utilize medical and vocational experts in their hearings, how they improperly assess drug and alcohol abuse in their decisions, and how they improperly assess whether individuals can work.

Tragically, evidence suggests that the agency's emphasis on high volume adjudications over quality decision-making has eroded the credibility of the disability appeals process and as a result, a large number of people are inappropriately on disability.

In addition to the problems the excessive growth has on the truly disabled, these programs have too often limited people from reaching their full potential. According to a 2010 paper published jointly by the liberal Center for American Progress and left-of-center Brookings Institution:

> The [Social Security Disability Insurance] program provides strong incentives to applicants and beneficiaries to remain permanently out of the labor force.

I look forward to these two hearings and hope to facilitate a productive discussion about how we can fix systemic problems in the federal disability programs so that precious taxpayer dollars are preserved for the truly disabled.

THE FOLLOWING QUESTIONS FOR THE RECORD WERE SENT TO ALL WITNESSES FOR THIS HEARING.

MR. KRAFSUR HAS NOT RESPONDED.

Questions for
Mr. Gerald I. Krafsur
Administrative Law Judge
Kingsport, Tennessee, Office of Disability Adjudication and Review
Social Security Administration

Chairman Darrell Issa
Committee on Oversight and Government Reform

Hearing: "Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process"

Questions regarding your comments at the June 10, 2014 hearing:

1. ALJ Krafsur, you confirmed that representatives from the Social Security Administration have told you that your decisions do not comply with agency policy, stating:

   > They just arbitrarily said that. Didn't explain why they disagree with it. They just don't agree with it.

   However, your focused reviews, which you testified that you had not seen, contain detailed explanations regarding how your decisions do not comply with agency policy. Did the agency grant you access to the reviews? Did you see them? Why or why not? What is your opinion of the focused review program? If you saw the reviews, do you think the reviews are accurate? Why or why not?

2. You also stated that you "never had a review because it's against the Administrative Procedures Act," when in fact the agency conducted two reviews of your cases.

   a. Do you still dispute the existence of those reviews?

   b. Please explain how focused reviews of ALJs violate the Administrative Procedures Act.

3. You claimed that you do not have your own theory for determining whether a claimant is disabled; however, you stated that you use a "cause and effect" theory of disability. Which agency policy or regulation supports your "cause and effect" theory? Why do you use the "cause and effect" theory?

General questions regarding your 2011 and 2014 focused reviews:

4. Did you discuss the findings of your focused review with anyone at the agency? Did the agency ask you to improve upon or change your decision-making in any way? Were you asked to undergo training as a result of the review? If so, please explain what the training entailed.

5. Do you agree with the focused review findings? Have you changed your decision-making because of this? If you could, would you go back and decide cases differently, based on your new training after the focused review?

Questions regarding specific findings from your 2011 and 2014 focused reviews:

6. Here's an excerpt from a hearing you conducted on September 26, 2013:

ALJ: See the difference how I conduct the hearing and Judge Overton. You met with Judge Overton... he never went through that stuff did he?

Claimant: – I don't think he did, no, sir. I don't think so.

ALJ: I do what's known as cause and effect. This is the effect. I have to find more causes though. If I can't find a cause, I can't disable. And we're working this right now. And she should have more complaints and stuff than I have here. I rely on the attorneys to do 95 percent of the work. I only do 75 [laugh]. My 75 is enough to establish by hearing.

7. In a recent hearing, you stated that you rely on claimant attorneys to do 95 percent of the work. What do you mean that you rely on claimant attorneys to do 95 percent of the work?

    a. Do other ALJs rely on claimant attorneys to do almost all of the work in developing the case? How many? Is it a common practice?

Question regarding awards, letters, or commendations:

8. Have you or your hearing office ever received any letters or commendations of any kind related to the volume or quality of your work? If so, please provide a list of all letters or commendations you have received and explain their contents.

Question regarding agency policy and procedures:

9. Do you believe that ALJ decision-making should be evaluated by SSA to ensure ALJs comply with policy? What should happen if an ALJ does not comply with policy? Should an ALJ who is not following agency policies and procedures be removed from his or her position?

Question regarding claimant attorneys:

10. Do most ALJs rely on claimant attorneys to do most of the work in developing the case?

Question regarding allowance rates:

11. Your total allowance rate from 2005-2013 was 99.1%. Why did you find such a high percentage of DDS decisions to be inaccurate, compared to other ALJs?

July 10, 2014

VIA HAND DELIVERY and E-MAIL
The Honorable Chairman Darrell Issa
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Judge Harry C. Taylor II Responses to Member Questions

Dear Chairman Issa:

Our firm represents Administrative Law Judge Harry C. Taylor II, who is based in the Charleston, West Virginia Hearing Office of the Social Security Administration. As you are aware, Judge Taylor was a witness who appeared voluntarily before the Committee on June 10, 2014 (the "Committee"). The purpose of this letter is to respond to the additional questions submitted to Judge Taylor by letter dated June 25, 2014, and by e-mail on June 26, 2014.

Judge Taylor does not believe that a full and fair depiction of his judicial career was presented at the Committee hearing and in the Committee's June 10, 2014 Staff Report.[1] Furthermore, the July 1, 2014 recommendation to Social Security Administrator Commissioner Carolyn Colvin that Judge Taylor be fired or placed on administrative leave[2] is particularly concerning when the Committee had the following questions to Judge Taylor outstanding. If the Committee seeks to be fair and balanced, it should reserve judgment and recommendations until all the facts have been presented, including the following facts which were specifically requested by the Committee.

[1] United States House of Representatives, Committee on Oversight and Government Reform, Staff Report, *Systemic Waste and Abuse at the Social Security Administration: How Rubber-Stamping Disability Judges Cost Hundreds of Billions of Taxpayer Dollars*, June 10, 2014 (hereinafter "Staff Report").
[2] *See* July 1, 2014 letter from the Honorable Chairman Darrell Issa to the Honorable Carolyn W. Colvin.

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The Committee, the Staff Report, and the questions herein refer to the on-the-record process in which disability cases were approved without a hearing. As set forth in detail below, the on-the-record process was not created by Judge Taylor, and his volume of on-the-record adjudications was a direct link to the Administration backlog and a specific request from multiple superiors to review cases for on-the-record resolution to meet productivity goals. Judge Taylor cannot be penalized for being asked to do fast track on-the-record adjudications by a series of supervisors for the sake of office productivity goals, penalized again for approving appropriate cases for which he was asked to review, and then penalized a final time and labeled a "rubber stamp" for having higher case approval numbers than other ALJs because he agreed to assist in the on-the-record process. Finally, and most critically, now that the on-the-record program has been discontinued, Judge Taylor is not conducting on-the-record hearings, and his ***case approval rate is 74.7%*** and trending lower towards the national ALJ average. This is critical for the Committee's consideration.

Therefore, pursuant to the direction of the June 25, 2014 letter, the following sets forth the Member's questions and the responses. Based on the information provided below, Judge Taylor is hopeful that the Committee will see the full context of the matters before the Committee as they involve Judge Taylor.

Question No. 1:

At the hearing on June 10, 2014, you stated:

> The thing that we have to meet is these goals that we've had over the years, and the goals have changed a little bit since I came in, but they've always gone up. And, of course, last year the goals were taken off, and they are no more.

Please explain your answer in more detail, incorporating answers to the following questions:

a. How have the goals changed over the years?

b. Are you referring to the 500-700 production goal numbers, or different goals?

c. Explain what you mean by "last year the goals were taken off, and they are no more."

d. Is it your understanding that there are no production goals?

Response:

When Judge Taylor was appointed an ALJ in 1988, the goal set by the SSA was 1.7 decisions per day per ALJ. In most months, the average was approximately 37 or 38 decisions per month per ALJ. This number was multiplied by the total number of ALJs in a particular Hearing Office to establish the Hearing Office goals for each month. Additionally, each Regional Office would have productivity goals, but Judge Taylor was not involved in how those goals were created or calculated.

The goals increased during Judge Taylor's tenure. For example, in 2012 – 2013, the goal was 2.48 decisions per day per ALJ. Also, at some point, the SSA installed weekly goals to help the Hearing Office achieve the monthly goals.

In approximately 2013, the weekly and monthly productivity goals were formally removed, however, these goals still exist in an informal manner. The current goals include working off aged cases, achieving a high agreement rate upon review and doing a legally sufficient decision in each case. The practical effect of these changes is that there are fewer short form decisions and longer decisions with more explanations.

Nevertheless, Judge Taylor's understanding is that each ALJ is still generally expected to handle 500 to 700 cases per year. The origin of the range is from when ALJ Cristaudo was the Chief Judge; he wrote a memorandum wherein he stated his belief that every ALJ should be able to handle 500 to 700 decisions per year.

Question No. 2:

You received letters from the agency commending you for your high production numbers, but stated that "the agency has got to be careful about that," since ALJ's cannot accept awards based on their performance.

a. Please provide a list of all letters or other commendations you have received or your office has received, and explain their contents.

b. What did you mean when you stated "the agency has got to be very careful about that?"

c. Did you express your concern about these letters possibly violating agency policy to anyone?

Response:

Judge Taylor received letters, both addressed to him personally and to the Judges of certain geographic regions in which he worked. The letters were submitted to the Committee in connection with Judge Taylor's June 10 testimony, and are presented herein again for your convenience at Exhibit A. In one letter dated October 2009, former Acting Regional Chief Judge Jasper Bede thanked Judge Taylor for his "dedication, hard work, and commitment to exemplary public service." *Id.*

The Charleston Hearing Office also received commendations for things such as: (1) lowering case processing time; (2) total claimants served; (3) lowering aged cases; (4) meeting agency goals, and (5) average daily disposition. A handwritten list of these office commendations were provided by Judge Taylor as an exhibit to his June 10, 2014 testimony and is presented herein again for convenience as Exhibit B.

Judge Taylor does not consider these letters "awards." There were no monetary components of any of the foregoing and they were not presented to him in a public ceremony or forum. They are, simply, pieces of paper with words of encouragement for a job well done.

With respect to the Charleston Office commendations, Judge Taylor similarly does not view these as "awards" but again as encouragement from the agency for certain achievements that were directed to an entire office. There were no discussions as to whether the letters or the commendations were in violation of agency policy. Judge Taylor's testimony that the "agency has to be careful about that" was related to whether the commendations could have the effect of causing certain ALJs to decide cases in a manner that was geared towards seeking commendations or seeking goals for goals sake. Judge Taylor did not act in any way to receive such letters, however.

Question No. 3:

You stated that there are "no on-the-records, or at least very few that are being issued at the present time." To the best of your knowledge, why are very few on-the-records now being issued?

Response:

See Response to Question 6, *infra*. The answer to this question is addressed in that response.

Question No. 4:

Did you get a copy of the 2011 focused review? Did you go over the results with anyone from the agency? Were there any actions that the agency took as a result of the review? Did the agency ask you to improve upon or change your decision-making in any way?

Response:

As you are aware, pursuant to the Administrative Procedure Act ("APA"), ALJs do not receive written performance evaluations. Nevertheless, Judge Taylor did not receive a copy of the 2011 focused review. Judge Taylor did not go over the results with anyone from the Agency. To the best of Judge Taylor's recollection, the Agency did not take any actions regarding him as a result of this review and the Agency did not ask him to improve upon his decision-making as a result of this review.

Question No. 5:

Did you get a copy of the 2013 focused review? Did you go over the results with anyone from the agency? Were there any actions that the agency took as a result of the review? Did the agency ask you to improve upon or change your decision-making in any way?

Response:

Judge Taylor did not receive a copy of the 2013 focused review but generally went over the results with his Hearing Office Chief Administrative Law Judge ("HOCALJ"). As noted in the Staff Report, Judge Taylor completed a training program after the 2013 focused review. *See* Staff Report at 32.

Question No. 6:

Between 2005 and 2013, you allowed nearly 6,000 people onto disability without holding a hearing. 68% if your decisions were issued on the record. How were you able to determine that so many claimants were disabled without needing a hearing? Did it ever concern you that you were reaching different decisions than two separate state DDS reviewers in so many cases without even holding a hearing?

a. Why did you find such a high percentage of DDS decisions to be in accurate?

b. How do you screen cases to decide which ones you can allow without a hearing? During the last decade, did anyone within your office help you screen cases? Who?

c. Did anyone ever evaluate the quality of your on the record decisions? Who?

Response:

The issue of the number of on-the-record decisions by Judge Taylor is the most critical area in which the Committee has not received the full and complete factual context for consideration. Such context is incredibly important to understanding the information behind the heavily discussed on-the-record case numbers that are before the Committee in this matter and to counterbalance the repeated reference to Judge Taylor as a "rubber stamp," which he is not.

Preliminarily, with respect to Judge Taylor's judicial decisions, it is critical to note that he is vested with a level of decisional independence under the APA. Nevertheless, because of the issues raised in the Committee hearing and Staff Report, Judge Taylor is more than willing to inform the Committee of the circumstances and historical context surrounding the issues, particularly regarding the on-the-record decisions.

We also provide this information to the Committee with the full appreciation and understanding of SSA Commissioner Carolyn Colvin's statement and testimony before the Committee that an ALJ's "allowance rate is not a proxy measurement of his or her policy compliance."[3] Based on the following information, such a proxy is not an appropriate measure of Judge Taylor's overall compliance with SSA policy.

Judge Taylor has been an ALJ since 1988. Prior to his service, he was a Clerk for the West Virginia Supreme Court of Appeals. Judge Taylor also worked as a private practitioner where he was a general practice attorney in Charleston, West Virginia. Judge Taylor worked on social security cases as well as medical malpractice cases, thus he had some familiarity with the social security system before he became an ALJ. Prior to his legal career, Judge Taylor served as an Artillery Officer for the United States Army and a Prosecutor/Claims Attorney for the United States Navy. Judge Taylor received several awards during his military service, including The Army Commendation Medal for meritorious service. *See* Exhibit C.

Judge Taylor has always been a very hard working and dedicated ALJ, working many nights and weekends to get work completed. Unfortunately, not all of Judge Taylor's colleagues shared the same work ethic, causing a significant backlog in cases to be decided. Therefore, in

[3] *See* Testimony of Carolyn W. Colvin regarding oversight of federal disability programs, House Committee on Oversight and Government Reform, June 11, 2014.

approximately 2002, a former HOCALJ approached Judge Taylor and asked him if he would be willing to take cases off the Master Docket to determine on a "fast track" basis whether certain cases could be decided on-the-record to reduce the backlog. This request was made in large part to meet office productivity goals and to make up for lower performing judges who were not meeting monthly production goals. There was also a goal in the Administration to identify cases that could be resolved at the earliest possible stage through on-the-record adjudication. This would save critical resources such as avoiding the need to hire expert witnesses, obtaining hearing space, arranging the logistics of a hearing, and bearing the costs of holding a hearing. Judge Taylor agreed to participate in this effort to reduce the backlog and increase office productivity.

Therefore, Judge Taylor was periodically provided with a stack of cases that were screened by experienced SSA Administrative Staff members who believed in their best judgment that the matter could be resolved on-the-record. *See, e.g.*, Exhibit D. This aspect is critical for the Committee's consideration. The SSA Administrative Staff are the first line of federal employee to review the state agency action in the cases. Notably, the state agencies and state reviewers operate under a different set of regulations from the regulations used by the Office of Disability Adjudication and Review ("ODAR"). The state agencies rely on state regulations, and the ODAR uses the CFRs. Therefore, every case that enters the Charleston ODAR is screened and reviewed with regard to the applicable federal regulations and certain specific characteristics (age, vocation, background, documents from the treating physician, etc.). Several people are involved in this process, including attorneys and senior supervisory staff and senior clericals who were trained and experienced in reviewing such cases. Over the last decade, this has included several people in these various capabilities. These experienced staff members provided Judge Taylor with the pre-screened stack of cases to be considered for on-the-record disposition.

Therefore, Judge Taylor reviewed the cases, and when he could handle the matter on-the-record, he would do so. When he could not resolve the cases, he would return them back to the Master Docket for random judicial assignment. It is critical to note that Judge Taylor did not, as it has been alleged, "rubber stamp" the cases that were pre-screened for his review. Indeed, the staff's initial belief regarding an approval was not always shared with Judge Taylor, who decided each case independently and on the merits of each case. In those circumstances, the staff expressed dissatisfaction with Judge Taylor's decision not to agree with their initial determination. Additionally, the on-the-records cases were over and above the cases that Judge Taylor did in a hearing.

The process of on-the-record staff screening and adjudication continued for a number of years under the tenure of different HOCALJs, some of whom stated that the ***on-the-record program was critical to meeting agency goals and strongly encouraged the practice.*** Judge Taylor was willing to help to reduce the backlog of cases and increase office productivity.

However, Judge Taylor never felt pressure to approve the cases that were pre-screened for him; rather he was urged by supervisors to meet office productivity goals and who encouraged the use of the on-the-record program. He was not, and is not, a "rubber stamp."

For approximately the past one and a half years, however, Judge Taylor has not received any pre-screened, on-the-record cases from the staff, and he has not conducted any on-the-record hearings in 2014. It is Judge Taylor's understanding that the on-the-record program has been discontinued. Because he has not received any more pre-screened cases, Judge Taylor's ***approval rate has gone down to 74.7% in 2014***, and that number may even be lower now. *See* Exhibit E. Indeed, even when his pre-2014 approval rates are reviewed in the overall list of ALJ decision data from 2005 to 2013 that was appended to the Staff Report, Judge Taylor ranked 44th. With Judge Taylor's current approval rates in the 70% range, he would likely be far further down the Staff Report list.

Therefore, the on-the-record program clearly demonstrates the cause of Judge Taylor's pre-2014 case approval numbers and the current lack of the program also clearly demonstrates that Judge Taylor's ***actual*** case approval percentage is trending towards the national average.

Question No. 7:

One of the findings of the agency's 2013 focused review of your decisions was that you dismissed opinions and assessments from medical and psychological consultants utilized by the state disability officers without proper analysis. Did anyone discuss this problem with your decisions with you? Who within the agency? When?

a. The reviewers found that the majority of your cases contained opinions and assessments from medical experts that were inconsistent with your findings of disability. Did anyone discuss this problem with your decisions with you? Who within the agency? When?

Response:

See Response to Question 7, *supra*.

Question No. 8:

Your 2011 focus review revealed a number of problems with your decisions, including that you never elicited medical expert testimony at your hearings in all of the evaluated cases. Why did you rarely elicit medical expert testimony at your hearings?

a. During your 25 years as an ALJ, did you ever elicit medical expert testimony at your hearings? [If yes] When did you stop? Why?

Response:

Whether to use expert witnesses at hearings is within the sound discretion of the ALJ. Judge Taylor is aware of several ALJ's who never used experts. Judge Taylor has 38 years of experience in worker compensation, social security, personal injury, and medical malpractice cases. Judge Taylor has reviewed medical records over the entirety of his career, and he knows how to interpret and analyze medical evidence. Judge Taylor also completed two classes in medical terminology, covering about 2000 medical terms, which assisted his adjudications. However, Judge Taylor regularly used vocational experts at Step 5 of the Sequential Evaluation Process.

Additionally, in an effort to comply with the Agency's recently expressed goals, Judge Taylor has started to use two medical experts, general medical and psychologist, and a vocational expert in each case he presides over, and, as noted above, he is not conducting on-the-record decisions.

Question No. 9:

Do you agree with the focused review findings? Have you changed your decision-making because of this? If you could, would you go back and decide cases differently, based on your new training after the focused review?

Response:

As noted above, Judge Taylor is no longer adjudicating cases on-the-record, and is now using two medical experts, general medical and psychologist, and a vocational expert in each case he presides over. These are significant changes that have impacted Judge Taylor's overall case approval numbers.

With respect to whether Judge Taylor would go back and decide cases differently, he would not change his decision to assist the Agency and his specific hearing office in handling on-the-record decisions in the manner noted above. Judge Taylor was specifically asked to assist in meeting office productivity goals by taking cases off the Master Docket for on-the-record consideration, and he was asked to continue the on-the-record program by several HOCALJs. Judge Taylor was essentially being asked to perform the work of other ALJs that were not performing and he was willing to do so for the Agency.

The only thing Judge Taylor would do differently is to encourage the HOCALJ to seek out the lower performing ALJs who were not meeting their monthly productivity goals, and thus were the source of the backlog to begin with, to increase their production. If the HOCALJs had lower performing judges handle approximately 6 or 7 more cases per month, there potentially would have been no need for the on-the-record program.

Question No. 10:

Did the agency ask you questions about your relationships with particular claimant representatives during your career? To your knowledge, has the agency requested information about hoe many cases you decided that were represented by attorney Jan Dils? Did the agency ask you about your relationship with Ms. Dils? Since last May, has the agency taken any actions or put any safeguards into place to stop you from deciding a disproportionate number of any particular claimant representative's cases?

Response:

Judge Taylor does not have any relationships with claimant representatives other than professional interactions with them in Court hearings. Judge Taylor does not have a social or personal relationship with any claimant representative. Judge Taylor has not been asked any questions about his relationship with any particular claimant representatives.

To Judge Taylor's knowledge, the Agency has not requested information about how many cases he decided that were represented by attorney Jan Dils or about any relationship with Ms. Dils. Judge Taylor is aware of whom Ms. Dils is based on the small legal bar in Charleston, West Virginia, and she has appeared before him, but he has no knowledge of her outside of the formal Agency proceedings for which she appears before him.

All cases assigned to Judge Taylor are randomly assigned by a Master Docket system. Judge Taylor has no control and has never sought control over the assignment process under the Master Docket system. Furthermore, Judge Taylor does not have the technical knowledge to assign himself cases from Master Docket, nor has he sought such knowledge to enable him to assign himself cases.

Question No. 11:

In your experience, do other ALJs rely on claimant attorneys to do most of the work in developing the case? How many? Do you consider it to be a common practice?

Response:

Judge Taylor does not have the information required to provide an answer to this question as he does not know what the practices of other ALJs to this level of detail.

Question No. 12:

Do you believe that ALJ decision-making should be evaluated by SSA to ensure ALJ's comply with policy? What should happen if an ALJ does not comply with policy? Should an ALJ who is not following agency policies and procedures be removed from his or her position?

Response:

ALJ decision making should be evaluated by SSA to ensure that ALJs comply with policy with the understanding that the APA vests ALJs with decisional independence. With respect to whether an ALJ should be removed from his or her position for allegedly not following agency policies, this question is too hypothetical to provide a specific response. Each case should be addressed on its own individual merits. Indeed, in the Democratic Staff Report that was issued on June 10, 2014, the report noted the testimony of Regional Chief Judge Jasper Bede, who testified that "[w]ell it [high approval rates by ALJ] should raise a red flag, *but it does not mean that any particular case was wrongly decided*."[4]

Judge Taylor has served his country and has been a committed civil servant for decades and is proud of his service. Judge Taylor does his best to adjudicate each case before him in a fair and just manner. Judge Taylor was part of a unique and challenging time at the Administration, and the process is steadily improving. Judge Taylor wants to be part of the solution, and despite the manner in which he was portrayed before the Committee, he is not part of the perceived problem.

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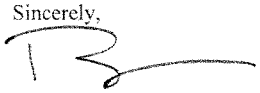
[4] *See* Democratic Staff Memo regarding Hearings on "Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process," June 9, 2014 (hereinafter "Democratic Staff Memo")(emphasis added).

Thank you for your consideration of this letter. Please do not hesitate to contact me with any questions or if you require additional information from Judge Taylor.

Sincerely,



Brian W. Stolarz

Enclosures

cc: Judge Harry C. Taylor II
Sharon Casey, Senior Assistant Clerk (via e-mail at Sharon.Casey@mail.house.gov)

EXHIBIT A

SOCIAL SECURITY
Office of the Regional Chief Judge

October 2005

Dear Judges of the Philadelphia Region,

I want to thank you for the outstanding service you provided to the American people this past year on behalf of the Social Security Administration and for your commitment to making us an exemplary judicial operation. While the Office of Hearings and Appeals nationally had an excellent year, the Region's accomplishments were extraordinary. Despite the many challenges we faced, including the 11,000 plus permanent case transfers we received from Regions 2 and 4, the Philadelphia Region met all of the agency's public service commitments.

Although many individuals contribute to our success, the Administrative Law Judges represent the Social Security Administration for thousands and thousands of people who come before us day in and day out looking for their "day in court." It is an extremely important process for them and by your actions you have shown that it is a very important process for you, too.

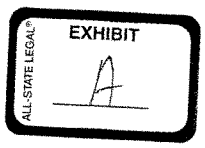
The region has a record of hearing and deciding cases in a timely, efficient, and professional manner, and being committed to issuing legally sufficient decisions, often very difficult balancing but an approach we have strived to master. You also took up the challenge of handling thousands of cases for claimants in other regions, while still handling your own sizeable workloads in a timely manner. This is the clearest expression of commitment to public service.

As we begin another challenging year, I know that we can count on you to continue the tradition of excellence that we have come to expect from the Administrative Law Judges and staff in Region 3. Thank you again for your dedication and commitment to exemplary public service.

Sincerely,

Frank A. Cristaudo
Regional Chief Judge

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals - Region III
P.O. Box 13496
Philadelphia, PA 19101
(215) 597-4100



SOCIAL SECURITY
Office of the Regional Chief Judge

October 2006

Dear Judges of the Philadelphia Region:

I want to take this opportunity to thank you for another year of exemplary public service. This was an extraordinary year in many ways. Personally, it has been a very gratifying year. It is a pleasure and honor to serve as the Acting Regional Chief Judge. It has given me the opportunity to travel around the region and to meet many of you. Because of your dedication and hard work and despite the many challenges we faced, the region surpassed Agency expectations and was a leader nationally in all goals.

We, of course, acknowledge the support of many individuals in providing this exemplary public service, but as you know, the Administrative Law Judges are representative of the Social Security Administration to those who come before us. By your actions, you have again demonstrated the importance you place on providing this public service and I thank you.

Again this year, we were called upon to assist other regions with extremely aged cases. We were able to provide hearings and decisions to almost 3000 claimants from Regions II and IV, many of whom had waited more than two years for a hearing. As in past years, these cases were processed as efficiently as possible exhibiting a clear expression of your commitment to public service no matter where the claimant resides.

As we look forward to another exciting and challenging year, I know you will continue the Region III tradition of excellence in public service. Thank you again for your dedication, hard work, and commitment to exemplary public service.

Sincerely,

Jasper J. Bede
Acting Regional Chief Judge

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review – Region III
P.O. Box 13496
Philadelphia, PA 19101
(215) 597-4100

SOCIAL SECURITY
Office of the Regional Chief Judge

October 2007

500 Quarrier Street
Suite 200
Charleston, WV 25301

Dear Judge Harry C. Taylor:

I want to take this opportunity to thank you for another year of exemplary public service. This was an extraordinary year in many ways. Personally, it has been a very gratifying year. It was a pleasure and honor to serve as the Acting Regional Chief Judge. It has given me the opportunity to travel around the region and to meet many of you. Because of your dedication and hard work and despite the many challenges we faced, the region surpassed Agency expectations and was a leader nationally in all goals.

We, of course, acknowledge the support of many individuals in providing this exemplary public service, but as you know, the Administrative Law Judges are representative of the Social Security Administration to those who come before us. By your actions, you have again demonstrated the importance you place on providing this public service and I thank you.

I know you will continue the Region III tradition of excellence in public service. Thank you again for your dedication, hard work, and commitment to exemplary public service.

Sincerely,

Jasper J. Bede
Acting Regional Chief Judge

SOCIAL SECURITY
Office of the Regional Chief Judge

October 2009

Harry C. Taylor
500 Quarrier Street
Suite 200
Charleston, WV 25301

Dear Judges of the Philadelphia Region:

I want to take this opportunity to thank you for another year of exemplary public service. This was an extraordinary year in many ways. Personally, it has been another very gratifying year. As Regional Chief Judge, I had the pleasure of meeting many of you that I had not met before and renewing many old acquaintances at the Administrative Law Judge conference held in San Francisco this year. Because of your dedication and hard work and despite the many challenges we faced, the region met Agency goals and was number one in the nation in overall ALJ per day productivity. Also, of note was that this fiscal year, 80% of the ALJs in this region met or exceeded the 500 dispositions per year expectation which is a significant increase from last fiscal year. Congratulations.

We, of course, acknowledge the support of many individuals in providing this exemplary public service, but as you know, the Administrative Law Judges are representative of the Social Security Administration to those who come before us. By your actions, you have again demonstrated the importance you place on providing this public service and I thank you.

I know you will continue the Region III tradition of excellence in public service. Thank you again for your dedication, hard work, and commitment to exemplary public service.

Sincerely,

Jasper J. Bede
Regional Chief Judge

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review – Region III
P.O. Box 13496
Philadelphia, PA 19101
(215) 597-4100

EXHIBIT B

List of Charleston Hearing Office Awards

1. Award of Excellence May 2005
   - Lowering Case Processing Time

2. Regional Chief Citation FY 2007
   - Total Claimants Served

3. Award of Excellence 2004
   - Total ALJ Dispositions

4. Regional Chief Citation FY 2004
   - Aged Cases

5. Award FY 2006
   - Total Claimants Served

6. Award - Outstanding Service FY 2003
   Total Dispositions per ALJ

7. Outstanding Service FY 2003
   Meeting Agency Goals

8. Award FY 2006
   - Total Dispositions within 180 days

EXHIBIT
B

9. Regional Chief Award Sept. 1998
Commitment to Public Service

10. Award of Excellence August 2007
Average Daily Disposition 2.28

11. Regional Chief Citation 5/1995

12. 5-Star Office August 2007
Total Disposition per ALJ

13. Regional Chief Citation

14. Award of Excellence 7/2006
- Average Daily Disposition per ALJ

15. Regional Chief Citation Aug 2007

16. Award of Excellence 8/2003
Lowering Aged Cases

EXHIBIT C

DEPARTMENT OF THE ARMY

THIS IS TO CERTIFY THAT
THE SECRETARY OF THE ARMY HAS AWARDED

THE ARMY COMMENDATION MEDAL

TO

FIRST LIEUTENANT HARRY C. TAYLOR, II, UNITED STATES ARMY

FOR

MERITORIOUS SERVICE
13 JULY 1971 TO 20 JANUARY 1973

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS TWENTIETH DAY OF JANUARY 1973

WILLIAM R. KREET, JR.
Major General, USA
Commanding

SECRETARY OF THE ARMY

ALL STATE LEGAL

EXHIBIT

C

Certificate of Appreciation

COMMANDER NAVAL SURFACE FORCE
U.S. ATLANTIC FLEET

Commander Naval Surface Force, U.S. Atlantic Fleet

To All Who Shall See These Presents, Greeting

Be It Known That

[illegible] [illegible] U.S.N.R.

as a member of the Staff of Commander Naval Surface Force U.S. Atlantic Fleet during the period [illegible] to [illegible] fulfilled all responsibilities in a professional and competent manner, thereby contributing significantly to the success and morale of the Naval Surface Force, U.S. Atlantic Fleet.

[illegible]

EXHIBIT D

April 5, 2006

Judge Taylor:

In an effort to make the most efficient use of our pulling resources, would you please review these cases prior to them being worked up? These are the 14 Beckley cases allocated to complete your docket 5/15 – 5/19. Any cases not needing a hearing, of course, will be submitted for writing/typing "on the record". Those cases remaining will be worked up and scheduled.

THANKS!!

Michelle C.

EXHIBIT E

ALJ Taylor's Adjudication Data from 2005-2014

Fiscal Year	Decisions	Awards	On-the-Record Allowances	Allowance Rate
2005	999	951	623	95.2%
2006	1,017	969	681	95.3%
2007	1,086	1,049	879	96.6%
2008	1,084	1,041	893	96.0%
2009	924	893	719	96.6%
2010	1,015	944	675	93.0%
2011	1,023	946	696	92.5%
2012	886	805	506	90.9%
2013	736	629	310	85.5%
2014	344	257	N/A	74.7%
Total	**9,114**	**8,484**	**5,982**	**93.1%**

Questions for
Mr. Charles Bridges
Administrative Law Judge
Harrisburg, Pennsylvania, Office of Disability Adjudication and Review
Social Security Administration

Chairman Darrell Issa
Committee on Oversight and Government Reform
Hearing: "Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process"

Question regarding awards, letters, or commendations:

1. Have you or your hearing office ever received any letters or commendations of any kind related to the volume or quality of your work? If so, please provide a list of all letters or commendations you have received and explain their contents.

ANSWER:

The following is a list (non-exhaustive) of the "letter of commendations of any kind related to the volume or quality of your work?"

(1) 2010 Deputy Commissioner Honor Award Citation - Hearing Office Awards, Harrisburg, Pennsylvania Hearing Office named one of the six best ODAR offices for FY 2010.

(2) 2009 Chief Administrative Law Judge Citation - Decision Writing;
- index of 100% April, 2009
Frank Cristaudo, Chief Administrative Law Judge

(3) 2009 Chief Administrative Law Judge Citation - Recognition of outstanding efforts, excellent management skills, hard work, contribution to meeting agency goals.
Frank Cristaudo, Chief Administrative Law Judge, April 2009

(4) 2008 - Award of Excellence - Harrisburg, Pennsylvania Hearing Office for First 7 Months of FY 2008:
- average daily dispositions 1 day - 3.62
- processing time of all cases - 305 days
- SSA cases pending 365 days - 15.3%
- SSA cases pending over 270 days - 32%

also, provided Processing Assistance to SSA Region #2
Frank Cristaudo, Chief Administrative Law Judge, May, 2008

(5) Chief Administrative Law Judge Citation - FY 2008 - Harrisburg, Pennsylvania Hearing Office in recognition of outstanding efforts, excellent management skills, enormous contributions, and total commitment to claimants:

- average processing time
- elimination all 1,000 day old cases
- % of 750 day old cases
- average of 365 day old cases decreased

Frank Cristaudo, Chief Administrative Law Judge, June 2008

(6) Five-Star Award of Excellence - 2007; for quality due process hearings and decisions in achieving five (5) Agency Goals for 2007

- zero 1,000 day old pending cases

Jasper J. Bede, Regional Chief Administrative Law Judge, Region #3; August 2008

(7) 2007 (August) - Award of Excellence - Harrisburg, Pennsylvania Hearing Office:

- average daily dispositions - 3.4
- average processing time - 264 days
- SSA cases pending - 0.09%
- SSA cases pending 365 days - 4%
- Productivity Index - 108%

Jasper J. Bede, Acting Chief Administrative Law Judge, Region #3

(8) USA Today - Article of July, 2007. This article highlighted the Harrisburg, Pennsylvania SSA Office as one of the most efficient Social Security ODAR offices; most efficient in processing claims. The article lists the Harrisburg office as the most efficient office, overall.

(9) 2007 - Deputy Commissioner Award of ODAR - Harrisburg, Pennsylvania Office.

(10) Five-Star Award of Excellence - FY 2006 - Harrisburg, Pennsylvania Hearing Office for excellent:

- dispositions per administrative law judge - 3.46
- average processing time - 302 days
- SSA cases pending over 270 days - 27%
- SSA cases processed within 180 days

and, processing 240 interregional cases.

Jasper J. Bede, Acting Chief Administrative Law Judge, Region #3; July 2006

(11) 2006 - Chief Administrative Law Judge Citation Presented to Region #3
Frank Cristaudo, Chief Administrative Law Judge

(13) Five-Star Award of Excellence - FY 2005 - Harrisburg, Pennsylvania Hearing Office for excellent:

- dispositions per administrative law judges
- average case processing time
- SSA cases pending over 270 days
- SSA case dispositions within 180 days

Jasper J. Bede, Acting Chief Administrative Law Judge, Region #3, July 2006

(14) 2005 - Certificate of Superior Performance - Meeting all FY 2005 goals.
A. Jacy Thurmond, Associate Commissioner of Hearings and Appeals SSA

(15) 2004 - Award of Excellence - Harrisburg, Pennsylvania Office FY 2004; for processing quality, due process hearing decisions for FY 2004:

- processing time - 288 days
- SSA aged cases 365 days - 4.14%
- processing cases within 180 days - 19.6%

Frank Cristaudo, Regional Chief Judge, June 2004

Questions regarding your comments at the June 10, 2014 hearing:

2. You stated that the processing time at your Harrisburg office was the best in the United States, which "placed the Harrisburg office as one of the most well run offices during [your] tenure at [sic] HOCALJ." In your opinion, do well-run offices always have a quick turnover of cases? Did your high volumes of decisions contribute to your office's success?

ANSWER

In my opinion, well run offices are offices that are efficient, effective, productive, and responsible to the public they serve. The Harrisburg office, under my tenure as Chief Hearing Office Administrative Law Judge, was effective, productive, and responsive to the public as evidenced by the numerous awards and citations received, some of which have been cited in Question #1.

A high volume of decisions (without sacrifice to quality) was necessary and responsive to the high volume of backlogged SSA claims pending administrative review, received during the period of time I was Chief ALJ.

Your question uses the term, "quick," turnover of cases. What is meant by quick? A disability claimant who has an appeal pending in excess of 365 days (1 year) probably would not consider this period of time to be "quick." This is so, whether or not the claimant is or is not ultimately

successful in the appeal. An adjudication of a disability appeal should have an analogue in the federal judicial system. I would not think that any federal district judge would consider an appeal that takes in excess of 365 days for scheduling, and then another several months for disposition, to be acceptable.[1]

The high volume of decisions did contribute to the Harrisburg hearing office's success.[2] However, the high volume of decisions also met objective qualitative reviews of the decisions as permitted by law.

Pursuant to senior management agency directives, several initiatives were enacted to screen and identify cases which could be the subject of an "exception" to the "first in first out" principles.

Under former Associate Commissioner Thurmond, on or about 2003, a short-term ODAR initiative was promulgated and implemented by the offices where, if the claimant was 55 years old and above, along with a terminally ill claimant/beneficiary claims, the claims were assigned on a rotational basis for review.

There was also an initiative referred to as DART. DART is an acronym for "Disability Adjudication Reporting Tools."

Under DART, the Division of Information Technology and Integration provided a computerized information system of reporting targeted impairment data. The organization of this data greatly enhanced the ability to process a claim expediently. When properly applied, DART enabled certain claims to be screened based on the category of illness, along with age factors.

Other examples of managerial initiatives to reduce backlog also include cases where the claimant was 55 +, *i.e.,* years or older, with no transferable work skills. These cases were screened for this category for assignment to judges.

In addition to the above-referenced, short term initiatives, emphasis was also given to inherent long term policy cases, such as TERI cases - a case involving a terminal illness of putative recipient; cases involving claimants age 50-54, or, otherwise, a critical case. Some examples of other critical cases include a Military Service Casualty Case, or a "Compassionate Allowance" situation.

> 3. You said that ALJs could be removed through the Administrative Procedures Act, but that ALJs were "not subject to those kinds of reviews." Why do you believe ALJs are not subject to review?

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[1] SSA Commissioner Colvin has testified before this Committee that since FY 2012, the average waiting time has increased from 353 days in FY 2012 to 411 days this fiscal year (2014). See June 11, 2014 Testimony, pages 1-2.

[2] See June 11, 2014 Testimony of SSA Commissioner Colvin, page 5.

a. Do you believe that ALJ decision-making should be evaluated by SSA to ensure ALJs comply with policy?

b. What should happen if an ALJ does not comply with policy? Should an ALJ who is not following agency policies and procedures be removed from his or her position?

ANSWER

Administrative Law Judges are subject to the federal Administrative Procedures Act, 5 U. S. C. §§ 101, *et seq.*, concerning their removal. See, *e. g.*,

5 U. S. C. § 7521, which states, in pertinent part:

Sec. 7521. Actions against administrative law judges
(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.
(b) The actions covered by this section are -
(1) a removal;
(2) a suspension;
(3) a reduction in grade;
(4) a reduction in pay; . . .

The extent to which a judge can or should be reviewed based on his/her decisional outcomes is a matter that is subject to litigation between Mr. Bridges and the employer. I have previously expressed my opinion in testimony presented to this Committee that it is contrary to the United States Constitution and the federal Administrative Procedures Act to purport to use any numerical "benchmark" derived from field office or DDS determinations of SSA eligibility, relative to making a comparison of adjudications of administrative law judges. See also, June 11, 2014 Testimony of SSA Commissioner Colvin, page 5.

General questions regarding your 2011 and 2014 focused reviews:

4. Your focused reviews indicated that you only "generally give[] the state agency medical/psychological consultant opinion little weight," and "rarely obtain[] an M[edical] E[xpert] despite the percentage of decisions decided at step 3." Do you agree with this finding? Why or why not? Why is this? Do you plan to utilize medical experts more frequently?

5. Did you get a copy of the 2011 focused review? Did you go over the results with anyone from the agency? Were there any actions that the agency took as a result of the review? Did the agency ask you to improve upon or change your decision-making in any way?

a. Were you asked to undergo training as a result of the review? If so, please explain what the training entailed.

6. Did you get a copy of the 2014 focused review? Did you go over the result with anyone from the agency? Were there any actions that the agency took as a result of the review? Did the agency ask you to improve upon or change your decision-making in any way?

a. Were you asked to undergo training as a result of the review? If so, please explain what the training entailed.

7. Do you agree with the focused review findings? Have you changed your decision-making because of this? If you could, would you go back and decide cases differently, based on your new training after the focused review?

8. Your 2011 review also states says that [quote] "ALJ's statements and the number of bench decisions signed that were written by attorneys, support concerns regarding whether he is actually applying SSA policy and reviewing each case on a case-by-case basis." [end quote] In 2011, all of the other ALJs in your office issued a total of one bench decision. You issued 300 bench decisions. Why did you issue so many bench decisions in comparison with your colleagues?

a. Did anyone within the agency ever question your high number of bench decisions? Who? When?

9. According to a 2011 focused review, on [sic] local law firm created a "Bridges Policy" in which the firm accepted any individual as a client if their case was assigned to you, regardless of the evidence. Were you aware of this policy?

ANSWER

I have not received, nor been made aware of, a "focused review" concerning my performance as an administrative law judge for the year 2011. To the best of my knowledge, information and belief, the agency has not provided me any notice or opportunity to respond to, or to be made aware of, a 2011 focused review.

In February, 2014, the agency made me aware of a "focused review" involving case dispositions reached in the year 2013. The agency advised that it had engaged in a "focused review" concerning, approximately, Ninety (90) of my fully favorable dispositions. The substantive basis

of this "focused review" appeared to be related to a change in the position description for agency administrative law judges that became effective, December 23, 2013. I have challenged the legality of this "focused review" in court proceedings. These court proceedings have been identified in my June 10, 2014 Testimony.

Questions regarding agency policy and procedures:

10. Do you believe that ALJ decision-making should be evaluated by SSA to ensure ALJs comply with policy? What should happen if an ALJ does not comply with policy?

11. In 2008, the agency reviewed 29 hearings and found that you allowed all 29 cases at the hearing. The agency recommends that ALJs do not announce the awards of benefits at a hearing. Were you aware that it was against agency policy to announce your decision at the hearing?

a. Why did you repeatedly violate this policy?

b. We have heard that a typical case file often contains more than 500 pages of evidence with much of it technical medical evidence. How long does it typically take you to review a file with 500 pages of evidence?

12. Do other ALJs rely on claimant attorneys to do most of the work in developing the case? How many? Do you consider it to be a common practice?

ANSWER

There is a process in place, consistent with the United States Constitution, and the federal Administrative Procedures Act, to engage in a post publication review of the decisions of administrative law judges for compliance with the SSA law and regulations. The position descriptions for both, administrative law judges, and regional chief administrative law judges, set forth the processes in place for this review.

Substantively, the SSA utilizes a five-step process in evaluating disability insurance claims. This process requires the Commissioner to consider, in sequence, whether a claimant (1) is engaging in substantial gainful activity, (2) has an impairment that is severe or a combination of impairments that is severe, (3) has an impairment or combination of impairments that meets or equals the requirements of a listed impairment, (4) has the residual functional capacity to return to his or her past work and (5) if not, whether he or she can perform other work in the national economy. In step four the administrative law judge must determine the claimant's residual functional capacity. See Truglio v. Astrue, Civil Action No. 4:10-CV-2129 (M. D. Pa. 2011).

To the extent an administrative law judge does not comply with the SSA statute, or lawful agency policy, the Administrative Procedures Act has provisions for the discipline of such a judge.

In 2008 I was Chief Administrative Law Judge for the Harrisburg Office. To the best of my knowledge, information, and belief, I was not aware of any agency policy that prohibited ALJs from announcing the awards of benefits at a hearing. I do not know the basis of your suggestion that the agency "recommends" that judges not announce the award of benefits at the conclusion of a hearing.

When one makes reference to a "typical" case, this term is difficult to fathom as an adjudicator. When a case arrives at the hearing office level, the case file is more extensive and complete than existed at the hearing office or DDS level. The case file consists of medical reports, descriptions of prior job functions, etc. However, as with any plaintiff in a civil court case, scenarios may be typical, but the individual case file is not. Each file was reviewed commensurate with the complexity of the information and issues raised by the claim.

A claimant's attorney certainly has a role in developing the claimant's case. As with all legal matters, different attorneys have different approaches and different levels of advocacy expertise and experience. Successful attorney practitioners before SSA engage in "best practices" which practices are, generally, good for the courtroom as well as administrative practice. Administrative Law Judges may have individual preferences for conducting hearings with claimants who are represented by counsel. Some judge may prefer briefs, summaries, opening or closing statements, etc. It should be emphasized that SSA Group Supervisors are the technical staff responsible for "working up, " *i.e.*, assembling the information for inclusion in the claimant's case file. However, unlike civil or criminal court proceedings, the claimant's counsel of record will have full access and full disclosure of all information in the claimant's file to which the administrative law judge has access. Counsel also has the ability to supplement the case file with information/evidence that it possesses which he/she feels will improve the case.

Questions regarding hearings and allowance rates:

13. Between 2005 and 2013, you allowed nearly 7,000 people onto disability without holding a hearing. 44% of your decisions were issued on the record. How were you able to determine that so many claimants were disabled without needing a hearing? Didn't it ever concern you that you were reaching different decisions in so many cases without even holding a hearing?

    a. How do you screen cases to decide which ones you can allow without a hearing? During the last decade, did anyone within your office help you screen cases? Who?

    b. Did anyone ever evaluate the quality of your on the record decisions? When?

14. Your total allowance rate from 2005-2013 was 95.2%. Why did you find such high percentage of DDS decisions to be inaccurate, compared to other ALJs?

ANSWER

Your question refers to a statistic which purports to represent that during 2005 through 2013, I approved "nearly" 7,000 claimants without an "in-person" hearing. I do not know the basis of the 7,000 number. All claimants' cases have a record on which an administrative law judge must refer to in a *de novo* proceeding to establish whether the claimant meets the statutory requirements for SSA assistance. The record on which a determination is based is essential. A claimant, for various reasons, may waive his/her right to an in-person hearing and rely on that record for a disposition on appeal before a judge.

The entitlement to SSA disability and/or Supplemental Income benefits is a legal determination that must be made by the SSA Commissioner, who has delegated this authority to administrative law judges in quasi-judicial proceedings. This legal determination cannot, and, as a matter of law, should not, be made in deference to non-legal personnel decisions that are reached without full due process and a developed record. SSA field office personnel and DDS reviewers are non-legal personnel. The process under which they make a determination is, generally, *ex parte*, and preliminary.

In your Question #14, you use terms such as "allowance" rate, and "percentage of DDS decisions to be inaccurate, compared to other ALJs." I emphasize that entitlement to SSA benefits is not a medical determination. Rather, the determination is a legal one that is made with input from qualified medical professionals.

In my response to Question #1, I referred to DART. Under DART, the agency expressly recognized that evidence made a part of the claimant's record could, in appropriate cases, "negate the need for a hearing." I have attached a copy of a DART-related memo sent from Region # 3 management to my responses. Out of the 7,000 cases to which Question #13 refers, it is not possible to determine how many of those instances involved cases where the claimant, voluntarily, intelligently, and knowingly, waived the right to an in-person hearing for either medical, mental, physical, emotional, or logistical reasons - or cases where the record, by a preponderance of the evidence, established a legal entitlement to SSA benefits.

Question #13 also references a percentage, 44%, of my dispositions which were issued "on the record." The record before the administrative law judge, as explained, is a more complete and extensive body of information than existed before the field office and the DDS staff. Additionally, as noted, the field office and DDS decisions are reached without benefit of legal input as to whether the physical and/or mental condition/impairment of the claimant is supportive of eligibility pursuant to law. It is an extreme misrepresentation to the American public to assume and to so publish that the percentages of reversals of field office and DDS determinations by an administrative law judge has any validity, or "benchmark" value, whatsoever. I must also raise an equal protection objection in that the Committee appears to concern itself with those judges who reverse field office and DDS decisions at a subjectively

high percentage, as compared to those judges who reverse field office and DDS decisions at a subjectively low percentage.

Cases were screened for exception to the "first in first out" principles according to senior management initiatives mentioned in the answer to Question #1, above.

My decisions have been evaluated for quality. To my knowledge, I have not had any decision found to have violated agency policy or standards.

Date: July 10, 2014 Signed: /s/_____
Charles Bridges

RESPONSES TO COMMITTEE QUESTIONS FOR
JUDGE JAMES A. BURKE
ADMINISTRATIVE LAW JUDGE
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION
ALBUQUERQUE, NEW MEXICO

Chairman Darrell Issa
Committee on Oversight and Government Reform

Hearing: "Social Security Administration Oversight:
Examining the Integrity of the Disability Determination Appeals Process"

ANSWERS TO QUESTIONS
REGARDING MY COMMENTS AT THE JUNE 10, 2014 HEARING

1. ALJ Burke, you stated that you "did not accept or reject the criticisms" in your focused review because "[you] know the law better than the staff people who did the focused review back in Falls Church." Do you believe that the findings in the focused reviews are without merit?

1. ANSWER

Yes.

With all due respect to your important legislative role, the decision making independence of ALJs has been deliberately codified in the APA and the Collective Bargaining Agreement, as we discussed at the hearing on June 10 to avoid, *inter alia*, political pressure such as the instant case.

The "Focused Review" procedure appears to be an ad hoc initiative by Commissioner Colvin–necessarily vague in its procedures so as to avoid charges of interference with judicial independence. Likewise, it is expressly stated that it is not a disciplinary action. Were this not the case, the discipline and grievance procedures of the agency would have been promptly invoked.

Judge John R. Allen, Deputy Chief ALJ, has confirmed to me in a recent email that ODAR has no published procedures for evaluating the "focused review." I might also add that the Commissioner's sharing of the "focused review" with your committee would seem to make any ALJ cooperation in the future unlikely.

In addition to the general doctrine of judicial independence, it is unlikely that the anonymous reviewers–who I understand, but do not know, are staff attorneys–have the knowledge and experience which I have gained over 40 years. Nor do have they the right to criticize a sitting judge.

In the spirit of harmony within the organization, I dd not seek protection under the CBA but–reserving all my rights–agreed to re-read various regulations and policies, which a good judge should do periodically in any case.

To have either accepted or rejected the "focused review" would give it a legitimacy I do not believe it has. Accordingly, if you have been informed that there was some sort of formal finding, acquiescence or disposition of this "focused review," you have been misinformed.

2. Do you agree with the focused review findings? Have you changed your decision-making because of this? If you could, would you go back and decide cases differently based on your new training after the focused review?

2. ANSWER

As explained above, I have not conceded the propriety of said "focused review" and therefore take no position. I am confident that my decisions are correct applications of the law and the facts as I found them. I have no reason to have changed my mind.

3. You stated that you had not discussed the findings of your focused review with anyone. Did you discuss the findings of your focused review with anyone at the agency? Were there any actions that the agency took as a result of the review? Did the agency ask you to improve upon or change your decision-making in any way?

3. ANSWER

I do not remember my precise statement about discussing the findings of the "focused review." I believe I testified, consistent with my answer in #1, that I spoke with the regional chief judge and the hearing office chief judge about my objections to the "focused review."

I am unaware of what actions the agency may have taken. I have not been asked to change my decision making.

F4. Have you or your hearing office ever received any letters of commendation of any kind related to the volume or quality of your work? If so, please provide a list of all letters or commendations you or your office have received and explain their contents.

4. ANSWER

I have not received any letter of commendation.

5. How do you screen cases to decide which ones you can allow without a hearing? During the last decade, did anyone within your office help you screen cases?

5. ANSWER

The Spokane and Albuquerque offices have attorney-writers screen for On The Record Decisions (OTR) and they sometimes recommend OTR to an ALJ. If after review I agree, I write the OTR over my signature. If not the case would go back to the regular queue.

6. When you held a hearing, you issued a decision from the bench 73% of the time. Why do you issue bench decisions so often?

   a. As part of its efforts to reduce the hearing backlog, did the agency encourage ALJ to issue bench decisions?

   b. Did anyone within the agency ever approach you because you were issuing too many bench decisions? When?

6. ANSWER

The reasons I use bench decisions are as follows:

Bench decisions provide a means for disposing of a fully favorable case with a decision being mailed within a week, as opposed to the now three month time period in my Albuquerque office when a decision is assigned to a writer. As such, it is a benefit to both the disabled claimant, whose anxiety is immediately relieved, and to ODAR, as it prevents unnecessary expenditure of staff time and resources necessary when processing the longer regular decision.

The issuance of a bench decision requires the judge to have a good understanding of the facts and law, and the self confidence to make a quick decision without spending more time deliberating. A comparison is between a trial court and a court of appeals. It may be that many judges are not as confident. I also believe that a judge should come to a case with an open mind, not an empty one.

7. Your focused review states that "72 percent of surveyed bench decision hearings were under 15 minutes long, and hearings often included little testimony from the claimant. In

a number of bench decisions, the ALJ did not assess the claimant's credibility in accordance with SSR-96-7p, provide an evaluation of the supporting evidence, or resolve any inconsistencies with the record."

SSA policy indicates that when drug abuse or alcoholism is an issue in determining disability, a bench decision is not appropriate. Of the 92 favorable cases surveyed, the reviewers found at least 5 instances where you issued a bench decision when the claimant had a history of Drug and Alcohol Abuse. Were you aware of the policy that ALJ should not issue bench decisions when drug abuse or alcohol is an issue in determining disability?

a. Of the 92 favorable decisions surveyed, you obtained Vocational Expert Testimony in only 1 case. Why do you choose to almost never use Vocational Experts?

b. Has the agency counseled you to utilize Vocational Experts prior to issuing a decision? When?

7. ANSWER

I object to the first paragraph. It is not a question but an accusation. It appears to be written by persons with substantially less legal training and experience than that required to be appointed an ALJ. To the extent there is any implication of fault, and an answer is required, in that paragraph I deny it.

I am aware of the policy that bench decisions not be used when drug and alcohol abuse (DA& A) is an issue in the case. You–and apparently the commentators of the "focused review"–show a misunderstanding here as well. A "history" of DA& A does not automatically make drug and DA& A an "issue." The term "issue" has a discrete legal definition of which the reviewers for the agency are unaware. It is the judge who decides what is and is not in issue in a particular case.

The choice to use or not use a VE is discretionary with the ALJ. I did use VE's in every case in my first four years in the Spokane office, as was the custom there. In the Albuquerque office the chief judge there does not use them and I found myself comfortable in so doing as well. I believe after 10 years as a judge and 30 years of prior practice, I can make sound vocational assessments without a VE, in most cases based on my knowledge of the Department of Labor Dictionary of Occupational Titles–the same reference used by V.E.s.

Credibility of the claimant is not always an issue when the medical records clearly document the physical and mental limitations which support a finding of disability, not withstanding a different finding by the DDS employees.

8. Of the 92 cases surveyed by the agency, six cases were remanded to you by the Appeals Council. Reviewers found that in at least 3 cases, you did not comply with the Appeals Council remand order. Can you explain why?

a. In one case, the Appeals Council remanded a fully favorable decision and instructed you to "obtain evidence from a Medical Expert and instructed you to take further action needed to complete the administrative record." The reviewers found that you "did not obtain Medical Expert testimony, and the record contains no additional medical evidence. [You] issued a fully favorable on-the-record decision without discussing the requirements of the remand order." Do you feel that ALJs are above the law?

b. Do you believe that ALJ decision-making should be evaluated by SSA to ensure ALJs comply with policy? What should happen if an ALJ does not comply with policy? Should an ALJ who is not following agency policies and procedures be removed from his or her position?

8. ANSWER

I object to the accusation without a full disclosure of the specifics.

As to the accusation that I did not comply with any AC order, I presume the AC was satisfied with my subsequent action on the case. I object to the "focused review" presuming to usurp the function of ALJs or the Appeals Council, or attempting to create a new level of review not provided by statute or regulation.

I have no knowledge of the case and cannot respond without specifics. I do not believe judges to be "above the law," and believe that both judges with high allowance percentages and low allowance percentages should follow the law. We are neither above nor below the law.

I think ALJ decision making should be evaluated by SSA to ensure that ALJs comply with the law. I believe that this review should include all judges, not just judges who grant cases at a higher than average rate. According to the just published OIG Audit on Low Allowance Judges, the national average of AC remands of unfavorable decisions is 19%. Our federal courts are burdened by increasing litigation of many kinds. There should be an agency initiative to ease the courts' burden. In FY 2013 U.S. District Courts remanded or allowed 44% of the cases appealed from AC decisions adverse to claimants. With these figures, it is evident that your assumption that DDS evaluators are usually right is imprecise.

These appeal figures are high considering most claimants do not appeal adverse decisions after the Appeals Council as they are not represented or the representative does not practice in federal court, but rather, they simply reapply. An example of the unnecessary litigation is that a few years ago the new general counsel for Region VI advised us judges by agency newsletter that he was ending the practice of "voluntary remand"–where the agency lawyers determine that the errors listed by the claimant warrant a concession and agreement to

return to the agency for a new hearing. This winnowing tool has been used by Region VI and all other regions as far as I know. We should be working toward prompt final resolution of cases without unnecessary further delay.

I have heard and continue to hear cases which have been remanded from the Appeals Council or Federal Courts where the law–not merely agency "policy"–has not been followed. This results in a delay of frequently two more years to a claim and a duplication of the substantial allocation of staff resources to the case. I note that Judge Bice has recently told this Committee of claimants who have died waiting for their claim to be correctly decided.

A common example of some ALJs not following the law are cases which are remanded for re-hearing where the ALJ erroneously declined to give substantial weight to the opinion of the claimant's treating doctor that his or her patient was disabled. The regulations 20 CFR 404.1527 et seq are very clear that generally the opinion of the treating doctor is to be given the most weight. Lesser weight is to be given a consulting doctor who only examined the claimant on one occasion. Finally, the least weight is to be given non examining agency doctors who only review medical records and who never see the claimant.

Federal courts of appeal apply those regulations. See, e.g.,"The findings of a nontreating physician based on limited contact and examination are of suspect reliability." *Drapeau v. Massanari*, 255 F.3d 1211,1213 (10th Cir.2001) citing *Frey v. Bowen*, 816 F.2d508.515 (10th Cir.1987). "As the Commissioner's own regulations recognize, treating physicians...bring a 'unique perspective' to the medical evidence. 20 CFR 404.1527(d)(2)." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.1995). This of course is consistent with a lay person's general opinion that you follow the opinion and advice of your own doctor.

Despite this clear law, I see numerous cases remanded where the ALJ has approached a treating physician's opinion of disability as a puzzle to be solved, going through semantic gymnastics in an eventually unsuccessful attempt to discredit that opinion, resulting in the delay and waste of resources I note above.

I note that SSA recently entered into a class action consent agreement in federal court in New York: *Bailey et al. v. Astrue*, (E.D.N.Y. No 11-CV 1788), in which five ALJs in the Queens office were alleged to have repeatedly refused to follow the "treating doctor" rule. SSA, instead of having taken administrative action by itself–was forced to admit in open court these ALJs failures and agreed to new hearings for numerous claimants, and corrective action for the judges.

I also note that these previously remanded unfavorable decisions seem to be substantially more numerous than my 6 of 92 in your sample. I reiterate my suggestion that you investigate the bulk of remands from federal court and the AC: cases where the decision adverse to the claimant has been found to be inconsistent with facts or law.

To reiterate my answer: yes I believe SSA should evaluate ALJs–but should evaluate those who cause delay and expense by improper denials. Aswell as all other judges..

10. Do ALJs rely on claimant attorneys to do most of the work in developing the case? How many? Is this a common practice?

10. ANSWER

In my view, the development of the case is perhaps the most important function of the claimant's attorney, and that ensures that the record is usually ready for a decision at the time of the hearing. In cases where a claimant is not represented, the hearing office staff does not automatically update the file and consequently the claimant appears at the hearing with a lacunae of the last two years or so of medical records. The state agency hearing updates the medical records before the request for hearing is submitted–with no further updates at ODAR. This practice results in further unnecessary delay. Each hearing office staff should ensure that the records of each claimant are up to date at the hearing level.

I cannot quantify the practice as you request. It is a common practice.

11. Your total allowance rate from 2005-2013 was 95.7%. Why did you find such a high percentage of DDS decisions to be inaccurate, compared to other ALJ?

11. ANSWER

I decide the cases based upon the facts and law at the time the case reaches me. I do not decide whether or not the decisions of the state agency were "inaccurate," nor do I consider some persons might be critical of my record. The integrity and independence of a judge is paramount.

I cannot answer to the decisions of other judges. I decide each case upon the facts and law and feel I make competent decisions in every case. With respect to the degree of weight to be given earlier DDS evaluations, I weigh them consistent with the law. Please see answer to #8.

DDS evaluations have a psychological component and a physical component which they never combine, contrary to case law. See e.g. *Thompson v. Sullivan.* 987 F.2d 1482 (10th Cir.1993), *Hargis v. Sullivan*, 945 F.2d 1482, 1489 (10th Cir.1990). Accordingly, the ALJ is the first decision maker to apply the law of combining all impairments–mental and physical. According, the accusation that I "disagree" with state agencies is somewhat incorrect, although 44% of U.S. District Court judges do so disagree.

Also, they do not give any weight to "mild" assessments of mental impairment, which is required to be done under federal regulation and a recent case of *Webb v. Colvin*, which reviewed past Tenth Circuit cases on the issue and put to rest the prior inconsistent line of cases.

Moreover, the DDS evaluations do not have the claimant before them, to see and evaluate the credibility of claimants and witnesses as to the more specific RFC, and with my experience in dealing with injured and disabled people for 40 years.

The DDS agency in New Mexico is understaffed and underfunded and is beset with a quota that gives very little time for evaluation. The medical evaluators are sometimes out of their field of expertise, and contrary to policy, usually do not include their CVs in the record. One doctor who opines on degree of impairment for things like a work related back injury is trained as an obstetrician.

Perhaps most importantly, the long wait between the DDS evaluation and consequent reconsideration decision and the hearing–sometimes two years or more–invariably leads to more up to date medical records and opinions, which render the DDS opinions out of date.

Case law also notes that by themselves, DDS evaluations are insufficient to support a denial of benefits. *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.1995).

While I cannot speculate on why other judges have different statistics, I do not that I was in the top 3% of the nation in my LSAT group in 1968 and in the top 10 % of my law school class at Hastings College of the Law, University of California. Perhaps my decisional statistics are related to my prior legal statistical experience.

As to why statistics of other judges are so much lower than mine, as I stated at the hearing June 10, I believe that attention should be given to ALJ candidates with prior experience in dealing at some level with injured persons, or at least the hustle and bustle of the courtroom and the typical honest hardworking Americans one encounters in those situations. Unfortunately, in my view there is a great deal of attention being given to appointing as ALJs former writers for SSA, or retired military lawyers. While these groups are competent and hardworking, their backgrounds generally lack appreciation of the experience of the lawyer who has counseled each client over the two years or more waiting time for a hearing and who has watched the changes in the claimant's health and ability to work and his or her family life during this time.

These new ALJs are frequently ignorant of the realities of the health care industry in which clinic medical providers vie with "occupational medicine" providers whose interest includes minimizing exposure of the insuror, or employer. An example is the ALJ who testified in a hearing last year who spoke of his career background as a legal officer in the military. While I know him to be a competent and dedicated judge–and a very pleasant person–I do not expect him to have the same valuable insights as I have during my past 40 years, and would not be surprised if his statistics were different from mine.

Very early in my practice, in 1975, the Tenth Circuit ruled that "the reviewing court should construe the Social Security Act liberally to allow inclusion rather than exclusion," *Mandrell v. Weinberger*, 511 F.2d 1102 (10th Cir. 1975). Accord *Cutler v. Weingerger*, 516 F.2d 1282 1285 (2d 1975). I have attempted to follow that direction.

CONCLUSION

Thank you for your questions. I hope I have been able to provide some information and viewpoint from my 40 years experience as lawyer and judge that will ensure and improve the continued functioning of the Social Security system. If I can be of further service, please do not hesitate to contact me.

The Social Security Act, since its inception in 1935, reminds us that the integrity of a nation is measured by how it treats its less fortunate and vulnerable people, and I am sure that we all work with that responsibility in mind.

July 9, 2014

Sincerely,

s/ James A. Burke
United States Administrative Law Judge

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