

104  
PERFORMANCE OF THE SOCIAL SECURITY ADMINISTRATION'S OFFICE OF HEARINGS AND APPEALS IN MOBILE, AL, AND RELATED ISSUES

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Performance of the Social Security... THE

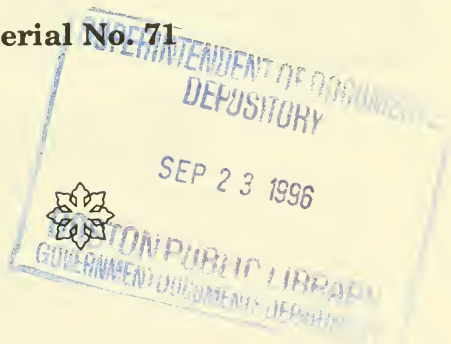
SUBCOMMITTEE ON  
COMMERCIAL AND ADMINISTRATIVE LAW  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JUNE 5, 1996

Serial No. 71



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1996

26-052 CC

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For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-053404-6



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**HEARING**

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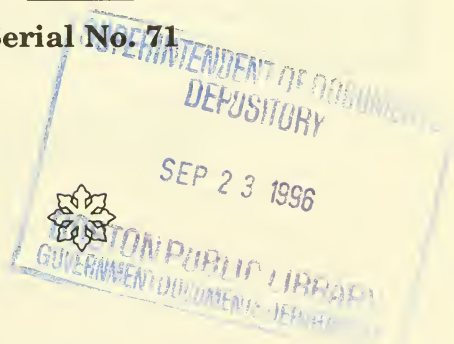
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# PERFORMANCE OF THE SOCIAL SECURITY ADMINISTRATION'S OFFICE OF HEARINGS AND APPEALS IN MOBILE, AL, AND RELAT- ED ISSUES

WEDNESDAY, JUNE 5, 1996

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCIAL AND  
ADMINISTRATIVE LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2237, Rayburn House Office Building, Hon. George W. Gekas (chairman of the subcommittee) presiding.

Present: Representatives George W. Gekas, Steve Chabot, and Jack Reed.

Also present: Raymond V. Smietanka, chief counsel; Charles E. Kern II, counsel; Rebecca Ward, secretary; and Agnieszka Fryszman, minority counsel.

## OPENING STATEMENT OF CHAIRMAN GEKAS

Mr. GEKAS. The hour of 10 o'clock having arrived, the hearing scheduled for the Subcommittee on Commercial and Administrative Law of the Judiciary Committee will come to order.

Because of custom and because of the rules, we will recess until the arrival of another member of the subcommittee so that we may have a working quorum. And so, we now recess.

[Recess.]

Mr. GEKAS. The time of the recess having expired, the hearing conducted by the Subcommittee on Commercial and Administrative Law Subcommittee of the Committee on the Judiciary will now come to order.

We note the presence of the ranking minority member of the subcommittee, Mr. Reed, of Rhode Island. His presence now constituting a quorum, we will proceed with the opening statements, if there are any, and then to the oral testimony.

This hearing has come at the request of the gentleman from Alabama, Representative Sonny Callahan to bring certain facts and certain trends in his district to the attention of our subcommittee. Fortunately, the request was one to which I could prove a quick answer. I said that we would hold a hearing and we are now accommodating him. First of all, this subcommittee has jurisdiction, long-existing, over the Administrative Procedure Act and the conduct of administrative law judges. Their activity is governed substantially

by the provisions of the Administrative Procedure Act; ergo, we have a solid jurisdictional basis for the testimony that we're about to hear.

No. 2—fortuitously, and jibing with the request of the gentleman from Alabama—is the fact that our subcommittee has already approved a bill, which is awaiting markup by the full committee, that goes to the heart of the organization of and the conduct of the administrative law judges of the Federal Government. So, the testimony that we're going to hear today relates to both arenas.

In the larger arena of Social Security Administration operations, other committees probably have primary jurisdiction. We hope that we can work with the gentleman from Kentucky, Mr. Bunning, whose Ways and Means Subcommittee on Social Security has been examining some of the operations of the Social Security Administration, so that his work, combined with ours on the organization of the administrative law judges, will be of interest and value to Members of Congress. We will be hearing today about the operations and organization of the Social Security Administration, the actions of the administrative law judges in Mobile that the gentleman from Alabama will bring forth, and also the Social Security Administration's response to the kinds of complaints that will be expressed here today. So, I feel very comfortable—and anxious, really—to proceed with the hearing for the purposes of jibing together all of these various interests.

There's no question that the subject that will be described here today by the gentleman from Alabama is national in its scope; that is, there are many other Members of Congress who from time to time are critical of—some gently, some more vociferously, but, nevertheless, critical of—the handling of disability claims and other problems facing the Social Security Administration. So, we know that he will speak, when he does, not just from a Mobile, AL, perspective, although that's his district, but also, that he'll be touching upon a theme that is national in scope.

So, with that, I will yield to the gentleman from Rhode Island.

Mr. REED. Thank you, Mr. Chairman.

I want to welcome Mr. Callahan to the subcommittee, and I commend him for bringing this very important issue to our attention. I was appalled to learn of the backlogs in the Mobile, AL, office, where claims wait an average of about 517 days to get the disability claims through the process, much longer than the national average. I was particularly dismayed to read the many letters that Mr. Callahan forwarded to us from his constituents, some of whom waited 2 or 3 years, often without any income, before getting their payments, all the while facing spiraling medical costs, foreclosure on homes or cars, utility shutoffs, and other crises; and I think this is a great tribute to the gentleman from Alabama that he would be so tenacious in fighting for his constituents and so insistent that this backlog be addressed.

I thank the gentleman for his efforts on behalf of his constituents and also for allowing us the chance to look at this issue in some detail, and I'm very much interested in hearing from you, Mr. Callahan, and also from your constituents and from everyone else, and, again, I commend you for what you've done for your people. Thank you.



Mr. GEKAS. With that, we recognize the gentleman from Alabama, Mr. Callahan. We will adhere, if we can, to the 5-minute rule, so that we can get you back on the floor as soon as possible.

**STATEMENT OF HON. SONNY CALLAHAN, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF ALABAMA, ACCOMPANIED BY JOHN BURGE, DISABILITY APPLICANT, MOBILE,  
AL**

Mr. CALLAHAN. Well, I appreciate it, Mr. Chairman, very much. I'm going to have to ask for your patience with respect to the 5-minute rule; we've tried to condense our statement and have condensed it a great deal.

First, let me thank you, Mr. Chairman, and the ranking member of your subcommittee, for having this hearing and for granting me this opportunity to convey to you and to the Members of Congress problems we are experiencing in the First Congressional District of Alabama. We have some charts and some testimony, and with your indulgence I'm going to go through it as quickly as I possibly can. But, I think it's important, since we have chronologically listed some problems we have and some questions we want you to raise. Our mission here is to assist you, Mr. Chairman. We're not trying to interfere in the jurisdiction of your committee; we applaud what you're doing; we applaud what your subcommittee is doing with respect for the need to reform the administrative law judge procedures, not only with Social Security, but in the other areas as well.

But, nevertheless, our problems in Mobile are so severe, our people are suffering so badly, that we thought by bringing this testimony to you it could encourage you and actually enhance your ability to foresee problems, or to see problems, or to witness problems that we are experiencing. And as a result of that, you'll be able to better perform your duty in drafting legislation that, hopefully, will create an ability of the administrative law judge procedures to be more effective than we currently think they are, at least in the First Congressional District of Alabama.

Other Members do have problems, as Mr. Reed has said. As a matter of fact, I need to submit for the record a statement from Mr. Gingrich, the Speaker of the House, who is experiencing some problems in Georgia; Mr. Spencer Bachus, from Birmingham, AL, and Wayne Gilchrest, from Kennedyville, MD, all who have submitted testimony, and I'd ask that their statements be made a part of the record.

Mr. GEKAS. Without objection, those statements will be accepted for the record.

[The prepared statement of Mr. Gingrich follows:]

PREPARED STATEMENT OF HON. NEWT GINGRICH, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF GEORGIA

Mr. Chairman, I wanted to submit testimony today to the Subcommittee because I believe that this Congress needs to address the needs of people with disabilities and take an active role in making their lives better.

I applaud the Subcommittee Chairman, George Gekas, for his efforts toward this goal, and I want to compliment my colleague and friend, Sonny Callahan, for bringing this matter to your attention.

I have formed two task forces on disability, both locally and nationally, because in the real world, life is often different than in the government bureaucracy. You can get sophisticated analysis from bureaucrats that has nothing to do with what happens to real people and to real families affected by a disability. Additionally, when I was a freshman in Congress, some folks down in Fayette County, Georgia, got me to live for 36 hours as someone with a disability. These task forces and that experience have shown me how a disability dominates your everyday life. The least that we as members of Congress can do is to ensure that those who are truly disabled receive the assistance for which they are entitled in both a timely and effective manner.

When I was told by my constituents of horror stories while trying to file for disability claims -- people dying before they could receive their assistance -- I was appalled. Right now in my district, I am working to help over 60 people with their disability claims. For some, the process has been emotionally and financially devastating.

Obviously, the nature of some of these cases requires that the entire process work efficiently in order to help the most severely disabled individuals. When someone is diagnosed as having a terminal illness, every second counts. That is why one case sticks in my mind as particularly disturbing. A constituent of mine, who was diagnosed as having a terminal illness, was denied assistance repeatedly. He was a terminal patient. Finally, almost a year later, it was ruled that he was eligible for assistance, but by the time that the decision was made, this individual had died. The decision was of no help and no comfort to his wife and son.

Another example was of a lady in my district who became unable to work and applied for assistance in July 1993. She was denied assistance again and again and filed for a hearing at the Chamblee Hearing Office in August of 1994. In January of 1996 her case was transferred to the Macon Hearing Office to be expedited and she has

just received a favorable decision two years and ten months after she began the process. One person from my district filed for a hearing in August of 1993 and waited two and one-half years before receiving his decision in January 1996.

In the Atlanta Hearing Office, my constituents work through either the Chamblee or the Atlanta Hearing Offices. In the Atlanta Hearing Office in 1995, there was an average of less than 34 cases disposed of per month compared to almost 73 in another city in the Southeast Region. And in the Chamblee Hearing Office in 1995, it took an average 452 days to determine whether or not someone was eligible for assistance, while in another city in the Southeast Region it took an average of 230 days. That rate is nearly double the number of days to determine eligibility. Those statistics should be unacceptable and would be anywhere other than in a government bureaucracy.

The Social Security Administration has now ordered a push to speed up the claims process, but I have not seen any change in terms of quicker decisions. In fact, it seems only to have shifted the delay to another point in the process.

I am including two charts which show the magnitude of the problems associated with disability claims. While the numbers speak for themselves, there is no way to describe to you the costs to individuals and families who have been touched by an already tragic situation.

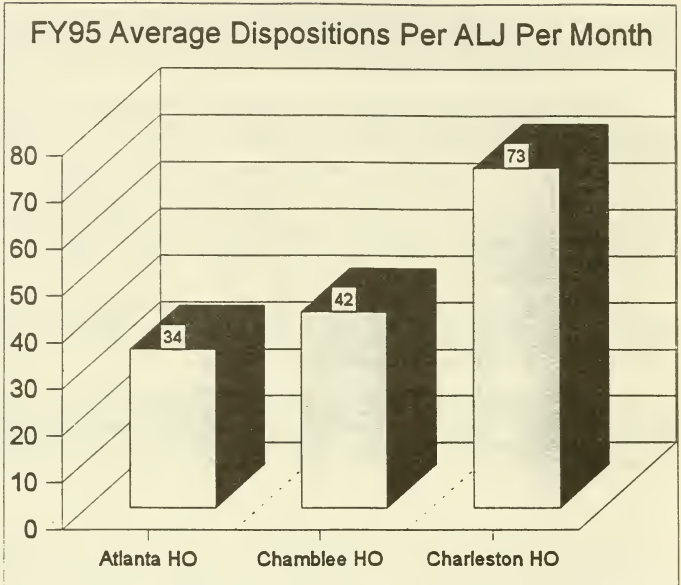


Figure 1- Atlanta and Chamblee Hearing Offices compared to the Charleston Hearing Office which has the highest average of dispositions per ALJ per month in Region IV.

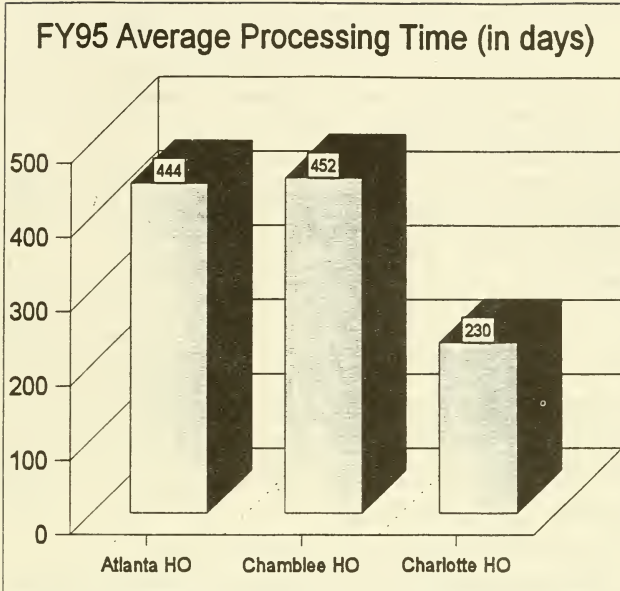


Figure 2 - Atlanta and Chamblee Hearing Offices average processing time compared to the Charlotte Hearing Office which has the lowest average processing time in Region IV.

[The prepared statement of Mr. Bachus follows:]

PREPARED STATEMENT OF HON. SPENCER BACHUS, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF ALABAMA

First, I would like to take this opportunity to applaud the efforts of my colleague, Congressman Sonny Callahan in working with the Social Security Administration to try to rectify the current problems involving delays Alabamians are experiencing both in having cases heard and in getting decisions rendered quickly. There have been tremendous delays and backlogs in processing disability cases not only in Mobile, but in Birmingham as well.

I was first made aware of this problem in 1993 when my caseworkers told me of the difficulties some constituents were having getting disability cases heard and decisions rendered. At that time, I wrote to the Secretary of Health and Human Services, Donna Shalala, and asked that she allow an increase in the number of staff members in the Birmingham office until the delays were alleviated. An additional 5 positions were granted on a temporary basis.

The Birmingham Office used the new authority to hire 5 new Administrative Law Judges (ALJ's) in an attempt to reduce the backlog. I have worked closely with the Birmingham office and they have been very helpful in getting status reports to my office and are sincerely concerned about resolving the delays. Unfortunately, even with the additional staff, there has still been a significant increase in the number of days a case is pending and in the total amount of time taken to process each case. It is simply not acceptable for disabled citizens to have to wait, in many cases, more than a year to just get their case heard and then up to another year for a decision. This reflects more than a mere backlog. It reflects a more fundamental problem with the system, which is indeed broken and in need of fixing.

This hearing is an attempt to identify the reasons for the delays and then dramatically reduce them. More importantly, most of these claimants are truly needy and are entitled to a prompt and equitable resolution of their petition. I am pleased with the opportunity this forum provides to assist deserving citizens, and I would like to thank Chairman Gekas for holding this important hearing and allowing me to submit my concerns and observations.

[The prepared statement of Mr. Gilchrest follows:]

PREPARED STATEMENT OF HON. WAYNE T. GILCHREST, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I appreciate the opportunity to bring to the committee's attention the problem of unreasonable backlogs for persons in my district applying for Social Security Disability Insurance.

Mr. Chairman, I have three full time district offices where everyday Americans come in to ask for help with the Social Security Administration. These stories would break your heart. Often, we are talking about people who have been independent all their lives, who have been trying to work with the Social Security Administration on their own, and come to their Congressman as a last resort. There are stories of husbands and wives, elderly and middle-aged, all facing the most trying times of their lives with illness and weakness. Some lose their homes, their families, and even their lives before Social Security recognizes their needs.

The system makes these people wait years for an answer as to whether they are too sick, in Social Security's view, to work anymore for a living.

There are two problems I have identified in my district:

(1) LENGTH OF TIME FOR A JUDGE TO SCHEDULE A HEARING

I thank Mr. Callahan for requesting a hearing on this problem.

Today, one of my constituents from the Eastern Shore, or from Anne Arundel County of Maryland, waits 730 days from the first day of application to receipt of the actual check. You may note that the request for a hearing with an Administrative Law Judge is actually step 3 in the process of applying for Social Security Disability Benefits. The initial application, denial and reconsideration steps, often handled by a constituent thinking it should be a straightforward case, can take four to five months. The nine Administrative Law Judges in Baltimore Maryland have a backlog of 700,000 cases.

My caseworkers have noted that the problem has only gotten worse in recent years. Mr. Chairman, I hope we get to the root cause. Is it under staffing? Is it waste and fraud by applicants? It is unconscionable to ask our American citizens who are sick and in desperate need, to wait 730 days for a favorable decision and

a check from Social Security. I understand that pilot projects at Social Security headquarters are underway. These need to be sped up and put out with the Administrative Law Judges.

*My recommendations:* I believe we need more Administrative Law Judges to review cases, have more staff to prepare and finish cases, and expand Social Security pilot projects to cover Administrative Law Judges.

(2) DELAYS ONCE A DECISION IS MADE BY AN ADMINISTRATIVE LAW JUDGE

Mr. Chairman, let's say my constituent obtains a favorable decision. This would not be unusual; a study by the General Accounting Office in the late 1980s found that about two thirds of all denied applications were reversed at the Administrative Law Judge level.

Let's say my constituent has won, and Social Security agrees that they are eligible for disability. My caseworkers report that it can be another four months for the award to go out. Another 120 days! Why? Well, my caseworkers have learned that the decision must be written up; it must be typed; it must be reviewed. This takes up to sixty days. Then the case can be sent out to the payment center where it can be another sixty days before the check is issued.

I understand that support staff are rotated to different tasks; I don't oppose it, but if it contributes to the delay in an award going out, it needs to be rethought. Social Security may need certain people on certain cases so that a constituent works with one Social Security caseworker.

*My recommendation:* When an Administrative Law Judge reaches a favorable decision, dedicate enough support personnel to help the Administrative Law Judge so that the check can go out in 30 days.

Everyday, our constituents come down with cancer, heart and stroke disease, or newer diseases like Chronic Fatigue Syndrome or lupus, where they cannot work. They have contributed to Social Security, and are frustrated with having to wait 730 days for money they may desperately need to keep their homes and families together. Mr. Chairman, thank you again for this opportunity. I hope we can all work together to fix this disgraceful backlog problem.

Mr. CALLAHAN. While I have been fortunate not to personally have to have gone through the difficult process of filing for disability benefits, we have with us one of my constituents who has not been quite so lucky. His name is John Burge, and you'll hear his story today as well. Now, this is a hearing for John Burge and all of the John Burges in this country. Like you and most of my colleagues here in Congress, I spend a good deal of my time serving as an intermediary between my constituents and the various Federal agencies. Although I've never minded this particular part of the job—in fact, it might be one of the most rewarding parts of our jobs—I've always felt it was a sad comment in the times in which we live that a person has to contact his or her Member of Congress in order to get the benefits to which they are entitled. In my opinion, Mr. Chairman, either these people are eligible for these benefits or they are not.

While I feel this way about most Federal programs, this is especially true of a person's right to receive disability benefits from the Social Security Administration. As such, several years ago I began to take an interest in the Mobile Office of Hearings and Appeals, especially after I realized just how backed-up their caseload had become. As far back as September 1993, I met with then-Chief Administrative Law Judge Frank De Bellis, as well as the office manager at the time, Warren Bullen, to discuss the backlog in Mobile.

In recent months, I have met with other officials of the Social Security Administration concerning our particular situation, including Acting Commissioner Shirley Chater, Chief Administrative Law Judge Charles Boyer, and Regional Chief Administrative Law Judge Henry Watkins from the Atlanta regional office. Although I was promised on many occasions that corrective action would be

taken to alleviate this tremendous backlog, I have, frankly, seen little change over the 2-year period.

In fact, it was not until I requested this hearing which you granted to me, Mr. Chairman, that I began to see any significant improvements. At one meeting with Judge Watkins in Mobile, I was informed that the best way to see positive results was through positive reinforcement of the judges and staff. While I am all for giving praise and a pat on the back when it is justified, I must tell you I continue to have grave concerns about the operation of the Mobile office.

Today, I would like to share with you and this subcommittee two particular statistics which I believe demonstrate the poor and, in my opinion, unacceptable performance of the Mobile office. Let me direct your attention to chart 1, figure 1, which shows the fiscal year 1994 regional average disposition per administrative law judge per month was 41.9 cases.

On the same chart you will note that the Mobile office was 24.4, a little over half of the rest of the Nation. Now compare this with figure 2, which shows the fiscal year 1995 regional average increased to 44.9 dispositions per month, while the Mobile office average improved to 34.2. Although the Mobile office average increased almost 10 cases per month after I made this request, it still fell well below the regional average and far below many of the other region IV offices. Average dispositions refer to the number of decisions rendered per judge per month.

Another strong indication that the Mobile HO is below performance level is shown in chart 2 on figures 3 and 4 it was 317 days for the region, while the Mobile average processing time was 402 days. Processing time is the number of days it takes to dispose of a case, from the day the request for a hearing is filed to the day the decision is mailed to the claimant. Now compare this with figure 4, which shows that while fiscal year 1995 average processing time for the region increased to 355 days, the Mobile operation skyrocketed to 517. In fact, the national average processing time for 1995 was 349 days—almost 6 months less than that of the Mobile office. Believe me, this is not the kind of progress I was hoping to find.

All of this leads to several questions, with the first and most obvious being, Why are we here and what do we hope to accomplish with this hearing? We are all aware in the increase in original Social Security claims being filed nationwide. We're also well aware of the fiscal constraints being placed on practically every Federal agency, but there seems to be a problem in Mobile which is unique to the system. Our mission here is not to criticize, but to ensure that claimants have the most timely and equitable hearing possible.

I hope this hearing will assist in the process to answer the following questions: Why are the disposition rates for processing time not in line with the regional or national average? Was a gag order imposed on the Mobile judges to prohibit them from talking to me, and is this a policy practice in other parts of the country? Did the Atlanta or Falls Church office have anything to do with the delay of information we requested from the Mobile office, and subse-



quently requested from the Social Security Administration under the Freedom of Information Act?

Let the record show, Mr. Chairman, that if the disposition rates and processing times in Mobile had been consistent with the national or even regional averages, we would not be here today. I fail to understand why an ALJ in Charlotte, NC, or Charleston, SC, can dispose of twice as many cases per month as the ALJ's in Mobile. Are the individual cases in the Mobile district such that they are twice as hard to determine eligibility? I should think not.

In an attempt to get a handle on what was going on in Mobile, I repeatedly tried to meet with the ALJ's to see what the cause was for this growing backlog. If it had been the lack of resources, I was prepared to come back to Washington and try to get them more money. If it was the fact that the judges' hands were being tied by someone in Atlanta or Falls Church, then I was prepared to come back and find a legislative remedy for that.

Unfortunately, my repeated requests to meet with the Mobile judges fell on deaf ears, which raises the question: is there any compelling reason why my request to engage in a face-to-face meeting with these judges was ignored? After all, both judges and Congressmen are paid by the taxpayers to serve the same constituents; it's just that they have one responsibility, and I have another.

I'd also like to know if there was a gag order preventing these judges from Mobile from talking with me, and, if so, who issued this gag order? I raise this question, Mr. Chairman, because I have heard from several of the judges individually—and unofficially, I might add—and all of them have said they thought a face-to-face meeting would be constructive, but they were told that such a meeting should not take place. Who said this? And why? I request, Mr. Chairman, that you pursue these questions on my behalf. I would also like to point out to this subcommittee that not only has there been much foot-dragging as it relates to the disposition of cases, but I'm troubled by the fact that on October 19, 1995, I requested specific information from the Mobile office from Chief Judge Frank De Bellis. In addition, I sent a similar request, this time under the Freedom of Information Act, the next day, to Mr. Vincent Sanudo, Office of Public Inquiries within the Social Security Administration. On numerous occasions, I personally called Mr. Sanudo's office and was informed each time that they were working with the Atlanta regional office to provide this material. The good news is this information was finally forwarded to me; unfortunately, it arrived in mid-April, 6 months after I asked for it. Mr. Chairman, I again ask you to pursue this on my behalf. When was this information gathered? Was there a delay in it being sent to my office? I believe it is necessary to share with you a bit of additional information I have received since the original scheduled hearing date of April 19, 1996. I recently received a letter from Judge Boyer dated May 15, 1996, in response to my concerns addressed in this testimony. He comments on the information I requested under FOIA that states their response was delayed due to missing documents and time-intensive research. For your information, Mr. Chairman, it was alleged to me that this information was collected by Judge De Bellis and was ready to be sent to me two days after I made the request; if this was the case, why didn't they

send the information? Why did it take 6 months to be delivered to my office?

Regarding the missing documents, I believe they are referring to fiscal year 1995 dockets. Well, I have those original documents in my possession today, as I have had all along, and I can certainly see why someone might want to withhold this information from me. There were many days where our judges held no more than two hearings a day, and weeks at a time where they held none. I would like to think that there's a good explanation for this, but I can't imagine what the explanation might be.

Judge Boyer also assured me in his letter that there is no directive prohibiting the ALJ's from speaking with me. With this assurance in mind, my office recently attempted to conduct a telephone survey of all region IV HO's. Mr. Chairman, once again, word got out about this survey and office managers became reluctant to talk to my staff. In fact, I have in my hand an E-mail from Margie Cargile in the Atlanta office addressed to each of the region IV HO's stating: "We have been advised by OCALJ that if Congressman Callahan calls you, you should advise them that all information requests must be referred to the Atlanta regional office, and that he or she should contact the acting regional management officer. Do not provide any information. I need to know if you received such a call, and if you answered any of the questions, what your answers were."

I don't know about you, Mr. Chairman, but if you'll refer to my survey, exhibit C, I'm sure you'll agree that these questions are fairly general in nature and could best be answered by a local office manager. It seems, however, someone has something to hide. Once again, Mr. Chairman, I request that you pursue these questions on my behalf.

Over the years, I have received hundreds of letters and I've shared some of them with you today. Unfortunately, these are not tales of the greatness of America; instead, they are horror stories of lost homes, repossessed automobiles, bankruptcies, and canceled health insurance policies as a result of sometimes waiting 2 years or longer for a claim to be processed. I can assure you there is not one person in this room who would care to experience the stress and anxiety associated with this process, and these people should not have to either. As I said, I've included, I think, 400 or 500 letters from people in my district for your perusal. But these are just some of the stories I've heard during my 12 years as a Member of Congress. As I mentioned earlier, in a few minutes we will hear first-hand from Mr. Burge who will tell his story in his own words.

Mr. Chairman, we should not have to listen to these horror stories any longer, for the taxpayers of my district, as well as our great Nation, deserve better. Chairman Gekas, I am aware of your bill, H.R. 1802, and I applaud you for looking into the matter of the ALJ's. Maybe it is the necessary vehicle to reform and streamline the system, and if it is, I will gladly give it my support. However, I must tell you that based on my own experiences, it is my belief that the ALJ's should first become more accountable before Congress considers giving them more autonomy.

I'm also aware of the GAO reports regarding short-term disability and the long-term program redesign. The GAO clearly states

that it is doubtful that STDP will reach its goals by the projected date of December 1996. I am skeptical as to whether or not the long-term program redesign will be in place even by the year 2000. Furthermore, it is my understanding that the STDP allows experienced OHA senior attorneys the temporary authority to conduct expanded case development and issue revised reconsideration allowances. I have witnessed this initiative in the Mobile office and I feel that because of it, many cases have been saved from going through the costly and time-consuming hearing process. This, no doubt, is in the best interest of the claimants.

My questions are as follows: If the SSA hires an additional 500 staff attorneys to issue revised reconsiderations, do we really need administrative law judges? Do staff attorneys have decisional independence? Are they protected under the Administrative Procedure Act? Do they have lifetime appointments? I would not be surprised if the answer to every one of these questions is, "no." On the other hand, are they required to follow time and attendance requirements? Are they accountable to their supervisors? Of course they are. But can the same accountability standards be applied to our ALJ's and, if so, are they being applied?

Speaking of time and attendance records, I would like to tell you a little of what has been alleged to me about some of our Mobile ALJ's. I understand we have a couple of judges who, on a regular basis, disregard the required time and attendance regulations by arriving late and leaving early; however, they claim to have worked the full 8-hour day. Any other employee in the Mobile office would be charged leave time for coming in late and leaving early. Do you think these judges take a couple of hours leave time every day? Of course not. Judge Boyer stated to me on November 7, 1995, that he will not tolerate time and attendance requirement violations. Perhaps Judge Boyer should visit the Mobile office for a while and see first-hand the ALJ's who are abusing the system.

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One constituent contacted me recently concerning a waiver claim. She said, "I've had four notices for a hearing date and I have appeared for each one fully prepared to represent my case. I arrived each time without an attorney because I am capable of representing myself. The law clearly states that I may have a representative, not that I must have one. All four times, Judge Smith refused to allow me to give any testimony or to represent myself."

Along these lines, I believe there should be a concern about a system where the Government, in effect, is acting as a collection agency for attorneys who represent claimants. Additionally, it appears that these lawyers are able to benefit financially from delays in the system, while the claimants most definitely do not profit in any way, shape, form, or fashion. Mr. Chairman, this matter has been brought to my attention by numerous attorneys in Mobile, as

well as claimants; something just doesn't square here, and that's not all.

Last September, my office was called by an official with the local Social Security Administration office to report a crisis situation. He had a claimant on the phone threatening suicide. She had been told by an ALJ that she would have her disability by the first of May 1995. She had just received an eviction notice, had no money for medication, and still had never received a decision on her claim. My staff member spoke to the ALJ assigned to the claimants's case and was told that he did not have time to pull up the file. The claimant was 8½ months pregnant with a gun to her head.

Finally, there is the example of a judge in Mobile who only disposed of 22 cases during fiscal years 1994 and 1995 combined. This, obviously, is unacceptable when the regional average is over 40 dispositions a month. I might say that that particular judge averaged less than one case per month. When I inquired into this matter, I was told that the problem would be taken care of. Do you know what the solution was? The administrative law judge was given mental disability retirement which, I understand, in some cases provides for generous benefits. Is that not the ultimate slap-in-the-face for the claimants they serve? The talk now is that the judge is planning to set up a law practice in Mobile that represents OHA claimants. If he's mentally disabled and could not function as an administrative law judge, is he capable of representing my constituents? The taxpayers, once again, deserve better.

While on the subject of disability retirement, allow me to raise a couple of other questions: is there adequate revolving-door protection to ensure judges who leave the bench can't immediately go out and practice before their former colleagues? And what number of former ALJ's are doing just this? Maybe, because of the recent problems we've had in Mobile, I'm more aware of the ALJ's than I once was, but it is not uncommon to see an ad on television or in the newspaper promoting some attorney who boasts that he can best represent the claimant because he is a former ALJ. As a matter of fact, they run ads in a local publication in Mobile saying, "Sonny Callahan can't get your Social Security for you; I can, because I'm a former administrative law judge."

On a positive note, I'm glad to see that the backlog in Mobile has decreased by 2,000 cases just since I requested this hearing. Obviously, we are moving in the right direction; however, from a long-term standpoint, I am rightfully concerned about the number of Mobile HO cases being handled by other hearing offices. While I applaud the decision to bring in ALJ's from other offices who have come to Mobile's rescue, I think it is imperative that we see real progress in the form of self-sustaining offices before we crack open the champagne bottle.

Mr. Chairman, at the outset I thanked you and this subcommittee for agreeing to put the spotlight on Mobile's HO; I want to again extend my heartfelt thanks. Since my request, I've heard from dozens of other Members who have expressed their concerns over similar situations in their districts. Over the coming weeks and months, this subcommittee and this Congress will be looking at ways to improve our hearings and appeals system, and I am hopeful that some of the facts that I have shared with you today

will play a positive role in ensuring that whatever changes come about are both meaningful and productive.

Before I conclude, I would like to ask that the subcommittee consider the following requests: until the Mobile HO has come up to the regional average, if not the national average, for the disposition rate as well as the processing time, I would like to see the Mobile HO submit to this subcommittee, as well as to this Member of Congress, a quarterly report on progress. I would also like to see this subcommittee address the wisdom of lifetime appointments of ALJ's with no real mechanism for removal. Another concern that you might want to look into is the possibility of the ALJ's writing their own decisions, as it is my understanding that Mobile ALJ's do not write theirs, while many of the ALJ's in other offices do.

While I am by no means an expert on the Social Security Administration in general, or the ALJ's specifically, I do believe the problems we encountered in Mobile have given me a unique perspective into this process. My goal has never been to embarrass the administrative law judges or the staff of the Mobile office of hearings and appeals; it has simply been to bring a resolution to this colossal backlog to ensure claimants receive a speedy and just decision. And when I refer to claimants, as I have throughout my testimony today, let us remember that we're not talking about the nameless, faceless people who happen to have a Social Security number and a whole host of problems. We're talking about the John Burges of America.

You see, when someone contacts me, they do so because they too often feel like they've come to the end of their rope. They don't know where else to turn or what else to do, and each time, without exception, my concern has not been whether they're Republicans or Democrats, or whether they're black or white. My objective has always been to try to ensure that the system works as equally and fairly for someone in Mobile, AL, as it does for someone in Harrisburg, PA. These are real people, Mr. Chairman, with real problems, and they deserve better than what they have been receiving. And I hope something positive will result from today's hearing that will give them reason to believe that the system does work.

For the record, Mr. Chairman, I would like to thank Chief Administrative Law Judge Frank De Bellis for his willingness to work with my staff and with me over the last couple of years. Frankly, I was surprised last year; just when Judge De Bellis was cooperating with me trying to bring about the positive changes in the Mobile office, I received a letter announcing his resignation as Chief Judge. I regret any action that might have been taken against him might be due to my intervention in this matter. Additionally, I appreciate Judge Boyer's cooperation during this time. He and his staff have worked diligently to answer my requests and concerns. I think it is important to note Judge Habermann's presence here today. Much of the recent progress that has been made in case disposition has occurred during his brief tenure as Acting Chief Judge, and for that I am very grateful.

Once again, Mr. Chairman, I plead your forgiveness for my lengthy statement, but I thought that I ought to try to convey to you a sincere problem that I have in Mobile, AL, and hope that this testimony and this hearing today will provide you some adequate

and constructive information as you go through this tedious process of trying to reform a system that is amuck. Thank you, Mr. Chairman.

[The prepared statement of Mr. Callahan follows:]

PREPARED STATEMENT OF HON. SONNY CALLAHAN, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF ALABAMA

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Mr. Chairman, I appreciate the opportunity you have afforded me today to take a closer look at the problems facing the Social Security Administration, Office of Hearings and Appeals (OHA) in Mobile, Alabama. Although I realize this hearing regards the Mobile Hearing Office, I would like to point out that Speaker of the House, Newt Gingrich, has made me aware of a very similar problem in his district in Georgia. In fact, Speaker Gingrich has a written testimony illustrating that fact. Additionally, my good friend and colleague from Birmingham, Spencer Bachus, has also submitted testimony concerning the OHA situation in his district, and Mr. Chairman, I ask that their statements be made part of the permanent record as well.

While I have been fortunate not to have personally gone through the difficult process of filing for disability benefits, we have with us one of my constituents who has not been quite so lucky. His name is John Burge and you will hear his story today. This hearing is for John Burge and all the John Burges in this country.

Like you, and most of my colleagues here in Congress, I spend a good bit of my time serving as an intermediary between my constituents and the various federal agencies. Although I have never minded this particular part of the job — in fact it can often be some of the most rewarding work we Members do — I have always felt it was a sad comment on the times in which we live that a person has to contact his or her congressman in order to get the benefits to which they are entitled. In my opinion, Mr. Chairman, either these people are eligible for these benefits or they are not.

While I feel this way about most federal programs, this is especially true of a person's right to receive disability benefits from the Social Security Administration.

As such, several years ago, I began to take an interest in the Mobile Office of Hearings and Appeals (Mobile HO), especially after I realized just how backed up their caseload had become. As far back as September 1993, I met with then-Chief Administrative Law Judge Frank M. De Bellis, as well as the office manager at the time, Warren Bullen, to discuss the Mobile HO's backlog of cases.

And in recent months, I have met with other officials of the Social Security Administration concerning this situation, including Acting Commissioner Shirley S. Chater, Chief Administrative Law Judge Charles R. Boyer and Regional Chief Administrative Law Judge Henry G. Watkins from the Atlanta Regional Office.

Although I was promised on many occasions that corrective action would be taken to alleviate this tremendous backlog, I have frankly seen very little change over a 2-year period. In fact, it was not until I requested this hearing that I began to see any significant improvements. At one meeting with Judge Watkins in Mobile, I was informed the best way to see positive results was through positive reinforcement of the judges and staff. While I am all for giving praise and a pat on the back when it is justified, I must tell you I continue to have grave concerns over the operation of the Mobile HO.

Today, I would like to share with you and this subcommittee two particular statistics which I believe demonstrate the poor and in my opinion, unacceptable, performance of the Mobile HO. Let me direct your attention to Chart 1, Figure 1, which shows the Fiscal Year 1994 regional average dispositions per administrative law judge (ALJ) per month was 41.9 cases. On the same chart, you will note the Mobile HO average was 24.4.

Now compare this with Figure 2 which shows the FY95 regional average increased to 44.9 dispositions per month while the Mobile HO average improved to 34.2. Although the Mobile HO average increased almost 10 cases per month, it still fell well below the regional average and far below many of the other Region IV offices. (Average dispositions refer to the number of decisions rendered per judge per month).

Another strong indication the Mobile HO is below average performance level is shown on Chart 2 in Figures 3 and 4. Look at the FY94 average processing time (in days) for Region

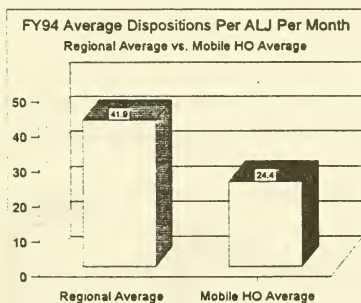


Figure 1

IV; it was 317, while the Mobile HO average processing time was 402 days. (Processing time is the number of days it takes to dispose of a case from the day the request for a hearing is filed to the day the decision is mailed to the claimant). Now compare this with Figure 4 which shows that while the FY95 average processing time for the region increased to 355 days, the Mobile HO skyrocketed to 517. In fact, the national average processing time for FY95 was 349 days --

almost 6 months less than that at the Mobile HO. Believe me, this was not the kind of "progress" I was hoping to find.

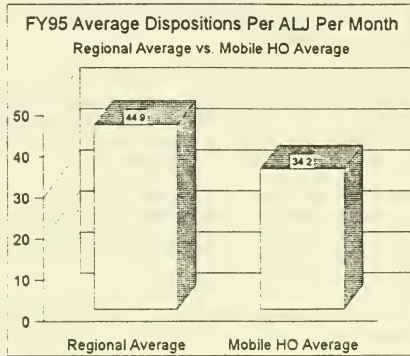


Figure 2

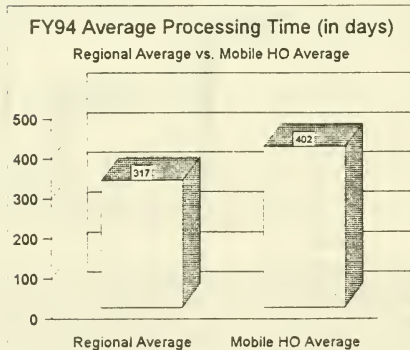


Figure 3



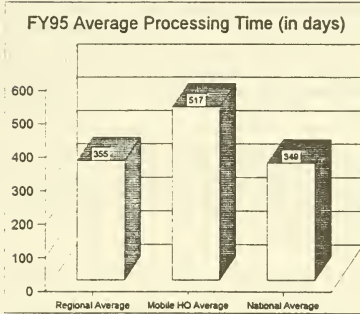


Figure 4

All of this leads to several questions, with the first and most obvious being, why are we here and what do we hope to accomplish with this hearing? We are all aware of the increase in original Social Security claims being filed nationwide. We are also all aware of fiscal constraints being placed on practically every federal agency. But there seems to be problems in the Mobile HO which are unique to this system. Our mission here is not to criticize, but to ensure that claimants have the most timely and equitable hearing possible. I hope this hearing will assist in a process to answer the following questions:

- ▶ Why are the disposition rates and processing times not in line with the regional, or national, average?
- ▶ Was a gag order imposed on the Mobile judges to prohibit them from talking to me and is this a policy practiced in other parts of the country?
- ▶ Did the Atlanta or Falls Church office have anything to do with the delay of information we requested from the Mobile HO and subsequently requested from the Social Security Administration under the Freedom of Information Act?

Let the record show if the disposition rates and processing times in Mobile had been consistent with the national, or even regional, averages, then we would not be here today. However, I fail to understand why an ALJ in Charlotte, North Carolina, or Charleston, South Carolina, can dispose of twice as many cases per month as those ALJs in the Mobile HO. Are the individual cases in the Mobile district such that they are twice as hard to determine eligibility as these other areas? I should think not.

In an attempt to get a handle on what exactly was going on in the Mobile HO, I repeatedly tried to meet with the ALJs to see what was causing this growing backlog. If it had been a lack of resources, I was prepared to come back to Washington and try to get them more money. If it was the fact that the judges' hands were being tied by someone in Atlanta, Falls Church or Baltimore, I was prepared to come back and try to find some legislative remedy to that as well.

Unfortunately, my repeated requests to meet with the Mobile judges fell on deaf ears, which raises the question, is there any compelling reason my requests to try to engage in a face-to-face meeting with these judges was ignored? After all, both judges and congressmen are paid by the taxpayers to serve the same constituents; it's just that they have one responsibility to carry out their duties, and I have another.

I'd also like to know if there was a gag order preventing these judges in Mobile from talking with me and if so, who issued it? I raise this question, Mr. Chairman, because I have heard from several of the judges individually — and unofficially, I might add — and all of them said they thought a face-to-face meeting would be constructive, but they were told that such a meeting should not take place. Who said this? And why? Mr. Chairman, I request you pursue this on my behalf.

Mr. Chairman, I would also point out to this subcommittee that not only has there been much "foot dragging" as it relates to the disposition of these cases, but I am also troubled by the fact that on October 19, 1995, I requested specific information on the Mobile HO from Chief Judge Frank De Bellis. In addition, I sent a similar request, this time under the Freedom of Information Act, the next day to Mr. Vincent Sanudo, Office of Public Inquiries with the Social Security Administration.

On numerous occasions, I contacted Mr. Sanudo's office and was informed each time they were working with the Atlanta Regional Office to provide this material. The good news is this information was finally forwarded to me; unfortunately, it arrived in mid-April, six months after it was requested. Mr. Chairman, I again ask you to pursue this on my behalf. When was this information gathered? Why was there a delay in it being forwarded to my office?

I believe it necessary to share with you a bit of additional information I have received since the originally scheduled hearing date of April 19, 1996. I recently received a letter from Chief Judge Boyer dated May 15, 1996, in response to my concerns addressed in this testimony (see Exhibit A). He comments on the information I requested under FOIA and states that their response was delayed due to missing documents and time intensive research. For your information, Mr. Chairman, it was alleged to me that this information was collected by Judge De Bellis and was ready to be forwarded to me two days after I requested it. If this is the case, why did it take six months to be delivered to my office.

Regarding the missing documents, I believe they are referring to the FY95 dockets. Well, I have those original documents in my possession today as I have had all along, and I can

certainly see why someone might want to withhold this information from me. There were many days where our judges held no more than 2 hearings a day and weeks at a time when they held *none*. I would like to think there's a good explanation for this, but I can't imagine that there is.

Judge Boyer also assures me in his letter that there is no directive prohibiting the ALJs from speaking with me. With this assurance in mind, my office recently attempted to conduct a telephone survey of all the Region IV HO's. Mr. Chairman, once word got out about this survey, Office Managers became reluctant to talk to my staff. In fact, I have in my hand today an e-mail (Exhibit B) from Margie Cargile in the Atlanta RO addressed to each Region IV HO stating "...we have been advised by OCALJ that if Congressman Callahan's office calls you should advise them that ALL INFORMATION REQUESTS MUST BE REFERRED TO THE ATLANTA REGIONAL OFFICE, AND THAT HE/SHE SHOULD CONTACT THE ACTING REGIONAL MANAGEMENT OFFICER MARGIE CARGILE (404-331-2284). Do not provide any information. I need to know if you received such a call and if you answered any of the questions what your answers were." I don't know about you, Mr. Chairman, but if you will refer to my survey (Exhibit C), I'm sure you will agree that these questions are fairly general in nature and could best be answered by a local office manager. However, it sure seems that someone has something to hide.

Again, Mr. Chairman, I request you pursue this on my behalf.

Over the years, I have received many letters and statements from my constituents who have had to endure this strenuous process. In a moment, I would like to share excerpts from just two of these letters. However, at this time, I ask permission to enter into the record all of the letters and statements from my constituents who could not be here today in person. I am providing to the subcommittee the actual letters, many of which are in the claimant's own handwriting, along with a typed, highlighted summary for your convenience. These letters describe in vivid detail some of the real pain and suffering which has taken place in the lives of these people primarily because of these unacceptable delays.

Unfortunately, these are not the tales of the greatness of America. Instead, they are horror stories of lost homes, repossessed automobiles, bankruptcies and canceled health insurance as a result of sometimes waiting two years or longer for a claim to be processed. I can assure you there is not one person in this room who would care to experience the stress and anxiety associated with this process, and these people should not have to either.

It is difficult enough just to hear these heart-wrenching stories. One letter I received was written by a claimant's wife who stated, "*We have been reduced to begging and borrowing to keep him in medicine. We've piled up medical bills over the amount of \$87,000....We've begged the doctors and nurses for medicine. We've sold anything worth selling to keep from having to borrow.....Everything is falling apart....We need a roof on our home....We have had no heat since December, 1995. We ran out of gas to cook with in November of '95.....We have put our home up for sale. We can't keep it now as we owe so much we will never catch up and do all the repairs that need to be done.*" This man originally filed for disability benefits in August, 1993.

He had his hearing on January 11, 1996, was approved and received his first check this past April. Imagine trying to survive for 2 ½ years with no income!

Another claimant wrote, "*I don't know what to do anymore. I am in constant pain, day and night. I live in a little shack by myself, no furniture, no phone. Friends put me some gas butane in the tank which will last a couple more days. My electricity will be disconnected any day. I sleep on the floor on a strip of foam. Friends have help[ed] me with utilities, but friends can only do so much. I am deeply in debt. One day they will find me dead and all my worries will be done.*"

These are but two of the hundreds of stories I have heard during my 12 years as a Member of Congress. As I mentioned earlier, in a few minutes we will hear firsthand from Mr. Burge, who will tell his story in his own words. Mr. Chairman, we should not have to listen to these horror stories any longer, for the taxpayers of my district, as well as our great nation, deserve better.

Chairman Gekas, I am aware of your bill, HR 1802, and I applaud you for looking into the matter of ALJs. Maybe it is the necessary vehicle to reform and streamline the system and if it is, then I will gladly give it my support.

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Once again, my goal has never been to embarrass the Administrative Law Judges or the staff of the Mobile Office of Hearings and Appeals. It has simply been to bring a resolution to this colossal backlog to ensure claimants receive a speedy and just decision. And when I refer to

"claimants," as I have throughout my testimony today, let us remember that we are not just talking about nameless, faceless people who happen to have a Social Security number and a whole host of problems. We are talking about the John Burges of America.

You see, when someone contacts me, they do so because they all too often feel they have come to the end of their rope. They don't know where else to turn or what else to do. And each time, without exception, my concern has not been whether they are a Republican or a Democrat; or whether they are black or white. No, my objective has always been to try to ensure that the system works as equally and fairly for someone in Mobile, Alabama, as it does for someone in Harrisburg, Pennsylvania.

These are real people, Mr. Chairman, with real problems. They deserve better than what they have been receiving. And I hope something positive will result from today's hearing that will give them reason to believe the system does work.

Before closing, I would, for the record, like to thank former Chief Administrative Law Judge Frank M. De Bellis for his willingness to work with my staff and me over the past couple years. Frankly, I was surprised last year -- just when Judge De Bellis was cooperating with me to try to bring about positive changes in the Mobile office, I received a letter announcing his resignation as Chief Judge. I regret any action that might have been taken against him due to my intervention in this matter.

Additionally, I appreciate Judge Boyer's cooperation during this time. He and his staff have worked diligently to answer my requests and concerns. I also think it is important to note Judge Habermann's presence here today. Much of the recent progress which has been made in case disposition has occurred during his brief tenure as Acting Chief Judge and for that, I am grateful.

I truly appreciate this opportunity to make my interests known. I commend the Chairman and the subcommittee members for the fine work you perform for this nation and for the service I am confident you will continue to provide.

DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Social Security Administration

Refer To:

Office of Hearings and Appeals  
5107 Leesburg Pike  
Falls Church VA 22041-3255

MAY 15 1996

The Honorable Sonny Callahan  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Callahan:

This is in further response to your request for information on the Mobile, Alabama Hearing Office (HO). When you initially requested information on hearings held in remote hearing sites by our Mobile Administrative Law Judges (ALJs), the HO was able to locate information only on hearings scheduled, not on hearings held. Also, as you know, some of that information was not available because of missing itineraries. While there is no requirement to retain the itineraries, the office does generally retain them for a number of months before they are destroyed, and they hoped to locate all of the itineraries to complete the report. However, because we did not want to delay transmitting information that we had to you, the report was incomplete.

At the time the documents were submitted through Freedom of Information Act (FOIA) channels for transmission to you, we began scanning some archived computer data to see if by doing so we would be able to provide a more complete response. Through the additional research, we were able to fix dates with the number of hearings held, rather than scheduled, which was the information you originally requested. We believe we now have a complete report of hearings held during Fiscal Years 1994 and 1995 by individual ALJs and have enclosed the report at Tab A. The costs associated with those trips may be incomplete because some of the travel vouchers were unavailable.

I apologize for the delay in getting this additional information to you. It was not readily available and required a significant amount of time to gather from several archived sources.

The time and attendance reports which you requested have been submitted for transmission to you under the FOIA. For your further information, we are enclosing copies of memoranda which were distributed to all ALJs. These memoranda will apprise you of the time and attendance policy for our field employees (Tab B). I assure you that ALJs are accountable to the Agency and must follow time and attendance rules and regulations, and I expect the Hearing Office Chief ALJs to

EXHIBIT A



Page 2

enforce all time and attendance rules and regulations. If you have any specific information that time and attendance rules are not being followed in the Mobile office, I would appreciate your providing that information to me.

I also want to take this opportunity to provide some additional information relating to some of the issues raised in your April 19 Statement to the Subcommittee on Commercial and Administrative Law which was provided to me.

There is no question that overall performance of the Mobile Hearing Office (HO) has been below what we expect and there are a number of factors that have contributed to the poor performance level. However, we fully believe that sustained, improved performance will be realized with placement of a permanent local management team, training, oversight and direction by OHA Regional and Headquarters management, and improved case management by the local office with assistance from both OHA Headquarters and the Atlanta Regional Office. These changes are well underway. We are working with regional and HO management staff in an effort to reach our goals. We are in the process of selecting a new Hearing Office Chief ALJ for Mobile, and when the position is filled, we expect to see dramatic improvement from the office.

As you discussed in your Statement, we have used permanent and temporary case transfers as a means of bringing the workload in Mobile under control, and this has helped reduce the pending considerably. At the end of October 1995, the pending per ALJ was 626 cases, and at the end of April 1996 the pending was 483, which is slightly below the Regional average of 491 cases. These temporary measures will continue until the Mobile office can raise its production to what we believe is necessary to maintain a pending workload consistent with regional and national levels.

I am very concerned about your belief that there exists a directive prohibiting the Judges in Mobile from speaking with you. I can tell you confidently that is not true. I would appreciate any additional information you may have on this matter. I assure you I will make it clear to the ALJs in the office that they have the freedom to discuss matters with you if they wish.

I apologize once again for what was perceived as "foot dragging" on the Agency's part in gathering and forwarding information you requested under the FOIA. The October 19, 1995 request to Judge DeBellis was considered a FOIA request and referred to the appropriate component for processing. It required a considerable amount of staff time for the Mobile office to gather the ALJ travel information because so many

Page 3

documents had to be searched and listed, and forwarding the information through the FOIA routing procedures took an additional amount of time.

With respect to your discussion on OHA's hiring of staff attorneys, the plan has never been to hire 500 staff attorneys this year. A few months ago we were given authority to hire 75 temporary staff attorneys, which we have done, and just recently we received authority to hire 75 more. We do have slightly over 500 staff attorneys who were temporarily promoted in Fiscal Year 1995 into the senior attorney position to help reduce the hearings workload. These attorneys through temporary regulatory authority are authorized to issue fully favorable decisions only in cases where the evidence of record supports a favorable action. They also may obtain additional evidence to clarify the record if they believe the additional evidence will result in a fully favorable decision without the time and expense of an ALJ hearing. Senior attorneys have no authority to hold hearings.

In response to your comment on unrepresented claimants, there is no requirement that a claimant be represented at a hearing. Claimants have the right to representation or may represent themselves if they choose. When a Request for Hearing is received in the HO and there is no indication that a representative has been retained, HO staff send material to the claimant which lists free legal services, or lists referral services (e.g., the local bar) which the claimant can use to obtain an attorney for a fee. If the claimant decides against representation, the ALJ is to proceed with the hearing. Because of your assertions, however, we plan to follow up with the HO to ensure that the Judges are not refusing to proceed with hearings when a claimant arrives unrepresented.

I appreciate your concern regarding procedures for handling a case where the claimant has threatened suicide. Per our national procedures, if a claimant has threatened suicide, the case is deemed critical and steps are taken to expedite the case. Every HO is aware of and, to my knowledge, follows these procedures. Again, if you will provide me with specific case information, I will investigate the matter and ensure that the Mobile HO is following Agency policy.

With reference to your statement relative to a Mobile ALJ applying for and receiving disability retirement, we have no authority to determine disability for government employees. That authority rests with the Office of Personnel Management (OPM). OPM makes a determination on an employee's personal application for disability benefits and the agency is

Page 4

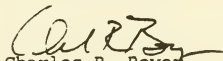
informed when a decision is made. Because of Privacy Act considerations, we cannot discuss individual disability claims with you. However, it is my understanding that additional information can be provided under the FOIA, in writing, if desired by you or the Sub-Committee.

You also raised concerns about ALJs, immediately after retirement or resignation, setting up law practices and representing claimants who have filed for Social Security benefits. This is not prohibited; however, Federal law imposes very specific restrictions in such circumstances. For instance, there is a lifetime ban on representing someone whose case the ALJ decided while employed as an ALJ. There is a two-year ban on representing anyone whose case was assigned to, but not decided by, the ALJ. Again, if you are aware of any violations of these restrictions, I would appreciate your providing specific information so we can investigate the matter.

You noted that many of our ALJs are writing some of their own decisions, but not the ALJs in Mobile. Over the last two years, as funding has allowed us to purchase PCs (personal computers), we have provided them to Judges who are PC proficient. Because of needs among support staff in our offices, we try to place PCs where they will be most productive. In January 1996, five ALJs in the Mobile office received PCs and are now using them in their work. Mobile ALJs composed 17 decisions in March and 14 in April 1996. We expect to see this number increase as the ALJs become more proficient in using PCs, and we expect to see more PCs distributed in the coming months.

I hope that I have responded to your concerns and have alleviated some of them. If you have additional questions or requests, I will be glad to assist you in obtaining information you need.

Sincerely yours,



Charles R. Boyer  
Chief Administrative Law Judge

Enclosures

15: From: MARGIE CARGILE at -S3G-F4 5/28/96 3:11PM (3082 bytes: 18 ln)  
 To: JOHN BOBB at -S3G-F4Z36, GLENDA BOWLING at -S3G-F4Z45, LECIA RRTTFORD at -S3G-F4Z41, KEN COCHRAN at -S3G-F4Z23, MICHAEL J. DAVENPORT at -S3G-F4Z47, STELLA EARGLE at -S3G-F4Z31, PETER C. EDISON at -S3G-F4Z35, DIANA FLUTY at -S3G-F4Z58, NORMAN FUZZELL at -S3G-F4Z28, AMPARO GRANA at -S3G-F4Z24, MARILYN HUDSON at -S3G-F4Z42, VICKI HUNKIN at -S3G-F4Z34, TONI JACKSON at -S3G-F4Z43, ELAINE M. JENKINS at -S3G-F4Z35, DEBERA JOHNSON at -S3G-F4Z57, LINDA KALES at -S3G-F4Z39, TONI LAW at -S3G-F4Z47, KATHY MAYFIELD at -S3G-F4Z37, TILLIE MORRIS at -S3G-F4Z26, JEAN MUIRHEAD at -S3G-F4Z36, CAROL L. NUSS at -S3G-F4Z38, MARIAN PARKS at -S3G-F4Z49, DORIS PRSTAGE at -S3G-F4Z60, ANN RAYBURN at -S3G-F4Z46, JAMES RIDENOR at -S3G-F4Z22, THOMAS L. ROBERTS at -S3G-F4Z32, ROR SCHANKER at -S3G-F4Z59, DAT SHACKELFORD at -S3G-F4Z21, JAKE SHANAHAN at -S3G-F4Z48, NANCY SMITH-MORRIS at -S3G-F4Z61, WILLIAM C. STRONG at -S3G-F4Z29, BEVERLY WALKER at -S3G-F4Z27, A.J. WILKERSON at -S3G-F4Z31, CYNTHIA ZEIS at -S3G-F4Z25, |S3G-F4 ATLANTA HO at -S3G-F4Z26, |S3G-F4 BIRMINGHAM HO at -S3G-F4Z21, |S3G-F4 CHAMBLER HO at -S3G-F4Z57, |S3G-F4 CHARLESTON HO at -S3G-F4Z43, |S3G-F4 CHARLOTTE HO at -S3G-F4Z28, |S3G-F4 CHATTANOOGA HO at -S3G-F4Z33, |S3G-F4 COLUMBIA HO at -S3G-F4Z31, |S3G-F4 FLORENCE HO at -S3G-F4Z45, |S3G-F4 FORT LAUDERDALE HO at -S3G-F4Z59, |S3G-F4 GREENSBORO HO at -S3G-F4Z41, |S3G-F4 GREENVILLE HO at -S3G-F4Z32, |S3G-F4 HATTIESBURG HO at -S3G-F4Z46, |S3G-F4 JACKSON HO at -S3G-F4Z27, |S3G-F4 JACKSONVILLE HO at -S3G-F4Z23, |S3G-F4 KINGSPORT HO at -S3G-F4Z47, |S3G-F4 KNOXVILLE HO at -S3G-F4Z34, |S3G-F4 LEXINGTON HO at -S3G-F4Z37, |S3G-F4 LOUISVILLE HO at -S3G-F4Z38, |S3G-F4 MACON HO at -S3G-F4Z42, |S3G-F4 MEMPHIS HO at -S3G-F4Z36, |S3G-F4 MIAMI HO at -S3G-F4Z24, |S3G-F4 MIDDLESBORO HO at -S3G-F4Z58, |S3G-F4 MOBILE HO at -S3G-F4Z22, |S3G-F4 MONTGOMERY HO at -S3G-F4Z48, |S3G-F4 NASHVILLE HO at -S3G-F4Z35, |S3G-F4 ORLANDO HO at -S3G-F4Z25, |S3G-F4 PADUCAH HO at -S3G-F4Z49, |S3G-F4 RALEIGH HO at -S3G-F4Z29, |S3G-F4 SAVANNAH HO at -S3G-F4Z60, |S3G-F4 TAMPA HO at -S3G-F4Z39, |S3G-F4 TUPELO HO at -S3G-F4Z61, ||S3G-F4 RSA at -S3G-F4Z42

To mailing list: #ALL CONFIDENTIAL, #ALL -S3G-F4 FIELD OFFICES

To mailing list: #FLOs, #mgt

Subject: Congresswoman Callahan's telephone survey--FOLLOWUP

----- Message Contents -----

TO: HOCALW  
 HOM

If you did receive a call from Congressman Callahan's office and you said that you would call back once you received direction and guidance from the RO, please call the staff person that called you back and advise him/her that their information request should be referred to the Atlanta Regional Office, etc.

OICALW is very concerned that we do not have any calls that were not returned or followed up. If you have any further questions please call Ruth Jordan (Acting Branch Chief, FLO Branch).

Margie Cargile

EXHIBIT B

[4] From: MARGIE CARGILE at -S3G-F4 5/24/96 10:13AM (3867 bytes: 38 ln)  
 To: JOHN BOBB at -S3G-F4216, GLENDA BOWLING at -S3G-F4245, LEOLA BRITFORD at -S3G-F4241, KEN COCHRAN at -S3G-F4223, MICHAEL J. DAVENPORT at -S3G-F4247, STELLA EARGLE at -S3G-F4231, PETER C. EDISON at -S3G-F4215, DIANA FLUTY at -S3G-F4258, NORMAN FUZZELL at -S3G-F4228, AMPARO GRANA at -S3G-F4224, MARILYN HUDSON at -S3G-F4242, VICKI HUNKIN at -S3G-F4234, TONI JACKSON at -S3G-F4243, ELAINE M. JENKINS at -S3G-F4235, DEBERA JOHNSON at -S3G-F4257, LINDA KALES at -S3G-F4239, TONI LAW at -S3G-F4247, KATHY MAYFIELD at -S3G-F4237, TILLIE MORRIS at -S3G-F4226, JEAN MUIRHEAD at -S3G-F4236, CAROL M. NUSS at -S3G-F4238, MARIAN PARKS at -S3G-F4249, DORIS PRESTAGE at -S3G-F4246, ANN RAYBURN at -S3G-F4246, JAMES RIDENOR at -S3G-F4222, THOMAS L. ROBERTS at -S3G-F4232, ROB SCHANKER at -S3G-F4259, PAT SHACKELFORD at -S3G-F4221, CAKE SHANAHAN at -S3G-F4248, NANCY SMITH-MORRIS at -S3G-F4261, WILLIAM C. STRONG at -S3G-F4229, BEVERLY WALKER at -S3G-F4227, A.J. WILKERSON at -S3G-F4233, CYNTHIA ZEIS at -S3G-F4225, |S3G-F4 ATLANTA HO at -S3G-F4226, |S3G-F4 BIRMINGHAM HO at -S3G-F4221, |S3G-F4 CHAMBLEE HO at -S3G-F4257, |S3G-F4 CHARLESTON HO at -S3G-F4243, |S3G-F4 CHARLOTTE HO at -S3G-F4228, |S3G-F4 CHATTANOOGA HO at -S3G-F4233, |S3G-F4 COLUMBIA HO at -S3G-F4231, |S3G-F4 FLORENCE HO at -S3G-F4245, |S3G-F4 FORT LAUDERDALE HO at -S3G-F4259, |S3G-F4 GREENSBORO HO at -S3G-F4241, |S3G-F4 GREENVILLE HO at -S3G-F4232, |S3G-F4 HATTIESBURG HO at -S3G-F4246, |S3G-F4 JACKSON HO at -S3G-F4227, |S3G-F4 JACKSONVILLE HO at -S3G-F4223, |S3G-F4 KINGSPORT HO at -S3G-F4247, |S3G-F4 KNOXVILLE HO at -S3G-F4234, |S3G-F4 LEXINGTON HO at -S3G-F4237, |S3G-F4 LOUISVILLE HO at -S3G-F4238, |S3G-F4 MACON HO at -S3G-F4242, |S3G-F4 MEMPHIS HO at -S3G-F4236, |S3G-F4 MIAMI HO at -S3G-F4224, |S3G-F4 MIDDLESBORO HO at -S3G-F4258, |S3G-F4 MOBILE HO at -S3G-F4222, |S3G-F4 MONTGOMERY HO at -S3G-F4248, |S3G-F4 NASHVILLE HO at -S3G-F4235, |S3G-F4 ORLANDO HO at -S3G-F4225, |S3G-F4 PADUCAH HO at -S3G-F4249, |S3G-F4 RALEIGH HO at -S3G-F4229, |S3G-F4 SAVANNAH HO at -S3G-F4260, |S3G-F4 TAMPA HO at -S3G-F4239, |S3G-F4 TUPELO HO at -S3G-F4261, ||S3G-F4 RSA at -S3G-F4242

To mailing list: #ALL CONFIDENTIAL, #ALL -S3G-F4 FIELD OFFICES

: mailing list: #FLOs, #mg:

Subject: Congressman Callahan's telephone survey--ACTION

----- Message Contents -----

TO: OCALJ  
 HOM

Regarding my message yesterday on the same topic, we have been advised by OCALJ that if Congressman's Callahan's office calls you should advise them that ALL INFORMATION REQUESTS MUST BE REFERRED TO THE ATLANTA REGIONAL OFFICE, AND THAT HE/SHE SHOULD CONTACT THE ACTING REGIONAL MANAGEMENT OFFICER MARGIE CARGILE (404-331-2264). Do not provide any information.

I need to know if you received such a call and if you answered any of the questions what your answers were.

We are probably going to have to provide this information out OCALJ will let me know later in the day. However, they advised that we should go ahead and gather the information. So please provide the answers to the following questions:

1. How many ALJs assigned to your office?
2. How many ALJs write their own decisions?
3. Are all ALJs signing in and out? If no, how many

sign in and out and how many work the regional fixed tour of 8:00 to 4:30?

4. If 3. is yes, how long has this practice been going on?

Please respond today by e-mail or fax if at all possible, but no later than Tuesday, 5/28, to the attention of your FLO.

Margie Cargile

## Questions for OHA managers:

Hearing Office \_\_\_\_\_ Phone # \_\_\_\_\_

Manager's name (or contact) \_\_\_\_\_

1. How many ALJs are assigned to your office? \_\_\_\_\_
  
2. How many of your ALJs write their own decisions? \_\_\_\_\_
  
3. Are your judge's required to either sign in and out or keep a time sheet? \_\_\_\_\_
  
4. If so, how long has this practice been in place? \_\_\_\_\_

*The following excerpts are taken from over 125 letters I received concerning the experiences my constituents have endured while waiting for processing of their disability claims. For ease of reading, minor corrections have been made in some instances. However, the entire letters have all been submitted to the record in the event further information is needed.*

We did not qualify for welfare or food stamps because we had just a little bit too much property, a car, a truck and a boat, etc. My kids are barely supporting themselves. I fought this case on my own for a year and a half, and then I got a lawyer. For three and a half years I struggled to survive, working with help from friends I had worked with for years, sometimes crawling up and down steps and having to be carried by crewmen to the pilot house chair. A man on crutches on a tug boat is not safe! Anyone who has not been through something like this doesn't realize the mental strain as well as the physical pain you are already in--not knowing where the money for your next electric bill, or house payment, or anything else is coming from. It was four years to the month from the time I applied for Social Security disability until I received my first check. Finally my prayers had been answered. If it had not been for the Lord Jesus and lots of prayer and support from close friends, I would have never gotten through this. I had a hearing at Mobile OHA in January 1995 before Judge Ragland (I had been before him in March 1993). In January 1995 I was granted my disability, but not before I was threatened by him (Judge Ragland) to be turned down again if I did not change my first date of disability from August 25, 1991, to August 1, 1994. Because I struggled, suffered and worked a little bit to survive (making approximately \$19,00 in three and a half years), I was forced to give up three years of past due benefits which I felt was unfair. I received my first monthly check in July 1995, and past due benefits check from January 1995 to June 1995 I received last month--March 1996.

Dan Baird  
Foley, Alabama

The waiting almost caused me a nervous breakdown. I am 62 no insurance of any kind no income of any kind. I am homeless so to speak. I am staying with family. Finally, I received the \$470.00 a month disability. It took forever. I filed way back in 1982. ... The constant waiting for a hearing is heart breaking! You lose hope. You keep hoping today I'll hear something. It doesn't happen. I just gave up. ... Put yourself in our place. The people who suffer because of the waiting, waiting, waiting.

Shirley Young  
Mobile, Alabama

My name is Lisa Littles. I am presently receiving SSI and Medicare. It has been a long hard journey to get to this point. ... I filed an appeal on July 28, 1994. I was granted a hearing before a judge. This hearing was finally set for April 1995. Almost a year after I filed the appeal, the judge gave me a fully favorable decision. By this time I was in a lot of pain and needed to be under a doctor's care and was taking a lot of very expensive medicine. By this time



my husband had divorced me and I was living with my mother and father. This put a great deal of burden upon them. I did not get my first check until January 1996. The Medicare card came about six weeks after that. I feel that I could have received much better care and could have avoided a lot of stress for me as well as my parents, if the system had worked faster. It is a very bad situation to be sick and in pain and have no means to get the medical care that you need.

Lisa Littles  
Loxley, Alabama

I lived off the generosity of family and friends. I sold anything of value to survive. This went on for two years. By this time, I was in debt, even borrowing \$2500.00 from friends so I could have tests run at the University of South Alabama Medical Center. I understand that a great number of people apply for disability benefits. Some deserving, some not and that all claims need to be evaluated thoroughly. Mobile County needs help in solving the problem of time.

Sharon Gayle Akridge  
Bayou La Batre, Alabama

John had a hearing before an administrative law judge at the court of Hearings and Appeals in Mobile, AL on July 18, 1995. This took less than 5 minutes. The judge told John that he was approving his claim for disability benefits. We didn't receive the official decision in writing until October, 1995. It hadn't been signed until September 30, 1995. John received his first check December 1, 1995. He still hasn't received all of the money owed to him. It has been 33 months since John first applied for Social Security. In the time it has taken we have lost just about everything we own. We've lost our home, our car, even our credit rating has been destroyed so we will probably never be able to own our own home again. John's illness has been devastating to our family and the hardships we have had to endure have almost been unbearable. It shouldn't take so long to settle a claim of this nature. We are ready to rebuild our lives.

Mrs. Karen H. Burge  
Citronelle, Alabama

In early 1990 I applied for benefits because I was hospitalized for stroke and cancer unable to work so I applied. After hearing, 18 months, past without any word from them even with an attorney. In 1995, I received my first benefit check.

Seymour Gamble  
Prichard, Alabama

I don't know what to do anymore. I am in constant pain, day and night. I live in a little shack by myself, no furniture, no phone. Friends put me some gas butane in the tank which will last a couple more days. My electricity will be disconnected any day. I sleep on the floor on a strip of foam. Friends have help me with utilities, but friends can only do so much. I am deeply in debt. One day they will find me dead and all my worries will be done.

Ronnie R. Seaman  
Grand Bay, Alabama

I became disabled in August, 1991. I had breast cancer surgery which affected me both physically and mentally. The mental problems the OHA caused me will haunt me the rest of my life. The cancer surgery was, and is so hard to cope with and when I knew not what to do other than apply for SSI for help little did I know I would be put through years of hell. I spent time in a state mental facility because of all the stress they were putting me threw. I became very suicidal and just wanted out because the OHA kept dragging their feet not worrying about whether I had shelter or food. I had to sell my mobile home and car and move in with my parents because I could not pay the bills that go with having a home and I needed money for medical care and lots of medication. I get upset just thinking about it. It is time someone takes a drastic step concerning this very important, sad issue. I could write a book on all the terrible things I had to be put threw just because I needed help. Yes, it is high time Members of Congress learn what is going on and the suffering of many sad cases. My prayers go out to them. I hope I can help make it better for everyone needing help before it is too late.

Betty Flaherty  
Brewton, Alabama

On October, 1993 with the help of my family I filed for my Disability Benefits. I did not receive them until two (2) years later in 1995. These were the longest and hardest two (2) years of my life. They were the worst hardships in my life financially. I had no income and was solely dependent on my family, church, and some public assistance. All of these combined were just enough to have a meager life. My family had to take from their income to help me keep lights, gas, water, food, pressing necessary medical needs, transportation, medicines, and personal needs. Other times I just plain had to suffer and do without. All my bills went unpaid, being constantly called by creditors, begging people to be understanding and fair with me until something could be done about my situation.

But the worse damage was done mentally and emotionally to me and my family. My disability is mental illness and this long period with no income added to my depression, distress and lack of self worth. Every week the crises in my life had to be dealt with by a counselor. It was a very scary and insecure time in my life. And my family because they are so caring and loving suffered right along with me.

But because of the backlog of cases, they just set there unread, unevaluated. This is

what made the process so cruel. It is my sincere hope and prayer that Congress will speedily deal with this arduous backlog of problems to relieve others of their long delays.

Barbara Crawford Durgin  
Montrose, AL

I wonder why I am alive. I can't work & provide for myself & my children and am constantly in pain & depressed. I think if I am turned down again I will end this unending misery & my burden of care on others. I cannot help the fact that I am young or that little of my chronic illness is evident from the outside. All I know is that I am incurably ill and unable to get any help from the agency I spent all my working years paying into.

Charlotte De'Fee  
East Brewton, AL

I was very lost and frustrated about the time it took to process my disability benefit claims with SS. After approximately 3 years a decision was made and I was denied. Of course, I had to appeal and was sent to more doctors for justification or approval for my conditions. This took several months also and added to the sense of hopelessness even more. Finally a SS doctor confirmed what I had already presented to those people and a year later I was approved for benefits. Several more months and much correspondence later someone sent a letter advising me of how much I would receive. I sincerely believe the time it takes to get help from SS is borderline criminal. Maybe a little drastic to say criminal, but very unbelievable at any standard of proficiency or sense of decency.

Allan J. Butler, Sr.  
Theodore, AL

I am at the end of the rope, so to speak, and do not know what else I can do. I desperately need help from the Social Security Department but they just don't respond to anyone or anything it seems but to humiliate you....

I am endeavoring at the present to pay off emergency room bills to three different hospitals and several doctors, who call me often wanting the balance....

I am writing concerning my disability and the hardship it has caused me over the last 5 1/2 years since I became disabled in 1991. I have continuously had to appeal for disability and try to get some action taken concerning this matter, as I not only could not work but medical bills and other expenses have piled up over this period of time and put me under great stress as well as my family

...my case went before the Administrative Law Judge on February 8, 1996 and was approved.

I am writing this in hopes that it will help someone in the future not to have to go through

the hardships and mental stress that being unable to work and no income has put me and my family through.

Carson D. Melton  
Frisco City, AL

Since October of 1995, my husband's file has been at the Office of Hearings and Appeals awaiting a hearing before the Administrative Law Judge. I went to the OHA two weeks ago to review my husbands file. I was literally taken aback when I saw the abundance of files in that office. Congressman Callahan, there were files stacked from the floor half way up the walls, everywhere you looked. There were probably ten desks (that I could see) with files piled so high no one could have used the desks. I just could not believe it! I recently read in the Mobile Press Register that the Mobile OHA was backlogged some 4,500 cases.

My seventy five year old mother-in-law has been our sole means of support for the past two years. She is taking from what was supposed to be her retirement nest to provide us with housing and the basic necessities of life. She cannot continue to do this forever. I have been unable to work during this long battle with my husband's illness because I am all that he has. The doctors advised me early into this illness that I need not be far away from my husband due to his extreme suicidal ideations. My husband cannot drive because of horrendous side effects of his medication. Therefore, it is left up to me to take him to his weekly sessions with his therapists and to his appointments with his psychiatrist.

For the first time in both of our lives, we are destitute. You see, the sad part is, my husband would love nothing more than to be able to work a job and provide for his family like any "normal" man. But sadly, my husband is not normal and may never be.

Even as I write tonight, my husband is suffering from serious depression. He does not answer the telephone, answer the door or have any contact with people. Congressman Callahan, I fear that if things do not start looking up soon, he could be facing another hospitalization.

How much longer are we expected to endure this hardship that we feel our own government has placed upon us?

How much longer can a seventy-five year old woman continue to provide for her son and his wife?

The Social Security Administration has put us through countless tasks to prove an illness that is well documented. Even his doctors cannot understand what is holding this up.

In closing, I would like to say that if the Social Security Administration is going to deny claims for disability when someone such as my husband clearly meets their criteria, then why write guidelines listing this criteria? We do not even have a full or part-time Administrative Law Judge here in Mobile. I was told that my husband's case would be heard when the ALJ comes back to Mobile sometime in April. As you can see, April is almost over and I have heard nothing. I was also told by an employee at the OHA that getting your Legislators involved would not help because they have no authority.

Mrs. Robert E. Fendley  
Mobile, AL

In March of 1994 she [my wife] applied for Social Security Disability. What followed was one of the most frustrating, confusing and lengthy ordeals I have ever had to contend with. It appears that the review procedures currently being utilized by the Social Security Administration has several levels of review, with each level producing overlap and duplication of information, records and evaluations, previously completed by prior reviews.

This letter is not to suggest that the Mobile Office is full of incompetent people in responsible positions, but it is to suggest the office has serious problems in the review process that need immediate attention. The facts and statistics speak for themselves. It is my understanding that the national average for a disability claim review is approximately 349 days, which in itself is entirely too long to meet the goals and objectives for which the program was intended. The MOBILE OFFICE is reported to have an average time greatly exceeding the national average. In fact, the MOBILE OFFICE average claim review period is approximately 517 days. This is 168 days or approximately 6 months longer than the national average. This translates to an average review time of approximately 50% over the national average. In the case of my wife's disability claim the review process exceeded 575 days even with physician records and hospital records being readily available. Although she was approved for disability benefits in Nov. of 1995, these benefits were made retroactive back to Dec. of 1993.

To date, 750 days after the review process began these retroactive benefits have not been paid....

I absolutely refuse to believe, based on the above statistics, that any employee or Appeals Judge in the Mobile Office is 50% inferior to the national average. Therefore, the bottleneck in the process must be the process itself. It appears that when adequate, reliable and sufficient information is readily available that the process could be shortened; thus, not only increasing production of the Mobile Office but equally reducing the hardship on the person and family of the applicant.

When illness or disaster strikes, this program which was designed by Congress to assist and provide relief is not meeting this intent in a reasonable time frame. It is my belief that most families, when disability of a bread winner occurs, could survive a short time on their own but not one, two or three years as has been the case in many instances. Many of these people have lost their homes, means of transportation, utilities and even food and medical needs due to the slow action in the Mobile Office.

Congressman Callahan, I not only thank you but urge you to continue your efforts in seeking solutions to the dilemma in the Mobile Office involving hearings and appeals. We all know that the first step to resolving a problem is first to admit that we have a problem. In this case it appears to me that productivity and the needs and intent of the program can be met to a degree by getting more claims to and past the review judges.....But how?

For the Mobile OHA to require a claim review period 50% longer than the national average probably is or should be a great embarrassment to this office itself. The Mobile office should, along with the people of the first district, welcome a Congressional Hearing on OHA activities. I hope with your efforts Congress will see fit to take whatever corrective action is necessary.

Douglas Capps  
Satsuma, AL

If you are a single person with no income 2 years of processing is devastating! It takes 1 ½ to 2 years.

Stress is very bad on a person in pain. It causes the pain to escalate. There were times I did not and could not sleep for 4 to 5 days. The pain, stress, and depression was so bad.

If I did not have children who helped me I would have been another homeless person. They paid my house payment and my car balance. I had to sell things out of my home to pay utilities. I lost my credit with department stores. I begged for help but was turned down.

...I started getting my Social Security Disability. I don't get much. I thank God for what I get. It is terrible what the Alabama Social Security Administration Office of Hearings and Appeals puts a disable person thru.

I understand why some people can't take the stress and commit suicide or lose everything and end up homeless.

Ms. M. E. Fleming  
Mobile, AL

We have been reduced to begging and borrowing to keep him in medicine. We've piled up medical bills over the amount of \$87,000. We owe the drug store. We've begged the doctors and nurses for medicine. We've sold anything worth selling to keep from having to borrow. But we still had to borrow from our kids and family....Everything is falling apart. Our truck needs work and tires. We need a roof on our home. Our heaters froze up. We have had no heat since December, 1995. We ran out of gas to cook with in November of '95. We had to cook on an electric frying pan....We have put our home up for sale. We can't keep it now as we owe so much we will never catch up and do all the repairs that need to be done. We are going to live in a trailer on our children's land in Georgia -- back to begging again.

Mrs. Eddie Corley  
Grand Bay, AL

During the time I was waiting for Social Security, I was a financial burden on my family. My mother loaned me money that she really didn't have to loan to help keep my bills paid. I was told by many people that it took a year or two to get a claim through S.S. They were right two years is a very long time with no income, and it did take a toll on me.

William C. Dixon  
Mobile, Alabama

I've been waiting for a hearing date for 4 months -- am facing the possibility of losing all I've worked for and struggling to pay medical insurance payments monthly. If there is a

reasonable explanation for this ongoing delay when doctors are unquestionably stating 100% disability. I wish someone would explain to me and my bill collectors.

Martha Boiling  
Eight Mile, Alabama

I had to wait over two years before I could get an appointment to appear in front of a judge.

Aynomous

I filed 2 times for my Social Security. They turned me down both times told me to get an attorney then it took me about 13 months to even get one penny from them -- still haven't received my back pay from them. It's been going on 16 months from Dec. 1, 1995 'til April 1996. Also, I have a 15 year old son I was trying to send to school and my wife got sick during August 1995 with cancer. We didn't have not one penny for hospital and doctors' bills and I don't think that they speeded up anything. We're still going through a lot of hardships all those hospital and doctors' bills we can't pay even pay any on them.

Clarence W. Holcomb  
Loxley, Alabama

My case was sent to the (OHA) July of 1994. My hearing was October 29, 1995. During this time the company that holds the mortgage on my home threatened to foreclose because of back insurance. We were living on my wife's SSI check and AFDC total \$600.00 a month, which barely covered our bills. Our car quit working in June of 1995. No money to fix it, no money to get a new one. February 1996 foreclosure notice, our home will be sold on front of court house steps at 11:00, April 9, 1996. Which is today as I write this letter, but we also filed bankruptcy this morning. After the hearing I expected to hear right away but I did not hear until March 29, 1996 that I had a favorable decision. But as of today we still haven't received any money. I got a letter yesterday telling me that I will receive back benefits. All this is very stressful causing more problems than you already have. These are some of the bigger problems I've had. Their are a multitude of other problems.

Raul Carmona  
Millry, Alabama

So many people that have applied for benefits, gets no results or answers because of slow processing, or backlog. I am waiting for an answer and some help I have no income of

my own. No family to help me. Two twin boys 6 years old to take care of. No way to wash clothes, no transportation.

Rebecca Poole  
Chickasaw, Alabama

My wife's income is all we have coming in, and it is in the amount of \$214.00 weekly for 40 hours. We cannot get any assistance, because they base it on the gross, but you don't live on gross, you live on net. I have not worked since June 27, 1995. Thru all of the stress of this situation, and having to keep everything going, my wife has developed medical problems, and under doctor's care. Just what would happen if she gets unable to work? Please tell me why I have to beg, and go to court to try and get what I have worked for all my life, and now I need what is justly mine.

Louis Carniey  
Fairhope, Alabama

I became disabled in April 1994. My hearing was finally in September 1995 but my claim had to be sent to a judge in Charleston, South Carolina! If this had not been done, I guess I would still be waiting for a hearing before a Mobile District Judge. This wait caused me to have a great deal of anxiety and certainly did not help my medical condition.

Sandra Butts  
Mobile, Alabama

It is bad enough to suffer the mental and physical anguish of my health problems and diet alone with the additional stress of having to wait years before getting results from the Mobile Office of Hearings and Appeals. The backlog of cases in this district are such that it has caused unnecessary suffering for myself as well as numerous others who are qualified under legal guidelines to receive their disability benefits. I am a 61 year old female who has worked hard all my life and paid into our system, never dreaming that I would need the benefits for which I have found myself in at this stage of my life. As a result of my numerous health problems, my insurance premiums have increased in 1995 from \$125.00 per month (on me alone) to \$425.00 per month, plus the cost of my many medications I have to have. My husband is already retired and we live on a limited income and the long delays on the OHA hearings I feel are unfair and unnecessary, placing undue financial hardship also. I would not wish these delays on any of you in Congress nor anyone else.

Loretta J. Clark  
Chickasaw, Alabama



It took me almost a year and a half to finally get it going to doctor's and finally having to go to court for it and having to get a lawyer which I couldn't afford then and can't now -- on \$480.00 a month. During my waiting time for it to go threw my poor mother had to try and keep my car payments up among other bills - doctors mostly. She also was on S.S. so it really caused a lot of hardship.

Margaret Carpenter  
Theodore, Alabama

I had received my disability from the place where I worked for one year and 6 months, but it is not enough to live on and keep my home. So I had to file bankruptcy and live from hand to mouth anyway possible to get by. While I had to borrow money for bankruptcy which I still owe. All of this while I am waiting for my disability. I can't even see all my doctors or keep appointments because I am not able to pay them.

Betty McDowell  
Mobile, Alabama

I am writing on behalf of my son, Kenneth Rodney Mixon. He has been denied Social Security Benefits twice, and we requested a Hearing in May 1995. I have been in touch with the Office of Hearings and Appeals and found out it will take 8-9 months before he can have a hearing. Rodney has been without a job since Sept. 1994. I asked the lady at the Office of Hearings and Appeals if there is anyway to speed up the process and she wanted to know if we had a lawyer yet? I told her yes. She said we could also write a hardship letter and maybe that would help too, but it hasn't hastened the process. ... His wife has a job at minimum wages. Without Rodney having an income, they aren't able to pay their monthly bills. ... We (mom and dad) have been helping them pay some of their bills in order to keep them from losing their house. ... Our financial situation isn't the best in the world and with all the stress in my life, I am on the verge of a breakdown. ... We have tried everything possible to help but there is nothing that can be done. We would not be begging for help if there was any other way out.

Sarah Mixon  
Frisco City, Alabama

I'm taking this opportunity to say to your face that Representative Callahan is right when he says something needs to be done in the First District of Alabama.

William Smith  
Eight Mile, Alabama

My family had to endure financial hardship as a result of the long period of waiting for financial assistance. Assistance which I feel was rightly mine having worked since the age of 17 or the 3 years I served in the military and fought in the Korean War. I would like to see steps taken to ensure that people who are entitled to such benefits should be awarded them in a timely manner.

Jack D. Barnette, Sr.  
Calvert, Alabama

In November of 1992 I applied to Social Security to establish my disability with them ... Finally in November 1994, I received a letter from Social Security advising that they would set up an appointment before a judge to determine if I am totally disabled. ... I was finally scheduled to go before Judge Robert S. Habermann on February 23, 1996. At this hearing the Judge ruled me totally disabled. He told me that in 2 weeks I would receive papers showing total disability so that I could file for Medicare. I did not receive these papers in the 2 weeks time allotted. After 3 weeks, on March 15th, I called the OHA. They said my file was still there and had not been processed. I called again April 5th, same story. So as of the date of writing this letter, I have received nothing. I would like to express my concern to Congress of the problems with OHA. This has drag on for 3 years and 3 months and it is still not settled.

Floyd Ziglar  
Codan, Alabama

I had to appear before the Judge on March 26th, 1996, and give him my testimony, which I did. So now I'm waiting yet again for the Judge's decision to see if I get my Disability or denied again. But I was told it could be 3 months to 1 year before I get a decision. This is not right. Why should it take so long for a "Decision" to be made after you've already reached and went to the "Hearing" level? You as members of Congress have the power to help those that are disabled. It shouldn't take 2 years to get disability.

Judy Dickens  
Mobile, Alabama

I believe that the judicial system in this office (OHA) should be investigated for others whose cause is as severe as mine. Despite the fact of my suffering a traumatic neurological illness, I had to suffer severely financially from 1991 to 1995 from heartless, time consuming, unjust practice in this office (OHA).

Shirley P. Matthews  
Mobile, Alabama

I can not sleep good and have uncontrollable crying. I lost everything in life that I worked for and feel that I deserve help.

Kenneth Blackmon  
Mobile, Alabama

My husband's hearing with the Office of Hearings and Appeals was in September 1995, and at that time, Judge Irwin ruled him totally disabled. At this point, it took Judge Irwin's office until December 1995 to get the motion typed up! ... My husband finally got his first check in March 1996.

Mrs. Eddie Lee Walker  
Magnolia Springs, Alabama

When I got out the hospital, I became homeless with no way to pay my rent forcing me to go from friend to friends house. My car was repoed without work. In short, my life fell apart with only out of town family to help me. ... Mr. Callahan, it took 3 years before I got any kind of help. I was forced to work. When I did find work the Social Security said that I showed I could work and didn't need any help!!!

Philip M. Bell  
Mobile, Alabama

I applied in Nov. 1993. ... Finally its ready to go before OHA but there is a huge backlog of cases so it sits their. ... On Dec. 5 1995, we finally got an appointment with OHA. We went before the Judge with 29 different diagnosis and medical problems. After we had discussed three of these the Judge granted me my disability. On Feb. 5 1996 I received a check.

Cathy L. Burrus  
Magnolia Springs, Alabama

I have waited for a hearing for about a year if not over, on two different accounts. I recently attended my hearing on Feb. 5th 1996. I continue to wait for a decision to be made. While attending the hearing, Judge Mason was extremely rude to me. I felt as though I was on trial for murder.

Horace W. Clark  
Bay Minette, Alabama

If it haven't been for you I don't think I would have made it over the years. I have suffered trying to make ends meet.

Eva Gray Jones  
McIntosh, Alabama

I was off work one year before anything was done for me and 18 months before I received Medicare. Needless to say, my finances had gotten in bad shape, I was desperate. ... We should not have to hire a lawyer or even go through you or so before you receive monies you had paid in.

Joe Ann Shehan  
Bay Minette, Alabama

I first applied in 1992, was turned down, applied again, and a third time! ... After another year, I had my hearing, and the months rolled by, I heard nothing, after almost another year. ... I received a letter stating I had been awarded disability benefits, and disability insurance back to Sept. 9, 1990. ... If this process had not taken so long, I would not have all this medical bills from trying to work and failing.

Julia Montgomery  
Foley, Alabama

Trying to get my children on Social Security has been pure living hell. ... On July 94 I began my youngest son's David's case and in November 94 I began Christopher's. I have had to take time off from work and take my children to doctors and hearings. ... Finally I had to get attorneys to take my cases which have just recently had Chris's hearing and David's will be the 24th of this month nearly two years after starting these procedures.

James Trosclair  
Mobile, Alabama

It should certainly not take this long for a decision. I have been told that it could take a year to 18 months for a decision. I filed on Aug. 31, 1995.

Carl Clark  
Bayou la Batre, Alabama

I filled out an application for disability over a year ago. I did go before the Office of

Hearings and Appeals Judge on Dec. 13 - 95 but the Judge said he will wait to Jan. 9 - 96 for my other doctor's appointment to decide whether to approve or disapprove the disability.

Alfred R. Hadley  
Bay Minette, Alabama

I have been waiting almost 2 years for my SSI benefits with medical papers from 2 doctors saying that I am disabled. Have been before the judge and I am still waiting. The hospital and clinic has already turned my bills over to collections and threatening to sue me. The clinic where I go has stopped getting my medicine for me or helping me at all. I can't keep borrowing from family and can't get it any other way.

Clarence E. Webb, Jr.  
Prichard, Alabama

I was diagnosed lupus in November of 1993 which I began to file for disability. ... I feel that the process is a very long line of red tape a sick person has to go through to receive help. In the process of waiting for an answer I almost lost everything my parents worked hard to provide for me. My father passed in 1994 which made it even harder for me whereas he was the bread winner of my family. I almost lost my medical insurance that I needed to keep for my expensive medication and chemotherapy treatment. I think it is awful that I had to pay a lawyer to present my case. When I began to receive SS disability I had a lot of back bills on top of that I had to pay a lawyer when that money could have helped me. I began receiving SS disability in Dec. of 1995.

Javana Funderburk  
Prichard, Alabama

I am writing now to go before the appeal judge. I have worked since I was nine years old I am now 50. This is a very humiliating experience for me. I realize that we should be screened very closely. But there should be a better system.

Doris Miller  
Mobile, Alabama

It took me 16-1/2 months to get on disability due to the tremendous back log of cases in the Mobile OHA. I lost almost everything I had and because of all the stress I've been under

I've also become a diabetic along with the other problems I have. All of this was unnecessary and uncalled for for all the stress I've endured.

George F Sheffield  
Chickasaw, Alabama

If I could hold down a job I would much rather do so then to not have enough money to get by on. My house notes always very late and that cost me more money. My husband and I have horrible credit mostly due to non-payment and slow payment. My husband has Hodgkins disease he is in remission he has been on his job for 20 years. If he comes out of remission, which is possible at anytime, I guess we will be homeless.

Mayellia Moore  
Whistler, Alabama

The process of Social Security disability determination is far too lengthy and complex. I submitted an application in November 1995 and didn't have a hearing until February 12, 1996. ... A judge was sent from Columbus, SC to hear the case. However, I had endured a great deal of hardship before getting any relief. ... I have yet to receive the final disposition.

Juanita Byrd  
Chunchula, Alabama

I filed for my Social Security disability in 1993 it went through finally, after going through the Administrative Law Judge Haberman in December 1995. Yes, it took that long for me to get it started. I feel that was too long a time. ... I needed that help badly, so I could get the medical attention, and medication I so desperately needed. I thank God it finally went through. I have suffered with each pain. I cry from it. Having Dr. and hospital bills coming to me from every direction and being told when I come to see the doctor I had to have money, I borrowed money for Doctors and medication. ... I lost my home, I've went through some mighty bad times and I suffer from great pain every day ... There was no need for my disability to take years to get it. ... Medical records speak for themselves. To be turned down so many times and going through the appeals and finally hearing -- and I needed the help then and there, but it took years, me suffering like I do with this pain.

Rollie Mason  
Chickasaw, Alabama

I have several complaints about the process, besides the waiting. I waited a year and 2-3 months for the first hearing. Three days before the hearing my lawyer wanted to postpone the

hearing due to mental stress he was under. My wife and I decided we could not afford to have it put off any longer. We notified the lawyer and the Office of Hearings and Appeals that I would be representing myself. During the hearing the Judge said he would like to reschedule my hearing because he would like to have a "vocational expert" present to evaluate my situation. He also advised me that it would be for my best interest to take this time to find an attorney to represent me. While leaving the office a woman who was present at my hearing gave me a piece of paper with an attorney's name and phone number on it. Is Social Security hearings "set up" so you must have an attorney? The handout clearly states you may represent yourself. Rescheduling my hearing (second) took several months and I hired another lawyer. Not the lawyer the woman recommended. The "vocational expert" was present and after the presentation the Judge said he would make his decision within ten days. It has now been 78 days and counting. This has been a very trying experience. It is hard to live off one salary for a family of six. My children have even become discouraged.

Teddy Boyington  
Bay Minette, Alabama

My experience with the Social Security Administration in Mobile Alabama has been an experience that I will never forget. It's taking me a little over two years to get the proper financial help for my great nephew Mark D. Lamar Moore.

Annie Howell  
Prichard, Alabama

I filed for my disability Social Security on April 10, 1995 and was denied. My attorney filed for a hearing before an Administrative Law Judge on August 25, 1995. My attorney has repeatedly tried to get a hearing date set at the Social Security office of Hearings and Appeals in the Mobile, Alabama office to no avail! They will not give him an answer about when a date might be given. I feel this is very poor treatment for people who have worked and paid in their money over the years and yet when they become disabled they can not receive the help they need.

Kathryn Morris  
Eight Mile, Alabama

I filed for SSI in October of 1993. I was turned down. They said I wasn't eligible. I then got Mr. Gil Laden to help refile for me. He fought for me until September of 1995. We went in front of the judge on Sept. 6, 1995. The judge said he would let us know something within the next few weeks. I still had not heard from them until I contacted you, Mr. Callahan.

After that it wasn't but a couple weeks and they finally sent me the letter that I had been approved. I received my first check in March of 1996.

Elaine Smith  
 Robertsedale, Alabama

My husband is totally disabled with a broken back and receives Social Security and as well as a retirement check from his place of employment. At the time of my injury I was the bread winner and not on fixed income. ... When we needed extra money I would work over time to help pay for medicine or other bills that we had to pay. After I was injured I did not have enough sick days or vacation time for more than a week when I stopped work. We had just purchased a car and a truck and had house notes that had to be paid. I had disability insurance but it would not take effect until I had been disabled for three months. So I decided to call Social Security in September 1994 and see if I could get temporary help until I could go back to work. ... I employed a local lawyer with the help of my disability insurance company to represent me during the hearing. He told me not to be surprised if it took at least six months for the hearing because of the back log. ... Finally by the end of August 1995, I received a letter from Social Security approving my application and enclosing a check for the back pay. ... I would like to say that no one should be put through an ordeal such as this. When one is ill or injured enough to apply for Social Security this process only adds more stress to the applicant. Some days I was so depressed, knowing that I would never work as an OR nurse again, or be active in the community that I did not want to leave the bed. When I received the letters saying I could work and I knew that I couldn't even go to the grocery store to buy food I became even more depressed. ... My experience was the most grueling and degrading experience that I have ever had this side of an IRS audit. ... The hearings should be timely and reviewed within two months from the time of application. In my case there were three months that we had to live in another county in order to reduce costs and pay bills to prevent bankruptcy. If I had not had disability insurance, my husband and I would have lost everything because of the "game" that is played with the Social Security program.

Carolyn Matthews  
 Saraland, Alabama

The original claim for disability was in 1983. ... We had applied for social security disability and were denied. Our right to convert our medical insurance to an individual plan was offered; however, the rate was \$400 monthly. We had no other income; therefore, we were not able to have the insurance. In 1986 I had open heart surgery with no insurance, we were forced into bankruptcy because of all the medical charges for my illness. Otis has had cancer, Lymphoma in 1993, Congestive Heart Failure in 1995 and he is still not approved for his



disability. We have lived on income below poverty level since 1983. We would have had a much easier life, if we had been able to have what was and is due us: Otis' disability from social security.

Otis and Rachell Smith  
Spanish Fort, Alabama

It was denied on September 8th 1995. In September I file a third claim to have a hearing before a trial judge. At this time I learned it would take at least twelve months before my hearing. October 13th 1995, I received a letter stating my request. I have had no contact with SSI since.

Gerald Wilson  
Mobile, Alabama

I asked for a hearing on October 13, 1994. I still haven't had my hearing. I was told I should have my hearing in January or February. It has come and gone and still no hearing. I have been waiting over two years for my disability payments to start that I need so badly to pay my bills.

Joyce Counselman  
Coffeville, Alabama

It took almost 2 years to get any money. Lucky I had some savings to get me through.

William Byrd  
McInstosh, Alabama

I am a 65 year old attorney...I conduct a general practice, some involves representing and working with people who are attempting to establish Social Security or SSI claims. I have followed serveral claims to fruition, but they almost always take a long time, as much as four years. It is frustrating to not be able to pay bills, to have medical bill collectors threatening, to stand in danger of losing your home, to beg rides from friends and relatives, to take some menial job and not be able to handle it, and then get sneered at by the community as being too sorry to work.

Robert F. Ware, Jr.  
Millry, Alabama

I would like to say that Social Security does have a problem. One problem is that I do not feel they are too strict, but I do feel they are entirely too slow.

Rev. Edward McMillian  
Bay Minette, Alabama

I have been trying since Nov. 16, 1993 to get my disability started but to no avail.

Betty Lowry  
Bay Minette, Alabama

Since 10/03/95 I have had no sources of income. My family and I have had to receive food stamp benefits and my gracious family have tried to help me in any way they can. This is a difficult and trial time in my life being that I am a single father with a daughter that I support solely and completely. I'm sure that I am not the only case of this sort you have heard before, but maybe you can help myself or someone else whom is walking in my shoes. I would not wish these circumstances upon not even my worst enemy.

Tommy H. Taylor  
Mt. Vernon, Alabama

In October, 1994, my husband was terminated from his job of 20 years. Our health insurance was ceased because we could not pay \$500.00 per month for health insurance; therefore, my husband had a nervous breakdown. We lost everything we have. We then moved here to Wilmer, Alabama, into the house with his brother and wife. I then had my Social Security file changed to Mobile. I finally got to go before the Administrative Law Judge Sept. 14, 1995. Dec. 1, 1995, I received notice that the Administrative Law Judge found in my favor and I was awarded my disability. TRY LIVING LIKE I HAVE SINCE 1993 - IT IS HELL, DEPRESSING AND ANNOYING. We now have no income but my disability of \$621.00. See how anyone of you can live like this. Something definitely needs to be done so other people don't suffer as we have.

Linda Hurst  
Wilmer, Alabama

In April, 1994, I made my first application for disability from Social Security and was denied. Two months later, I reapplied and again was refused. Now it is April, 1996, and I'm still waiting. We had an appointment scheduled for April 9, 1996, for a hearing before the Honorable Judge Irwin Coleman, Jr. for a review of my records and a ruling for disability. However, because I was in the hospital, the hearing was postponed for another 3-4 weeks. It has

been a long two years and I hope that this will help bring about a swift and speedy conclusion to not only my case, but the cases of others are waiting to hear from the Office of Hearings and Appeals.

Cynthia M. Robinson  
Foley, Alabama

I filed for disability the first time on July 23, 1992. I was declined. I then refiled again in an appeal on Sept. 8, 1992. Finally, I received a court date with Administrative Law Judge William L. Ragland on Aug. 25, 1993. And this is his findings; that I was "disabled" with in the meaning of the Social Security Act, since June 8, 1992. I did not know until Jan. 3, 1994 how much I would receive or how much back pay I would get. But remember, we the taxpayers helped pay your way, so think about how it would feel if we decided you were "overpaid" and you didn't even know what your pay was based on. Or that you had to go to a selected doctor you've never seen, so he can determine your health and whether or not you're eligible to receive the Social Security part of your disability.

Marion Turner  
Wagarville, Alabama

In the initial stage of filing for Social Security I encountered a case worker who told me that I would be denied on my first attempt. I took this to be just someone with an attitude. So I asked "How do you know without having seen my application?" Her reply was "Everybody gets denied the first try regardless of the qualifications." After three years and numerous meetings, filing papers and red tape I realize she was only offering a warning of what I was about to experience. During the appeal process things become so complicated it requires an attorney to continue the steps required to get through the remaining portions of the system. At this point the process really bogs down. The attorneys usually work on percentages which makes it beneficial to prolong the case. But, the one who needs immediate attention is left to survive by means of trial and error in achieving help through other programs. With little knowledge of programs willing to lend assistance it becomes expensive and difficult while suffering physical and financial obstacles never before imaginable. In addition the ridicule, insults and dehumanizing treatment received only adds to the physical and mental torment already being suffered. There is no pain medication for the hurt that is felt when you try to explain to a son in high school, who takes money he has earned and buys food rather than a class ring for graduation...or a 12 year old daughter asked what I said to the man at the door in an argument that made him shut off the electricity (for the third time). After loosing all my personal property I have been humbled to acceptance of a life with very little hope of personal achievement. But I would like my children

to have an opportunity to live a respectable childhood. I ask only that I be allowed to give them the bare essentials until they become self-reliant. After three years of waiting they seem to be disappointed yet submitted to living without things once taken for granted.

Ronnie Taylor  
Semmes, Alabama

After three years and many doctors I finally got a hearing and I was approved. Although I was approved in December, 1995, I did not receive a check until March of 1996. I'm thankful I had a little money saved and I had some helpful children or me and the 12 year old boy would have been out on the street. I hope you will see this is a big burden on married women with children or men too.

George Taylor  
Irvington, Alabama

You wanted to know how I felt about the Social Security Administration. Those people put my family and I through HELL for over a year. No my family had to experience some time that were hard. My wife and I almost came to a divorce at one time during this crisis. There were times where we didn't know how to pay the light bill. But there would be a church or community action would help. If not for those people I don't know how my family and I made it through Hell and back..without the help from these people. I can say it was a experience that I'll never forget...

Tommy Dale Bryant, Sr.  
Bay Minette, Alabama

I have been off for 2 years - no income. My papers have been at the OHA since December 1994, that is 17 months. I have sold everything we got in last 25 years. Stress, depression, uclers, mygrain headache, all from wait. My wife work as a waitress, 65-75 hours a week to pay some of the bills. I have mortgage house two times, borrow \$21,000 in last two years to survive. The situation destroys families, it doesn't work.

Jerry L. Hembree  
Citronelle, Alabama

I applied October 1993 and went before Judge Coleman in Evergreen, Alabama, on Jan. 22, 1996. I was awarded my S.S. but here it is mid April and I still haven't received my check. I really think this is so unfair. I am now 59 years old. No job, the only income I have is \$230.00 a month from S.S. from my ex-husband for taking care of our child. But do they not realize the medicine and other expenses you have and clothing, living expenses, etc. How long do they

have to wait to see if you are disable. I have been waiting approx. 28 months. I would just like to know why this takes so long. And why we the poor people should have to suffer for what reason, I don't know. I would have to write a book on how angry I have been over the past 2 ½ years.

Geraldine Schaefer  
Brewton, Alabama

It's taken two more years before I could get a fair hearing about that time I lost all my furniture, car. Everything I had to apply for Chapter 13 for help to keep from losing the rest of my personal belongings. Congressman I do not think is fair. With people like myself, work very hard and something happened to them, they have to wait so long to get help.

Leonard C. Greene  
Mobile, Alabama

This is the second time I have been before the Judge. It took 18 months just to get a court date (August 17, 1995). I just don't understand why it's taking so long. I'm so tired of suffering. I need to be under a doctor's care, but their is just no money and I'm unable to work.

I have been told I must leave the apartment I have been sharing with my boyfriend, who has been my sole support, at a near date. I have no source of income and no family in Mobile I can turn to for assistance. I have furniture in my boyfriend's apartment and cannot go to live at the Salvation Army because I have no place to store it.

I have medical debts of approximately \$21,000.00 for which I am being hounded by collection agencies. This, coupled with my continuing bad health, has caused my boyfriend to turn against me. I am suffering extreme distress over this situation.

I will soon be homeless with no money to provide myself with housing, food or medical care.

Vickie James  
Biloxi, MS

I appealed again to go before a Judge. I have been waiting for two years now. I still have not got a date for court.

Judy Hutchinson  
Whatley, AL

I was told in early January, 1996, that Judge Joyner has made a decision on that, but as of yet I do not know anything. I have called several times asking about the decision. They tell me that it is in the writing component.

Since my hearing with Judge Joyner, our income has drastically changed again. My husband has not received any Workman's Compensation since February 9, 1996. We have no income.

Patricia Walker  
Bay Minette, AL

I have not been able to work at all since Oct. of 94. I do not have any financial resources of my own. I filed bankruptcy in 1994.

If not for my church, friends & family, I would have been put out of my mobile home. I would not be able to buy medicine or pay my utilities, health insurance, or phone. My prescription drug bill alone comes to over \$1000.00 a month, not including my immoglobin infusions.

Except for food stamps I have not received any aid from state or federal agencies (except FEMA). On Feb 27, 1996 I appeared before Judge Ragland for an official hearing of my case. That was six weeks ago today. I don't know even if I'm going to receive my disability because as far as I know Judge Ragland has not ruled on my case.

Gail McInnish  
Monroeville, AL

In June, 1991, I applied for Social Security Disability. I was denied three times and then I got an attorney. He appealed and had a hearing in Feb. 1992. I went through a tremendous amount of pain & depression.

Betty Jernigan  
Summerdale, AL

I requested a hearing before the Administrative Law Judge, in March 1993 they granted my request. In May, 1994, I went before the Judge and within 15 min. I was granted Social Security disability. I did not receive any money until October of 1994. Everytime we were asked for additional information, we did our part to make sure they got the information right away. When we called to check on the status they would always say they had not gotten the information or needed more.

In the 3 years and 10 mo. it took me to get Social Security we had to use all our earnings (also use our IRA which we were penalized for). In the last 6 months had to

borrow money. In April 1994 I had a heart attack and I will always say it was from the stress I had to endure trying to get Social Security.

R. M. Williams, Jr.  
Theodore, AL

When we went to court, the judge told us he would approve my husband's case, but when it got to his desk, he denied it. We are now in the process of appeal. These people do not seem to understand as the years go by my husband is much worse now than when he applied. Mostly because he has no medical insurance. Therefore, he doesn't see a doctor for his ailments.

When my husband filed for Social Security, our home was paid for - now it has two mortgages on it. We are under a great strain and trying our best to hold on. Friends and relatives have been a blessing but they have families too.

Mrs. Robert New, Sr.  
Jackson, AL

I, Shirley C. Hudson, would like Congress to know it took me 18 months before I was approved for disability. When your doctor writes that you are not able to maintain any kind of job ever that should be enough. With all the delays I was given I stayed very depressed. It didn't make my condition any better. I owe a lot to Representative Callahan and the many prayers that were said for me. I feel what I was put through was pure hell for me. I hope something can be done so other people like me will not go through what I did. I had many nights I could not sleep because of what I went through. I hope you or none of your families go through the hell I did. If it was not for my family and prayers I would have lost my mind.

Shirley C. Hudson  
Mobile, Alabama

Here it is, three (3) years after filing for my Social Security Disability and I'm still waiting by the phone daily to hear something. I filed for a hearing October 7, 1994...and the hearing was not set until November 28, 1995, almost 14 months later. The hearing was rescheduled and was supposed to be set within the next 60 days. It was set for March 8, 1996. Another evaluation was requested and was to be set up immediately, the results faxed to the judge and a decision made. The evaluation was set up and made March 28, 1996. I am still waiting for the determination of my life, and it is my life.

Through the entire 3 years, I have been manipulated and ignored. This is my life these people are playing with, and it is so apparent that they do not care.

The majority of the people working in the Social Security System are by far the rudest, most dishonest, and manipulative people that I have run across in my entire 49 years on the earth, and I've worked in and for the Mobile County Jail System!

To prove my point, my last appointment for evaluation by a Social Security doctor was on Thursday, March 28, 1996 at 8:30 a.m. My mother died Wednesday, March 27, 1996 at 8:05 p.m., and I know better than to cancel the appointment because it would have been used for an excuse to drop my claim, or I would have had to wait another 6 months for an appointment. Sad, but very true.

My appointments have been canceled without reason and stated they couldn't be set up again for several months. There is no excuse for this three (3) year wait, except for people who get paid regardless of their work production and it is very obvious that if the poor people who have applied keep being put off and their life put on permanent hold, they will give up and become yet another street person. This is truly sad.

Cynthia Thomas  
Mobile, AL

From April, 1993, until July 20, 1995, when I finally got my hearing which lasted about 15 minutes and then another 4 months before I got my first monthly check. In the meantime the mortgage bank was giving me a hard time about my late house payments.

But Congressman Callahan, it should not take 2 years or better to get a 15 minute hearing when your doctors wrote letter after letter that you are not able to work.

Felton J. Roberts  
Bay Minette, AL

I understand the purpose of the session is to discuss the lengthy, agonizing process of determining social security disability eligibility for applicants. Wherein I have not come to the point where I would personally have to apply for these benefits. I have been very involved in assisting several relatives and acquaintances with their applications. I can truthfully state that I would never want to wear their shoes. Many of these people suffer both their physical and mental defects already, then have to endure the emotional trauma which is secondary to the other problems. They are unable to work now, although they've worked and given the best of their years to being self-supportive and paying into a system which almost causes them to self-destruct. While the SS Act indicates an individual must be disabled and not working twelve consecutive months, many people try time and time again to go back to work, even against doctors advice, because they can't make it without an income. Others just can't go back to work, then they lie around and wallow in grief, scared to death of losing their homes, cars, utilities



being disconnected; wives and/or husbands. and children eating poorly, and the social situation goes on and on. There are many heart-sickening scenarios that can be described. The Congress couldn't meet long enough to hear one calamity after another unfold before them.

Yolanda W. Wright  
Churchula, AL

I finally got my appeal hearing after about 2 years. When my day arrived and I got there my name was called and we went into the court chambers. The Judge started asking me things and explain things. I was asked to go back out front and they called a black lady in and heard her case first. To me that was discrimination but I let it go. They came out and the lawyer was telling her she would get full benefits. They called me back in and when I was finished they told me the Judge would go over my case and I would be notified by mail. Why did she get an answer that day and I had to wait months for an answer.

Gracie Peek  
Chickasaw, AL

This concerns a waiver of Medicare claim that dates back to December, 1991....I have appeared before Judge Smith not once as indicated by the file, but four times.

This is a very involved case and if Judge Smith had gone thru the proper procedures this would have been settled long ago.

As I have said I have had four notices for a hearing date and I have appeared for each one fully prepared to present my case. I arrived each time without an attorney because I am capable of representing myself. The law clearly states that I may have a representative not that I must have one.

All four times Judge Smith refused to allow me to give any testimony or represent myself. In the decision dated December 12, 1995, he said he based his decision on testimony given and there was none. Each session is recorded and if the records were checked, the records would hear me out, nothing was recorded.

To give you some idea of how this went: The last hearing I appeared for was on January 20, 1995. I again came alone because that was my privilege. Judge Smith saw I was again alone and he asked me two questions -- How old are you and how much education do you have. When I answered he then told me to leave. I said first I wanted to read something and without giving him time to say anything I proceeded to read 20 CFR 404.508 and 404.509. (These are covered in paragraph 4, page 2 of Judge Smith's decision). I then told him if the decision he would make would be based on these two that I would hope he would make a favorable decision. By this time he was furious and he told me again to leave. I was in the courtroom a total of 6 minutes.

There is no question that I have not been given due process and that I have been harassed to the extent by Judge Smith. No one should ever again have to go thru what I have with him again. I will request that if my case has to be returned to an administrative law judge not Judge Smith but someone who will preside by the letter of the law and allow me my day in court. I am

totally exhausted with this and there is no excuse for it going on this long.

Each time I appeared before Judge Smith I had a written statement, mainly for me to refer to. But I also made a copy for Judge Smith so he might refer to it while making his decision. Each time I said I had the statement and he asked me to leave. The 2nd and 3rd times I appeared I was in the courtroom less than 15 minutes.

Dorothy (Dot) Owen  
Mobile, AL

While I appreciate all the assistance you have given on my behalf, I feel the Congress needs to know the length of time taken in getting through OHA due to the tremendous backlog of Social Security applicants.

I am without any means of financial or medical support, and need assistance, not delays. Please let my voice be heard in Washington before other Members of the Congress.

Mary Williams  
Mobile, AL

I filed for my disability benefits January 9, 1995. I had my hearing on February 2, 1996 and was approved my disability. They told me I would have to wait four to six months before I would hear from my claim, due to such a large backlog of cases at the Office of Hearings and Appeals.

This is a long time to have to wait for my benefits to begin.

Marcia Echols  
Jackson, AL

I have had no income for over a year and now I have practically nothing left. I have sold my furniture, clothes, car, and practically everything else. I worked 30 years to pay the light bill, get medicine, and get food. My daughter who was a senior in high school had to drop out because I couldn't afford to send her.

My doctor has started giving me a new medicine that cost \$254.00 a month. I will not be able to buy it even though it seems to make me feel better.

I called to see if there was anyway I might could get a court date soon because I need to buy medicine. I was told the only way I could get a court date sooner was foreclosure or death.

Margaret Hadley  
Bay Minette, AL 36507

It took me two years to get any financial help. My mother took care of me and all my needs during this time. I find it very unfair that people have to wait so long to receive any help.

Cynthia Brown  
Atmore, AL

June 28, 1994, I filed for a hearing with the Administrative Law Judge. The hearing was set for June 22, 1995. I then get his answer on December 13, 1995. This whole process took from 1st filing August 16, 1993 until December 13, 1995.

Wilbur Brooks  
Frisco City, AL

I filed for my Social Security disability February 27, 1995....

I was denied my disability April 28, 1995. I ask for a reconsideration May 8, 1995, and was turned down June 16, 1995. I then requested a hearing before an administrative law judge. I got a notice for my hearing for April 16, 1996. This is how long it has taken me. This makes it very hard on people when you have been used to a two paycheck income. If I hadn't had my profit sharing from my job we would have lost everything we had and now it is gone. I also lost part of my profit sharing because of early withdrawals.

Betty Jean Nettles  
Franklin, AL

My Social Security disability claim was initially turned down, but an appeal hearing won a bench decision from Judge James D. Smith in my favor on December 18, 1992. I realize that some time-consuming procedures are necessary, but a full six months elapsed before Social Security officially acknowledged my eligibility in a letter dated June 18, 1993. During this time I had continued to pursue the matter with the Social Security office in Mobile in order to find out the reason for the lengthy delay. It was still several months later before I began to receive the actual SSI benefits checks promised to me. I feel that this was an unacceptably long delay for someone in my condition. I believe that the district office could and should have done more to speed the start of my disability payments, and that it was indeed negligent in the timely performance of its duties. My sympathy goes out to others in similar dire health circumstances who may have been forced by needless delays such as this to endure even greater hardships.

Jan Morgan  
Jackson, AL

My sons have kept me with food and essentials but they have families and my expenses are causing friction in the family.

My old home is hard to heat and so I've had to be cold lots of times trying to conserve expenses. This has been a cold hard winter.

I have waited for over five years for some assistance. My home will not be livable unless some repairs are made soon. The electric wiring is gone out on half of the house. I know it is a dangerous situation but I cannot fix it without some assistance.

Mary F. Jackson  
Grand Bay, AL

In December of 1993 I received a denial for the Request for Reconsideration telling me I could file for a hearing before an Administrative Law Judge and this was done in January of 1994.

...my hearing was reheard in June... Had it not been for Mr. Laden I do not think I could have made it as the Judge made me feel very uncomfortable -- we left the hearing and was told that Judge Micare would make a decision and inform Mr. Laden at a later date -- I received a fully favorable decision dated October 25, 1995.

Gloria Brunson  
Eight Mile, AL

Without the help of you for the last 18 months I would still be waiting. I had no income. I have a huge amount of medical and drug bills which I will never be able to pay, which I acquired during this time with no health insurance, and now Social Security says they have overpaid me by \$2,500.00.

When a peon has something bad happen to them they do not need all the hassle they get afterward.

David Mashburn  
Mobile, AL

...the SSA has procrastinated for so long on my disability claim as to put my family and I in dire financial crisis, thus lowering my mode of living arrangements. To slow down the SSA process in these past few years, I've learned the SSA has you submit and resubmit reports and claims almost exactly as the last ones I had to draft originally. On February 23, 1996, I finally had my hearing before an Administrative Law Judge and several weeks later a fully favorable Notice of Decision was mailed to me. Here we are nearly 60 days later and still no payments for disability have been made....

Thomas Geeck  
Bay Minette, AL

Mr. GEKAS. Mr. Burge, you're welcome to testify before this committee, and you will have perhaps more than the 5 minutes, but not quite as much time as the gentleman from Alabama consumed.

Mr. BURGE. I don't believe I have quite as much to say as Mr. Callahan.

Mr. GEKAS. Excuse me, before we start I want to acknowledge the presence and attendance of the gentleman from Ohio, Mr. Chabot, a member of the subcommittee.

Proceed, Mr. Burgess; I'm sorry.

Mr. BURGE. I'd like to thank you, sir, for taking the time to hear my story.

Applying for Social Security benefits was something I did not want to do; I had no other choice. Due to compounding health problems, I found myself in a position where I could no longer work. I was blinded in an accident in 1979. I eventually regained partial vision but, unfortunately, my eyes were irreversibly damaged. In October 1992, my overall health began to fail. I was blind in my left eye and I developed an ulcer on the cornea of my right eye; my vision deteriorated rapidly. I was diagnosed with narcolepsy and catalepsy. By January 1993, I couldn't drive a car; I couldn't climb a ladder, or even walk upstairs to tuck my sons in bed because I could go out at any time and not realize it, and I could fall and hurt myself—I have done this. I developed high blood pressure; I lost my job, and just wasn't able to go back to work.

By July 1993, I decided to apply for disability benefits. In November 1993, I received my first notice that my claim had been rejected. I called the Social Security office in Mobile and I was told that, if I wanted to receive any benefits, I would have to get an attorney. I hired an attorney and appealed the decision. In March 1994, our attorney requested a hearing before an administrative law judge. My hearing before Judge Irwin Coleman was not until July 18, 1995. The hearing itself took less than 5 minutes. I was told my claim had been approved on the basis of my medical records. The fully-favorable decision was not signed until September 29, 1995. I received my first check December 1, 1995. My dependents' checks began in June 1996. I still have not received my, "backpay," but my attorney was paid out of my money on February 2, 1996.

Due to the extreme length of time this has taken, my family has been emotionally and financially devastated. In the last three years we've lost our home, our car, our credit, personal possessions, and dignity. We've done without simple, basic necessities. Without the help of my mother, we would have been homeless. We accumulated over \$20,000 in medical bills because we have no health coverage. My dependents still will not have any health coverage.

I am a Vietnam-era veteran, and I am a proud patriot of America. I believe that if a person is able to work, they should, but if they can't, it shouldn't be such a long process to get help. I also feel that the hardship this bureaucracy has indirectly caused to happen to my family is deplorable. I thank you, sir.

[The prepared statement of John Burge follows:]

## PREPARED STATEMENT OF JOHN BURGE, DISABILITY APPLICANT, MOBILE, AL

Applying for Social Security Disability benefits wasn't something I wanted to do. I had no other choice. Due to compounding health problems, I found myself in a position where I could no longer work. I was blinded in an accident in 1979. I eventually regained partial vision but, unfortunately, my eyes were irreversibly damaged. In October of 1992, my overall health began to fail. I was blind in my left eye and I developed an ulcer on the cornea of my right eye. My vision deteriorated rapidly. I was diagnosed with narcolepsy and catalepsy. By January of 1993, I couldn't drive a car. I couldn't climb a ladder or even walk upstairs to tuck my sons in bed because I could "go out" at any time and not realize it and I could fall and hurt myself. I developed high blood pressure. I lost my job and just wasn't able to go back to work. By July of 1993 I decided to apply for disability benefits.

In November of 1993, I received my first notice that my claim had been rejected. I called the Social Security office in Mobile and I was told that if I wanted to receive any benefits I would have to get an attorney. I hired an attorney and appealed the decision.

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Due to the extreme length of time this has taken, my family has been emotionally and financially devastated. In the last three years we've lost our home, our car, our credit, possessions and dignity. We've done without simple basic necessities. Without the help of my mother, we would have been homeless. We accumulated over \$20,000 in medical bills because we have no health insurance. My dependents still will not have health coverage.

I am a Vietnam Era Veteran and I am a proud patriot of America. I believe that if a person is able to work they should, but if they can't, it shouldn't be such a long process to get help. I also feel that the hardship this bureaucracy has indirectly caused to happen to my family is deplorable.

Mr. GEKAS. We thank you, Mr. Burge. Just a quick question for you, based on the latter part of your testimony. You say in June 1996 the dependents' benefits began; is that what you said?

Mr. BURGE. That's correct; yes, sir.

Mr. GEKAS. I have a few questions for Congressman Callahan, my friend from Alabama. One thing that struck me is when you said, Sonny, that you would be worried, although you liked the idea of my trying to do something about the administrative law judge structure in the bill that we've introduced and which was approved by this subcommittee, you worry that the autonomy that you feel that it will grant will be more injurious than helpful, or at least that it won't be helpful, according to what I inferred from what you said.

Mr. CALLAHAN. No, sir, Mr. Gekas, that's not the case.

Mr. GEKAS. All right, good.

Mr. CALLAHAN. My mission today is to convey to you the problems I have in Mobile and pray that, in the drafting and the re-drafting of the legislation you're proposing, it will, through your autonomy, at the same time eliminate some of the problem areas that we have in Mobile. Autonomy may be the best route; I have no idea.

Mr. GEKAS. All right. I have to tell you, one of the targets of the legislation is to do something about disciplining and structuring assignments of judges—the whole panoply of things which you have outlined as having been troublesome in Mobile. We believe that in an ALJ corps structure the questions of accountability, discipline,

and adherence to the Administrative Procedure Act all will be more well-focused. I wanted you to know that. I thought that you were saying that perhaps the kind of independence that we envision for the administrative law judges would be hurtful, and I'm glad to see that's not the case.

Mr. CALLAHAN. No, I don't mean to imply that, Mr. Chairman. I'm here pleading with this committee, and certainly you three, at least, are more knowledgeable about the process than I'll ever be, and I applaud not only your positions, but your knowledge of the problems and your willingness to address this. If autonomy is the right way to go, well, then that's great with me; that's fine with me. You know, I have my own amateurish, nonprofessional—as you all are professional—views. I don't even know why we need lawyers to hear these cases, frankly.

Mr. GEKAS. I'll talk to you about that privately. [Laughter.]

Mr. CALLAHAN. Maybe we should have paralegals hearing these cases. Maybe administrative law judges; maybe another tier ought to be imposed. I don't know that it takes a mental giant.

But my point is to bring to you problems that, hopefully, when you go through this process, these problems will be eliminated forever. That you have a check and balance where in a situation like Mobile, which is about the worst in our district, that there's some relief capability. And then, when you have a judge who is hearing 22 cases in 24 months, that you just don't tell him or tell the Congress or anybody else, "We can't do anything about it; that's all he'll do." As long as you have the checks and balances, as long as you consider the problems of Mobile, I have no problem with your destination. I applaud your mission. I want to help you get there; I just want to make absolutely certain that the checks and balances are in your bill to eliminate possibilities of this in the future.

Mr. GEKAS. I understand. One other question before my first 5 minutes runs out, and that is having to do with the quarterly reports. I'm not sure our subcommittee would be the proper venue for that, but what I will do—and with you if you want to cooperate in doing it—I know you do—is we will approach Congressman Bunning and together work out a worthwhile procedure if he believes, as we both do, that it might be necessary to try to achieve a quarterly report on caseload, on backlog, et cetera. Is that what you were talking about?

Mr. CALLAHAN. I think that your committee ought to be afforded it, and I don't know why they would object—the figures are there—and I would like for your committee to see the progress that is hopefully going to be made.

Mr. GEKAS. Yes, but my idea is, though, that since—

Mr. CALLAHAN. Maybe they could send it to the Ways and Means Subcommittee on Social Security, your subcommittee, and me.

Mr. GEKAS. Yes. That in part has to do with the operations of the Social Security Administration, which is more relevant to what Jim Bunning is doing than ourselves, but it's interrelated because the role of the administrative law judge under the Administrative Procedure Act also is a part of that. Maybe a triangular approach to this—your office, mine, and Jim's—would in fact give us a good start.

Mr. CALLAHAN. I think that if they would afford the three of us—the two subcommittees and me, as the Congressman from that district—yes, I think that would be very acceptable.

Mr. GEKAS. We'll look at that. I yield to the gentleman from Rhode Island.

Mr. REED. Thank you, Mr. Chairman.

I again want to commend Mr. Callahan for his very compelling and persuasive testimony and also appreciate the fact that you would fight so vigorously, not only for your constituents, but also for all of our constituents because we all have the same situation that we confront in our home districts with people who, like Mr. Burge, need the assistance of their Government after serving their Government and supporting it for so long, and when they're denied that, that not only hurts the First District of Alabama, but also every other district in this country, and I thank you.

I wonder, Mr. Callahan, do you feel—and I sense from the testimony that there's been some progress made and I don't think you're quite willing to say that we've fixed the problem—but I want to get a sense whether you feel that there's a better dialogue now with your office?

Mr. CALLAHAN. I think there definitely has been progress made and I don't mean to imply that I'm unappreciative of that. I think, however, we must recognize that a lot of the progress made still does not bring us up to the regional standard average. A lot of the progress has been made by transferring cases out of Mobile, by transferring judges into Mobile—temporary solutions. Now, is this improving the Mobile operation? If they still are below standard, they still need to do something or else we'd be right back where we were. But, yes, especially since I requested this hearing I've seen significant improvement. Still, we're on the 40-yard line, and I'm talking about my own 40-yard line, and we're trying to score a touchdown. We don't want to be last; we want to be number one, and that is my mission. We don't want Miami to be ahead of us; we don't want Charlotte to be ahead of us, or anybody else. We want to be number one.

I'm not saying, "Give them their Social Security." I'm saying, "Give them their hearing in a timely fashion and make a decision."

Mr. REED. So that your position, I think, Mr. Callahan, is that there should be a commitment from the Social Security Administration to do what they have to do to get you at the national average in terms of time for hearings and disposition of cases; that's the bare minimum.

Mr. CALLAHAN. That is my mission.

Mr. REED. And I think that is entirely not only acceptable, but it should be, I think, all of our missions, and I thank you, and thank you, Mr. Burge for your testimony.

Thank you very much, Mr. Chairman.

Mr. GEKAS. The Chair will indulge in a second round of questions for 5 minutes or less. Mr. Burge according to your testimony you applied for disability benefits first in July 1993 and you didn't hear about a disallowance until November 1993. Then you requested through your lawyer, as I recall, a hearing in front of an administrative law judge; that request was in March 1994. And then in



July 1994 you were actually accorded the opportunity to appear for a hearing. Is that correct?

Mr. BURGE. That is correct, sir.

Mr. GEKAS. Now, this is what strikes us here. You say it only took 5 minutes for that administrative law judge to see the merits of your claim and approve it.

Mr. BURGE. That is correct. Actually—

Mr. GEKAS. So he did his job. In this instance, in that 5-minute portion of the whole time that you spent on this, he acknowledged your right to benefits and so found. But now, after that quick 5 minutes in an easy-to-dispose-of kind of situation that apparently he found, the decision isn't signed until September 1995. Is that correct?

Mr. BURGE. That's correct. It took 79 days for him to sign his name to the paperwork.

Mr. GEKAS. Then the checks didn't start until December 1995. All of that seems to be an administrative jungle after the action of the administrative law judge. So it has to do with the administration, not with the ALJ. Apparently, he did a good job, at least belatedly; in 5 minutes he was able to see the merits of your claim. That's pretty good, but we see where the problem lies just in that little instance: in the preliminary stages and the finalization of the claim after the administrative law judge did his job there, in that case.

That's all I have at the moment, and if you have no second round we'll proceed to the second panel. We thank you Congressman Callahan and Mr. Burge. It has been a very illuminating set of testimony that you have brought to us.

Mr. CALLAHAN. Thank you.

Mr. BURGE. Thank you, sir. Thank you, members of the committee, for your time.

Mr. GEKAS. We will now call to the witness table the Honorable Charles Boyer, Chief Administrative Law Judge of the Social Security Administration; the Honorable Henry G. Watkins, Regional Chief Administrative Law Judge of the Social Security Administration; the Honorable Frank M. De Bellis, Social Security Administration Administrative Law Judge in Mobile, and the Honorable Robert S. Habermann, also a Social Security Administration ALJ in Mobile. And we will proceed to invoke the 5-minute rule on each of the witnesses who will be called to testify as they were named, and as the nameplates suggest from our left to right; so, we will begin the testimony with Judge Boyer.

#### STATEMENT OF HON. CHARLES BOYER, CHIEF ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY ADMINISTRATION

Judge BOYER. Thank you, Mr. Chairman, and good morning.

Mr. GEKAS. Before we start, I want the panel to know that their written statements will be accepted for the record, and they can summarize, if they wish, or outline, or read any portions, of course, but the whole statement—if you're cut short by the time requirements—will be made part of the record without objection.

Judge BOYER. Thank you, sir. My name is Charles Boyer and I've been an administrative law judge with the Office of Hearings and Appeals for about 22 years. I have considerable experience as a

hearing office chief and as a regional office chief, and became the Chief Administrative Law Judge of Social Security in October of last year. I wish to thank Mr. Callahan for his remarks and for bringing these concerns to the attention of the subcommittee. I'd like to assure him and you that we share a common goal of service to our claimants and to your constituents. You can rest assured that you have the continued cooperation of the Office of Hearings and Appeals and, certainly, my office.

I am accompanied here today by Judge Watkins, who is our Regional Chief Judge in Atlanta, and by Judges Frank De Bellis and Robert Habermann from our Mobile hearing office. Before discussing the Mobile hearing office itself, I think it's important to provide a general overview of the hearing process at SSA and the impact that dramatically increasing workloads have had on the organization as a whole. Since the early part of this decade, growing workloads have affected the performance of every hearing office, and it's impossible to evaluate the performance of any single office without understanding the system as a whole.

As you know, Mr. Chairman, SSA has experienced unprecedented increases in disability claims workloads in recent years. This fiscal year, we estimate that 2.5 million disability claims will be filed and forwarded to the State agencies. This is an increase of 41 percent over the fiscal year 1990. This increase in claims translated into an equally dramatic growth in requests for hearings before our administrative law judges. By 1995, requests for hearings had nearly doubled from 1990 when they reached 588,600. I'm pleased to tell you, Mr. Chairman, that the staff throughout OHA, the Office of Hearings and Appeals, and especially our judge corps, have responded to this unprecedented influx of cases by increasing productivity from an average of 37 cases per month, per judge in 1992 to over 46 cases per month per judge in 1995, resulting in dispositions of over 537,000 cases in 1995, an accomplishment that makes me very proud of our judges. This is nearly a 25-percent increase in these years, and I think that's something that any company would be proud to report to their stockholders.

However, despite this increased productivity, the rapid workload growth has caused delays in processing appeals timely. Currently, it takes more than 375 days on average to process a request for hearing, which is up 58 percent from 1993. Now this is certainly not the world-class service—which is Commissioner's Chater's No. 1 priority—that we are seeking. You may recall from Associate Commissioner Rita Geier's testimony before this subcommittee a few weeks ago, SSA has responded by allocating significantly increased resources to our office during a time when budgets are being tightened elsewhere, including in SSA. We have hired over 200 additional judges since 1993. We have brought the ALJ corps to over 1,000. The support staff in our hearing offices has grown by over 1,000 people as well since 1993.

Increased resources, improved technology, and the dedication of our staff have provided gratifying results, although we recognize that we have many miles to go before we can provide the world-class service that we're seeking. We do believe that we have reached a significant turning-point. Our production nationwide is such that we are disposing of more cases than we are receiving, so

this will permit us to start reducing the number of cases pending in our offices, and that, in turn, will help us reduce the unacceptable, lengthy processing time.

So this has been a challenging decade, especially for our staff and especially for our judges, but they've responded to that challenge, and I believe that the same applies to our hearing office in Mobile. The management information on the hearing office in Mobile does confirm that the performance over the last four years has been below the norm. The Mobile hearing office experienced the same influx of cases that the rest of the Nation did since 1994—and I see that my 5 minutes has expired, but I beg your indulgence for another minute.

Mr. GEKAS. The Chair will yield an additional minute to the gentleman, hoping that he can wrap up.

Judge BOYER. Thank you, sir.

The Congressman has pointed out that the production in the Mobile hearing office has risen, showing great improvement over the last couple of years under the direction of the hearing office Chief, Judge De Bellis. We have worked in concert with our regional office and with the local hearing office to see that additional resources were received there. They have additional judges; they have additional writers, and we have a new hearing office manager. And effective last week we recruited a replacement, following Judge De Bellis's retirement from the hearing office Chief ALJ position, who we believe to be a considerable help to the office.

I have tried to cooperate with Congressman Callahan's office in every respect. I regret the delays that have occurred in responding to requests for documents. I can only reassure him and the subcommittee that we have acted as promptly and as quickly as possible in submitting documentation to him. Candidly, I must admit that since arriving here in October, nothing seems to move as fast as I would like for it to, but I can assure you all that we are responding as quickly as possible. I can also assure him and this subcommittee that our judges are complying with time and attendance requirements, and that, once again, I am very proud of their performance.

Thank you.

[The prepared statement of Judge Boyer follows:]

PREPARED STATEMENT OF HON. CHARLES BOYER, CHIEF ADMINISTRATIVE LAW  
JUDGE, SOCIAL SECURITY ADMINISTRATION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to be here today on behalf of the Social Security Administration's (SSA) Office of Hearings and Appeals (OHA) to discuss the performance of our Mobile, Alabama hearing office. I am accompanied today by Judge Henry Watkins, the Regional Chief Judge for the Atlanta Region, and Judge Frank De Bellis from the Mobile hearing office.

INTRODUCTION

Before discussing the Mobile hearing office itself, I believe it is important to provide a general overview of the hearing process at SSA and the impact that dramatically increasing workloads have had on the organization as a whole. Since the early part of this decade, growing workloads have affected the performance of every hearing office, and it is impossible to evaluate the performance of any single office without understanding the system as a whole.

WORKLOAD GROWTH IN GENERAL

As you know, Mr. Chairman, SSA has experienced unprecedented increases in its Social Security and Supplemental Security Income (SSI) disability claims workloads in recent years. This fiscal year, for example, we estimate that 2.5 million disability claims will be filed and forwarded to the State agencies for an initial disability determination, an increase of 41 percent over Fiscal Year (FY) 1990.

The increase in claims filed at the initial level translated into equally dramatic growth in requests for hearings before our Administrative Law Judges (ALJs), and by FY 1995, requests for hearings had nearly doubled from FY 1990, reaching 588,600. I am pleased to tell you, Mr. Chairman, that staff throughout OHA, and especially our ALJ corps, responded to this unprecedented influx of cases by increasing productivity from an average of 37 cases per month per ALJ in FY 1992 to 46 cases per month in FY 1995. That is nearly a 25 percent increase in three years, something many private sector companies would be delighted to report to their stockholders.

Needless to say, however, despite increased productivity, such rapid workload growth has adversely affected SSA's ability to process appeals timely. Currently, it takes more than 375 days, on average, to process an ALJ hearing, a 58 percent increase from the average time in FY 1993.

ADDRESSING THE WORKLOAD CHALLENGE

This is not the world class service that Commissioner Chater has established as SSA's number one priority, and no one in SSA or the Office of Hearings and Appeals finds it acceptable. As you

may recall from Associate Commissioner Rita Geier's testimony before this Subcommittee a few weeks ago, SSA has responded in a number of ways. First, SSA has allocated significant increased resources to OHA during a time when budgets are being tightened everywhere, including in SSA. We have hired over two hundred additional ALJs since FY 1993, bringing the ALJ corps to over 1,000 judges. These ALJs require extensive training in the Social Security programs before they become fully productive, but they now have sufficient experience that their presence is having a positive effect. The support staff in our hearing offices have grown by over 1,000 people since 1993 as well.

SSA has also invested in new and improved technology, including Local Area Networks or LANs in each hearing office to link the personal computers we have installed, as well as improved case tracking software. As workloads have increased, we have also tried to work smarter, establishing work teams to reassess processes and devise new strategies for hearing and deciding cases more quickly and efficiently.

The result, Mr. Chairman, has been gratifying in many respects, although we have many miles to go before we provide the world class service that Commissioner Chater envisions. I am pleased to report that we have now reached what we believe is a significant turning point. Our production is such that we are disposing of more cases each month than we receive, permitting us to start reducing the number of cases pending in our offices, and that in turn will help us reduce our unacceptably lengthy processing time. However, I must be frank, Mr. Chairman, and point out that dramatically better processing times will not happen overnight. It will take some time, but we are on the right track.

#### DISABILITY REDESIGN

Mr. Chairman, SSA did not only deal with the rise in disability case filings and appeals through increased resources. Under Commissioner Chater's leadership, SSA undertook a re-engineering initiative, looking from the bottom up at the entire disability adjudication process. The result is the "Disability Process Redesign," a plan which greatly strengthens the adjudication process from the moment a claimant enters a local office to file for disability benefits right through final adjudication of the claim. Various aspects of the Redesign are now being tested, and full implementation will occur in stages in the coming years. SSA expects the Redesign to cut hearing-level processing time in half by the year 2000.

In sum, Mr. Chairman, this has been and continues to be a challenging decade for all of our staff in OHA, especially our ALJs. They have clearly responded to the challenge, however, and the same applies to our hearing office in Mobile.

PRODUCTIVITY IN THE MOBILE HEARING OFFICE

Our management information on hearing office productivity over the last four fiscal years confirms that the Mobile hearing office's performance has been below the norm. In FY 1992, for example, the Mobile hearing office averaged 25 cases per month, 32% below the national average of 37 per month. As the Mobile hearing office experienced the same influx of cases as the rest of the nation, the situation deteriorated and in FY 1994, the ALJs issued only 24 cases per month, 44% below the national average of 43 per month. As a result, public service declined, as the average time to process a case in the Mobile hearing office rose to over 400 days in FY 1994, 100 days above the national average.

OHA has not, however, ignored this situation. To the contrary, with outside assistance, changes in management and systems, and increased effort on the part of the Mobile staff themselves, the picture today is a good deal brighter. For example, in FY 1995, average production in the Mobile hearing office rose to 34 cases per month and that improvement continues today. Thus far in FY 1996, Mobile is averaging 39 cases per month, only 7 percent below the national average. All indicators are that productivity will continue to increase in the months to come.

ACTIONS TAKEN TO IMPROVE HEARING OFFICE PRODUCTIVITY

Working in concert with Judge Watkins and his staff in the Atlanta Regional Office, we have taken a number of actions to address the workload and performance issues in the Mobile hearing office. First, we have increased staffing, adding two additional ALJs to bring their staffing level from 7 in FY 1992 to 9 today. Similarly, we have increased the number of decision writing staff from 7 in FY 1992 to 12 today.

There have been changes in personnel in the office as well. Judge De Bellis, the former Hearing Office Chief Judge, stepped down at the end of last year, and we are now recruiting nationwide for a replacement. In February 1995, we hired a new hearing office manager, filling a vacancy that is critical to efficient operations.

We have also moved aggressively to provide the hearing office with outside assistance from other hearing offices and from other staffs. For example, in FY 1995 we transferred 600 cases to other offices for hearing and decision; thus far in FY 1996 we have transferred another 1,700 cases to ALJs in other offices. In FY 1995, we sent 1,400 cases to other staffs to have decisions drafted, and in FY 1996 to date, another 370 cases have been sent out for decision drafting. Similarly, other offices are now helping the Mobile office to "pull" or prepare cases to get them ready for hearing; in this fiscal year, 550 such cases have been

prepared by staffs outside the Mobile hearing office.

All these initiatives have had a positive impact, Mr. Chairman. As I indicated previously, the number of cases pending per ALJ is now down below the national average and that fact, coupled with the improving productivity of the current ALJs in the office should enable Mobile to start reducing its processing times and providing better service to the public.

#### MECHANISMS FOR ALJ DISCIPLINE AND REMOVAL

One of the personnel actions we took in Mobile relates to the last subject you invited me to testify about, Mr. Chairman--namely, mechanisms for ALJ discipline and removal. In December, Regional Chief Judge Watkins worked with one of the ALJs in the Mobile hearing office whose performance had been utterly unacceptable. That ALJ ultimately retired.

As you know, Mr. Chairman, while an agency may take some informal actions to discipline ALJs, they may not unilaterally remove, suspend, or reduce an ALJ in grade or pay. Rather, the agency may only propose such disciplinary actions to the Merit Systems Protection Board (MSPB), and it is the MSPB which determines whether there is "good cause" for the proposed action after affording the ALJ an opportunity for a hearing on the record.

#### THE MSPB PROCESS

The MSPB process is both lengthy and resource intensive. The agency initiates an action against an ALJ by filing a complaint with the MSPB containing charges that describe in detail the facts that support the proposed disciplinary action. The MSPB assigns the complaint to its Chief ALJ. The ALJ who has been charged, called the respondent, has 35 days to file an answer to the complaint, denying, admitting or explaining each fact alleged in the complaint. The parties (the respondent ALJ and the agency) have an opportunity to engage in discovery, including written interrogatories, depositions, requests for production of documents, and requests for admissions of facts.

Once discovery is complete, the MSPB ALJ schedules and holds a hearing during which the agency presents documentary and testimonial evidence in support of the charges. The respondent ALJ may designate a representative and is entitled to cross examine witnesses, present rebuttal evidence and evidence in support of affirmative defenses. The parties customarily have an opportunity to submit post-hearing briefs.

The presiding MSPB ALJ issues a recommended decision regarding whether or not there is "good cause" to impose disciplinary action and the nature of that action. The parties may file exceptions to the recommended decision with the MSPB within 35

days--and they may also file replies to exceptions within 25 days of the date of service. After receipt of the exceptions and any replies, the presiding ALJ closes the record and forwards the case to the Board itself.

The Board considers the case on the evidentiary record and issues a final decision which rules on the issue of "good cause" and specifies the penalty, if any, to be imposed. If the Board finds that there is "good cause" to take a disciplinary action, the agency then (and only then) may impose the penalty prescribed by the Board.

Since 1977, SSA has filed 35 actions with the MSPB and responded to five actions filed by ALJs. While cases in which a settlement agreement is reached may be resolved in less than one year, a case that goes through the full process generally takes two years from the time that the agency files the complaint.

I would also like to point out, Mr. Chairman, the Social Security Administration believes that H.R. 1802 establishing an Independent Corps of ALJs would not improve this situation. To the contrary, it would make it worse. The bill makes no changes to the existing MSPB process that I just described; rather, it requires a formal and lengthy internal complaint review process in the Independent Corps before referral to the MSPB, when warranted. The result will be more complexity and delay.

#### OTHER DISCIPLINARY ACTIONS

For misconduct of a less egregious nature, the agency has the authority to take informal disciplinary actions to address conduct which does not merit the penalty (e.g., suspension or removal) which only the MSPB can authorize. We do this when there is a reasonable expectation that lesser disciplinary action will be sufficient to ameliorate the objectionable conduct. This has the advantage of conserving resources and addressing the issue quickly through a less formal process. Such progressive discipline includes counseling, training, written admonishments and official reprimands. If informal discipline of this kind does not resolve the misconduct, the agency then may file a complaint with the MSPB seeking a stronger penalty. The informal discipline previously imposed will then be taken into consideration by the MSPB in determining the appropriate penalty.

#### CONCLUSION

The last few years have been challenging for all our hearing offices. Workloads have skyrocketed to levels never before seen or even imagined. I am proud of the fact that staff throughout OHA have responded to this crisis with enthusiasm and dedication, and I am pleased to report that agency-wide, we are reducing backlogs and beginning to provide the public with better service.



I am also pleased to report that the Mobile Hearing Office is on the road to improved performance.

I would be happy to answer any questions that you and the members of the subcommittee may have.

Mr. GEKAS. We turn to Judge Watkins.

**STATEMENT OF HON. HENRY G. WATKINS, REGIONAL CHIEF ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY ADMINISTRATION, ATLANTA, GA**

Judge WATKINS. Thank you, Mr. Chairman, Mr. Reed, and counsel. You've indicated that my statement has been received into the record, so I'll just speak from it briefly.

I'm pleased to be here to assist this subcommittee in your task of trying to review and maximize the efficiencies, as well as the justice, that the office in Mobile dispenses. As I indicated in my written testimony, I thoroughly reviewed Judge Boyer's written testimony and I'm in agreement with it, and I just wanted to add a few other things by way of focus. I was appointed Regional Chief Judge in the Atlanta region in November 1994. One of my priorities on assuming that position was to enhance the productivity and the efficiencies in the Mobile office. There are 31 offices in our region and I've devoted more time to the Mobile office, and more resources, than any one office in that region.

I give some background as to OHA in my statement, and I commend that to your attention to explain; for example, when Mr. Burge was testifying he spoke about applying for disability and he talked about going to the local Social Security office. Of course, all of that predates his request for a hearing before OHA. We acknowledge that we have a problem with backlog, but there has to be a distinction between the wait for a hearing and the request for a hearing before an administrative law judge, and I commend that to your attention. We have made several efforts to reduce the backlog in Mobile and, in fact, we've been quite successful.

As Judge Boyer point out, in fiscal year 1994 the ALJ's in Mobile issued 24 cases a month; this was 44 percent below the national average of 43 cases per month. In fiscal year 1996, the Mobile ALJ's are averaging 39 cases per month and that's 7 percent under the national average. From fiscal year 1994 to fiscal year 1996, the Mobile ALJ's increased their production an additional 15 decisions per month, per judge. That's a 63-percent increase in production in a fairly abbreviated period. As I noted in the statement, judges are not in total control of their dockets, and we're working with the elements that control how quickly a case goes to hearing and how quickly a decision is issued.

Those segments of the legal community and of the general community include claimants, claimants' representatives, vocational experts, medical experts, as well as the support staff in the office and the management teams locally, regionally, and nationally, and all have made a concerted effort to work with the Mobile office. Speaking of working with that office, it's clear that some hearing offices have greater case receipts proportionately than others. As a result of that, in the short term we try to reallocate resources within the region, and also within the country, to try to equalize the workload. In Mobile, we have done more resource infusion into that office than any other office, by far, in this region.

Mr. GEKAS. Starting when?

Judge WATKINS. Starting in November 1994 when I arrived. From April 1995 to the present, as an example, 2,362 cases have

been transferred to other offices. What we're trying to do is to take a two-track approach—and we've started with that since day one—that is to enhance the efficiencies and the productivity in the Mobile office and at the same time bring in outside resources to help them with the backlog. One of the efforts that is mentioned in my statement as well as—I had a chance to briefly review the statement of the president of the ALJ Association—I asked the president of the ALJ Association to ask for volunteers to help the Mobile office out, and we got a number of volunteers coming in from all over the region and outside the region to assist in that effort. We were quite successful, because from June 1995, the backlog in Mobile has been reduced from 6,634 to 4,300; that's a 35-percent reduction in the backlog.

Now, one thing that we have to remember in all of this is that whenever we bring in judges or other resources from other offices, that's at the expense of those offices, and we have other congressional Members asking for reports and responses about their constituents and, of course, reasonably so. As a consequence, our resource reallocation is an aid to balance the workload throughout the region and it can't be used to eliminate the backlog in a particular office at the expense of claimants who are awaiting hearings in other offices.

Sir, if I could have 1 additional minute?

Mr. GEKAS. The Chair grants you another minute or so.

Judge WATKINS. Thank you.

With regard to claimed administrative law judge abuses in Mobile, when I took over as Regional Chief Judge, one of the first offices I visited was the Mobile office. I went to that office and I explained to the judges and staff there that they were high-profile and that I was as concerned as they should be about the perception that they weren't performing as efficiently as they might. I personally undertook working with a judge, whom I will not name and I will not discuss in any detail because of privacy concerns. I personally worked with that individual and a satisfactory result was obtained. That judge retired and that retirement was totally out of the hands of our agency; it was an independent decision made by the Office of Personnel Management and I think the public was well-served by that.

With regard to the judges in the Mobile office, I've spoken with those judges about any complaints. I've solicited actively because I've heard about these complaints kind of floating out there and asked if anyone had any complaints. I wrote a letter to every congressman in the eight-State region of region IV and to every senator. I explained to them; I explained to every attorney, every member of the public: if anyone had any complaints, any observation of deficiencies of any of our employees, please bring them to my attention and I would promptly investigate it. Every claim of ALJ or employee abuse, I have investigated. Unhappily, a lot of these things are floating out there in vague form and when you start to press for detail the people who press these claims back off; I do understand. And I examined the record of the Mobile office and discovered that many of the complaints that were lodged against the judges there were lodged between 1990 and about 1992, and they stopped at that point for some reason. There is nothing

else documented after that date. During this period, there was some correspondence between the management team and the regional office addressing concerns. Since then, I have nothing in writing from anybody complaining about the judges in that office that has gone unaddressed. If there is a complaint, I will address it personally and forcefully with the judges and with the staff in that office and all others.

And, finally, sir, in closing, I'd just like to say that I do appreciate that the public should be fairly and professionally served, and while I look closely and carefully to ensure that our employees are doing their job, at the same time I have to staunchly defend them against rumor and gossip that's totally unsubstantiated. If there are facts, if there are allegations, I will conduct the investigation; so, I need at least an allegation; I need at least a name, a date, and I will pursue it. So, in those cases that are simply alleged, I will pursue; I will issue warnings. But if there's nothing for me to investigate, it's difficult for me to do so. I have actively and vigorously proceeded against judges and other employees who have not comported with their statutory and regulatory duties. In the Mobile office, however, there is a stark absence of any documentation about an ALJ engaged in misconduct, and if there is, I will act on it expeditiously and forcefully.

Sir, as I said, my statement is in the record and I appreciate that you've allowed me to exceed my time. I stand ready to answer any questions that you and your committee may have.

Mr. GEKAS. I was going to say that perhaps some of your other concerns will be a part of the Q and A that will follow.

Judge WATKINS. OK.

[The prepared statement of Judge Watkins follows:]

PREPARED STATEMENT OF HON. HENRY G. WATKINS, REGIONAL CHIEF  
ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY ADMINISTRATION, ATLANTA, GA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear here today. I am honored to assist this subcommittee in your review of the performance and oversight of Administrative Law Judges (ALJs) generally and of the Mobile, Alabama Office of Hearings and Appeals ALJs specifically. As a preliminary matter let me note that I have thoroughly reviewed Chief Judge Charles Boyer's written testimony, and I'm happy to report that I am in complete agreement with it. As background, I will discuss the history of ALJ workload and performance. But I will focus on what has happened in the Atlanta Region of OHA since November 1994, the date of my appointment as Regional Chief Judge.

BACKGROUND

Any meaningful discussion of the performance of ALJs in the Social Security Administration's (SSA) Office of Hearings and Appeals (OHA) requires a basic understanding of the overall system of which OHA is a part. The vast majority of cases decided by OHA Administrative Law Judges involve claims for disability benefits. Thus, my testimony primarily addresses only these disability cases.

When a person believes that he or she is entitled to Social Security disability benefits their first point of contact is the Social Security field office. The claim is filed with the field office. The field office will typically review the claim to determine whether the claimant meets the technical requirements for filing a disability claim. If these requirements are not met the field office will issue a technical denial. If the technical requirements are met the claim is referred to a State agency that the Social Security Administration authorizes to make disability determinations. These State agencies are usually called Disability Determination Services (DDSs). The DDS reviews the case and if it concludes that a claimant is disabled it will send the file to the field office to certify payment of disability benefits. If its initial determination is that the claimant is not disabled, the claimant may request a reconsideration determination. The DDS may then decide, based on re-analysis or new evidence, that the claimant is disabled.

Significantly, OHA has no jurisdiction or control of the procedure described above. It is only when a claimant has been found not to be disabled by the DDS adjudicators that OHA may become involved. A claimant who disagrees with the reconsideration determination may file a request for hearing before an Administrative Law Judge. Also, it warrants mention that not all requests for hearings result in hearings before ALJs. Under new agency procedures three categories of OHA employees -- Senior Attorneys, staff attorneys and paralegals -- are currently empowered to authorize benefit payments in certain

limited cases. However, these non-Administrative Law Judge adjudications are permitted only where the record evidence supports granting all the relief sought by a claimant (disability benefits) without a hearing. Therefore, these non-ALJ adjudications, while significant, can in no way be considered a possible substitute to ALJ adjudications.

#### SSA INITIATIVES TO REDUCE THE BACKLOG

In light of the foregoing it is clear that the entire time a claimant has sought disability benefits is not time the case is before OHA. Having said that, it is true that in recent years a tremendous influx of new disability claims has resulted in a backlog that OHA is only now beginning to successfully address. As Judge Boyer's statement notes, requests for hearings approached 600,000 in fiscal year 1995, almost double such requests filed in fiscal year 1990. But with added resources, new technologies, and innovative procedures we have begun to reduce the case backlog and provide faster service to the public. Adding to our positive trend of adjudications is the fact that our productivity per employee has significantly increased. This is a result of simple hard work.

The challenge of increased productivity is a balancing act for all employees, but especially for judges. We must find innovative ways to streamline the system, and at the same time, continue to be guided by basic precepts of fairness. We must treat each claimant as important and yet be mindful that there are many other claimants awaiting a hearing before an ALJ. Thus, the increased productivity of ALJs, including the Mobile ALJs is all the more impressive.

#### MOBILE HEARING OFFICE PRODUCTIVITY

As noted I became Regional Chief Judge following the completion of FY 1994. Mobile ALJs in FY 1994 averaged issuing 24 cases per month. This was 44% below the national average of 43 cases per month. In FY 1996 the Mobile ALJs are averaging 39 cases per month, 7% below the national average. From FY 1994 to the FY 1996 Mobile ALJs have increased their production an additional 15 decisions per month per judge -- a 63% increase in production in a fairly abbreviated period.

I hasten to add that ALJs are not in complete control of the number of cases they hear and decide. A sufficient number of cases must be prepared by the support staff with cooperation from claimants' attorneys/representatives, medical consultants, and claimants themselves. Case development in preparation for hearing is labor intensive and requires a concerted effort from hearing office support staff and from OHA management at every level. Further, once a case is heard and an ALJ makes a decision there has been a problem of getting sufficient decision drafting

output for ALJ's to timely issue the decisions. In Mobile case preparation and development as well as decision writing after the hearing, have shown considerable improvement. Thus, the ALJs in that office are now able to hear and decide more cases. This improvement in case preparation/ development and writing assistance has resulted from a focused effort by Mobile hearing office management, as well as supportive efforts from the Regional and national Chief Judges' offices. I fully expect the improvement in Mobile to continue.

#### RESOURCE INFUSION INTO MOBILE HEARING OFFICE

Some hearing offices have proportionately fewer case receipts than others. If this pattern persists over the long term the Agency considers a permanent restructuring of the staffing levels of the offices to reflect the variation in case receipts. But to address disproportionate receipts to staffing in the shorter term, we at the regional and national levels temporarily reallocate personnel (including ALJs) and resources to assist those offices with greater receipts. As an example, the Mobile hearing office has been the greatest recipient of reallocated personnel and resources in the Atlanta Region. Offices such as the Charleston, South Carolina hearing office, have had some of the Mobile cases transferred to them. When this happens these other offices get credit for hearing and deciding the transferred cases. Though the Mobile office doesn't get credit for these cases, in fact the Mobile backlog is directly reduced by such efforts.

One of the largest single resource reallocations was made in 1995 to benefit the Mobile hearing office. Indeed, from April 1995 to present 2,362 cases have been transferred to other offices. In these cases there have been prompt hearings scheduled with a view toward promptly issuing the decisions. As one example of the extraordinary efforts to assist the Mobile hearing office, in August of 1995 I sent a request to ALJs through the President of the ALJ Association. That request sought judges who would volunteer to assist with the Mobile backlog. This resulted in 14 ALJs from other hearing offices assisting the Mobile office. They took dockets of Mobile cases, augmenting that office's efforts to reduce the backlog. From June of 1995 the number of Mobile office cases awaiting hearing has been reduced 35% -- from 6,634 to 4,300.

It must be remembered that when judges or other resources are taken from other offices to assist the receiving office, the lending office has pending cases to be heard and decided. Likewise those lending offices face questions from Congress members on behalf of their constituents. Thus, resource reallocation is an aid to balance the workload throughout the region. It cannot be used to eliminate the backlog in a

particular office at the expense of claimants awaiting hearings in other offices.

#### CLAIMED ALJ ABUSES

With remarkably few exceptions I have been pleased with the work ethic and dedication of the Atlanta Region OHA employees. From my first month as Regional Chief Judge I made clear that all employees were expected to comply fully with all agency and regional policies. This includes those relating to time and attendance, courtesy to the public and co-workers, and ethical requirements. I personally oversee claims of ALJ abuses. Moreover, while I have great confidence in the vast majority of ALJs and other employees in the Atlanta Region I have encouraged members of the public, claimants, Congress members or anyone else to point out any perceived deficiencies in the performance or conduct of OHA employees. In this connection, on my appointment as Regional Chief Judge I sent a personal letter to each U.S. Congress member in my eight-State region introducing myself and inviting each to contact me personally on any problems which could not be handled locally. I am proud to say that my regional office staff has satisfactorily responded to virtually all congressional and other inquiries.

With regard to claimed ALJ abuses I have told all who would listen that I would investigate any such claims if provided any reasonable factual particulars. Very few have been provided. When I look into the occasional claims that ALJs abuse time and attendance requirements those making such claims typically shrug and respond that they had no personal knowledge but they had heard stories. In the event there might have been anything to these undocumented claims I strongly restated to all judges and other employees that if such a claim has any basis in fact their biggest problem would be in dealing with me. On the other hand, I will defend staunchly every employee in this region whose claimed wrongdoing is based on nothing more than mere rumor or gossip. Fairness and due process extend to Federal employees just as it does to the claimants who appear before us.

It has been suggested that at some time in the past some ALJs may have abused time and attendance and other agency requirements. But if such alleged abuses cannot now be documented this suggests 1) that they did not exist in the first place, or 2) that they have been corrected -- so mechanisms exist to address them. Given that there are no unaddressed specific claims of ALJ abuse one may reasonably conclude that any current claims of such abuses are largely apocryphal.

#### COMPLAINTS ABOUT A PARTICULAR MOBILE ALJ

On being appointed Regional Chief Judge in November of 1994 there were pending complaints of a Mobile ALJ whose productivity was



embarrassingly low. It was suggested by some that I seek to transfer that ALJ to an office in another State. The performance of this judge was the basis for the preponderance of the complaints about the Mobile office. Due to privacy concerns I cannot address the particulars of that judge's case. I can say that this judge separated from government service in December 1995. Even after his departure his production was still being cited as an ongoing problem, ignoring the fact that he was no longer with the Agency. Let me assure you that this situation was handled with all due concern for the public interest. It has been intimated that this judge got a golden parachute. There is no basis for such a suggestion. First, the result achieved was far preferable to transferring the judge from the Mobile area to another office. Second, any decision in this matter was made independently by the Office of Personnel Management based on objective medical and other evidence.

#### CONCLUSION

In closing, on behalf of all OHA personnel in the Atlanta Region, I state unequivocally that our goal is to serve the public fairly, efficiently, and courteously. We are working diligently to reduce the backlog, and at the same time we are giving each claimant individualized and personal attention. We will continue to meet this daunting challenge with energy, imagination, and compassion. I appreciate your concern for the problems the agency faces in providing world class service. However, as the record shows we have made, and continue to make, significant strides toward that goal. I would be happy to answer any questions.

Mr. GEKAS. Judge De Bellis.

**STATEMENT OF HON. FRANK M. DE BELLIS, ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY ADMINISTRATION, MOBILE, AL**

Judge DE BELLIS. Mr. Chairman, and members of the committee, good morning, and thank you for the opportunity of appearing before you.

My name is Frank De Bellis. I was appointed as a Federal administrative law judge in August 1990. I served in the Social Security Administration's Montgomery, AL, and Bronx, NY, Offices of Hearings and Appeals prior to coming to Mobile in 1993, and I was the hearing office Chief Administrative Law Judge through November 1995.

You've heard the perspective from Judge Boyer from a national scale. You've heard the perspective from Judge Watkins on a regional scale. My function here is to tell you some of my experiences for the 2½ years that I was the hearing office chief. I also want to thank Congressman Callahan for the kind remarks that he's made about my assistance with his office.

I want to emphasize that the focus of this inquiry is the performance of the administrative law judges in the Mobile office and related matters. I would also like to emphasize that the performance of the administrative law judges does not start at the beginning of the process, when the request for hearing is received, nor does it end when the decision is issued. It begins when a work file has been produced by a legal assistant for review, scheduling, hearing, and decision by the administrative law judge. It ends when he or she has made that decision and he or she turns it over to a staff of decision writers. The delay between the receipt of the request for hearing and the time that the judge receives it, I think, is unfairly charged to the judge. It's fairly charged to the office and to the administration, but not to the judge. Similarly, the delay that occurs between the time that he or she has decided the case and the time that the decision is actually issued—again—is unfairly charged to the administrative law judge, but fairly charged to the administration.

Judge Watkins's statement addresses in detail all the factors that determine the office output, and he makes the point that the judges do not control the process, which confirms what I am saying, at least in part. My statement addresses a number of specific and, perhaps, unique problems that I encountered from my arrival at the Mobile office. Since I furnished my statement to the committee, I've had the opportunity to make an analysis of certain comparative statistics that relate to the Mobile office in particular, and to the region as a whole, because we are compared. Why is Mobile's productivity so disparate from that of the region and so disparate from the Nation as a whole? While I haven't been able to analyze anything on the national basis, I have been able to make a statistical analysis of allocation of staff to the Mobile office as compared to the average allocation of staff in the region. In particular, what we now refer to as legal assistants—they were called the hearing assistants until a short time ago—and decision writers, who are at the beginning portion of the process and the ending portion of the

process respectively, I respectfully urge are not within the control of the administrative law judges.

Mr. GEKAS. Without objection, we will accept that analysis for the record.

Judge DE BELLIS. Thank you very much.

[The information follows:]

MOBILE OHA STATISTICAL COMPARISON<sup>1</sup>

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>	<u>PERCENT (+/-)</u> <u>FYs 1995-1993</u>
<u>PRODUCTIVITY</u>				
Case Receipts	4000	4814	4493	+12.33
Cases Disposed	2171	2660	4116*	+89.59
Decisions Drafted	1639	2332	2959	+80.54
Cases Made Ready for Review/Hearing	2861	3136	4417	+54.39
Hearings Scheduled	2950	3565	4115	+39.49
Hearings Held	2158	2673	2864	+32.72
Final Decisions Typed	2106	2580	4059*	+92.74
<u>RESOURCES AVAILABLE</u>				
Administrative Law Judges	6.79	9.10	10.00	+47.28
Decision Writers	6.20	8.36	9.59**	+54.68
Legal Assistants	7.92	7.92	9.68	+22.22
Hearing & Office Automation Clerks	11.50	15.75	18.03	+56.78
Overtime (Hours)	1929.30	2389.30	3174.70	+64.54

\* Includes decisions drafted "Out of Town" and "Action 7" staffs and Senior Attorneys.

\*\* Represents total Decisions Writers available (10.72), less those assigned to "Action 7" and/or Senior Attorney reviews from 06/01/95 (1.13).

<sup>1</sup> The Mobile Hearing Office operated without a Hearing Office Manager from 4/4/94 - 2/19/95.

Judge DE BELLIS. The analysis contains the statistical information that leads to a conclusion that I will address in my remarks.

During that 2½ years, the Mobile office had a number of problems that exacerbated the conditions that were referred to by Congressman Callahan. They have been identified in my statement, and I will very quickly refer to them. The office was without a hearing office Chief Administrative Law Judge from January 1992 through May 1993. I arrived on June 1, 1993. In addition, it was without a hearing office manager, which is the critical managerial position in every hearing office throughout the country. It was without a hearing office manager from April 1994—and, effectively, a lot longer than that—until April 1995. That's a documented one year that ended when the current hearing office manager was appointed and actually reported for duty.

During my experience and to date, there were and are no supervisory clerical personnel between the hearing office manager—Mr. Chairman, may I have the additional time?

Mr. GEKAS. Yes, we extend to you another large minute.

Judge DE BELLIS. Thank you very much. It may take me a little bit more than 1 minute.

Let me repeat that during that tenure and to date, there were and are no supervisory clerical personnel between the hearing office manager and the actual operating clerical employees in the hearing clerk and typing units, which are critical. In August, at the very end of fiscal year 1993, the Mobile office was relocated. It was relocated from one site to another site. I don't have to explain to you what happens when there's an office relocation; there were disruptions. Without the office manager that I referred to, I had to deal with all of the ongoing problems that develop as a result of a change in facility. This was a new facility, by the way, with all the problems that come with that, including the cooling system, the heating system, the allocation of space, and the security concerns that have to be dealt with. This became the function of the hearing office chief; there was no hearing office manager.

I learned very quickly that the Mobile clerical staff had never adjusted to an operational change, which is referred to as the "unit" system—you'll hear more about it, I'm sure, as your inquiry progresses—a change from what was called the "unit" system to a "reconfigured" system. I don't prefer one over the other. All that I am suggesting to the committee is that there was a major operational change which converted control by judges over their assigned staff, consisting of a hearing assistant, a hearing clerk, possibly a typist, and the decision writer—this changed to, in effect, a "pool" system. Again, I have no preferences. It makes no difference to me as to how the operation is performed. However, what happened, as far as I could determine, is that there was no training that followed this rather drastic change in the job requirements of the hearing clerks and the typing functions.

During this 2½-year period, more than a 50-percent increase in clerical support staff was provided. Now the help comes possibly after the problem has arisen, but there was a 50-percent increase in clerical staff during that period of time, which, incidentally, had to be trained without an office manager. Over a period of approximately 6 months, from July 25, 1994, through February 1, 1995—

that's the first and the last—there were 24 separate union grievances, demands, requests for management action and complaints, all of which required management attention in responding and setting up opportunities for oral presentations to inquire into their merits. Some of them had merit; I'm not questioning whether they did or did not have merit, but these are some of the experiences.

As to the Mobile statistics—reference was made to an ALJ, as to whom I believe privacy requires, I identify no further than to acknowledge as an ALJ; he is included in our statistics. He's included as a tenth ALJ. All of these statistics are divided by 10 to arrive at the "per ALJ" performance. I suggest to the committee that it should have been nine, because there was no input by that ALJ into the numerator of the equation. We have a number in the denominator, no activity in the numerator. For what it's worth, I think it negatively impacted on what we are referring to as the performance of the ALJ's as a whole in the Mobile office.

The last item that I've reflected in my statement concerns what are referred to as "numerics." Performance evaluations are critical in any management operation. Within the OHA framework, you cannot evaluate an employee on the basis of how many cases he has done, how many decisions he has written. I don't know if it really requires any elaboration to tell you that this may very well be a shortage of a managerial tool. As previously mentioned, the lack of control that the ALJ's have over the flow of cases was discussed by Judge Watkins. His statement completely covered that.

In addition, there was a statement submitted on April 19, 1996, by Judge Ronald G. Bernoski, who very effectively described this situation as a, "system that has left the judge with all the responsibility for the case, but with no authority to accomplish the work effort." I would like to add to that point that the ratio of hearing assistants and decision writers, shown in the document that the committee just accepted, the ratio of hearing assistants and decision writers to the ALJ's in the years 1993, 1994, and 1995 was considerably lower in the Mobile office than the average of those ratios in the entire region IV.

What do I conclude from that? Had Mobile received the same ratio of hearing assistants and decision writer resources, I believe that we would not be sitting here today. I believe that if that ratio of resources to ALJ's had been the same, that some 3,700 additional cases would have been available for ALJ's to review, schedule, hear, and decide, and, in addition, that more than 750 additional decisions would have been drafted by the decision writers and issued. Which brings us to today: the Mobile office has shown tremendous improvement with the infusion of resources that have been described by Judge Watkins. There's no doubt about that.

If the committee will look at the statistical comparison that I have attached to my statement, you can see very clearly that we are moving in the right direction and that we have been moving in the right direction, certainly from February 1994 when I was asked to produce an improvement plan. It was produced and it was provided to the regional office; they have it. We have been following it, and the results are manifest.

Once again, Mr. Chairman, thank you for the opportunity to appear at this hearing.

Mr. GEKAS. That was a large minute, but it was fruitful.

Judge DE BELLIS. I hope it wasn't disappointing.

Mr. GEKAS. No, it was valuable.

[The prepared statement of Judge De Bellis follows:]

PREPARED STATEMENT OF HON. FRANK M. DE BELLIS, ADMINISTRATIVE LAW JUDGE,  
SOCIAL SECURITY ADMINISTRATION, MOBILE, AL

Mr. Chairman and Members of the Subcommittee:

This statement supplements the one furnished to the Subcommittee, along with my biography, on April 13, 1996.

When I stepped down as Mobile Hearing Office Chief Administrative Law Judge (HOCALJ), I provided to Region IV Chief ALJ Henry G. Watkins a comparative statement of Mobile office productivity and resources for the fiscal years 1993, 1994, and 1995. A copy of that statement is attached hereto.

To the information conveyed by the statistical compilation, I can add that problems reflecting in some ways on the issue identified in Congressman Hyde's letter of April 3, 1996 were created or exacerbated by the following:

1. The absence of a HOCALJ in the Mobile office from January, 1992 through May, 1993;
2. The absence of a Hearing Office Manager from the Mobile office, officially from April, 1994 (and effectively much earlier) through February (but effectively April), 1995;
3. The absence of supervisory clerical personnel in the Mobile office, at least from June, 1993 (and to date);
4. A disruptive office relocation at the end of fiscal year 1993 to a new facility;
5. The on-going new building adjustment problems, including the expansion and modification of office space to accommodate unplanned staff increases and needs for files storage, cooling/heating system deficiencies, and security concerns;
6. Dealing with numerous union demands, complaints, and grievances arising out of allocations of office space, furnishings, and equipment, and dissatisfaction with employee performance appraisals and promotional appointments made;
7. Retraining of staff as a result of an operational change from one known as the "unit" system of case preparation, development, and disposition, to the present "reconfigured" system;
8. Assimilation and training of personnel constituting more than a 50% increase in Hearing Clerk/Office Automation Clerk support staff without supervisory clerical personnel;
9. The inability to utilize "numerics" in employee performance evaluations; and

10. In calculating "per ALJ" comparative statistics, the inclusion in the denominator of an ALJ who was not effectively contributing to the items included in the numerator.

With the exception of Nos. 3, 5, and 9, none of the listed items still persist, although the disparity in productivity between the Mobile office and other offices does.

While much progress was made in fiscal years 1994 and 1995, there is room for improvement. I look forward to being part of the implementation process.

I am pleased to assist the Subcommittee in its inquiry, and would be glad to provide clarifying details if desired.

Mr. GEKAS. Judge Habermann.

**STATEMENT OF HON. ROBERT S. HABERMANN, ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY ADMINISTRATION, MOBILE, AL**

Judge HABERMANN. Thank you very much. I am Bob Habermann. I am an ALJ and have been an ALJ in Mobile for the last 3 years, and for the last 6 months I was the acting hearing office Chief Judge.

I want to tell you just a little bit about my office. We have 57 hard-working, dedicated men and women—some black, some white, some Hispanic. Some are at the beginning of their careers and some are at the end of their careers. Over 40 of these individuals were born and bred in Alabama and have great ties to the people there. They care deeply about the people of Mobile. Other employees who have been assigned to the office have also developed heavy ties to the area. We care deeply about Mobile, and we are very distressed by the fact that things are not going as well as they could.

Not too long ago, a few years ago, our office was at the top. We were number one or in the top five, and I'm not quite sure why we fell so far—I think Frank gave some reasons—but I want to tell you that the bottoming out process started a long time ago, and we are on our way up. The corps of individuals that we need to go back to the middle of the pack, and eventually to the top, is in place and is functioning well in Mobile. I don't want to hit you with a whole lot of statistics. You've heard the stats, and the thing about stats is that they can say anything you want them to say, but there is one interesting one that I want to say. Over the year that just ended this May, the ALJ's in our office put out almost 4,800 decisions. These aren't judges from other offices that are issuing them, such as in Charlotte or in Knoxville. These are our ALJ's, and we put out 4,800 dispositions in the last year. And I want you to know that if you add up the total dispositions in fiscal years 1993 and 1994, that sum is less than the total amount that we put out last year.

So, I think we have really begun to turn things around. If you take these 4,800 decisions and divide it by our nine judges, excluding the one judge that was only doing one a month, our judges have averaged about 44 decisions a month, and that is an incredible increase from where the average was just 2 or 3 years ago. I think we are on our way up. I think that the tide has turned, and I believe over the next several years, this trend will continue.

When I took over as the Acting Chief Judge about 6 months ago, our management team decided to take a fresh look at everything. We developed a vision; we set plans, objectives, goals. And I want to say that a lot of the goals that we set have been met. We developed a brandnew approach called the "TEAM" process of which we have implemented the first phase, and we've developed other concepts such as our part A program. And I think these programs are going to continue to show significant results.

As I stated in my statement, I think there are things that we still need to do. I think that the position of a hearing office Chief Judge has to be reinforced. I think you need to consider whether hearing office Chief Judges have the authority, the power, and the



tools in order to provide a solution when there are problems in the office? Obviously, if you have a well-motivated, professional staff and things are working well, then the job of the HOCALJ—the Hearing Office Chief Administrative Law Judge, as we call a HOCALJ—all these acronyms—is a very easy job. But where you have problems in the office, where employees are not producing, where employees are not doing their share, there needs to be more authority given to the hearing office chief.

In my statement I talked about the fact that there are no production standards, which amazes me. The bench, the bar, the public, the Congress, and the news media are looking very closely at the Social Security Administration for numbers. They want to know how many cases we put out, how many cases are pending, but as far as I know, not one single member of my staff has a production quota. It's difficult for a manager to manage when he can't predict or expect certain results out of his employees.

I think we have to look at certain other things. We need a code of judicial ethics for judges; I think that's imperative. I think there should be standardized case-processing guidelines.

I see my time is up.

Mr. GEKAS. We extend to you the same courtesy that the others abused.

Judge HABERMANN. I will not abuse it because I am at the very end.

Each of the judges in my office has their own particular way of doing a case. I think that there should be some standardization there. And I think that we should have a peer review type of system where the local judges in an office can put pressure on their fellow judges, where those judges are having problems in particular areas.

I want to make just one more comment. As far as I know, we judges in the Mobile office have never, ever refused to meet with anybody from the Congress, and we welcome the opportunity at any time to sit down with Congressmen, any Congressman—we have several in our particular region—and meet with them and discuss problems.

It's been an honor to be here. I guess all my life I wanted to be here before Congress and say a few things. I thank you for the opportunity—and I don't want you to read that the wrong way—and I'm certainly willing to answer any questions you may have, either now or later. Thank you.

[The prepared statement of Judge Habermann follows:]

PREPARED STATEMENT OF HON. ROBERT B. HABERMANN, ADMINISTRATIVE LAW  
JUDGE, SOCIAL SECURITY ADMINISTRATION, MOBILE, AL

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

My name is Robert S. Habermann, and I am currently an Administrative Law Judge with the Office of Hearings and Appeals in Mobile, Alabama. From December 1, 1995 to May 4, 1996, I served as the Hearing Office Chief Administrative Law Judge in this office. I have attached my Biographical Sketch to this statement should you wish any additional information concerning my background and experience. I thank the Subcommittee for the opportunity to discuss the state of the Mobile Hearing Office during my tenure as Acting Chief Judge.

Our office currently consists of fifty-seven dedicated men and women, housed in a "stand alone" building built in Mobile, Alabama in 1993. I have attached a chart depicting our organizational structure as of April 30, 1996. We currently have nine Administrative Law Judges assigned to our office, several of whom have had distinguished legal careers. Judge William L. Ragland, for example, is a decorated World War II veteran and a former Missouri Circuit Court Judge. Judge Irwin W. Coleman, Jr., served as an Assistant United States District Attorney, and for many years, has been an elected officer in the Association of Administrative Law Judges. Judge James D. Smith has served in our office for twenty-two years and he has received multiple commendations from the Congress, our Agency, the bar, and the public. And Judge Alan D. Oboler served for twenty years in the public defender's office in New York City, and also was a member of the faculty of New York Law School teaching criminal law. I hope that these examples provide some insight regarding the caliber of Judges in our office.

Shortly after my appointment as Acting Hearing Office Chief Administrative Law Judge, I began working with my Supervisory Staff Attorney (Roger Nelson) and my Hearing Office Manager (James Ridenor) in formulating our vision for the ensuing six months. I wish to state, parenthetically, that these two individuals, in my opinion, did a superb job during this period.

Professor Stephen Legomsky cites the four basic goals in an adjudicative system: accuracy, efficiency, acceptability, and consistency.<sup>1</sup> Further, he states:

The accuracy goal reflects the need to ascertain the truth. The goal of efficiency encompasses a desire to minimize not only the monetary costs to the parties and to the public, but also the costs of the waiting

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<sup>1</sup>Stephen Legomsky, Forum Choices for Review of Agency Adjudication, 71 Iowa L. Rev. 1297(1986).

time and decisionmakers' time. The acceptability goal recognizes the importance of having a procedure that the litigants and the general public perceive as fair.

Professor Legomsky also notes that consistency "over-laps partly, but not entirely with the other three." Since inconsistent decisions result in public uncertainty as to how to plan for the future, consistency may be subsumed within accuracy. With these principles in mind, my management team identified our two primary goals: 1) to continue to raise the Mobile Offices' statistics to the Regional average in all categories; and 2) to significantly reduce the backlog. I recognized that the success of my leadership rested on accomplishing these goals. I believe that we were successful in each of these categories.

It is my view that during this five month time period, we continued the forward advance initiated by Judge De Bellis in early 1994. With a generous offer of writing-support help from Judges Boyer and Watkins, the Judges and support staff of the Mobile Hearing Office issued 1877 Decisions and Orders, equalling 375 cases per month or 41.17 cases per Judge per month over this period of time. Note, as a comparison point, that in all of FY-1993, we issued only 2042 Decisions and Orders, and only 2660 were issued in FY-1994. In addition, our "Average Pending Days" (the average age of a case on our docket) fell from 339 days on December 1, 1995 to 290 days on May 3, 1996. Furthermore, our Judges scheduled 2015 hearings over this five month period, averaging 45 hearings per month per Judge. This figure is quite remarkable due to the fact that there were government shutdowns, furloughs, and many holidays during this period.

We also developed two new work-flow initiatives during this period. The first initiative was to implement a case-manager system in January, 1996 which we called the TEAM (Together Everyone Achieves More) approach. The concept involved a joining of a Judge, a legal assistant, a writer, and two hearing clerks into a "team". We felt that such a venture would foster our four basic goals (efficiency, acceptability, accuracy, and consistency) because the team members would be working together. Since such a system encourages healthy competition among the teams, production and morale would increase. While only Phase I of the TEAM concept has been implemented (joining of a Judge and a legal assistant), the resultant pairings have been, for the most part, very productive and professionally satisfying.

The second work-flow initiative involved the Part A Medicare caseload. In recent months, the office has received an unprecedented 700 cases from one Provider alone. Many of these cases involve the same or similar issues. In short, this initiative is aimed at grouping similar-issue cases into distinct categories and adjudicating them in bunches. This initiative,

too, satisfies our goals of accuracy, acceptability, efficiency, and consistency, and will lead to greater productivity. Hence, "more bang for the buck."

Finally, my management team worked together to dramatically improve our labor-relations profile. We resolved all pending grievances and EEOC complaints. In addition, no new grievances, Unfair Labor Practices, or EEOC complaints were filed during this period. We extended the hand of partnership to the Union, and together, we equitably resolved many matters of mutual concern.

On March 23, 1996, I advised Judge Watkins that I wished to be relieved of my position as Acting Chief Judge. While I have several personal reasons for stepping down, two reasons were paramount. First, I have served as a Manager for most of the past twenty years, and I now wished to be just a Judge. Second, and perhaps most troubling to me, the Chief Judge position lacks the necessary power to function effectively. Much of the problem arises with the inherent contradictions in managing adjudication generally. Managers need predictability and accountability. Judges need independence and flexibility, and as such are often profoundly anti-bureaucratic.

In a 1991 article,<sup>2</sup> Jerry L. Marshaw highlighted this conflict:

Administrators would prefer to think of administrative adjudicators as a part of the administration team. They feel an institutional responsibility for agency decisions, a responsibility that is imperiled by adjudicatory impartiality. Too much of the latter and adjudicators can make policy to suit themselves, regulated parties, or the agency's clientele, rather than promoting the program of the agency in whose name they adjudicate.

The fear of runaway adjudicators reflects but one aspect of the tension between adjudication and administration. Administrators are concerned with general administrative programs, not with particularized inquiries. Rather than viewing each case as a unique opportunity to dispense individualized justice, as a job to be done well in and for itself, administrators are likely to see adjudication

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<sup>2</sup>Jerry L. Marshaw, Organizing Adjudication, Reflections on the Prospect for Artisans in the Age of Robots, Admin. Law. News Vol. 17, No. 3 (Spring, 1992)

merely as the means for implementing rules. In their heart of hearts they would prefer rule-bound application of agency policy to innovative adjudicatory problem solving.

While tension between Judges and management may be unavoidable, steps can be taken to lessen the strain. Peer review mechanisms, a Code of Judicial Ethics, standardized case processing procedures, and case management initiatives aimed at delegating more control to the Judges over their dockets could be implemented to accelerate the adjudicative process. In turn, these measures would also provide guidance and benchmarks to the Judges regarding goals and aspirations. It is my personal view that these are needed here.

In addition, while the Social Security Administration is closely watched by the Congress, the Press, and the public regarding backlogs and disposition rates, I am unaware of any production standards for our employees in the Office of Hearings and Appeals. It's difficult for a manager to manage a high-volume operation when there are no production standards.

Furthermore, the employees' performance evaluations at the Office of Hearings and Appeals have changed from a multi-tier evaluation system to a "pass-fail" system. Therefore, a high achiever may score as well as a mediocre achiever. There are few incentives to do well other than "professionalism."

In my prior position as General Counsel of the Benefits Review Board at the Department of Labor, I headed an office of 125 attorneys plus an additional 75 member support staff. As a manager, I could hire, fire, evaluate, promote, discipline, award, and assign work within the confines of the Union Contract. Most of these management tools are either non-existent or significantly diminished at the Office of Hearings and Appeals, and leave the manager to depend on the professionalism of the Judges and support staff to accomplish the mission of the office. Where the Judges are well-motivated, the office generally runs very well as the energy "trickles down" and ignites the staff. But if a professional staff member is not well-motivated, the manager is left with few options. As a manager in Mobile, I was generally well pleased with the high-caliber professional staff (both Judges and support staff), and I am grateful for their support, encouragement, and the high standards they set for themselves. Most of them are "self-starters". However, in those instances where motivation was lacking, I was helpless as a manager to rectify the situation.

In summary, the Judges and support staff of the Mobile Office have continued the forward advance initiated by Judge De Bellis. The highly professional and dedicated Judicial and support staff issued almost 1900 Decisions and Orders and scheduled over 2000

during the December 1 to May 3, 1996 timeframe. We have developed several effective work-flow initiatives, and we are working in partnership with the Union to establish a productive and pleasant work environment. I have indicated that peer-review mechanisms, a Code of Judicial Ethics, case processing guidelines, and production standards may be helpful in goal-setting and goal-achieving initiatives.

I will be glad to answer, in my personal capacity, any questions you may have.

- APRIL 30, 1996

ORGANIZATIONAL STRUCTURE - Acting Hearing Officer  
 Robert S. Habermann - Chief Administrative Law Judge

SUPPORT STAFF

James Ridenor - Hearing Office Manager

ADMINISTRATIVE SECTION

Regina Taylor Howard  
 Halley A. Spafford  
 M. Faye Varnado  
 Tracy Y. Watkins (Sis)

HEARING CLERK SECTION

Deatra Adams  
 Veolia Hawkins  
 Nancy Holloway  
 Barbara Howell  
 Beverly D. Kenny  
 Judy C. Lynch  
 Chris U. McKee  
 Deborah S. Rogers  
 Cathleen Saxon  
 Elizabeth A. Sutton  
 Geri S. Templeton  
 Cherise Tunstall  
 Julie C. Woodard  
 Douglas A. Young  
 Sharon Zimmerman

LEGAL ASSISTANT SECTION

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 Sharrrien C. Burks  
 Cheryl P. Cargill  
 Judy A. Cruthirds  
 Tammy M. Hall  
 Donna Liller  
 Suzy Maske  
 Mary Leigh McCoy  
 Gerald Mitchell  
 Donna Mizell  
 Danielle Sharpe  
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OFFICE AUTOMATION CLERK SECTION

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WRITING STAFF

Roger A. Nelson - Supervisory Staff Attorney

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 Wendy A. Pierce

PARALEGAL SPEC. SECTION

Warren G. Bullin  
 Billie F. Creamer  
 Billie W. Hughes  
 Carl L. Warren  
 Mary T. Wilson

Chief Judge

Judges

SSA

HOM

Administrative

Automation Clerks

Super. Legal Abst.

Legal Assistants

Hearing Clerks

Staff Attorneys

Paralegal Specs.

Total

	<u>FTE CEILING</u>	<u>FTE ACTUAL</u>
Chief Judge	1	0
Judges	9	9
SSA	1	1
HOM	1	1
Administrative	6	4
Automation Clerks	8	2
Super. Legal Abst.	1	1
Legal Assistants	10	13
Hearing Clerks	13	15
Staff Attorneys	0-12	6
Paralegal Specs.	0-12	5
<u>Total</u>	<u>62</u>	<u>57</u>

ADMINISTRATIVE LAW JUDGES

Irwin W. Coleman, Jr.  
 Frank M. De Bellis  
 Glay E. Maggard  
 Joseph J. Miccare  
 Alan D. Oboler  
 William L. Ragland  
 Ricardo M. Ryan  
 James D. Smith

Mr. GEKAS. We'll test you right away.

Part of your testimony at the end seems to contradict, a little bit, what Congressman Callahan asserted as part of his main testimony, that, in fact, in his judgment, the way he concluded, there was a kind of a gag rule imposed relative to his request to meet with the hearing judges—the ALJ's—and others in the Mobile office. You're saying that you never refused to meet with Sonny Callahan. Is that correct?

Judge HABERMANN. Yes, that's correct.

Mr. GEKAS. But, did he request a meeting directly from you?

Judge HABERMANN. I've never received a invitation directly from the Congressman to speak with him. There were a couple of occasions when he was at our office, that we expected that Congressman Callahan would be meeting with us, and for some reason—and I don't know what the reason is—that meeting didn't happen.

Mr. GEKAS. Did you ever receive a directive from anyone, including the individuals on the panel, not to meet with Congressman Callahan?

Judge HABERMANN. Well, this is a very difficult question, and I think each of us have—

Mr. GEKAS. Well, give us a difficult answer.

Judge HABERMANN. Thank you. I don't know what the policy was before I became the Acting Chief Judge, but on December 1 it was my impression that I should initiate no contact with Mr. Callahan, and that if there was any contact made that it should be referred up to the regional office. And I adhered to that policy throughout my entire time as Acting Chief Judge.

Mr. GEKAS. That smacks of a kind of gag rule, so the credibility of the testimony from Congressman Callahan takes on new standards, as it were. I believe, fervently, that part of the improvement that has now been asserted by the members of this panel is due in part to Sonny Callahan's extraordinary interest and honing-in on the problem.

Judge HABERMANN. I agree with that fully.

Mr. GEKAS. So, his credibility in that regard is very high. So, when he also says that he feels he was the subject of a gag rule, I have to—as one member of this subcommittee and as Chair—give a lot of credibility to that. And now what you tell me seems to, in perhaps a left-handed way, give credence to the notion of a gag rule.

Judge HABERMANN. I don't want to use that word, you know, "gag rule." I'm not sure what it means.

Mr. GEKAS. Well, we're trying to be dramatic about it, perhaps, but everybody understands that the order that you received was not to initiate contact with Congressman Callahan. Was that the extent of what you were directed to do?

Judge HABERMANN. I have nothing in writing, but it's been my strong belief, ever since I became the Acting Chief Judge, that the policy was to initiate no contact and to refer any contact up to the regional office.

Mr. GEKAS. Was that by word of mouth?

Judge HABERMANN. I've searched for how this became apparent to me, and to this day I don't know exactly how it became apparent to me. But I can tell you that through the judges in my office, it



was apparent to everyone I talked to. I don't have a written directive. I have on a couple of occasions requested the opportunity to speak to Mr. Callahan, and I was not able to provide any contact or receive any contact from him.

Mr. GEKAS. There was a letter, apparently, from Judge Boyer to Congressman Callahan on May 15, 1996, in which there was an assertion that there was no directive prohibiting ALJ's from speaking to him. So, that comports a little bit with what you're saying, that there was no actual directive. But you—somewhere—gathered an understanding that that was the suggestion, if nothing else.

Judge HABERMANN. Yes, and I've searched my heart and my conscience—and my notes. I do not have anything in writing from any official above me that would prohibit this practice. I can tell you that I had sought out the permission to make contact, and I was not able to make contact. But I have no directive, so it very well could be that my belief was incorrect or mislaid.

Mr. GEKAS. Yes, we have the text of the E-mail signed by Margie Cargile. Do you know who that is?

Judge HABERMANN. Yes, I know who she is.

Mr. GEKAS. Who is she?

Judge HABERMANN. She works, I believe, on Judge Watkins' staff. I'm not quite sure what her title is. I've never met her personally; I have talked to her on the phone.

Mr. GEKAS. Well, then, in effect there is a written directive of some sort here to which you apparently could allude in your understanding that you were not to contact Congressman Callahan. Is that correct?

Judge HABERMANN. I have read the E-mail. I think it's dated something like May 29, or whatever.

Mr. GEKAS. So it was more than just a feeling that you had or an understanding that you reached. This says, "If you did you receive a call from Congressman Callahan's office and you said that you would call back once you received direction and guidance from the RO, please call the staff person that called you back and advise him or her that their information request should be referred to the Atlanta regional office." So that, indeed, there is a kind of understanding that you can infer from that, that you should not talk, nor any of the people in your office should talk, to Congressman Callahan. So I can't blame him, Congressman Callahan, for believing that there was a kind of a gag order issued.

My time has run out in the first round. I will yield, and then I will come back to this question and others in the second round, in the third round, in the fourth—well, whatever. But now I yield to the gentleman from Rhode Island.

Mr. REED. Thank you, Mr. Chairman.

I want to thank you gentlemen for your testimony today, and I just basically want to ensure I understand what you've said. A lot of what you've said is that it's not the ALJ's fault because the ALJ's role is very limited, and I'm just wondering how limited it is, and I'll ask some basic questions. There was the example of Mr. Burge, who said that after the 5-minute hearing it took 79 days to receive a decision. Do I assume from your testimony that the judge just sort of sat passively there for 79 days with no inquiries about the case and no system in place to ensure that his or her decision

was implemented? Is that the system you operate in? Judge De Bellis.

Judge DE BELLIS. In effect, yes. I don't think that there's a routine followup on every decision that's made that goes into the writing component. Then it is assigned by the supervisor of that component, the staff supervisory attorney, to a particular decision writer. The next time that the judge normally sees the case is when a decision has been drafted. I can't tell from the dates that we have before us when the decision was made and when it was referred to the decision-writing component. It may have been the day before; it could be. As a matter of fact, when we do have reason to expedite, in what is referred to as critical cases, it happens exactly that way. You'll have a decision; you'll have a decision drafted, and you'll have it out—possibly within 24 hours or less.

Mr. REED. And the system that you describe is a system that operates throughout the entire Social Security system?

Judge DE BELLIS. I can't speak for the other offices, because I do know that there is great disparity in actual processes.

Mr. REED. Perhaps Mr. Boyer could speak for the other offices. Is this the system in every HO?

Judge BOYER. Mr. Reed, I can assure you that there is a system in place to address what are labeled "dire need" cases. And when a case is marked as dire need under emergency situations—as have been described here today, I might add—that case would have been advanced to the front of the line in the writing component, and as Judge De Bellis pointed out, that case could have been issued within 24 to 48 hours. I don't know what happened in Mr. Burge's particular case, but, yes, that system is in place.

Mr. REED. Mr. Habermann.

Judge HABERMANN. Yes, thank you. In this particular case, the hearing was held on July 18, 1995—and I have his note. The ALJ said on that date that it should be granted, and it is signed by his initials saying it is favorable and the basis for it was given on that date. The following day his clerk assigned it to the decision-writing pool. So, the ALJ did his job on the day of the hearing, or within a few hours of the actual hearing, and it was forwarded to the decision-writing component on the following day. It was not released until September 29. This delay in our office at that time was certainly not uncommon. We're talking about 2½ months, and at the time that was not uncommon. In fact, for certain cases that would be very fast.

Mr. REED. It just strikes me that this is an absolutely horrible system, that no one has any responsibility. Because I would suggest that if we quiz the administrators who are the decision writers, they would say, "Well, unless they tell me this is really a dire priority," which I presume was after a call from a Congressman's office, then it becomes a dire priority.

Judge BOYER. Well, sir—

Mr. GEKAS. Then it becomes irritating.

Judge BOYER. Actually, the source of the information which would bring it to our attention that it is a dire need could be the congressional office, and sometimes it is, but when we talk about a dire need, we're talking about the particular circumstances or conditions of an individual—

Mr. GEKAS. A cardiac patient who is in distress.

Judge BOYER [continuing]. Which might be medical or might be economic.

Mr. REED. Let me ask you, Judge, who makes that dire need assessment?

Judge BOYER. Sometimes the hearing office management makes that assessment.

Mr. REED. So the judge doesn't?

Judge BOYER. Well, if it comes to the judge's attention, the judge can ask, as the judge frequently does, that it be called a dire need case. I would also, Mr. Congressman, like to mention that while I don't know what happened in this specific case, but there is an individual responsible for seeing that cases move through the decision-writing process and move through there expeditiously. There is a supervisory staff attorney whose job is to see that cases aren't bogged-down or backlogged in decision writing. The processing time for cases to be written is a goal, nationwide, that we're working very vigorously on and have reduced it at the present time to approximately 20 days. We will have that down to between 10 and 15 days by the end of this fiscal year. In Mobile, their average time was under 40 days so I can't explain what happened on this particular case, but there is an individual responsible and it can be expedited.

Mr. REED. With the chairman's indulgence—so, there was a supervisory staff attorney in the Mobile office that was responsible for monitoring these cases?

Judge DE BELLIS. Well, it's his function to assign the decisions to be written and to supervise the quality of the decision as well.

Mr. REED. Where is this individual today?

Judge DE BELLIS. Today? Is he at the regional conference?

Judge WATKINS. He's at the regional conference.

Mr. REED. No, I'm talking about not literally today, but I'm trying to find out who is responsible for—and I think that person—the staff or someone—should approach and ask for his or her comments about this process, too, because this seems to be a situation where actually no one is in charge, and it's a system that—I mean, I'm amazed that other offices seem to function much better than the Mobile office if this is the system that we all have to confront every day.

Judge WATKINS. May I speak to that, Congressman, briefly?

Mr. REED. Yes.

Judge WATKINS. The particular situation that you hear sounds unreasonable on its face; however, it's not atypical for Mobile or any other office until this year, when Shirley Chater said that she did not want these decisions waiting in the queue to be written, especially the fully-favorable decisions which are easier to draft than the others in terms of legal defensibility. We started to send out all fully-favorable decisions immediately. We directed local hearing office management to send those out to people that we had trained. Some were within the Office of Hearings and Appeals, and others were in other components of Social Security. We got those decisions drafted, and we had a target of 1 week of getting them drafted and turned around back to the offices, and we had great success. So,

I would like to think that that situation that occurred—Mr. Burge's case—could not occur today.

Mr. REED. I thank the gentleman.

Mr. Chairman.

Mr. GEKAS. We'll grant you a second round, if you so desire.

I was fascinated by the fact that Judge Watkins revealed to us that at one point the Association of Administrative Law Judges was willing and able and did supply volunteers to help out with their workload. Is that correct?

Judge WATKINS. Congressman, I do not have an adversarial relationship with the ALJ Association—quite to the contrary.

Mr. GEKAS. I didn't imply that you did. What I was saying was that pleased me to hear, first, that you could call upon it; secondly, that the association was at your right side to try to help.

Judge WATKINS. They have been very helpful, and I would like to add that President Cleveland has been open to any suggestions to improve—

Mr. GEKAS. President Grover Cleveland was one of the greatest historic figures of our time, yes.

Judge WATKINS. I'm speaking of President Melford Cleveland of the ALJ Association.

Mr. GEKAS. At any rate, let me ask you this. I take it that the first choice of the volunteers, or how Judge Cleveland might have begun to gather some volunteer chits, came from Social Security Administration ALJ's from around the country. Is that correct?

Judge WATKINS. That's correct.

Mr. GEKAS. Was there any instance to your knowledge in which a judge could have volunteered from another realm, or is your knowledge only related to the Social Security ALJ's?

Judge WATKINS. No, we only had Social Security ALJ's, Congressman.

Mr. GEKAS. As volunteers?

Judge WATKINS. That's correct.

Mr. GEKAS. All right. That's very important to me because it means that the association, as such, vis-a-vis the corps that I envision, could do the same thing nationwide and plug in where needed to help catch up with the backlog, et cetera. The other thing that I wanted to ask, and this was of Judge De Bellis, relates to the analysis made by Judge Bernoski. He was able to dissect the relationship between the work and duty of the ALJ and all that precedes and follows the adjudication that he performs. That, too, is very important to me in relation to our new legislation.

So, the 5-minute decision that everybody applauds with respect to Mr. Burge, which was an open-and-shut case, as it were, for this administrative law judge to take 5 minutes for a favorable decision in a case that consumed 3 years for the claimant—that cannot be laid at the feet of the ALJ in question, but, rather, on the process to which the gentleman from Rhode Island is referring; that is, the before and after. Is that correct?

Judge DE BELLIS. The delay?

Mr. GEKAS. Yes.

Judge DE BELLIS. Yes, that's correct.

Mr. GEKAS. Getting back to the so-called gag rule which Congressman Callahan has so eloquently described for us, there was

a second E-mail, apparently, in which the bold language, "Do not provide any information," referring to Congressman Callahan's office, is part and parcel of a directive that seems to come from—Margie Cargile—and it comes from Judge Watkins's office?

Judge WATKINS. She is my acting regional management officer—and if I could address that, Congressman?

Mr. GEKAS. Yes, I'm going to ask you about that. But it says here, "We have been advised by OCALJ." Is that Judge Boyer's office?

Judge BOYER. If I may, Mr. Chairman, since there are these questions about the gag order concern. I am quite concerned myself that what I see is a lack of communication with the Congressman's office, and I intend to see that communication from my office and from all of our offices is improved, because I'm here once again to reassure his office and yours that there is no, "gag order," as I would understand it or perceive it. If I could explain what the policy—and the longstanding policy of this agency—has been for many years, and that is, on all matters that are related to inquiries relative to a constituent of yours, we are to answer those inquiries and answer them promptly.

On nonspecific matters, which gets us into areas of budgeting, processing times, delays, and the like that are a part of a bigger picture, the policy of the agency has been—for certainly as long as I can remember in my career—that those types of inquiries should simply go through either the regional office or the chief judge's office, where the opportunity to bring those responses into the broader context is provided. And that policy is specified.

Mr. GEKAS. Wouldn't it be wiser to say, "Provide the information, but notify or give copies of that information to the superior," so that everybody knows what information was granted? Isn't that a simpler and better way? From the standpoint of the Members of Congress, that's much better.

Judge WATKINS. May I add to that, Congressman?

Mr. GEKAS. Yes.

Judge WATKINS. There are some considerations: we got—in this particular case—we got a request to provide the home addresses, names, and other personal information about the ALJ's in the office. Those raise privacy concerns that have to be interpreted and applied at the national level. So, anytime anything involves—

Mr. GEKAS. Aren't they a matter of public record, the addresses of where ALJ's reside?

Judge WATKINS. Well, it asked for home numbers and home addresses, and we had to refer that sensitive issue to the Chief Judge's office; they worked with the Commissioner's office in Baltimore in trying to coordinate a response to that. But if you start to provide that information locally, and the cat's out of the bag, and it's inappropriate, then you have an employee on the line who has done something inappropriate.

Mr. GEKAS. Well, we could talk about that some other time. We're talking about a phone book and accessibility to a Member of Congress who wants to get some answers. I understand privacy and confidentiality, but this is too much, to not provide any information. The gentleman from Alabama was justified in being "irked," to say the least.

Judge BOYER. Understandably, and I believe that certainly we can work on our communication skills. If I could, Mr. Gekas, there are a couple of other quick comments that I'd like to make at this point. Your referral to using outside ALJ's for the emergency situation that we've had and that Judge Watkins and Judge De Bellis have tried to address. Those non-SSA judges, of course, would not provide us immediate relief because they don't have the training and experience in the Social Security law and work that we wanted and needed immediately. I know steps can be taken to improve upon that, but for the short-term fix—and we certainly intend this to be a short-term fix because we do intend for Mobile to come up to the norm, and to be stable, and to address their own workload—but we needed immediate help.

Reference has been made to our processes. I would reassure the subcommittee, and I believe as the subcommittee knows, Social Security is taking a very close look at all of our processes through re-design or reengineering. This process is going on right now taking a look at the delays and how we can reduce them. We believe that there are many answers to be found, and that much improvement can be made.

Reference has also been made to the concerns about performance standards and the lack of performance standards within the Office of Hearings and Appeals. This policy of general rather than numerical performance standards was adopted by Social Security agency-wide over a year-and-a-half ago as part of an effort to work in partnership with the unions to come up with a better system of evaluating our employees. This is not something that is unique to the Office of Hearings and Appeals; it is present throughout all of SSA.

Thank you, sir.

Mr. GEKAS. We will yield to the gentleman from Rhode Island for another round of questioning.

Mr. REED. Just very quickly, Mr. Chairman. From what's been described today, the system seems to be critically out of whack. The idea that the hearing officer makes the decision, and then someone else writes the opinion, and then maybe a year later it shows up for signature seems to be not a way to organize the system. This is a purely amateur opinion, I might add, but I'm not being totally sanguine, also, about the ALJ's down in Mobile. I think, essentially, unless there is other evidence that will come forward, that they acquiesced to a situation in which there is limited output by their colleagues. How else do you justify the very extraordinarily poor output of the Mobile office?

So I would suggest that in this situation it is not just the kind of bizarre administrative aspects that I think are emerging from the hearing today. I just wonder what we can do—and it might be to reorganize the administration to make the judges be more accountable for their workload? I offer that as a comment and for your response.

Judge BOYER. Thank you, Mr. Reed. If I could, and I know that we were not speaking—I hope—literally, because I know of no specific instance where a decision of a judge went into the decision-writing pool and actually waited one full year before being issued. Nevertheless, the delay that was certainly pointed out in Mr. Burge's case, and some of the delays we have elsewhere, we find

unacceptable and steps are being taken to reduce those delays. I believe that our judges are accountable for their work, and I believe that, as you suggested here, there may well have been more that the judge could have done in this particular instance but without knowing all the details, it's difficult for me to suggest remedies that he could have taken at the time.

Many of our judges in simple terms—I probably shouldn't use that word, but in the legal world of a complicated decision versus a less-complicated decision—and this certainly appears to be a less-complicated decision—many of our judges are writing their own decisions if they are capable of doing that. They've made a tremendous contribution in that regard. That's certainly one thing that could have happened. Another thing that could have happened is that the judge, while not in charge of the decision-writing staff, is in charge of his or her docket, and the judge can go back and ask questions about what's going on with particular cases. They're provided a list of the cases that they have and they can follow through.

Much has been said about one system of hearing office configuration versus another system of configuration, as to whether a unit system should prevail, or whether a pooling or team system should prevail. The fact of the matter is that at the current time, nationwide, OHA has no firm policy as to how each office shall individually be configured. We take into account many factors in determining how they should be organized.

Some of the smaller offices, of which Mobile is not one, have found it very beneficial to go back to a system where specific people are assigned to work only for specific ALJ's. What happened in the early and mideighties is that we developed this pooling or reconfiguration system. Many studies at that time showed—and we'll be glad to provide those to the subcommittee if you would like—that the pooling of staff under conditions where resources were limited—and that is the same circumstance that we're in today—provided the most beneficial and most efficient way to operate our individual hearing offices. That is how we wound up with this system that we have today with staff pooled or reconfigured. Nonetheless, there is still some variance and some flexibility in how offices may organize offered at this time under our current policy.

Mr. REED. Thank you, Mr. Chairman.

Mr. GEKAS. I have no more questions. I do want to conclude by stating to these distinguished judges who form this panel that I take it that in the future there will be no such thing as a gag rule, or what we characterize as a gag rule, or failure or reluctance to provide information to a Member of Congress, particularly Congressman Callahan since he screams rather loudly at this whole array of circumstances. So, there has been a benefit derived from this hearing right from the start, because that's what I gather will be the future policy governing the provision of information to the Congressman from that area or from any other area. Next, the fact that there has been an improvement in the backlog statistics and in the attention given to particular cases in Mobile—that, too, has to be attributed in part to the intense effort of Congressman Sonny Callahan to bring about better service for his constituents.

So, those conclusions that I draw are good and they make this hearing a success. It does not end here, however, because all of the other problems that we see, particularly with the process, as the gentleman from Rhode Island has pointed out, and with whether or not the current system, as we have learned from some testimony here today, comports with the Administrative Procedure Act. I have purposely not elicited questions or answers about that particular phase of what we're doing here. That's what the next witness is going to try to portray for us and that's going to be very valuable for this subcommittee as it proceeds along the path of looking into the entire ALJ structure.

With that, I thank every member of the panel.

Judge WATKINS. Mr. Chairman, I'm loath to add anything because, as you know, I have a plane to catch.

Mr. GEKAS. Yes, I was going to suggest that those of you who can remain to hear the testimony of Judge Cleveland should do so, but if you can't, you can't.

Judge WATKINS. But the one thing that I can't leave unanswered: The suggestion that there's been a gag order, or any indication that any judge should not speak with any Congressman, does not come from my office, never has, and never will. I have over 250 judges in region IV. They meet and talk with Congressmen and Senators on a daily basis.

Mr. GEKAS. Well, we're justified in drawing a conclusion from the E-mail and from even what Judge Boyer has produced that there is. If you don't want to raise it to the level of saying a gag rule, you can describe it anyway you want to—it's not good.

Judge WATKINS. All right.

Mr. GEKAS. I thank the gentlemen.

Judge BOYER. I thank the chairman, and I can assure you of our continued cooperation and support.

Mr. GEKAS. Judge Cleveland. No relation to Grover Cleveland?

Judge CLEVELAND. Yes, sir; we claim it.

Mr. GEKAS. Judge Cleveland is the president of the Association of Administrative Law Judges and, at my request, I wanted to see how he could characterize this whole Mobile mess within the context of the Administrative Procedure Act and whether that could give us some insight as to how that system—just in Mobile—could be improved. We ask the gentleman to proceed to testify. Any written statement will be incorporated into the record without objection. You may proceed.

#### STATEMENT OF HON. MELFORD CLEVELAND, PRESIDENT, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INC.

Judge CLEVELAND. Thank you, Mr. Chairman. I appreciate the opportunity of being here, and I will repeat for the record that I am speaking as the president of the judges' association, and not in any way for the Social Security Administration.

The Mobile situation is very regrettable. There's already been testimony that we've done our best in the association by getting volunteers to go there. Basically, that's about all the association could do in the present context. With certain exceptions, Mr. Chairman and Congressman Reed, it is my opinion that in Mobile and elsewhere, the judges have done about the best that they could



with the management handicap that they labor under. The truth of the matter is—and this sounds strange and I know it; I've been an ALJ a long time—but the truth of the matter is that under the present system, the only time the judge has control of the case is when he holds the hearing and when he signs the decision.

I would refer you to the very back page of my statement, Mr. Chairman, where I have a diagram. This diagram shows at the top, where it says, "One, Former OHA Unit System," the way we worked, in my opinion, satisfactorily for many years. A judge had a writer, a clerk, and usually a hearing assistant. The judge had a docket of cases. I, personally, was familiar with the progress of practically all of my cases in my head at that time. If anybody called, I could either tell them or pull open a file cabinet and tell you what was going on and get it worked out. I was personally embarrassed if a case didn't move.

Then they came along with what they call reconfiguration. That's number two, down at the bottom of the page. And you will note that there is a manager at every level so that, in effect, you go through a manager to each operating person, and you may have to go through the hearing office manager—through a manager—and then to the operating person and there are many hands on the case. When a case leaves my office—and for a while I was embarrassed, but you just have to take it—when it leaves my office to be written, I have no idea where it goes. I inquired not long ago about a case, and they scurried around about a day and then said, "Oh, that one was shipped out to New York some time ago."

And it is, Congressman Reed—and I say this without equivocation, and I've worked all over the Government for 43 years—it is the worst system that I've ever seen. And the lowest clerk doesn't mind telling you, "No, I can't do that. You have to go through my supervisor." And the supervisor may say, "You have to go through the hearing office manager." Now, you make your peace with it. You know, you get friends; you get things done indirectly and you get it done outside channels.

But I submit to you, Mr. Chairman, that a hearing office manager can control the numbers of cases that a judge gets out, either way, no matter what the judge does—now there are exceptional judges; I understand that—but the managers decide which cases are written, when, by whom, where, and which judge's cases are written first. It is—and I don't want to be too emotional about this—but it is the worst system that I ever worked under, and judges have to live with it.

In addition to—I believe you referred to it as an administrative jungle, Mr. Chairman, which I think it is—there is one more element, I believe, in the Mobile situation, and I'll cover that and then to straight into the APA. But with all due respect—and I have nothing to gain by this, but I'm a long-time observer—the predecessors of Ms. Rita Geier, who is now the Associate Commissioner, the predecessor of Chief Judge Boyer and the predecessor of the Regional Chief Watkins were not very active.

Are you going to give me my minute?

Mr. GEKAS. Yes, we'll enlarge your minute.

Judge CLEVELAND. Thank you, sir.

Judge CLEVELAND. They were really not very active about a lot of things. Now this present group, I don't agree with them in a lot of ways. They are required to defend this reconfiguration thing, and they are against your bill, H.R. 1802, and they're dead wrong on both of those, but they are active. They have done things; they have jumped into this Mobile thing and they have jumped into other things, too. I think that is a plus and I think the fact that there was not that much activity at the top of OHA for some years explains partly why there was such a buildup of cases, in addition to this administrative muddle that I've pointed out.

But I would like to emphasize—and I'm dead serious about this—that judges don't control the cases in the average office in any way, whatsoever, and it's embarrassing, but that's the way it is. I'm doubtful that any Congress ever envisioned that an agency operating under the APA would ever have such a system as this reconfiguration. But, nonetheless, I think on the 50th anniversary of the APA, we ought to look into the background and remind ourselves why certain things are in it.

Prior to the Administrative Procedure Act, especially in the 1930's, there were many new Government agencies filled with many new Government bureaucrats. And it must have been really chaos there at the time, because a person would have his rights questioned or put in jeopardy by an agency, and he might not know what decision would be made, where the decision would be made, by whom, or what was required of him, or what he could do. It was pretty well—as far as I can tell from the literature—chaos. But he could be sure of one or two things, and one of them was that the people who investigated the situation and the people who prosecuted it against him might also be the people who decided the case. And he might also know that if the initial decisionmaker didn't suit the head of the agency, he or she might not be promoted or might lose his or her job.

So there was a great clamor that these hearing offices were the complete tools of the agency and that, in effect, it was a kangaroo court. And I might say that since this was in the 1930's and these were new agencies, the first really strong complaints, Mr. Chairman, came from the political party that was not in power in the 1930's, but, eventually, everybody began to see that this was not a good thing at all.

World War II came along and then the Administrative Procedure Act was unanimously adopted by the Congress. Basically, it provides litigants and the public due process of law. Judges are appointed and act pursuant to the Administrative Procedure Act, and their independence is, to some degree, protected. This protection of the litigants, the public, and the ALJ's left the agencies free to conduct their missions and to carry out their policies. The protections of the act were merely intended to free the hearing officers—now ALJ's—from complete domination and control by the employing agency. In our view, there are still areas of control by agencies over ALJ's that we think are unfortunate. And in my complete statement, Mr. Chairman, I have quoted our senior senator, Senator Heflin, about the subtle pressures and all that we are somewhat familiar with. But, Mr. Chairman—

Mr. GEKAS. In that regard, Judge Cleveland, while the thought is in my head—

Judge CLEVELAND. Yes, sir.

Mr. GEKAS [continuing]. We did have, also, some court cases in which the conclusion was that the judge rendering the decision, perhaps, was too much beholden to the agency that hired him. Is that correct?

Judge CLEVELAND. Yes, sir. In my complete statement I cite particularly the case of *Administrative Law Judges v. Heckler*, where the U.S. district court found that because of these various pressures and all, that even under the APA, we could be—it would not have been extraordinary if ALJ had not been swayed by the pressures, and I lived through that, Mr. Chairman. I had directives; we had general directives. We were told that the good news was when we were paying less cases and there were all kinds of pressures for us to pay less cases and to not follow the directives of the U.S. district court, but to follow the agency's policies. That was in the 1980's when the Social Security Administration cut off about 400,000 people from benefits and the ALJ's and the courts put a lot of them back on.

But, bureaucrats go both ways, Mr. Chairman, but they always, in my opinion, want to push you a little bit. And I can say this openly because I've been in the Government for a long time—and I won't be here much longer—but I have seen this over and over again. I will say, however, Mr. Chairman, that whatever comes or goes, whether the bureaucrats' policy is to cut people off or to pay down the backlog, or whatever else, our association will be very vigilant to see that people get fair hearings and that due process of law is not eroded.

If I could just clear up one thing, Mr. Chairman, with great respect, Congressman Callahan asserted that ALJ's have lifetime appointments; that's not correct. We are subject to RIF's; we're subject to removal by the Merit Systems Protection Board, and this has been recognized at least ever since the Supreme Court case of *Ramspeck*, and that's in my complete statement.

Thank you, sir.

[The prepared statement of Judge Cleveland follows:]

## PREPARED STATEMENT OF HON. MELFORD CLEVELAND, PRESIDENT, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INC.

Mr. Chairman,

I am Melford Cleveland, President of the Association of Administrative Law Judges, Inc. (the Association of ALJs in the Social Security Administration), I am here today representing that organization, and not in any manner the Social Security Administration.

I appreciate the opportunity of representing my Association before the Committee. I have completed 43 years of government service including military service and I am beginning my fifth year as President of our Association.

I first learned about Congressman Callahan's concerns about the Mobile Office of Hearings and Appeals when he invited our officers to come to a meeting in his office.

At that meeting I advised Congressman Callahan, and our Regional Chief Judge, Henry Watkins that the only thing our Association could do to help with the problem in Mobile was to ask our ALJs nation-wide, to volunteer for temporary service in the Mobile office to move the back log. I made it clear that we could only go into the Mobile office in that manner if Office of Hearings and Appeals (OHA) management approved the plan and arranged the logistics.

Later Judge Watkins requested that I ask for volunteer Judges, we got volunteers, more than were used, and we were thanked for our efforts by Judge Watkins.

With the handicap of an inefficient management system, in my opinion our Judges over the years have performed well. SSA operates a system of mass justice. It has been described as the largest system of administrative adjudication in the Western world. The dilemma which this presents is how to deliver mass justice to a litigious society while using a system which is designed for individual case attention. Since the 1980's, the administrative law judges of SSA have established a commendable record while functioning under the pressure of these huge

workloads. In 1975 the average number of monthly case dispositions was 16 per administrative law judge. The staffing ratio was 2.9 to 1. By FY 1992 the average case disposition per judge had increased to 36.6 per month with a staff ratio of 3.35 to 1. This record shows that the judges increased their case dispositions by 128% while the staffing ratio has increased by only 1.55%. The judges had increased their case dispositions by 72% more than the increase in staff. By FY 1995 the average monthly disposition had increased to 44 cases per judge, resulting in a new high mark of 526,743 case dispositions that year. This is a commendable performance in view of the fact that the cases have become more complex, more voluminous, require the use of more expert witnesses, have more attorney representation and are more time consuming.

This admirable record has been accomplished by the judges without sacrificing the measure of due process provided to the claimant at each hearing. At one point in the early 1980's, SSA attempted to apply undue influence on the judges in an effort to get them to deny more claims. This effort resulted in the case of Association of Administrative Law Judges v. Heckler, 594 F. Supp. 1132 (D.D.C. 1984), where the court found that the "unremitting focus on allowance rates...created an untenable atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof." This contribution to public service by the SSA judges was recognized by the American Bar Association by an award that was dedicated to the judges in the agency. The citation provided as follows:

Be It Resolved, that the American Bar Association hereby commends the Social Security Administrative Law Corps for its outstanding efforts during the period from 1982-1984 to protect the integrity of administrative adjudication within their agency, to preserve the public's confidence in the fairness of governmental institutions and to uphold the rule of

the law.

This is truly an outstanding record of accomplishment by a dedicated group of administrative law judges who have placed the rule of law and due process above their personal interest. They have placed their individual positions at risk to protect the rights of others to a fair due process hearing while at the same time deciding a huge number of claims.

The reason that our Association and the Judges in the Mobile office could not do more to help the situation is because of the OHA management organization:

The problem of a large backlog of cases pending decision writing, which has been raised as the subject matter of this hearing, is a systemic problem that is inherent within the current OHA hearing office management structure. Of all the agencies of the Federal government, none exerts a more direct influence on the lives of Americans than the Social Security Administration. More than 40 million retired and disabled individuals and their families depend on SSA for accurate and timely payment of monthly benefits.

The current structure and location of OHA has even been questioned by the Agency. In a May 1981 Management Oversight Review Report on the Office of Hearings and Appeals and the Social Security Administration, the Office of Inspector General found that the appeals process could be more effectively located outside the Social Security Administration. The report highlighted the appearance of impropriety and the incongruity in having one arm of the Social Security Administration making the basic eligibility determinations in cases while the Office of Hearings and Appeals arm of the Social Security Administration adjudicates that decision. It went on to question the wisdom of the arrangement of putting the Office of Hearings and Appeals under the direction of an Associate Commissioner because the Social Security Administration staff controls the resources, space, equipment and supplies of the Office of

Hearings and Appeals which, if restricted, could indirectly control the number and quality of the hearings held. As late as February 27, 1996, the Chief Judge of the Dallas Region of SSA sounded a critical warning for OHA. He stated that "headquarters officials from both Woodlawn and Falls Church each conveyed a similar message: ' the hearings and appeals function is not performing in a satisfactory manner and its continuation in current form is in doubt'. Upon review, I am fully convinced that OHA is at risk."

The basic problem of the OHA office management system relates back to a change in the management system that was adopted incrementally by the Agency in the early 1980's. Prior to that change, each administrative law judge was assigned a support staff consisting of a staff attorney, hearing assistant and clerk. Each judge had supervisory responsibility over their support staff personnel, including preparing performance evaluations. This system created a small homogenous unit around each judge that had interest and pride in the judge's work product and that had concern with the demands of public service. This system was replaced by the Agency in the early 1980's by a management structure known as "reconfiguration." Its main thrust was to remove certain functions from administrative law judge responsibility. This new system stripped all support staff from the judges and placed them in common office pools under the control of managers. The judges no longer had any supervisory control over any support staff personnel and the responsibility of preparing employee performance evaluations was given to the managers. This system has placed a third person (the manager) between each judge and their work product. Under this system, if a judge has a problem with any particular part of the work product or case, the judge must go to the manager for relief and not to the support staff person who is performing the work. If conflict develops between the judge and the manager, the support staff person will follow the direction of the manager and not the judge because the

manager has the control and the power over the staff person by having the authority to evaluate their work performance. This system has left the judge with all of the responsibility for the case but with no authority to accomplish the work effort. Reconfiguration has not only placed an encumbrance between the judge and the judge's work product, but it has also established a dual chain of management between the judges and managers. This dilution of the line of authority has obscured the chain of responsibility and has weakened the entire management structure.

When most individuals are informed of the circumstances of this system, they cannot believe that it exists. Because of this management system, the judges in Mobile have had no authority to move the decisions along or expedite the decision writing process. After each judge renders a decision in a case, the case is then transferred to a pool of decision writers who are under the control of a supervisory staff attorney. From that point, the control of the work flow of the decision writing process is under the direction of the managers. The managers determine who will write each decision, when the decision will be written, and whether it will be written by personnel in the office or by personnel in another office. The judge does not again see the case until the decision appears in the form of a rough draft. The judge then has the responsibility to correct the decision. But at times (in other offices) the managers have questioned the form, nature of, and necessity for the corrections and, on occasion, have refused to make them.

It is, therefore, clear that the judges in the Mobile office, as in all OHA, have been stripped of their employee supervisory authority and are without power to effectuate any control over the decision writing process. The judges in the Mobile office were powerless and could not assert any direction or control to correct the backlog in the cases pending decision writing.

OHA has now further exacerbated the decision writing process by recently implementing



an initiative known as "Action #7." This initiative removed about 560 trained staff attorneys and paralegals from their support functions as decision writers for administrative law judges and placed them in a role of claims adjudicators. In this role, they are to pay disability claims without judge supervision. This decision writing function of 560 writers was then replaced with about 170 writers from other components in the agency, many of whom were untrained.

In written testimony before the Subcommittee on Social Security of the House Ways and Means Committee, on May 23, 1995, the Association predicted that this initiative would have an adverse impact on claimants. The Association specifically stated that "This transfer of personnel will result in a reduction of support staff for the judges and will cause a backlog in the issuance of final written decisions after the hearing. Many of these writers are from the Appeals Council, and we believe that the Appeals Council will experience a case backlog from this transfer of personnel functions. The end result will be delay for claimants."

Our prediction has been accurate. OHA now has a decision writing backlog of over 43,000 cases and has started another initiative ("Jump Start") to address this problem. One of the elements of the initiative is to have judges write some of their decisions, while Action #7 continues. We have now reached the absurd situation where staff attorneys are deciding cases and judges are writing decisions.

The inefficient office management system that the agency has created is now showing "stress fractures" under the weight of the current huge case workload of over one half million cases. The accuracy of the Inspector General's warning regarding the danger of the agency controlling the resources, space, equipment and supplies of the administrative law judges is now becoming abundantly clear. The office management system of "reconfiguration" has created an inefficient process that is responsive to the managers and not the judges. The judges are the

only persons in the agency who are responsible for the cases, but are denied the authority to do their work. Under the current office management structure, the managers must be held accountable for the collapse of the work flow process. The managers have the authority under this system and they must now shoulder the accountability.

The only solution to this dilemma is to return to the "unit system" form of office management. The unit system is more efficient and will restore pride and personal interest of the support staff in the work product of the judge. It will allow the staff personnel to be directly responsible to the person for whom they are working. It will restore both the responsibility and authority in the judges and will provide them with the capacity to perform their job duties. The unit management system also implements the concept of "total quality management" which SSA has declared is its basic management tool.

In summary, these matters should be kept in mind in appraising problems in OHA.

1. OHA should never be surprised at the size of its backlog either locally or nationally, because OHA has a formula which it can apply to case receipts at the initial and reconsideration levels which permit it to calculate at any given time approximately what OHA case receipts will be 18 to 24 months later.

2. As we have indicated, ALJ's in the Office of Hearings and Appeals have no control over their cases except at the time of the hearing, and when they sign the decision.

3. In my opinion, based on my experience and observation in OHA, a real reason, in addition to the organization problems, for the Mobile situation is that the predecessors to the

Associate Commissioner in OHA, the Chief Judge and the Regional Chief Judge in Region IV took very little action about such problems.

We do not believe that Congress, when 50 years ago this June enacted into law the Administrative Procedure Act, ever anticipated that an agency subject to the APA would organize its ALJ's along the "reconfigured" lines I have described. In any event, I believe it is appropriate on this 50th anniversary of the APA, which Congress considered in one form or another for approximately 10 years before enacting, to consider the background of the APA and the reasons for some of its provisions:

Prior to the enactment of the Administrative Procedure Act hearing examiners', now ALJs, classification was determined by the ratings the agency which employed them gave them, and their compensation and promotion depended upon their classification. They were thus subservient to and dependent on their agency. There were many complaints about the actions of the hearing examiners. It was said that they were the tools of the agency and completely under the control of the agency heads in making their findings and recommendations.

It must have been extremely frustrating and chaotic to a citizen who learned that a relatively new agency, filled with bureaucrats, had before it a question involving the citizen's property or other rights. The citizen would not know when or where the decision would be made, or by whom. He or she would not know where or how to present evidence favorable to the citizen, might not receive notice of the proceedings in a timely manner, and would have other questions about the proceedings. However, the citizen would eventually learn that the

persons in the agency who investigated the question initially might also prosecute the claim against the citizen, and these SAME AGENCY EMPLOYEES might eventually decide the case. Moreover, if the case was not decided the way the agency wanted it decided, the decision maker might never be promoted or might even lose his or her job. This was chaos and unfairness compounded.

Another way that dissatisfaction was expressed was: "Where necessary information must be secured through oral discussion or inquiry, it is natural that parties should complain of a 'government of men'. Where public regulation is not adequately expressed in rules, complaints regarding 'unrestrained delegation of Legislative authority' are aggravated. Where the process of decisions is not clearly outlined, charges of 'star-chamber proceedings' may be anticipated. Where the basic outlines of a fair hearing are not affirmatively set forth in procedural rules, parties are less likely to feel assured that opportunity for such a hearing is afforded". S. Doc. No. 8 77th Cong., 1st Sess. 24 (1941).

Eventually leaders in both parties in the early 1930's realized that something should be done about this unfair situation. In 1937 a report from President Roosevelt's Committee on Administrative Management recommended separation of adjudicatory functions and personnel from investigative and prosecution personnel in the agencies.

After World War II, in June 1946, the Administrative Procedure Act was unanimously enacted by Congress and signed into law by President Truman. As a demonstration of the Social Security administration's lead in the beginning in providing due process for our humble citizens, the APA was modeled on the Social Security Act. *Richardson v. Perales* 402 U.S. 389, 409 (1971). In fact ALJs and the APA were the Alternative Dispute Resolution forum of the day, the answer to clogging the federal courts.

The APA was hailed as "a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government, and a long sought advance in democratic government...a comprehensive charter of private liberty and a solemn undertaking of official fairness." (The APA and the Hearing Examiner, John W. Macy, Jr., Ch. U.S. Civil Service Commission, Fed. Bar Journal vol. 27 No. 4, Fall, 1967, citing Senate Document 248, 79th Cong. 2d Sess. 291, 1946. It required rules for notice of the proceedings to all parties, and rotation of cases as much as is practicable. (We believe this latter requirement may be being violated according to recent testimony before Committee).

According to John Macy, Chairman of the Civil Service Commission, 1967, the role of the hearing examiner in the APA was critical. He stated that "Even those who have since concluded that the Act neither created nor substantially altered a single government agency, nevertheless, believe that its hearing examiner provisions represented a significant advance in the development of fair procedure, and some believe that here the act accomplished the most decisive change...it marks the culmination of a long-term trend...to concentrate ever more closely on details of administrative procedure. Great attention thus comes to the examiner, the PIVOTAL FIGURE in administrative adjudication.

The Hearing Examiner administers oaths and affirmations, issues subpoenas, and rules upon offers of proof and receives relevant evidence, takes or causes the taking of depositions, regulates the course of the hearing, holds conferences for the settlement or simplification of issues by consent of the parties, disposes of procedural requests or similar matters, questions witnesses, considers the facts in the record and arguments and contentions made, or questions involved, determines credibility and makes findings of fact and conclusions of law, recommends

decisions or makes initial decisions on the basis of reliable, probative, and substantial evidence on the record, and takes any other actions authorized by agency rule consistent with the provisions of the Act. (Sections 5, 7, 8 and 11, Adm. Proc. Act.)

Only the hearing examiner, now ALJ, or the agency or some specially qualified and designated statutory officer may preside at the taking of evidence and the same person who presides if available must initially decide the case or certify the record with his or her recommendation. If the initial decision is not appealed, or reviewed by the agency within time limits, it becomes the final decision of the agency. All decisions with findings of fact and conclusions of law become part of the record, and the record is made exclusive for purposes of decision. These provisions are to make certain that those who sign decision are responsible for them, and that evidence and arguments of private parties are fully considered, that the views of the agency are not unduly emphasized or secretly submitted, and that the official record alone is the basis for the decisions. There are no secret or covert reasons for the decision, only those on the record are appealable to the Federal courts.

The APA further provides that presiding and deciding officials must carry out their functions impartially, and may withdraw at any time if they deem themselves disqualified. Moreover, the hearing officer, ALJ, may not be responsible to or subject to the supervision of any person performing investigatory or prosecuting functions for any agency, and such person may not participate except as a witness or counsel in a public proceeding. Finally the hearing examiner is qualified, paid, and has tenure through the Merit Systems Protection Board and may not be removed except for good cause by the MSPB after opportunity for hearing. This

provision was designed along with the provision that the agency not make performance appraisal of the presiding official was to further insulate such official from the agency and improper influence and to assure greater fairness and objectivity. See Generally: *The APA and the Hearing Examiner*, by John W. Macy, Jr., Chairman, Civil Service Commission, *Federal Bar Journal*, Vol. 27, No. 4, Fall 1967; *Ramspeck v. Federal Trial Examiners*, 73 S.Ct. 570, 1953; Congressional Research Service, the Library of Congress, *the Administrative Law Judge System*, Floyd Lewis, American Law Division, September 9, 1982.

In our view there are still problems with subtle control by the federal agencies and bureaucrats, and perceptions of agency control of ALJs by the public:

"As this has evolved there have been efforts to give independence to hearing officers and administrative law judges, but nevertheless, there are so many subtle, indirect ways, and direct ways by which administrative agencies and departments attempt to control their judges. And, basically this bill is a bill designed to prevent bureaucrats from controlling their judges. That's the basic issue, and its there throughout.

I mention subtle ways. There are secretaries, parking spaces, all sorts of situations, and then there is the perception issue. I've had people who have been before administrative agencies, and after they finish a hearing, the agency prosecutor walks out with the administrative law judge and goes to lunch. That's just one way that there is a perception problem with the public." Statement of Senator Howell Heflin before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, July 12, 1995, Serial No. 12.

Finally, whatever comes or goes, whether an agency attempts to rule against citizens with just claims, or pay down the backlog, the Association of Administrative Law Judges will be eternally vigilant to see that our citizens receive fair hearings, and that due process of law is not

eroded in any manner.

Although ALJs may be removed from office for cause after a hearing and do not have lifetime tenure as we have heard some assert, there currently is no process to discipline ALJs for offenses short of removal. The Association of ALJs has advocated the adoption of ethical standards of conduct for administrative law judges as recommended by the American Bar Association. This standard of ALJ conduct should be government wide and not agency by agency. Chairman Gekas has a bill that would accomplish this goal. The history of agency and political pressure on decision making has made it clear that the agency should not be empowered to set standards for ALJs but an outside office of ALJs or a corps of ALJs should set the standards.

The management of Social Security disability hearing offices is not controlled by ALJs. The number of hearing decisions per ALJ reported by SSA is not controlled by the ALJ. ALJs would advance seriously ill claimants on the docket and in the writing of the decision if they controlled these resources. If judges and not SSA managers controlled hearing offices, the injustices we have heard today would be addressed. Mr. Chairman, you have proposed legislation that would put ALJs in control of the resources needed to process adjudications. We urge the changes in hearing office management be adopted by SSA.

#### Recommendation of Association of ALJs

1. An independent body to enforce the APA with agencies - office of ALJs or corps of ALJs.



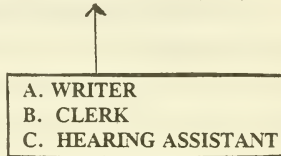
2. Government wide standard of conduct for adjudicatory officers as a measure for performance.
3. Procedure for discipline in addition to removal of ALJ not controlled by agency.
4. Put ALJ's in charge of resources needed to conduct hearing process and control of managing the hearing process.

MANAGEMENT OF OFFICE OF HEARINGS AND APPEALS  
AT SOCIAL SECURITY ADMINISTRATION

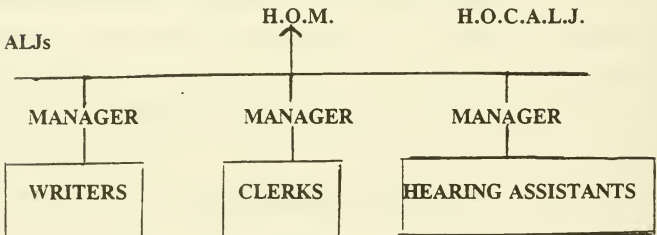
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1. FORMER OHA UNIT SYSTEM:

ADMINISTRATIVE LAW JUDGE (ALJ)



2. CURRENT RECONFIGURATION SYSTEM:



\*H.O.M. = HEARING OFFICE MANAGER

\*H.O.C.A.L.J. = HEARING OFFICE CHIEF ALJ

Mr. GEKAS. We thank you, sir. This is very helpful, and it constitutes a good summation of the proceedings that we conducted here today. I think we're all the better for it. You answered my chief question concerning the independence of administrative law judges, not just by the written statement in which you incorporate some of the findings of the relevant cases, but also in your oral testimony. I'm fully satisfied and grateful to you for your appearance, your interest, and particularly the way you stepped in in the Mobile situation and—as acknowledged by Judge Watkins—that you helped, through your efforts with the association, to ameliorate that mess.

Judge CLEVELAND. Thank you, Mr. Chairman.

Mr. GEKAS. I'm very appreciative of that.

I yield to the gentleman from Rhode Island.

Mr. REED. Thank you, Mr. Chairman. I want to again thank Judge Cleveland for his always thoughtful comments and testimony. I applaud you and your association for how you have assisted by providing volunteers to go in and whittle down the caseload. What I would just suggest, too, is that among many of the revelations in this hearing—obviously, the administrative nightmare that you confront in the Social Security Administration; it was impressive to me that it's so confused—but the other aspect which Mr. Callahan was talking about, I think, raised the question of how we can constructively think about increased accountability for ALJ's in the system. And I would hope that your organization, your association, would help us with respect to that.

Judge CLEVELAND. Congressman Reed, I was told not to talk about this too much, but other people have, and we really think that Congressman Gekas's bill, H.R. 1802, does provide for accountability. It provides for discipline of the judges; it provides for standards Governmentwide, and we've put a great deal of effort in that, as have many people in Congress.

Mr. GEKAS. Your last statement will not be stricken from the record.

Judge CLEVELAND. Thank you, sir.

Mr. REED. I want full credit for eliciting another unpaid commercial for your bill, Mr. Chairman. [Laughter.]

And I thank the judge. As always, it's a pleasure.

Judge CLEVELAND. Thank you.

Mr. GEKAS. Thank you very much, Judge Cleveland. This hearing is adjourned.

[Whereupon, at 12:22 p.m., the subcommittee adjourned.]



## APPENDIX

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### STATEMENT OF JUDGE WILLIAM A. POPE II, PRESIDENT, FEDERAL ADMINISTRATIVE LAW JUDGES CONFERENCE

I am Judge William A. Pope, II, President of the Federal Administrative Law Judges Conference (FALJC). FALJC is a voluntary professional association, organized almost 50 years ago for the purpose of improving the administrative judicial process, presenting educational programs to enhance the judicial skills of Administrative Law Judges, and representing concerns of Federal Administrative Law Judges in matters affecting the administrative judiciary. The Conference has almost 500 members, including Judges from every administrative agency which employs Administrative Law Judges. By virtue of our broad membership base, FALJC is the only organization which can speak for the broad spectrum of Federal Administrative Law Judges. Over the years, the Conference has taken leadership roles in preserving the decisional independence of ALJs, supporting measures enhancing due process of law in administrative judicial proceedings, and in supporting improvements in the administrative judicial process.

FALJC learned that concerns about the performance of the Social Security Administration's Office of Hearings and Appeals in Mobile, Alabama had been expressed by Congressman Sonny Callahan to this Subcommittee and were going to be the subject of an oversight hearing on April 19th. We did not prepare a statement for submission to the Subcommittee at that time because we were unaware of Rep. Callahan's specific concerns. However, due to the postponement of the hearing to June 5th, we were able to obtain a copy of Rep. Callahan's prepared statement and would like the opportunity to comment on his remarks. We request that our statement be included in the record of this hearing.

Rep. Callahan's statement raises important concerns regarding the backlog of cases in the Mobile Office of Hearings and Appeals. FALJC does not have sufficient information to comment on the operation of the Mobile Office. However, in reviewing the concerns raised by Rep. Callahan, we request that the Subcommittee keep in mind that the Administrative Law Judges in Mobile and elsewhere perform a vitally important function of insuring that citizens receive a fair and impartial hearing, presided over by an independent adjudicator, in cases of the utmost importance to the individuals involved. Regardless of the problems which may be faced by the Mobile Office, the independence of the ALJs there must be protected, not weakened, to preserve this fairness and impartiality.

Putting the role of the ALJ in perspective, Federal Administrative Law Judges perform a unique judicial function within the Executive Branch of the U.S. Government. They conduct formal trial-type hearings in cases arising under a wide variety of federal statutes and regulations, interpret the law, apply agency regulations, and issue written or oral initial or recommended decisions. ALJs are judges, in every sense of the word, not underlings or subordinates. The U.S. Supreme Court has said that the role of an Administrative Law Judge is "functionally

comparable" to that of federal trial judges. *Butz v. Economou*, 438 U.S. 478, 513 (1978). Just as in the federal trial courts, decisional independence of the judges who render decisions in the administrative judicial process is the single most important element of due process of law and is the key to the public's perception of justice in the administrative hearing process. Under the Administrative Procedure Act and other federal statutes, ALJs have complete decisional independence, and to protect that independence ALJs have absolute appointments, are not subject to agency efficiency ratings, promotions or demotions, and "have tenure very similar to that provided for Federal judges under the constitution." Sen. Rep. No. 95-697, 95th Cong. 1st Sess. 2 (1978), reprinted in 1978 U.S. Code Cong. & Admin. News 496, 497.

There are over 1300 ALJs assigned to about 30 federal agencies. The agency employing by far the largest number -- over 1050 -- is the Social Security Administration. The Department of Labor and the National Labor Relations Board each employ about 60 ALJs. The remaining ALJs are employed by agencies with 1 to 20 judges. Administrative Law Judges adjudicate cases falling into three broad categories: regulatory cases; entitlement cases; and enforcement cases. Their decisions directly affect the lives of far more Americans than do the decisions of all the U.S. District Courts. It is estimated that ALJs hear as many as four times the number of cases heard by the U.S. District Court Judges, and they do so more swiftly and at lower cost. Administrative Law Judges play a vital role in ensuring that American citizens receive due process of law from their Government.

FALJC strongly endorses the concept that ALJs must be given the support they need by the agency by which they are employed to handle the caseload of that agency. It is our understanding that the Social Security Administration receives over 500,000 new cases for hearing a year. The numbers of cases involved here are staggering. It is impossible for an ALJ to hear 45-50 cases a month and issue written decisions in approximately the same number, as SSA Administrative Law Judges average, without the support of an efficient clerical staff to process the cases and get them ready for hearing, and staff attorneys (*i.e.*, law clerks) to assist the judge in drafting written decisions in accordance with the judge's instructions.

In regard to the issues raised by Rep. Callahan in his April 19, 1996 written statement presented to the Subcommittee, first, Administrative Law Judges do not have lifetime appointments. They are subject to reductions in force, and agencies may bring disciplinary proceedings before the Merit Systems Protection Board where several remedies, including removal from office, may be imposed for good cause (*see* 5 U.S.C. §7521). This system does provide an effective means of disciplining ALJs in appropriate instances and a significant number of actions against ALJs have been brought before MSPB over the years. That removal of sitting ALJs may be difficult is as it should be, for judicial independence is illusory if ALJs can be removed for anything other than egregious conduct or job performance. Nevertheless, it seems clear that, absent extraordinary circumstances, good cause would exist to remove a Social Security Administration ALJ issuing only one decision a month for two years.

In addition, although SSA ALJs may write some of their own decisions, no judge can hear, decide and write decisions in 45 cases a month 12 months a year. That is why SSA provides decision writers for its ALJs, whose job it is to draft decisions under the ALJs'

direction. Expecting Social Security Administration ALJs to dispose of an increased number of cases while writing all or most of their own decisions is more than is humanly possible and would seriously compromise the ALJs' ability to provide fair, well-reasoned decisions.

Finally, only hearings before judges with full decisional independence can provide both the reality and the public perception of fairness necessary for litigants to have confidence in the adjudication process. Having cases decided by ALJs, who have survived a rigorous competitive process leading to their selection, assures a high quality of decisions. When more than a decade ago SSA attempted to influence its ALJs to reduce the number of cases in which benefits were awarded, the ALJs had the decisional independence to stand their ground and challenge the agency's actions, drawing the praise of the courts (*see, e.g., Barry v. Bowen*, 825 F.2d 1324, 1330-31 (9th Cir. 1989; *Association of Administrative Law Judges v. Heckler*, 594 F. Supp 1132, 1141-43 (D.D.C. 1984) and an award from the American Bar Association.

We thank the Subcommittee for the opportunity to be heard in this matter.



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