103

# SUPPLEMENTAL SECURITY INCOME MODERNIZATION PROJECT

## HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

MARCH 1, 1994

**Serial 103–78**

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE
82-385 CC WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-044856-5

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## TUESDAY, MARCH 1, 1994

House of Representatives,
Committee on Ways and Means,
Subcommittee on Human Resources,
*Washington, D.C.*

The subcommittee met, pursuant to call, at 2:10 p.m., in room B–318, Rayburn House Office Building, Hon. Harold E. Ford (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
WEDNESDAY, FEBRUARY 23, 1994

PRESS RELEASE #13
SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

## THE HONORABLE HAROLD E. FORD (D., TENN.), CHAIRMAN, SUBCOMMITTEE ON HUMAN RESOURCES, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON THE SUPPLEMENTAL SECURITY INCOME MODERNIZATION PROJECT

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The Honorable Harold E. Ford (D., Tenn.), Chairman, Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a hearing to discuss the Supplemental Security Income (SSI) Modernization Project. The hearing will be held on Tuesday, March 1, 1994, beginning at 2:00 p.m. in room B-318 of the Rayburn House Office Building.

Oral testimony will be heard from invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

**BACKGROUND**:

The Supplemental Security Income (SSI) program is authorized by title XVI of the Social Security Act. Enacted as part of the 1972 amendments to the Social Security Act (P.L. 92-603) and begun in 1974, SSI provides monthly cash payments in accordance with uniform, nationwide eligibility requirements to needy aged, blind, and disabled persons. The SSI program replaced the earlier Federal grants to the States for old-age assistance, aid to the blind, and aid to the permanently disabled. These Federal grants continue in Guam, Puerto Rico and the Virgin Islands; however, the Northern Mariana Islands are covered by SSI. In September 1993, the number of recipients of SSI benefits rose to 5.7 million, with total annual benefits paid reaching $21 billion.

**FOCUS OF THE HEARING**:

The SSI Modernization Project report was the first comprehensive review of the SSI program since it was begun in 1974. The purpose of the Project was to provide a full examination of how well SSI law and the policies developed by the Social Security Administration (SSA) serve persons with very low or no income who are over 65 years old or blind or otherwise disabled. Then-Commissioner of Social Security Gwendolyn King appointed 21 experts, representing a wide range of programs serving aged, blind, and disabled persons, to work on the project.

Members of the SSI Modernization Panel set four top priorities for program improvement: (1) increase SSA staffing, with an annual cost of $20 million by 1997 and a five-year total cost of $100 million; (2) increase the Federal benefit standard, with an annual cost of $34 billion by 1997 and a five-year total cost of $86 billion; (3) stop counting, as income, in-kind support and maintenance, with an annual cost of $2 billion by 1997 and a five-year total cost of $7.9 billion; and (4) increase the resources limits, while streamlining the resources exclusions, with an annual cost of $687 million by 1997 and a five-year total cost of $2.6 billion. The estimated cost of all proposed changes to the SSI program is approximately $39 billion annually by 1997, nearly tripling the current cost of the program.

Members of the modernization panel were not in unanimous agreement on the top priorities. Some members were concerned about the cost to the Federal Treasury over five years, as well as to State and local governments. Other members believed that benefit increases

(MORE)

above 100 percent of the poverty guideline should be a long-term goal, while lower-cost changes to improve program equity and simplification of the administration of the program would be appropriate short-term goals.

Another concern of some panel members was the proposed elimination of the reduction in benefits for the receipt of in-kind support and maintenance. Finally, some panel members wondered whether other pressing domestic policy problems might have higher priority than modernizing SSI.

Members of the Subcommittee are interested in discussing the following questions: To what extent, if any, should SSA staff levels be increased? To what level should the Federal benefit standard be increased? Should in-kind support and maintenance be counted as income? To what extent should resource limits be increased and resources exclusions streamlined? What will proposed reforms of the SSI program cost? To what extent should work incentives be a factor in determining benefit levels? How has the Supreme Court's Zebley decision impacted the SSI program? Should disabled children receive rehabilitation services in addition to, or instead of, cash assistance?

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Persons submitting written statements for the printed record of the hearing should submit at least six (6) copies of their statements by close of business, Tuesday, March 15, 1994, to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Subcommittee office, room B-317 of the Rayburn House Office Building, before the hearing begins.

**FORMATTING REQUIREMENTS:**

**Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.**

1. **All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.**

2. **Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.**

3. **Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.**

4. **A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.**

**The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.**

••••

Chairman FORD. Good afternoon. The Ways and Means Subcommittee on Human Resources will come to order.

I am very delighted to have my colleagues join with the subcommittee today as we hold the fourth in a series of hearings on the supplemental security income [SSI] program. The first in the series was a general oversight hearing. This was followed by a joint hearing with the Subcommittee on Social Security on disabled alcohol and drug abusers and a joint session with the Subcommittee on Oversight on fraud by foreign language interpreters and others.

At the beginning of the oversight session in October, I noted the rapid growth in the SSI program. At an annual growth rate of 8 percent, the program is one of the fastest growing entitlement programs that we have in the Federal budget today. Part of this growth is due to the impact of the 1990 decision by the Supreme Court in the *Sullivan* v. *Zebley* case. This decision made nearly a half million needy, disabled children potentially eligible for retroactive benefits, and it opened the door of eligibility for even more disabled children in the future.

Although many still believe that the SSI program primarily serves needy elderly persons, it is now dominated by disabled persons. In 1974, nearly 60 percent of the 4 million SSI recipients were elderly, and only 40 percent were disabled. Now nearly 75 percent of the 6 million SSI recipients are disabled and about 25 percent are elderly.

Former Commissioner Gwendolyn King appointed a panel of experts to examine the SSI program. This "modernization project" issued its report in August 1992. Today, I am pleased to welcome once again its distinguished Chairman, Arthur Flemming, who has testified over the past couple of weeks. He has requested from my colleagues on this subcommittee that he be allotted more than the 5-minute time period that we allot witnesses testifying before the subcommittee. Anytime we have such a golden-tongued warrior of the spoken word, I think we would have to grant you, Dr. Flemming, whatever time you would want before this subcommittee.

I would like to welcome my colleagues who will be appearing before the subcommittee today. It is our clear intent to continue to hear from witnesses as we prepare this subcommittee to move into welfare reform and also look at this supplemental security income program overall.

There has been a lot of talk by people throughout this Nation that this SSI program was constituted to respond to the growing population of the blind, the aged, and the disabled in this country. There have been many who have accused the program of having too much fraud and abuse in it, but we want to make sure that we protect those that the program was constituted for in the first place and make sure that we rid this particular program of any fraud and abuse.

I am very delighted today to have all the witnesses. I would like to apologize for starting 10 minutes late today. That is not usual for this subcommittee.

Let me at this time recognize Hon. Blanche Lambert, a Member of Congress from the eastern part of Arkansas right adjacent to my district, just one river separates the two, a very distinguished new

Member of the House of Representatives; and Carrie Meek from the State of Florida, one that I visited with and talked with, about this issue for some time.

And one of the reasons why we are holding these hearings today is because she puts so much pressure on this subcommittee to look into these areas. It is very timely that we look at this particular issue as it relates to the supplemental security income program.

The Honorable Blanche Lambert, from the State of Arkansas, you are recognized at this point—unless you, Mr. Kopetski, would like to have an opening statement.

Mr. KOPETSKI. No.

[The prepared statement of Mr. Ford follows:]

# OPENING STATEMENT OF
# HAROLD E. FORD, CHAIRMAN
# SUBCOMMITTEE ON HUMAN RESOURCES
# COMMITTEE ON WAYS AND MEANS
# HEARING ON THE SUPPLEMENTAL SECURITY INCOME MODERNIZATION PROJECT
# TUESDAY, MARCH 1, 1994

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Today the Subcommittee holds the fourth in a series of hearings on the Supplemental Security Income (SSI) program. The first in the series was a general oversight hearing. This was followed by a joint hearing with the Subcommittee on Social Security on disabled alcohol and drug abusers and a joint hearing with the Subcommittee on Oversight on fraud by foreign language interpreters and others.

At the beginning of the oversight hearing in October, I noted the rapid growth in the program. At an annual growth rate of 8 percent, the program is one of the fastest growing entitlement programs in the Federal budget. Part of this growth is due to the impact of the 1990 decision of the U.S. Supreme Court in Sullivan v. Zebley. This decision made nearly a half million needy, disabled children potentially eligible for retroactive benefits, and it opened the door of eligibility for even more disabled children in the future.

Although many still believe the SSI program primarily serves needy, elderly persons, it now is dominated by disabled persons. In 1974, nearly 60 percent of the 4 million SSI recipients were elderly, and only 40 percent were disabled. Now, nearly 75 percent of the 6 million SSI recipients are disabled and only about 25 percent are elderly.

Former Commissioner Gwendolyn King appointed a panel of experts to examine the SSI program. This "Modernization Project" issued its report in August, 1992. Today, I am pleased to welcome, once again, its distinguished chairman, Dr. Arthur Flemming. Along with Dr. Flemming, I welcome Robert Fulton, who, along with others, filed a minority report on the Modernization Project.

In today's fiscal climate, modernizing SSI is a daunting task. The price tag on the Modernization Project's proposals would nearly triple the cost of the program. Yet, it is troubling that the SSI benefit for a single recipient is only 75 percent of the poverty level at $446 per month. I hope we can find ways to modernize SSI, but we must not ignore budget constraints, and fraud and abuse in the process. Needy blind, disabled, and elderly persons are counting on us. We should not let them down.

Chairman FORD. Congresswoman Lambert, you are recognized.

## STATEMENT OF HON. BLANCHE M. LAMBERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Ms. LAMBERT. Thank you, Mr. Chairman, and thank you for bearing with me. I am a new Member, and this is a relatively new experience for me. Thanks to the members of the subcommittee.

Mr. Chairman, I want to begin by thanking you for inviting me to testify today. I know of your concern and interest in this program as well as your commitment to ensuring that it is being administered properly. I am honored to be here, and I am honored to join you in those interests and those concerns to make sure that this program is designed and well-spent to ensure that those people who are disabled receive the assistance they deserve.

Mr. Chairman, my interest in the supplemental security income program is fairly specific. I am concerned about alleged abuse of the program by parents who may coach their children to misbehave in order to qualify for SSI for schoolchildren. As I stated in my letter to you, these concerns were first brought to my attention through numerous calls and letters from my constituents asserting that abuse in the system existed and requesting that I investigate. Because I do not sit on a committee with jurisdiction over the program, I wrote to you as well as to the Government Accounting Office to request an investigation. In addition to my efforts, the Arkansas General Assembly has also become involved.

Responding to repeated allegations of program abuse, a number of concerned legislators on the Joint Interim Committee on Public Health, Welfare and Labor's Subcommittee on Welfare Reform, held a hearing on February 22, drawing the support of the Governor to get to the bottom of these allegations. Since that time, the amount of mail that my office has received has increased substantially as teachers, counselors and medical professionals have grown increasingly willing to discuss this problem and to offer constructive suggestions.

Mr. Chairman, this is a delicate issue, and I want to make it clear that my intent today is not to condemn a largely beneficial program or its deserving recipients. In today's climate of increased public skepticism of government expenditures and federally run programs, accounts of abuse quickly tap into a sense of public outrage and create impressions that are difficult to dismiss.

For instance, in Arkansas, SSI benefits for children are referred to as "crazy checks" because reports of abuse highlight schoolchildren who continually act disruptive or intentionally fall behind in schoolwork in order to qualify for benefits. While the term "crazy checks" may provide a convenient name or means of conveying allegations, I am afraid that it may damage the self-esteem of children who are receiving SSI benefits for very real mental and physical handicaps.

My purpose is not to champion any form of demagoguery or to unfairly pass judgment on this program. I am simply here to report these allegations to you and to offer my assistance in resolving this problem.

In Arkansas as well as other States, the increase in SSI outlays is attributed to the landmark 1990 Supreme Court decision in *Sul-*

*livan* v. *Zebley* which stated that the Social Security Administration, when determining eligibility for disabled children, had to give consideration comparable to that given to adults when determining disability under SSI. The Social Security Administration could no longer rely on a "listings only" approach but had to administer an individualized functional assessment if a child's alleged disability did not appear in the "listing of impairments."

Mr. Chairman, I agree with the Supreme Court's decision, and I applaud the efforts of those who worked so diligently to correct this discrimination. I am afraid, however, that their noble cause may have been transformed into a programmatic nightmare through the murky world of Federal regulations.

As a result of the court's decision, regulations were published on February 11, 1991, detailing the criteria to be used during an individualized functional assessment. Those criteria included developmental or functional categories, known as "domains," to be used when assessing mental or physical limitations. The domains are cognition, communication, motor ability, social ability and personal/behavioral patterns. A child may be determined disabled if he or she has a severe problem in one domain and a moderate one in another or if a child has a moderate problem in three domains.

While it may be relatively simple to determine physical disabilities or severe mental retardation, the problem seems to lie in the domains of social ability and personal behavioral patterns. The medical professionals and educators that I have spoken to point to these criteria as vague and the most subject to potential abuse because, unlike severe mental or physical handicaps, problems in these domains are difficult to scientifically verify.

As I stated in the beginning of my testimony, allegations revolve around parents who supposedly "coach" their children to act disruptive in class and to perform poorly on tests and homework. Educators and medical professionals point to the marked increase in the number of claims that they have processed since implementation of the *Zebley* decision as evidence. Indeed, the State of Arkansas saw a 126 percent increase in children receiving payments between 1990 and 1992.

The concerns of these professionals are outlined in the testimony presented at the February 22 hearing. Mr. Chairman, I respectfully request that these documents, which are en route from Arkansas, be made a part of the record when they do arrive.

[The following was subsequently received:]

# MINUTES OF THE
# WELFARE REFORM SUBCOMMITTEE
# OF THE
# JOINT INTERIM COMMITTEE ON
# PUBLIC HEALTH, WELFARE AND LABOR

February 22, 1994

The Welfare Reform Subcommittee of the Joint Interim Committee on Public Health, Welfare and Labor met on Tuesday, February 22, 1994 at 1:30 p.m. in Room 130 of the State Capitol Building in Little Rock. Those members in attendance were: Senator Jerry Bookout (ex-officio); Representatives Lacy Landers (ex-officio), Larry Goodwin (Chairman), Pat Flanagin, Frank Willems, Bob Fairchild, Gus Wingfield, Randy Thurman, and V.O. Calhoun.

**Chairman Goodwin** called the meeting to order.

**Approval of Minutes from the September 1, 1993 meeting. (Exhibit B)**

**Discussion of the Social Security Program and possible abuses under the Zebley decision. (Exhibit C)**

**Representative Flanagin** was recognized. He deferred to Governor Jim Guy Tucker to address the committee.

**Governor Tucker** congratulated the committee on having this hearing and bringing attention to a federal program that is clearly resulting in a loss of a large amount of taxpayer money, as well as, also creating an environment in which children are unfairly and wrongly labeled as disabled. He expressed his hope that careful attention be given to the testimony offered to the extent that something might be done through encouraging at the federal level. Governor Tucker will join with the committee in encouraging such change and look forward to the approach the committee might suggest on it. He circulated a copy of the Washington Post article dated February 2, 1994 entitled, "How 26 Words Cost the Taxpayers Billions in New Entitlement Payments", by Bob Woodward and Benjamin Weiser. The Governor expressed his hope that the committee will look very closely at the adverse impact this has on children who get falsely labeled under this program and the impact it has on the public schools in our state.

**Representative Flanagin** was recognized. He said everyone is aware of the problem since there has been excellent cooperation from the media in bringing this matter to the public's attention. He commented on the Washington Post article which described how this situation developed. The origin goes back to 1972 which was the first year children were included in SSI legislation. The committee passed a resolution two years ago requesting our Congressional Delegation to look into the abuse of SSI benefits for children. He can foresee legislatively making it easier to prosecute a parent for child abuse when it can be proven that the parent has told the child to purposely go to school, be disruptive, and do poorly on tests, so they can get a "crazy check." In May 1992, when the letter was sent to the Congressional Delegation, several responses were received stating that the Social Security Administration did not think it was a large problem. This was frustrating since people in Arkansas were saying just the opposite. Currently, billions of dollars are being spent and we are not sure if it is helping the children who really need help. Parents are taking the money and spending it on things that are not helping children. They are required to spend the money within six months and the money is being spent on anything.

**Chairman Goodwin** said he understands that since May 1992 we have had an increase in the children with disability program by over 100%. **Representative Flanagin** said that is right and up to 250% in some counties in Arkansas.

**Representative Wingfield** asked Representative Flanagin what does the "crazy checks" cost the state in Medicaid benefits? **Representative Flanagin** said in dollars and cents right now you will probably see a negligible impact because most people who get on SSI become Medicaid eligible and most of them were already Medicaid eligible. At this point we are only starting to scratch the surface and it will be difficult to project what the abuse will be down the road.

**Mr. Kenny Whitlock, Division of Economic & Medical Services**, was recognized. He said the average cost in the Medicaid program in the disabled children category is about $5400 annually per child.

**Representative Wingfield** asked how many children are in the program? **Mr. Whitlock** said there has been an increase in the number of SSI children in Arkansas. The increase since the Zebley decision in 1990 has been approximately 250% statewide.

**Senator Bookout** asked Representative Flanagin to reiterate the chronology of the committee's action. **Representative Flanagin** said he got involved early in 1992 when a counselor from one of the elementary schools in Forrest City came to him and said something has to be done about these "crazy checks". They are disrupting school because of all of the paperwork that is being dumped on counselors and teachers. At that time, he was unfamiliar with this problem but then found out that the counselor was talking about the SSI program and the way that it had been open for abuse by the Sullivan vs. Zebley decision in 1992. After talking with constituents and hearing of many cases of abuse, he brought the problem to the committee. We conducted hearings, listened to testimony, and formed a subcommittee to study this matter. The committee found that there was a tremendous potential for abuse and we passed the resolution that was sent to our Congressional Delegation in May 1992. Several responses were received and typical of the responses was that if this type of abuse was widespread, there should be a reassessment of the screening process and changes should be made accordingly. One of the Senators contacted the Social Security Administration who said they were not aware of a large scale problem with the new standards and there was no pending legislation to challenge the new standards. He now hopes to make the Congressional Delegation more aware of the problem.

**Senator Bookout** said it is his understanding that this is not just a problem of the Delta only but it is a nationwide problem. He asked Mr. Whitlock the more money that is used for this purpose means less money to be spent for other Medicaid programs? **Mr. Whitlock** said yes.

**Chairman Goodwin** asked if it is true that we refer to abuse when someone generally cheats to get on the system. It appears these people are following the guidelines to be certified for the program so possibly the people who are being abused are the children who are forced into this situation just so the parent can get the check. **Representative Flanagin** said he thinks there is abuse on the part of the parents by telling their children to misbehave. The system is tempting honest people in order to receive more money. He believes we should not just give the money to the parents and let them go out and spend it on what they want instead of spending it on what the child needs.

**Senator Bookout** asked what about giving the money to the schools. It appears to him that this would be the logical place for it to go. **Representative Flanagin** said that would be a good idea. The money could be given to health service agencies if it is going to be for medical treatment, or to school districts in lump sums.

**Representative Calhoun** applauded Representative Flanagin for bringing this to everyone's attention and he thinks he has done an outstanding job. He does not begrudge anyone who has a problem and needs help. The federal government has set up a situation that will mark these kids for life. He asked what is the best action for this committee to take? As state legislators, what can we do? **Representative Flanagin** said he thinks we are doing the right thing by letting people know what is going on. He said we will send our transcripts and a resolution to the Congressional Delegation and remind them that we brought this to their attention two years ago and action needs to be taken immediately.

**Cassandra Wilkins, Director, Disability Determination,** was recognized. She said the SSI program provides monthly benefits to some of the nation's most vulnerable people - those who are aged or disabled, and who have little income and very limited resources. One of the most critical roles of the SSI program is to provide benefits to help meet the needs of low income disabled children. In February 1990 in Sullivan vs. Zebley, the Supreme Court found that SSI's prior regulation used narrower standards for evaluating disabilities for children than for adults. As a result of the 1990 Supreme Court decision, the Social Security Administration was required to develop new regulations to determine disabilities for children. The Court basically said that an age appropriate standard should be used and should be comparable to the adult standard. That decision and subsequent regulations of those changes brought a lot of attention to this program. Prior to the Supreme Court decision in 1990, there were a small number of children receiving SSI based on disability. After the Supreme Court decision and the new regulation, those numbers have increased significantly. As a settlement of the Supreme Court decision the Social Security Administration and the Health and Human Services Department settled with the plaintiffs and agreed to make this decision retroactive to 1980. Individuals that had applied prior to the Supreme Court decision were able to reapply and have a decision issued under the new guidelines. That resulted in retroactive payments for people around the country. The issue should be broken down into several areas: (1) The new regulation that came out of the Supreme Court decision. Discussion has surfaced that there have been abuses in the program which might be based on the criteria itself. Prior to the Supreme Court decision, a child had to meet a medical listing which was a very strict standard. After the Supreme Court decision and the new regulation that were formulated, a child did not have to meet a medical listing. Instead there was an individual functional assessment and they look at how the child functions in an age appropriate manner. The new criteria requires them to look at five different domains and children are evaluated under those domains. The criteria has prompted some of the discussion because the way the functional assessment is developed is that the domains are broken down into cognitive, communication, behavioral, social, and motor domain. Motor usually deals with the physical impairment whereas the others may have some physical as well as mental overlay, but some are strictly in the mental impairment area. A child can have a physical or mental impairment and qualify for disability. The change in the criteria has resulted in some of the discussion we have heard and may not be abuses but people who are indeed eligible based on the new criteria. The Social Security Administration did a study and found that about 2% of the cases resulted in incorrect decisions by the state agency level. (2) The second area is after a decision is made and a person receives benefits, how these benefits are used. The Social Security Administration makes payments to an individual, and in this case a child would have a payee, a parent or guardian to receive the money. There are studies and investigations going on to try to determine whether or not funds are being used properly under the current guidelines. (3) The third area is that if a parent or guardian is involved in some other program and the child is required to take speech therapy, then the parent is required to provide those services to the child. There is some monitoring of the services provided but it is difficult because that would have to be done at the federal level.

**Chairman Goodwin** commented that if he understood the law prior to Sullivan vs. Zebley, that in order for a child to be on the disability program they had to have acute leukemia, chronic epilepsy, or serious mental retardation. He asked if it was correct that after the decision it was simply behavior that wasn't age appropriate? **Ms. Wilkins** said prior to the Supreme Court decision, a child had to meet a medical listing of severity. The areas that Chairman Goodwin named were in the medical listing. There was also a listing that dealt not only with physical but mental impairment. After the Supreme Court decision, it was an age appropriate standard. With the adult program they did not stop at the medical listing but went on and considered age, education and other vocational factors. The Courts said they did not do that with children because children do not work, they could not use those same standards. The standards developed were that of a comparative and age appropriate standard. **Chairman Goodwin** said if behavior that isn't "age appropriate" might mean a child is just simply acting up and creating all types of problems - does that qualify them for these disability checks? **Ms. Wilkins** said not in of itself. What they have to have is a medically determinable impairment. They have to first look to see what is the cognitive level of the individual and then look at the other domains of behavior, etc. At least three domains have to be affected.

**Representative Willems** asked do you have to rule and pass judgement on all these kids? **Ms. Wilkins** said yes. The application is taken either in person or on the telephone at the Social Security Administration Federal Offices around the state. Those applications come to the state agency and they make the disability decision based on the federal criteria that was developed. They gather evidence from medical sources as well as teachers, parents, etc., that would be able to tell them how that child functions. They approve roughly 40% of the applications at the initial level and at the reconsideration level it is about 10% reversal. **Representative Willems** asked if they have to go through a redetermination process if they improve. **Ms. Wilkins** said at this time there is not a lot of continuing disability reviews but that a structure is set up to follow. It has been emphasized to go back and review children who had not performed at an age appropriate level to see if they are now performing at grade level appropriate levels.

**Representative Calhoun** asked Ms. Wilkins if the 40% is just kids? **Ms. Wilkins** said yes and with the adult program it ranges about 35%. **Representative Calhoun** asked if the children are ever followed up to see if they have improved? **Ms. Wilkins** said there should be a review by the Social Security Administration under the continuing disability review program. Right now the numbers are very small in terms of the number of cases that are being reevaluated. As funding increases for the program, they get so many initial filings and reconsideration filings that it is almost impossible at this point to reevaluate a lot of the cases. **Representative Calhoun** said he supposes right now that if a child gets in this program at six or seven years of age, they are locked in for 11 or 12 years. **Ms. Wilkins** said that is possible since this is a new program, but hopefully reviews will be increased as time goes on. Representative Calhoun asked how many children in Arkansas are currently in the program. Ms. Wilkins said the number that they have gotten from the Social Security Administration is roughly 16,000 for 1993. A 1992 figure showed 13,139. There has been an awareness over the past couple of years and people are finding out about it. They have gone from around 3,000 cases to 13,000 cases, but they think at some point that will level off.

Senator Bookout asked Ms. Wilkins to tell the committee the intent of the change in the law that makes this new money available. Ms. Wilkins said the policy makers had a requirement from the Supreme Court, at least a general requirement, and the policy makers then filled in the specifics. The general requirement was to try to come up with a standard for children comparable to the adult standard. In doing so the policy makers then looked at using an age appropriate standard. The regulation is heavy on how the child functions. They pulled together a group of experts in the medical community to come up with these standards. It was similar to what is looked at in special education and other areas where children are involved. Senator Bookout asked in the area of special education if the money is given directly to the recipient? Ms. Wilkins said that is correct.

Carla Nimocks, Speech Language Pathologist Supervisor, was recognized. Ms. Nimocks said they are getting extra money for something that is already paid for. Medicaid pays for therapy services and in that, there is an abuse. When a patient comes in, they decide that yes they are in fact speech/language disordered. They will come in for a couple of therapy sessions and then they stop. They have tried in the past to call the SSA and let them know that these people are not coming back for services but are still receiving their check. They have been told that there is nothing that can be done about it. They have no one to inform and no way to police what is happening. Because the children will hopefully get better with the services they provide, they feel there has to be some point when it can be said that they are better, as far as speech and language are concerned and they can function as a normal child.

Representative Dietz asked if she is dealing with children on this program and have no way to turn them off, they just continue to come? Ms. Nimocks said yes. A child who comes in and receive an evaluation from them and has three or four sound problems, because of his age and the type of sound problem he has, he is considered to have a severe speech problem. This child would qualify. They work on his speech and he gets better but he continues to receive his check. Representative Dietz asked does he continue to come see you? Ms. Nimocks said no, he just gets the check. Approximately 70 - 80% of the children they never see again.

Dr. Linda Collins, Brinkley Health Center, was recognized. She said the parents and the children are not the only ones abusing the system. There are agencies that are abusing the system. They are told that this child needs speech therapy and the child is only using the slang he hears in his neighborhood and home but there is nothing wrong with the child. There are also some problems with mental health centers who send kids in they say are hyperactive and the child, after being observed and after talking to the parent, is found not to be hyperactive but to have a behavior problem. If you put them on Ridalyn then they are assured that they will get this check and that is what the parents want.

**Chairman Goodwin** asked if these agencies often bill for services and follow-up with these people and bill continuously? **Dr. Collins** said yes, absolutely. They are building their patient load and the agency is benefiting through funds from the state government. The parent is using the child and the agency is using the child.

**Representative Willems** asked what kind of doctor Dr. Collins is? **Dr. Collins** responded that she is a general practitioner. **Representative Willems** said it is very interesting that they say they are having a speech problem when they are actually having language or slanguage problems. **Representative Willems** asked if this is the biggest problem that Dr. Collins has found or if there are other problems that come up? **Dr. Collins** said there is a full range of problems from the parent who applied for disability for her three month old to you name it.

**Chairman Goodwin** asked Dr. Collins if she has any suggestions on how we might monitor these agencies? **Dr. Collins** said the kids are being recruited. The counselors are telling the parents if you put your child in special education or get a doctor to say the child has a problem then you can get a check for him. They are being indirectly recruited.

**Shelvie Cole, School Psychologist, Wilbur Mills Coop,** was recognized. She said she is the Early Childhood Coordinator at the Wilbur Mills Coop. They provide services for children ages three to five years of age. She first became aware of the Social Security benefits for children with disabilities approximately two years ago when their office began receiving requests from both parents and the Social Security office for records that were related to children who qualified for the early childhood program. At that time she thought it was a program similar to Medicaid, and if a child qualified then any additional services that they might need would be provided. Later she learned that several families that had more than one child in their program or had an older child in the special education class at school, and these parents were quitting their jobs because of the money they were receiving as a result of their children being labeled as having some type of problem that interfered with their ability to benefit from regular education without special assistance. They received numerous requests from parents to forward the evaluation and programming information to the Social Security Office. Approximately 10% of their students have been declared eligible for SSI benefits. They serve 225 children in total and there are about 5,000 children in the state receiving early childhood services. If 10% of that population is also receiving Social Security that's an additional 500 children. She found this was happening not only in her area but throughout the state and that the numbers are climbing. She began to hear horror stories about the misuse and abuse of the system such as: the family members who were purchasing new pickup trucks, houses, a 500 acre farm, and double-wide mobile homes with their back checks. One family is receiving approximately $4,000 per month because all nine of their children have been declared eligible. These children are diagnosed as having some type of developmental delay, meaning all of their educational needs and services such as speech therapy, occupational therapy, physical therapy are provided free by the local school system or the early childhood program. If a child needs aids such as braces, wheelchairs, or other assisted devices there are organizations such as the Easter Seals, that provide these services at no cost to the parent. We need to ask ourselves what benefits are the children receiving from these monthly checks. She feels that it is too easy for a child to qualify for Social Security benefits, but if the benefits are granted, then those benefits should go directly to the service provider, the school and not to the parent. She encouraged the committee to intervene in this matter as quickly as possible and stop this abuse of the system and the misuse of the taxpayers money.

Debbie Sea, Principal, Forrest Hills School District, was recognized. She said she has had many reports from her counselors and teachers of children saying to them, "I don't have to listen to you, I get my "crazy check", and then not behave in school. The very first week of kindergarten they began receiving applications. They decided to start keeping copies of the applications because they are never told if the children qualify or not to receive SSI. When she began as an administrator they were criticized for over identifying minority students as having problems with their ability to learn. Now many of these parents are begging for applications so that they can qualify. She requires parents to come to school for a day if the child has a behavior problem. Since Christmas she has had two parents pull their children out of school because they refused to come to school for the day. They are so interested in getting the child a check that they won't come to school to see what type help the school feels the child needs as far as behavior counseling or what is expected of a child in elementary school. They feel strongly that the parents are not giving the children's interest the utmost in why they are applying for these funds. The school would like to see some way that the educators would be more involved in this process. In the responses that SSI gives, they say the teachers are an integral part, but in what she has seen the teachers are not an integral part in the children being able to qualify for these funds. They would like to make the qualifications the same as the national guidelines for special education. She has been told by testers that they are not sure that any children that they test don't qualify. She would like to have this investigated.

Chairman Goodwin asked Ms. Sea to get the staff a copy of the special education requirements.

**Senator Bookout** asked **Ms. Sea** in her opinion, how many kids really are emotionally/mentally disturbed? **Ms. Sea** said they have no idea who gets in the program. The school looks at the applications and wonder how the child is considered for qualification if they are brought to the office one time for a behavior problem. **Senator Bookout** said you all play a key role in the determination but that is the end of your role. **Ms. Sea** said from the responses that they have received, they are saying that they play a key role. They have a blank form of what is sent to the schools from SSI. It is so broad that they feel there should be a formal adaptive behavior screening done on the children.

**Ms. Bobbie Davis, Superintendent, Brinkley School District,** was recognized. She said the abuse of SSI is a growing problem in her county. The national figure show a 126% increase in the number of SSI eligible children and Monroe County is no different. From 1990 to 1992, Monroe County has gone from 58 SSI eligible to 120 eligible. This is an increase of 102%. The number of children from the Brinkley School District who have attempted to be certified for SSI purposes has greatly increased in the last year. As the word spreads, the frequency for requests for information forms for SSI increases. This creates a problem for teachers and staff as they spend a lot of time evaluating students who actually do not have problems. This process is time consuming. Teachers or counselors complete the disability determination forms that they receive from Social Security and they take a long time to complete. Other pressing responsibilities must be set aside as all of those requests are marked urgent. In order for a child to qualify for SSI, a teacher has to identify a disability. When they complete a request and mark a child as average with no problems they are bombarded by a furious parent or guardian who wants to know why they are being kept from getting their check. Parents are determined to have their children enrolled in special education classes or identified as learning disabled so that they will be eligible for a $450 a month entitlement from SSI. Parents do encourage their children to misbehave and fail tests so that they can be categorized as learning disabled.

Public Comments

**David Manley, Director of Litigation, Legal Services of Arkansas,** was recognized. He said his law firm represents a lot of people who are trying to get SSI. They have not one instance where a parent came to them and said they told their child to act crazy in order to get an SSI check. They are not naive enough to believe that it doesn't happen. However, they are also not naive enough to believe DDS or the Administrative Law Judges are so ill prepared or unprofessional or just flat ignorant that this child is going to trick them into believing that they are eligible for SSI. The teachers have already conceded that they don't always know who is eligible and who is not. Just because they apply does not mean they will necessarily get the money. Under the Social Security regulations parents are entitled to buy mobile homes. Most of the kids from the Delta come from substandard housing anyway, and the law firm often encourages the parents to spend the money purchasing mobile homes or making repairs on the house. The parents are entitled to enlarge their bathrooms or put rails in for wheelchairs. These things are perfectly acceptable and they are encouraged to make necessary improvements. If we cared about children we would fund education, spend more money at DHS, fund prenatal care, and if we have a mother with nine children on SSI we ought to fund family planning. This committee and legislature has not seen fit to do that. There is not a lot the Arkansas Legislature can do because this is a court order that requires this. Even Congress could not change this. Any resolutions this committee makes would land on ears that probably want to hear it but can't do a lot about it.

**Representative Flanagin** said if you saw the chronology of the Zebley decision and say that it goes back to the 1972 legislation and the 26 words that were included in that legislation upon which the Zebley decision is based, are you saying that Congress can't do anything to change the law that they enacted? **Mr. Manley** said the Congress can change all the acts they want to but the standards that have been adopted by Social Security and administered by Ms. Wilkins' agency, are pursuant to a court order. **Representative Flanagin** said a court order that is interpreting an act of Congress. That is what we are saying, Congress changed the law then you would change the administrative regulations pursuant to that law which would make the court order mute. **Mr. Manley** said that is correct. **Representative Flanagin** said we are directing our attention to Congress asking them to change the law, not to the Social Security Administration asking them to change their reaction to the court decision.

**Representative Calhoun** asked Mr. Manley what payment they get when they represent one of these cases? **Mr. Manley** said they don't get anything. If they have to go to federal court and win the case up there, then they win their attorneys fees under the Equal Access to Justice Act. It is a federal statute that says if a government agency is not substantially correct in their decision then the opposing party can get their attorney fees out of the government, because the government should have granted benefits or made the correct decision in the first place. They are federally funded and are attempting to make sure the law is complied with.

**Ami Rossi, Director, Arkansas Advocates for Children and Family,** was recognized. She is the mother of a severely learning disabled child. Because of her income, her child could not qualify for SSI, but she has grave concerns about children who have learning disabilities who are not easily identified by the school system. One thing that she wanted to look at was the number of children that are projected to be disabled in the state of Arkansas. The conservative estimates are approximately 7% of the children in Arkansas have disabling conditions. That is a little over 43,000 children. The predominant number of children that indicate disabling characteristics are elementary aged children, 6-14 years of age. It would stand to reason that we would have a number of children that would possibly qualify for SSI at the elementary level. There are significant outreach activities going on in this state that have been funded by government and private foundations that have urged people who are serving disabled populations to inform them about this opportunity that SSI presents. The opportunity is for parents who have disabled children being able to have available resources to truly meet their needs. She is concerned that children might be used as pawns in this game and that the money not go toward betterment or improve their health, or other disabling factors they may have. Some of the numbers that have been indicated today in some of the east Arkansas counties also coincide with large increases in the number of clients served by children's medical services. Some of the numbers you hear about, while alarming by the amount of growth in a very short period of time, are in some ways a measure of success by virtue of the amount of outreach that has been activated to try to increase these numbers of people to enroll in this program. Her office tends to hear from people who have more difficulty getting their children qualified and are not having them qualified by SSI than they have had reported of people who are illegitimately getting the services and qualifying for them. If the number of abuses is a low number, then you need to hear from the people who are using the funds very well for the benefit of their children.

**Representative Flanagin** read a statement made by Senator Russell Long from Louisiana. He said, "Disabled children's needs for food, clothing, and shelter are usually no greater than the needs of abled children." What we need is health care and rehabilitative services and not money. **Ms. Rossi** said if you are looking at the conditions in which some of these children live in you would have to agree that if you can improve their living conditions, you can also improve some of the circumstances of their ability to perform. There is research about how environmental conditions can improve or deter a child's learning. These kids are coming from a lot of odds that are against them in the first place. If they also have a disabling condition, it intensifies or disqualifies their abilities to succeed in life in a way that we hope our children will succeed.

**Wanda Stovall, Arkansas Disabilities Coalition,** was recognized. She said she is the parent of a 22 year old son who was born with spina bifida. If it had not been for SSI she is not sure how he and his sister would have survived. She has fought to get help from her ex-husband as far as the medical bills and child support. Medicaid covers a lot of areas but there are a lot of things it does not cover. When she was able to buy a house, there was no help to broaden the doorway to the bathroom. They needed to make things accessible for her son who uses a wheelchair. They did get help in building ramps, but one of the ramps would have put him out in the front yard to get him in the other room. She paid to have a ramp built so that he could be dry and get in and out of the car. She knows there are problems and with any system there is abuse, but there are a lot of people who really do need help. Her son just started working at Arkansas Children's Hospital. She does not feel that he has been labeled because of receiving these services. She read from a letter written by a father with an autistic child who feels a child should not be labeled "crazy" because he receives an SSI check.

**Chairman Goodwin** said the concern is we understand that probably the vast majority of the program is very much needed, but it is important that if there is fraud it needs to be thinned out so we can make sure that people who are eligible for this program and who desperately need assistance receive help.

**Representative Calhoun** said some people are misunderstanding what our intentions are. We are not here on a witch hunt or to tell people that they don't deserve anything, we are here because there is fraud. We did not make up the name "crazy check" and he would not use the word himself. It is a good program but it needs to be cleaned up. It should not be a blank check for someone to have their kid act up in school in order to receive money.

**Veda Perkins, Founder and Executive Director of Together We Stand Outreach,** was recognized. She is concerned that anyone would allow his or her child to be stigmatized for life to gain financially. Labels throughout our society have been used to divide us. Some of the people who have been labeled and their intelligence underestimated, have found hidden benefits and now you who set these standards and allow these labels loosely are up in the air. Her question is why? Is it for reelection purposes? She would be impressed if these actions would have been hailed when your colleagues lowered their standards. Some of the members of the General Assembly and statewide offices forget that they should demonstrate concern for all Arkansas citizens. She asked why don't you work to question the testers and examiners and the methods they use in order to place these labels on the children. Why don't you improve the living conditions and the job opportunities in these areas before you start trying to destroy the people who cannot qualify for this income without the professionals cooperating. She does not doubt there is a problem. She does believe that we spend more money to cover the hidden deals between elected officials, business executives and state employees. She would like to hear the comparisons to how many drug addicted people that have qualified for disability, to children that have been qualified. In hearing that a 250% increase of the children receiving SSI has had the impact of $70 million on the Medicaid program, what has been an increase in the same time span for AFDC? Was it really the SSI that went up, or was it both that went up? What "crazy check" means to you, might very well not mean the very same thing to the people who are using the term. We speak of these people as if they are non-taxpayers. You can't exist in this world that you don't pay some kind of taxes. The negative connotations that she hears does not demonstrate to her that we are open to fairness, we are only out to destroy many of these people's only means of survival. Let's give these people hope and look for areas that can be improved before you try to destroy their livelihoods.

Robert "Say" McIntosh, was recognized. He was wondering if there is some way to let the legislators get their crazy checks also, because he can't understand the legislators not being interested in drive by shootings. This is something that the legislature controls. They should be trying to get 30 year maximum sentences for someone who just drives by and shoots someone for nothing. This is a racial thing. The first time that white people see that black people might be getting something over them, they just go to pieces, and say that blacks are getting rich. Nobody is mad about the 150 billion in the S&L. Billions are wasted at the Defense Department each year, but nobody is mad about that. Some people in public housing feel that they have to tear the places up just to get help. $12 million are put into Highland Courts every three years, and this does not make sense. Anything that we have is subject to abuse. The legislature here abuses its power, the Governor abuses his power, we have a president who might go to prison for abusing his power, his wife might go to prison. No one has called a legislative hearing about that. Don't bother these poor people about a "crazy check". Lots of people need it. He has never seen a school as filthy as Central High School, do these kids deserve a "crazy check"? They don't have sense enough to put paper in the trash cans. We have to be real, we can't go by what the newspapers are saying because they are trying to sell newspapers, they are not trying to help anybody. John Walker and the Friday Law Firm are getting rich, and you are not mad about that. We can't afford to talk about anyone in Washington because we are not doing what we need to do here. We need to get the schools out of federal court and stop wasting the tax dollars in federal court. These people are not getting rich. If a kid can get a new house or new car, you should say God bless them. We don't have gangs, we just have black on black crime. We have to concentrate on things that will make this state better.

Representative Flanagin made a motion that we report to the full committee and recommend that a full committee resolution asking President Clinton and the Arkansas Congressional Delegation to examine the abuses of the SSI program and that we send a transcript of the hearing with copies of the resolution to the Congressional Delegation and the White House. The motion was seconded and carried by voice vote.

With no further business, the meeting adjourned at 4:10 p.m.

Ms. LAMBERT. In November 1993, Arkansas State University released a survey of 111 certified school personnel, including teachers, special education teachers, counselors and school administrators—people who help determine the eligibility. The results of that survey are quite alarming, particularly the following three items:

Eighty-one percent of the respondents agreed that children referred for SSI—schoolchildren—have made comments that they have been told to misbehave in order to qualify for disability payments.

Seventy-nine percent agreed that once children qualify for the SSI, their motivation to complete schoolwork decreases.

Eighty-eight percent agreed that children whose parents have referred them for SSI talk about money their parents receive as a result of their SSI claim.

Only 9 percent of the sample believe that SSI for children was being used appropriately. I also request that this survey be included in the record as a part of my testimony.

[The following was subsequently received:]

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VICE CHAIRMAN

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON DEPARTMENT OPERATIONS AND NUTRITION

COMMITTEE ON MERCHANT MARINE AND FISHERIES
SUBCOMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

February 14, 1994

The Honorable Harold Ford
Chairman, Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives
B317 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Chairman Ford:

It has recently been brought to my attention through numerous calls and letters from my constituents that there are serious administrative flaws with the distribution of benefits under the Supplemental Security Income (SSI) program, specifically as it relates to disabled children. News articles in The Washington Post, and The Arkansas Democrat-Gazette highlight and confirm these concerns. Given that you recently have held hearings on SSI-related issues, I respectfully request that you consider holding hearings to further investigate these allegations.

Due to the easing of disability restrictions in the 1990 Supreme Court case Sullivan v. Zebley, the SSI program has seen an explosion in participation - some of the counties in my district have seen an increase of as much as 255%. While I do believe that some of the increase may be attributable to increased outreach efforts, I am gravely concerned that much of the increase may be due to abuse. I have basically three areas of concern that I feel should be addressed. They are as follows.

(1) Allegations that parents are "coaching" their children to be disruptive in order to receive SSI benefits.

(2) Concerns that disabled children do not require more cash benefits than nondisabled children in poor households.

(3) Concerns that under the current administrative procedure truly disabled children are not receiving the medical and therapeutic assistance that they require.

Mr. Chairman, in an age where every budget expenditure is closely monitored and where increases in one program may lead to the reduction of benefits for qualified recipients in another, I feel it is extremely important that we investigate these allegations to insure that funds are being spent as Congress intended. I believe we would all agree that the federal government has a role to play in addressing the needs of low-income disabled children, but are those needs truly being met?

In light of these concerns, it behooves this Congress to get to the facts of the matter, make whatever changes may be necessary, and restore public confidence both in our ability to properly address what we all agree are admirable goals, and to assist the truly needy. Please know that I stand ready to assist you in any manner possible. Thank you for your consideration of my request.

Sincerely,

Blanche M. Lambert

BLANCHE M. LAMBERT
Member of Congress

# Problems with Social Security Disability Claims Among School-Aged Children

Sarah Broom John R. Slate Craig H. Jones
Arkansas State University

Paper presented at the annual meeting of the Mid-South Educational Research Association, November 10-12, 1993.

## Abstract

Surveyed 111 certified school personnel to assess their attitudes toward Social Security Disability claims among school-aged children. Respondents reported a significant increase in referrals in the 92-93 school year over the 91-92 school year. Overall attitudes of respondents toward SSI indicated a belief that the system was not being utilized properly and that possible abuses were occurring.

## Problems with Social Security Disability Claims Among School-Aged Children

Supplemental Security Income (SSI) is a government program that provides monthly payments to persons, including children, who have a disability (Understanding SSI, 1992). For children who are disabled to qualify for SSI benefits, they must live with parents who have limited income and limited resources ($2,000 for a single person, or $3,000 for a couple. Benefits include financial payments that range between $430 to $670 per month.

In the application process, a team consisting of a physician, psychologist, and a disability evaluation specialist review several sources of data, including medical and school records, before making a decision about the claim (Disability, 1992). In most cases involving a child, the child's school is contacted. Teachers and counselors are asked to complete reports concerning the child's behavior and academic progress. Also, a copy of the child's speech and hearing tests, grades, and psychological exam, if available, are reviewed. If the school does not have a psychological examination on file, the parents are responsible for taking the child for an evaluation although Social Security will pay for this service (Social Security, 1993).

When determining whether a child is disabled, the evaluation specialist must determine if the child's mental or physical condition limits the child's ability to function in a manner similar to children of the same age. If this determination is made, the child will be considered disabled for SSI purposes (Social Security, 1993). In special cases, a child can automatically be determined disabled and, as a result, will receive immediate SSI payments. These cases include: HIV infection, blindness, deafness, Cerebral Palsy, Down Syndrome, Muscular Dystrophy or significant mental deficiency (Social Security, 1993).

Recently, a significant increase appears to have occurred in the number of disability claims filed. Two factors appear to have affected the number of claims filed involving school-aged children. First, in the Zebley decision (If you get, 1992), the courts ruled that Social Security was discriminating against widows and children. The Supreme Court determined that all cases involving widows and children turned down between January 1, 1980 and February 11, 1991 could be refiled and reevaluated. Second, parents have become more aware about the availability of benefits under SSI provisions. The potential monthly income can provide an inducement for parents to attempt to have their children declared disabled.

Recently, a regional hearing was held in Forrest City, Arkansas to obtain information from educators about the impact of the SSI program on school personnel and school resources. Comments from educators included complaints about the burden of filling out the paperwork related to SSI claims, and perceived abuse of the system. That is, educators described cases in which children had been told to "act crazy" in order to receive a check and cases in which the child had been told to deliberately score low on tests given to determine eligibility. In addition, the educators present expressed concern about how the disability checks were being spent. Many believed that the money was being used to buy material things for the parents, rather than to purchase clothing and other materials needed by the child. As a result, several educators stated that they believed the screening process needed to be changed to help eliminate applicants who were clearly not eligible (Some parents, 1993).

As disturbing as these allegations are, the persons who testify at a public hearing may not be representative of educators in general. Thus, in this study, we surveyed school personnel's views regarding Social Security Disability claims among school-aged children.

## Method

A questionnaire was completed by 111 certified school personnel from several school districts in Northeast Arkansas. Participants were 77 regular classroom teachers, 12 special education teachers, 7 counselors, 8 administrators, and 7 chapter one reading and math teachers. They had an average of 11.0 years (SD = 7.5) of experience in education. There were 27% who worked in kindergarten through second grade, 33.3% who worked in grades 3-6, 27% worked in grades 7 through 12, 9.9% worked at mixed grade levels, and 2% did not report this information.

Following demographic questions, participants were asked to respond to 14 questions that assessed their views toward the behavior and academic deficiencies of children who are screened for SSI benefits, and the strength of the SSI program on a 5-point scale (strongly agree, agree, neutral, disagree, and strongly disagree).

## Results

A factor analysis identified a single factor that accounted for 38.7% of the variance. Of the 14 questionnaire items, nine had high loadings on this factor. When summed, responses to these nine items produced an attitudes scale with a coefficient alpha of +.88 which indicates very high internal consistency. Table 1 lists these items with the percentage of participants who agreed or disagreed with each questionnaire item.

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Insert Table 1 about here

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An analysis of variance revealed that attitudes toward SSI varied as a function of years of experience in the schools, *F*(3, 86) = 3.46, *p* < .05. Participants with 15 or more years of experience (*M* = 34.1) expressed attitudes toward SSI that were more positive than did participants with 1-5 years of experience (*M* = 37.5), 6-10 years of experience (*M* = 38.8), and those with 11-15 years of experience (*M* = 37.9). No differences in attitudes were found, however, by grade level taught, *F*(3,101) = .697, with the mean scores being 36.4 for participants working in kindergarten through third grade, 37.9 in grades 3-6, 36.1 in grades 7-12, and in 37.3 in mixed grades.

Consistent with reports that SSI claims are increasing, participants reported completing an average of 4.5 (*SD* = 7.2) claims in the 91-92 school year and an average of 6.7 (*SD* = 9.9) claims in the 92-93 school year. This difference in the number of reported SSI claims was statistically significant, $t(107) = -5.71.$, $p < .01$.

## Discussion

The educators we surveyed reported completing more disability in the 92-93 school year than in the 91-92 year. They also perceived SSI claims as comprising more of a problem now than in years previously. The less time participants had been in education, and thus the more recent their initial exposure to the SSI system, the more negative their attitudes tend to be. These negative attitudes are based upon the belief many children who qualified for SSI benefits were not truly disabled. In fact, only 2.7% thought that children who qualify for SSI were truly disabled. Rather, these educators believed that parents with a competent, healthy child are having the child declared disabled so that they may receive extra money. As a result, only 9% of our sample believed that the SSI system for school-aged children was being used appropriately.

Currently, the government's disability trust fund is close to bankruptcy and has only enough money to pay benefits until 1995 (Disability trust fund, 1993). By shifting greater amounts of Social Security payroll taxes into the disability trust fund, however, Congress anticipates keeping the fund solvent until 2020 (Disability trust fund, 1993). Much of the drain on this system is coming from an increasing number of SSI disability payments to school-aged children. Because of the attitudes of the school personnel in this study toward the SSI system, there is a strong possibility that many of these claims constitute an abuse of SSI.

We believe that a thorough review of the criteria and procedures for determining SSI eligibility for school-aged children is needed to determine whether or not these educators' opinions are based in fact or prejudice. If their opinions are based in fact, then the receipt of benefits by students with genuine disabilities is being jeopardized by abuse that needs to be stopped.

## References

Disability. (January, 1992). U.S. Department of Health and Human Services, Social Security Administration. SSA Publication No. 05-10029. ICN 456000.

Disability trust fund going broke as record numbers claim benefits. (1993, April 24) Jonesboro Sun. pp. 12.

If You got SSI through the Zebley Court Case. (June, 1992). U.S. Department of Health and Human Services, Social Security Administration. SSA Publication No. 05-11012. ICN 480266.

Social Security and SSI Benefits for Children with Disabilities. (January 1993), U.S. Department of Health and Human Services, Social Security Administration. SSA Publication No. 05-10026. ICN 455360

Some parents abuse SSI, buy cars, TVs, educators say. (1993, March 2). Wynne Progress. pp. 5B.

Supplemental Security Income. (January 1992). U.S. Department of Health and Human Services, Social Security Administration. SSA Publication No.05-11000. ICN 480200.

Understanding SSI. (September 1992). U.S. Department of Health and Human Services, Social Security Administration. SSA Publication No. 17-008. ICN 443175.

Table 1

School Personnel's Views Toward Questionnaire Items Regarding SSI.

| Questionnaire Item | Agree | Disagree |
|---|---|---|
| Children whose parents have referred them for SSI misbehave more often in the classroom than children who have not been referred for SSI. | 77.4% | 10.8% |
| Children whose parents have referred them for SSI talk about money their parents receive as a result of the SSI claim. | 88.2% | 0.9% |
| The issue of SSI checks has become more of a problem this year than in previous years. | 90.9% | 0.0% |
| Children who qualify for SSI payments are truly disabled. | 25.2% | 74.7% |
| Children whose parents have referred them for SSI perform more poorly on academic work than children who have not been referred. | 59.4% | 18.0% |
| Once children qualify for SSI, their motivation to complete schoolwork decreases. | 79.2% | 2.0% |
| Once children qualify for SSI, they misbehave more at school than they did before the SSI claim. | 72.0% | 8.0% |
| Children referred for SSI have made comments that they have been told to miss test items in order to qualify for disability payments. | 78.3% | 0.9% |
| Children referred for SSI have made comments that they have been told to misbehave in order to qualify for disability payments. | 81.0% | 2.7% |

Ms. LAMBERT. These findings, along with the concerns of educators and medical professionals, highlight policy questions that should be discussed regardless of the abuse claims. For instance, is a direct cash payment the best method of ensuring that a child will receive the treatment or services that he or she needs? How can we provide for accountability of funds dispersed under SSI? Would a voucher system ensure greater program integrity?

I know that Congresswoman Meek has introduced a bill that adopts some of the recommendations of the SSI modernization project, and I applaud her efforts at reform. Specifically, I support efforts to modify the 6-month resource rule that requires lump sum back payments to be spent within 6 months.

In my opinion, the current rules do little to encourage wise use of what is sometimes a significant amount of money. I hope that during consideration of this legislation the concerns that I have reported could be addressed as well.

Mr. Chairman, the reports of abuse that I have highlighted in my testimony can be easily subject to claims of sensationalism and demagoguery. I have made a deliberate attempt to avoid speaking of the program in that manner because, overall, I believe that much good comes from it. That fact is often lost when an issue becomes scandalized, and that is precisely my reason for wanting to be here today.

I believe it is in the best interest of all who are concerned with this program to get to the bottom of these claims. For children who legitimately receive SSI benefits to have a program that is greatly beneficial to them cast as fraudulent and their benefits described as "crazy checks," the effects are at least demeaning and harmful. For those children who may be abusing the program through no fault of their own but due to parental encouragement, imagine the effect of learning that underachievement and misbehavior are rewarded while diligence and discipline are discouraged. In any case, the losers are the children.

Again, Mr. Chairman, I stand ready to assist you in any manner possible as this subcommittee reviews the program, and I thank you again and will be glad to take any questions from you or members of the subcommittee.

I just touch on a point that I think brings home to me personally. When I ran for Congress many people told me I was too young. I was a woman in a district that wouldn't accept a woman. And I didn't understand that, and that was because my parents had very fortunately taught me not to be discouraged and certainly to make sure—to know that I was capable of anything.

If there is any true disservice or problem that we have, it would be that telling our children in today's world when things are so competitive that they cannot compete or that they are not capable. I think it is much, much more important that we encourage our children to be all that they are capable of.

Thank you again for having me.

Chairman FORD. Thank you, Ms. Lambert.

Ms. Lambert, I want to recognize Congresswoman Meek, would you stay for a question or two?

Ms. LAMBERT. Most certainly.

Chairman FORD. I am going to send down my staff. There is an article in The Commercial Appeal this morning about the Medicaid fund in our act for special education. While Mrs. Meek is testifying, I would just like you to glance through the article so you can comment on it in just 1 minute.

[The following was subsequently received:]

Medicaid funding eyed for special education
Byline: Cornell Christion The Commercial Appeal
ESTIMATED INFORMATION UNITS: 3.6 Words: 459
03/01/94
THE COMMERCIAL APPEAL - Memphis, Tenn. (MMPH)
Edition: Final
Section: Metro
Page: B1

City school board members agreed Monday to explore the idea of the school district being recognized as a Medicaid provider, which could pave the way for a new source of funding for services for some special education students.

Board members were told during a board-staff conference that federal legislation has made it possible for school districts to shift the cost of providing some special education services from the school district to Medicaid.

The legislation allows Medicaid to pay for school counseling, nursing, transportation, speech therapy and a host of other services for economically disadvantaged special education students. Figures on the number of special education students, as well as the number considered economically disadvantaged, were not available Monday night.

* That could mean $2 million to $3 million a year in Medicaid funding for a big-city school district like Memphis City Schools, according to a management consulting firm officials are considering hiring to help them pursue the issue.

"I think, as I understand it, the service delivery would remain the same. The children would still get the services; the employees would still be our employees. The difference would be who pays for it," said Supt. Gerry House.

"Right now, you're having to pay for it out of local funds and whatever few state funds that you get. What this does is that it allows Medicaid to pay for these services. So it's the funding that changes. Everything else would remain the same."

The new strategy, which was made possible by the Omnibus Budget Reconcilation Act of 1989, is being tried or considered by schools in Delaware, Michigan and Illinois, said officials from the Deloitte & Touche management consulting firm.

Medicaid is the federal health insurance program for the poor that is administered by states. The proposal was presented to board members as a "refinancing" of school district costs.

It would require the school district to be recognized as a Medicaid provider like hospitals and nursing homes. The technical term would be a "school-based health services provider."

The state would have to approve a new Medicaid program custom-designed for the school district, and the program would have to be exempted from the state's new TennCare effort. School board members were warned that the whole process would take months.

But board members urged House to continue discussions on the issue with the consulting firm. The board is expected this month to consider entering a contract with Deloitte & Touche. The firm's fee would be tied to the amount of funds "refinanced" through Medicaid.

"I would encourage us to look into it," said board member Bill Todd.

"We need to pursue every legitimate and legal means . . . that's at our disposal to get our hands on money," said board member Sara Lewis.

End of Story Reached

Chairman FORD. Mrs. Meek, you are recognized at this time.

## STATEMENT OF HON. CARRIE P. MEEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mrs. MEEK. Thank you, Mr. Chairman and subcommittee members. I want to commend you for holding this hearing today. The SSI modernization project was completed almost 1½ years ago, and your leadership and interest is the key to moving SSI reform forward. I know it is going to be difficult, and it is expensive, but certainly it is worthwhile.

It is all too easy for SSI to be pushed aside while so many other important issues come to the forefront. Maybe there are louder and more forceful voices out there pushing other agendas and other issues. I am here today with these other witnesses to help change that perception. We are all here to speak out loudly and forcefully that SSI must be reformed, and this is the year to do it. This is the year of reform, and SSI should be included. So I appreciate the opportunity to appear today and talk about the legislation I have introduced.

Mr. Chairman, our Nation's character is defined by how we treat those in society who are most in need. And looking at the SSI program today, it is obvious that we are in need of some major character adjustment.

I am particularly concerned about the plight of poor elderly women who have precious few options in our society. For many of these women, SSI is their main source of support, even though it only provides enough income to bring them to less than 75 percent of the poverty level. How long will we as a society tolerate maintaining this Nation's neediest and most vulnerable people—the needy, aged, blind and disabled—at a level which we all acknowledge guarantees an impoverished existence?

I strongly support the work of the supplemental security income modernization project and the excellent report prepared by the experts in this field led by Dr. Arthur Flemming and certainly pushed on and on as fast as he can by Sam Simmons. I greatly admire and respect both of these people, and they are both with us today.

I believe that the recommendations of the SSI modernization project must be implemented, and that is why I introduced H.R. 2676 which incorporates not everything but some of the most important recommendations of the modernization project. As I mentioned—and I will repeat with emphasis—that SSI is the only Federal program that seeks to provide a minimum income and a measure of dignity to the lives of millions of aged, blind and disabled Americans.

The problem, Mr. Chairman, is that SSI falls well short of that goal. Now, this goal, Mr. Chairman, was set in 1972 when SSI was established. The Senate Finance Committee foresaw a program that would provide positive assurance that the Nation's aged, blind and disabled people would no longer have to subsist on below-poverty level. Well, here we are 22 years later, and that goal is still unmet.

The modernization project's major recommendation is to phase in an increase—and I repeat phasing in, not abruptly doing all of this—an increase in benefit levels over 5 years so that the incomes of SSI recipients would reach 120 percent of the HHS poverty guidelines. This is really the centerpiece of the reform, and I have included this recommendation in the bill.

There is ample precedent for using standards higher than 100 percent of poverty guidelines. Food stamp eligibility, for example, is as high as 130 percent. The report provides additional examples.

The SSI benefit standard in 1992 was 74.4 percent of poverty guidelines for an individual and 82.7 percent for a couple. I maintain that this is simply not sufficient. If our goal is to lift the aged, blind and disabled out of poverty, then we should do so.

Witnesses who provided testimony to the panel of experts recounted numerous stories of SSI recipients who had to choose among necessities. I wish that you could read more of my mail. One of my own constituents from North Miami, Fla., told me about his experience, and I quote:

> I am a recipient of SSI and started receiving payments in April, 1978. At that time, I lived together with my mother and brother. In 1982, we moved to this address, and my folks paid most of the expenses. Then my brother, who received medals in World War II, died and left me alone with my mother. Then my mother died, too, in August, 1993, and I was left with only my SSI payments to make ends meet.
>
> My folks had left me very little money, but I was able to operate at a deficit to pay the rent and other expenses in our apartment. I am doing my best, but no matter how well I do, it still does not seem to be quite good enough.

Mr. Chairman, this is not the picture that Congress had in mind when SSI was established more than 20 years ago.

Because of these low eligibility and benefit levels, exclusions from resources have proliferated in order to help people maintain eligibility. The result is a very complicated system that makes administration of the program even more costly.

It is time for reform, Mr. Chairman. The experts recommend increasing resource eligibility standards to $7,000 for an individual and $10,500 for a couple and simultaneously reducing the number of exclusions. My bill increases resource standards and eliminates some of the exclusions, but I would encourage the subcommittee to do a complete review.

The only thing I am asking here today is that you review and try to reform SSI. My bill addresses only those exclusions included in title XVI of the Social Security Act, but many others exist. I believe that with adequate resource limits and realistic income eligibility levels most exclusions would not be necessary.

I also strongly support the recommendation to eliminate inkind support from the determination of income. Such support is food, shelter or clothing given to a person or received by that person because someone else paid for it. Receiving such support, Mr. Chairman, can result in a recipient's benefit being reduced by one-third. The experts were concerned that this provision discourages family members from providing help and that the policy is confusing both to the beneficiaries and to Social Security staff.

Another recommendation encompassed by my legislation is enhancement of work incentive provisions. My bill would allow SSI beneficiaries to earn $2,400 annually without having benefits reduced. For every $3 earned above this level, benefits will be reduced by $1.

Work incentive provides opportunities for SSI recipients to achieve a greater measure of independence and perhaps eventually end their reliance on public assistance. In recent years, the disabled in particular have taken greater advantage of the opportunity to work. In 1991, 6.3 percent of recipients with disabilities received income from working.

The last major change included in H.R. 2676 is reduction of the age limit for eligibility on the basis of age, reduce it from 65 to 62, phased in over a 3-year period. The experts recommended this reduction to make it consistent with other Social Security programs which permit retirement benefits at age 62. This lower age would provide greater security for the elderly for whom it is difficult to find work.

I recognize, Mr. Chairman and members of this committee, that the greatest barrier to enacting the recommendations of the SSI project panel of experts is the cost. The President's budget proposal for fiscal year 1995 calls for an increase of $1.2 billion for SSI, but this increase is designed only to provide funding for the projected rise in caseload growth.

And I will perhaps end here, Mr. Chairman. I know the time is flying. But I just want to summarize it by saying that this is the year for SSI reform. It can be done. My bill gives one way of doing it.

Thank you, Mr. Chairman.

Chairman FORD. Thank you very much, Mrs. Meek.

I, too, think that we ought to seriously consider doing something as it relates to reform in the supplemental security income program. But in light of all the budget restraints, I am not certain how much we will be able to reform this program. Does the modernization project take into consideration that most of the SSI recipients are also eligible for food stamps, medical assistance and, in some cases, housing assistance?

In light of all of the other things we have heard with other witnesses who testified in some of our joint sessions with other subcommittees on Ways and Means, we see a growing number of drug and alcohol abusers coming on the rolls of SSI. We certainly have seen a large number of immigrants coming on SSI with middlemen acting fraudulently and sometimes receiving kickbacks as representative payees. Some have suggested that there is fraud and abuse in these areas.

As we look at the total dollar amount of the SSI program, I think we all would agree that the disabled who would qualify under the means-tested program is rapidly growing. Continental growth at the current rate would really increase the supplemental security income budget about two and a half to three times the amount of money that we are spending today.

As chairman of this subcommittee I know any legislation that probably would be forthcoming, would have to be budget neutral or revenue neutral. Projections from the modernization project indicate that current benefit levels only come up to about 75 percent of the poverty threshold.

Mrs. MEEK. Right.

Chairman FORD. What if we considered something, maybe, in the tune of 100 percent of the threshold rather than 120 percent of the poverty median?

Mrs. MEEK. I would say that any consideration is desirable at this point, knowing where we are in this country in terms of the large deficit that we have, but that we should at least make some step forward for—maybe to phase in increases over the next 5 years. Yes. If it isn't 120 percent, it will be better than it is now—if it is 100 percent it will be better.

But I think we can't ignore the fact that SSI right now is inadequate in terms of what is available out there for these elderly disabled people and very, very poor people, that they are just barely subsisting as it is now.

I would appeal to this committee to come up with whatever means that you see fit in your purview on Ways and Means and in your purview on your subcommittee to phase in a higher level of SSI than we are presently seeing and have it phased in in such a way that it will substantially add something to what we are getting without adding more to the deficit.

Speaking to your point about abuse, I just feel that there is so much abuse around, Mr. Chairman, that it couldn't barely be laid at the foot of SSI. Wherever I go I hear of abuses. I am just hoping that administration will be tightened to the point that we can go after these abusers and leave more money for the poor and the disabled and not cause them to be the victims when they are really being, I would think, abused by those people who are abusing the system.

Chairman FORD. Thank you.

Ms. Lambert, a couple of questions before I get to that article. Thank you very much for your testimony.

Do you think children should receive SSI benefits?

Ms. LAMBERT. Those children who need it.

Chairman FORD. Those who need it. Do you think it would be more beneficial to offer children treatment vouchers rather than cash payments for SSI?

Ms. LAMBERT. I think there has been some question as to whether or not the cash that is being administered is going to the real need that the child has. Service vouchers, or other means of actually seeing that services and treatment are going to the children that need them, are certainly options worth exploring.

Chairman FORD. What do you suggest that we do to improve the SSI program to ensure that children who are allegedly being coached by their parents for the purposes of receiving and staying on these SSI rolls do not receive benefits?

Ms. LAMBERT. I have a couple of suggestions.

As I stated in my testimony, a part of what I would like to do is to be a part of your group and certainly join you in your efforts to help bring back the integrity into these programs. I certainly don't profess to have all the answers but am willing to work hard with you and the subcommittee and others to reach some of those.

I think some of the questions revolve around how the delivery is being made, the delivery of the resources to the child. You mentioned the voucher system—some have mentioned—and as you indicate here in this article, that actually getting those special services through other avenues——

Chairman FORD. But is there a danger in that? In reading that article this morning, we have a school system in my hometown that is now talking about hiring consultants—not the professionals within the school system—who will be paid according to the dollar amount received from the Federal Government based on the number of enrollees in the services.

Ms. LAMBERT. There is alarm, yes.

Chairman FORD. It is very alarming that the school system is indicating that all of these things are needed—and I have no problem with it being constituted in the school system, but it is disturbing to see that the school system is talking about paying these financial consultants. Their fees will be triggered to the amount of dollars that they receive to set up these particular programs in the school system from the SSI program or the Medicaid program.

You are receiving Medicaid providing that you are eligible for supplemental security income benefits. This does, in fact, fall within your jurisdiction on the Commerce Committee because it would involve Medicaid dollars.

Ms. LAMBERT. That is one of the reasons that I was alarmed is that those people that were reporting to me or who were bringing the information to me were actually those teachers, principals, counselors, those who were in the school that are responsible for administering the program.

Because, as you said, we have people whose funding and whose capability is directly related to what is coming in, and those people are alarmed, which was one of the reasons that my concern was triggered because these are the people who are helping to administer the program, and they are saying that perhaps there is some way that we could make the program more effective.

One of the other ways would be addressing the domains, the last two domains that are used in the criteria, the developmental and social behavioral domains that are used in making a judgment or making a decision on those children that are capable of receiving the benefits. I think that those are areas where we have got to look.

Again, when we talk about what we want to see for the future of our Nation and for the future of our community and our children, we have got to give them the support that they need to be competitive, and it is going to be important that we reinforce that in any way that we can.

I think that, again, if we look at the areas of the domains, those last two in particular, if we look at services as opposed to just cash payment and other areas where we can actually get at the root of the problem and address the needs of the children there.

Chairman FORD. In some cases, Ms. Lambert, that might work, but what happens when you have children with severe illness that the mothers would not have to coach? I mean, we have a lot of disabled people who are drawing supplemental security income that are in dire need of the financial assistance benefits in many cases. And I think what some of the other witnesses today will be testifying to is that this income level is still below the poverty threshold, and, therefore, benefits under SSI should be increased.

Ms. LAMBERT. Most definitely. And I don't disagree at all that there are many out there who are disabled who need these resources. And that is the very reason why I would like to see us addressing the abuses. I think the allegations that we see out there harm the program far more than the abuses do because it limits or diminishes the integrity of the program.

Those first three domains—and this is strictly in the case of the children—those first three domains do get at a tremendous amount of the actual disability in the children when it is concentrated in those areas, and it addresses that so that those that are severely disabled will certainly come out with the resources that they need. The last two domains are very necessary.

It is just that I think it is important that we look at things that cannot be scientifically documented when we look at the behavioral problems and maybe the social problems that are calculated in those last two domains, that we have to be very careful that we are not opening ourselves up for subjection again with the involvement of the parents.

Chairman FORD. Is most of this information coming from the Arkansas State University in releasing their survey that they conducted on problems with Social Security disability claims among school-aged children?

Ms. LAMBERT. A copy of that survey is included with my testimony as well as——

Chairman FORD. We are going to make it a part of the record. But did most of this information come directly from that study?

Ms. LAMBERT. A bit of it, yes.

Chairman FORD. You mentioned earlier that you also have firsthand information as it relates to teachers and others coming to you to talk about kids being coached.

Ms. LAMBERT. Some of those names and others are in the testimony that came from the State hearing that was held with the State legislature in Arkansas and are certainly available within that testimony, and that will be submitted in the record as well.

Chairman FORD. The reason I ask is, maybe my State DDS office is just too tough. I hear stories every day. Even when I was home over the weekend, after flying down on the same flight with you the other day, I had a constituent of mine who had applied for SSI benefits over 12 months ago for seizures and other disabilities, and he was denied, denied, and denied, and he died over the weekend and never received those benefits.

I can tell stories one after another. Maybe it might be my DDS office. I can't get anyone on SSI; it is tough. It is just like trying to pull a tooth with a pair of pliers.

Ms. LAMBERT. That is why I concentrate strictly on children.

Chairman FORD. Even with children, I find that to be true in my area. But I don't find it to be true with others who are testifying in other parts of the country. Naturally, we are concerned. I want to get more evidence.

Ms. LAMBERT. Most definitely, and I agree with you wholeheartedly. That is why I say I want to offer myself, my findings as well, to work with you, that I am here simply to ask that these—again, these allegations be inspected, that we go through the process of investigation. Because, as I say, the allegations can be more harmful to the program than the abuse. I want to be able to reinstate the integrity of the program to make sure that we are reaching the people who need it, the disabled, the blind.

Chairman FORD. We want to do that. We are going to make that commitment. I applaud the school system, but at the same time I don't want to create another bureaucracy out here that is going to add more children to the rolls just for the purpose of receiving school dollars. If these dollars are needed, I think we ought to appropriate them from the Federal level, but not create an entitlement program so large and blow it completely out of proportion overlooking the recipients who passed the means-tested provisions of the program itself.

Ms. LAMBERT. I agree. I offer myself to work with you.

Chairman FORD. Thank you.

Mr. Kopetski.

Mr. KOPETSKI. Well, Mr. Chairman, I am curious about the focus on children. This scares me because children don't get enough resources in our society.

I need you to clarify that you consider mental illness to be a disability.

Ms. LAMBERT. Most definitely. It is categorized under one of those first three domains, I think, if I am correct. I am not sure how they are listed in number. But, yes.

Mr. KOPETSKI. And children can have mental illnesses and need——

Ms. LAMBERT. Most definitely. Most definitely.

Mr. KOPETSKI. So you are not suggesting eliminating children from the SSI eligibility?

Ms. LAMBERT. Not at all. What I am trying to do is reinforce the system so it provides to those children who need it the most and that those that are abusing the system do not create allegations and problems for the system so that the integrity of the system and really the power behind the system is not eliminated for those that need it.

Mr. KOPETSKI. I was interested in the Chairman's comments because we have difficulty in my district gaining eligibility for what we believe are truly needy individuals. Do you know of other States? Is it just Arkansas where these alleged abuses have arisen?

Ms. LAMBERT. I have heard of others—Pennsylvania for one and some others—but I have really only concentrated in my own district.

Mr. KOPETSKI. I see. OK. So, hopefully, if there is abuse it is very limited?

Ms. LAMBERT. Again—and I think that is the point to be made is that if there is abuse, we want to recognize it. We want to investigate to find out if there is. If there is not abuse going on, then, you know, there is maybe just a minimal amount, and that is what our findings will be.

I think it is just important for the integrity of the system and to be able to maintain the system that we put these allegations to rest if there is no truth to them, but the important part is that we reinforce the system so that it is there for those people who need it, mentally retarded, the disabled, all of those children.

Mr. KOPETSKI. Mentally ill as well?

Ms. LAMBERT. Yes.

Mr. KOPETSKI. Mr. Chairman, just a note that under budget reconciliation it is going to be very difficult to have any increases in any human resource program. We have a budget cap, so that means if we are going to add to this program we have to take from another program.

Mrs. MEEK. May I respond?

Mr. KOPETSKI. Of course.

Mrs. MEEK. I just think that it's ridiculous to have a deduction when someone gives you clothing. That that should really be considered.

Mr. KOPETSKI. I agree.

Mrs. MEEK. That is something that—I guess the word I need is sort of nitpicking. If someone in the family just gives you some support services, SSI is reduced. I would say that is a superfluous way of decreasing the budget.

Mr. KOPETSKI. I agree.

Mrs. MEEK. There are other things that could be done.

If they just give SSI recipients a little money for their work, work incentives, it is certainly not going to in any way bust the budget.

I think when we look at those provisions what I see happening budgetwise here in the Congress is they are robbing Peter to pay Paul, and they are moving money around. I cannot see how reform can be delayed, such a small stipulation for some people, not for everybody. I don't see us perhaps increasing benefits across the board, but I think we ought to take a step forward after 20 years. Not to say this is going to be something to make the deficit much bigger, but how can we move money around on a priority basis, particularly when we have so many elderly people who are disabled and unable to help themselves.

I guess what I am asking for is a shift in priorities, not to add more money to the budget.

Mr. KOPETSKI. OK. Thank you.

Thank you, Mr. Chairman.

Chairman FORD. Well, Mrs. Meek, that would be very difficult to do. We spend over $20 billion today on the SSI program, and it is one of the fastest growing entitlement programs in the Federal budget. You are talking about a $2 billion ticket item just in the response to the member's question 1 minute ago.

But I am in agreement that we are going to have to look at all of these areas, and certainly it has been called to the subcommittee's attention about fraud and abuse in many areas of this program. We want to continue to investigate and look at the evidence that will support some of these things that have been said before the subcommittee, and we want to take whatever appropriate action that would be necessary.

One of the things I would like to talk to you further about, Ms. Lambert, since you serve on the Commerce Committee, is the area of Federal moneys being paid to school systems to pay fees for consultants according to the number of students they get to enroll in SSI and Medicaid.

I say that because we represent neighboring areas, and certainly what happens in my media market happens in your media market.

With you serving on the committee with jurisdiction over the Medicaid program and this committee with jurisdiction over the supplemental security income program I would like to continue to monitor this with you.

Because I think the reports and the studies that have been released by Arkansas State University and others, even with the Supreme Court ruling, suggest that primary and secondary institutions continue to look in this direction and before we let it grow out of proportion we need to make sure that we put some balance into the program. With two committees having the jurisdiction I would like to work with you on it.

Ms. LAMBERT. I would be proud to work with you. And I agree, creating an incentive for abuse is not really the right way to go there either. So we would definitely like to work with you.

Chairman FORD. Thank you all very much.

Ms. LAMBERT. Thank you, Mr. Chairman.

Chairman FORD. The subcommittee would like to call the next panel up: Hon. Arthur Flemming, the chair of the SSI modernization panel, former Secretary of Health, Education and Welfare; and also Robert Fulton, member of the SSI modernization panel, independent public policy analyst.

I would like to welcome the two of you before the subcommittee. I am sorry that it took so long for the first panel of members. Let me thank you once again for coming and being with us today. It is an honor to have the two of you testify before this subcommittee.

As you know, Dr. Flemming, you are always welcome before this subcommittee. We always look forward to your testimony before the committee as well.

## STATEMENT OF HON. ARTHUR S. FLEMMING, CHAIR, SUPPLEMENTAL SECURITY INCOME MODERNIZATION PROJECT PANEL, AND CHAIR, SAVE OUR SECURITY COALITION (FORMER SECRETARY OF HEALTH, EDUCATION AND WELFARE)

Mr. FLEMMING. Mr. Chairman, thank you very much. We appreciate Members of Congress spending this much time on this very, very important issue. The discussion was very interesting.

As you have noted in your opening comment, the Supplemental Security Income Modernization Report was filed in August, 1992. This is the first time that we have had an opportunity to discuss the report as a whole with this committee of the Congress. I would like, therefore, to request the committee to incorporate the report in the record of these hearings.

Chairman FORD. We will incorporate the full text of that report as a part of the record before the Subcommittee on Human Resources.

Mr. FLEMMING. Thank you very much.

[Due to the length of this report, it will be retained in the committee files.]

Mr. FLEMMING. I am grateful that you have invited my colleague, Robert Fulton, who served with me on this panel. Mr. Fulton has rendered outstanding service as a public servant to the State of Oklahoma, to both the executive and legislative branches of our

Federal Government and as a member of the supplemental security income modernization panel.

I am also delighted to note that another member of our panel is here as a witness, Elizabeth Boggs, who will be testifying later. She was really our leader as far as the disability issue is concerned. I am just delighted she is here.

I hope that this will be the first of a number of hearings dealing with our recommendations.

Today, I desire to introduce you to the panel and give you some idea of the thrust of our recommendations. Gwendolyn King established our panel of 21 persons outside the Federal Government representing a wide range of interests regarding public and private programs that serve aged, blind and disabled persons. I am including the names and a brief identification of the members of the panel. Actually, that is included in the report.

This panel consists of some of the finest persons that I have had the privilege of working with in the various assignments I have had for the government over a period of 55 years. We were ably assisted by Rhoda Davis, the Associate Commissioner for supplemental security income, Peter Spencer, the Executive Staff Director of the project, Commissioner King's immediate associates and the career staff of the Social Security Administration.

We held public meetings in 8 cities and heard oral and written comments from more than 400 individuals, including current and former SSI recipients, representative payees, representatives from professional organizations, amnesty groups, legal service organizations and Federal, State and local government.

Mr. Chairman, I visited all 10 regional offices, local offices within each regional office and met with claims representatives in SSA offices and in five State disability determination offices.

In the middle of 1991, the project published a paper in the Federal Register which invited comments on issues and options which we had identified. Approximately 14,000 comments were received, the largest number of comments on a single paper that SSA has ever received. These were shared with the panel.

The thrust of our report is this:

We became deeply impressed with the fact that when the Congress and the President set up the supplemental security income program 20 years ago as a part of our Social Security program, they were challenging the national community to pool its resources, both private sector and public sector, to help the poorest of the poor among the aged, blind and disabled deal with the hazards and the vicissitudes of life.

Believing that our Nation should be judged, in large part, by the way in which it deals with the poorest of the poor, we have recommended among other things that, first, a seriously understaffed Social Security Administration be authorized to increase its staff by 6,000 and then tackle its backlog of disability cases which has led to an average delay of 3 to 4 months in handling an initial disability application and to an average, as you indicated, Mr. Chairman, just a few minutes ago, of more than 1 year in handling appeals.

The second thing is that we recommend that Congress repeal the antifamily provision of the SSI program which authorizes a cut of as much as one-third of benefits if a beneficiary moves into the home of a family or friend and receives help for food and shelter. I could enlarge upon that a great deal, but I will refrain from doing it.

There should be significant upward revisions and simplifications in resource requirements which make it impossible for a person to save money and set aside a nest egg to meet the unknown hazards of the future.

Next we recommended that Congress strengthen and simplify the provisions for work incentives and eliminate work disincentives.

We believe that considerable emphasis should be placed on the fact that if people are on AFDC rolls or on SSI rolls that they should not feel that they are there forever but that we should be of assistance to them in helping them to come back into the work force.

We recommended that funds be appropriated for the first time for representative payees. As you have indicated here, we are placing a great deal of reliance—on the volunteers known as representative payees, and yet we are not providing them with adequate staff support.

Then, finally, we said, raise the benefit level to 120 percent of the poverty line over a period of 5 years with the understanding that it will be raised to 100 percent of the poverty line as soon as possible.

The estimate in 1992 dollars was if they were all accepted the SSI budget would be at $38 billion at the end of 5 years, with $28 billion attributable to an increase in benefits.

The President has urged that some Federal funds be set aside for investment in programs designed to serve the people of our Nation. I urge that a fair share of these funds be used to start setting in motion the recommendations made on behalf of the poorest of the poor among the aged, blind and disabled of our Nation.

Mr. Chairman, you have placed a great deal of emphasis on the fraud and abuse that has crept into the system, and I would be delighted at an appropriate time to address that issue because it is a significant issue and one that we should all of us who are interested in SSI be willing to address.

Thank you very, very much.

Chairman FORD. I know that was not an area that you covered with the modernization project. But it is an area, Dr. Flemming, that at some given point this subcommittee would like to either hear from you testifying before the subcommittee or making comments in writing, as it relates to all of the areas that your testimony has covered, including about three or four different areas of fraud and abuse.

Mr. FLEMMING. Mr. Chairman, it goes to really the heart of the system. Since the modernization report has been filed, we have had an outstanding report by Vice President Gore and his task force, namely the National Performance Review Report. I was very much interested in that because I have had the opportunity of serving on both Hoover Commissions, and I had the opportunity of serving as a member for 8 years on President Eisenhower's Committee on Government Organization.

Vice President Gore's task force has made a unique contribution because their emphasis has been on improving the functions of government, and among those functions is to get at fraud and abuse. And some of these basic recommendations can certainly be applied to SSI, our largest domestic program.

I would simply say that I would like to plant the idea that I feel that in developing a system of this kind we should place less reliance on detailed rules and regulations and more reliance on the claimspeople at the grassroots.

I met with them, a great many of them. They are devoted civil servants. And if we gave them authority to act when they see fraud and abuse—because they would see it—they would act. And, instead, we rely on a lot of rules and regulations which oftentimes have to go up to the regional level or maybe the Federal level, for implementation.

Chairman FORD. They can make recommendations and suggestions.

Mr. FLEMMING. The claimspeople can make recommendations, but they can't act. Give them authority to act. If claims representatives see right in front of them fraud or abuse, give them authority to act. Don't make them recommend to somebody else. They see it, they know it, and we can get rid of a lot of these rules and regulations. We are talking about fraud and abuse. But you can also cite other parts of SSI. It would seem to me that Vice President Gore's task force has made fundamental recommendations that we ought to try to apply to SSI.

Chairman FORD. OK. Mr. Fulton, I am sorry we got into that dialog. You are recognized now, sir.

## STATEMENT OF ROBERT F. FULTON, MEMBER, SUPPLEMENTAL SECURITY INCOME MODERNIZATION PROJECT PANEL, AND INDEPENDENT PUBLIC POLICY ANALYST, PATTON, MO.

Mr. FULTON. Thank you, Mr. Chairman. I appreciate, also, the opportunity to be here to provide testimony to the subcommittee.

I am also honored to be here with Dr. Flemming. He has been an outstanding leader in so many ways over the years, and the energy and commitment he brought to the work of the modernization panel were truly outstanding. I will assure you that the panel stayed focused on its mission under his leadership. We may not have covered everything, but we covered more than anybody else has, I think, since the program began.

I would like to paraphrase the first several pages of my testimony and make most of my comments in responses to the points that were in your letter inviting me to testify here today.

In the first part of my testimony I deal with some of my personal involvement with SSI, and the various places I have worked where the SSI program was within our jurisdiction. But I must say that until the time I went on the modernization panel, I didn't know SSI was bedeviled by anything like the number of complex issues that exist in this program.

I think that my unfamiliarity with many of these issues tells us something about how the general public sees the program. Unless a family member is dependent on SSI or a family member has been turned down for disability benefits, most people will know little about this program.

I didn't know, for example, when I was a State administrator, that States had certain options in the SSI program. Had I known, we might have done some things a little different than we did.

When I was welfare director in Oklahoma for 4½ years in the 1980s, we administered State SSI supplements. We worked with the Social Security Administration. The SSI program was not then a problem. The program was not growing. It was essentially budget neutral.

One year we did cut our State supplement with some help from the Ways and Means Committee. In order for us to make that change, Congress had to adopt a modification of a provision in title XVI that restricts the States' ability to reduce supplements. SSI was at that time a program that was run in the field. It was not at all in the policy limelight at the State level.

I think SSI today needs the attention of this subcommittee and the Congress as a whole in dealing with some of the very sticky issues that the modernization panel has presented. Even if you don't like the advice, I think the analysis of the problems in almost every case is clear and can help the Congress a great deal in dealing with these issues.

I suspect I was invited here to testify because I was part of a group of five of the panel members who joined in a statement of additional views in which we disagreed with the rest of the panel on some issues. But I want to say that I am confident that I speak for those other four who joined with me in saying that the directions that the panel proposed were generally the right directions.

The question of how far and how fast to go is really where we differed. I think I can illustrate that by commenting on the increase in the Federal benefits' standard and some of the other issues.

The cost of raising the benefit level to 120 percent of the poverty line, as recommended by the majority of panel members, is clearly prohibitive. Nevertheless, benefits in SSI should be improved, with the SSI payment level raised to at least the Federal poverty level over a period of several years. In our statement, we suggested that be done by adding 2 percentage points to the annual COLAs each year.

If you only added 1 percent per year, that would be progress, but if you added 2 percentage points a year, within a few years after the year 2000 you would have the SSI benefit up to the poverty line. Moreover, this wouldn't impact the Federal budget very drastically.

One of the reasons why we were cautious, is that we were sensitive to the fact that the AFDC program has such poor benefit levels around the country, and we were concerned about trying to move SSI ahead so rapidly without giving poor, nondisabled children the priority they ought to have.

I suspect that the deficiencies in AFDC have a lot to do with what you were hearing a little while ago about the efforts of some families in Arkansas to get a child into SSI. The SSI benefit for a single individual in the State of Oklahoma, which I know best, is more than the AFDC benefit for a family of four. In Arkansas the disparity is much greater than that.

Chairman FORD. You are saying that one SSI recipient, a child, would be equivalent to a family of four on Aid to Families with Dependent Children; is that correct?

Mr. FULTON. Yes, sir. That is absolutely correct.

Chairman FORD. That is probably true in 19 of the States where you have low benefits. I am from one of those so-called poor States, too. I know it would be true in Tennessee, Arkansas, Mississippi, Alabama, Georgia, Kentucky and other areas like that.

Mr. FULTON. It is true of the median State, so it is probably true of a little more than half the States.

With regard to inkind support and maintenance, I think the entire panel was horrified by the rules, the counterproductive effects of cutting assistance when someone is getting a little bit of support, usually but not always from somebody living in the home. It can be any kind of private assistance.

If the elderly or disabled person lives in a separate apartment and walks across the yard and takes his/her meals with the family, that is inkind support and results in a reduction in benefits. Our group, our little five-member cabal, didn't come up with any specific plan for getting rid of inkind support and maintenance. We endorsed the need to do so, however.

I think the $2 billion price tag is too much to get it done in one fell swoop. I would urge you to look at the statement of views of Michael Stern, who was another member of the panel who didn't join our group but who presented a plan for rationalizing the support received from living in the household with another person with the treatment of couples in SSI. And I won't go into that in detail, but I think his proposal is worthy of the committee's examination.

The statements of additional views are in the back of the panel report. I ask that you print them in your report following my prepared statement.

On the treatment of resources, again, the proposal to go to $7,000 for single individuals and $10,500 for couples raises an issue of equity and fairness with other programs. The AFDC resource standard is $1,000, which clearly is totally inadequate. Our group supports movement upward on that. My own view is that you ought to double the present standard and then index it to the cost of living.

The *Zebley* decision I won't comment on in detail. It is a matter that you have gone into a good deal here already. It has obviously posed a huge workload on the Social Security Administration and on State disability determination units.

The final comment I had was on State supplements. I hope there is a way that we can move this program closer to what I think it started out to be, which was a federalization of assistance for the elderly, blind and disabled.

I comment in my prepared testimony on the options approved by the panel majority. In this case I did get support on the panel— to do two things: One is to restrict somewhat the State's ability to have the Federal Government administer overly complex supplementation schemes.

Right now, the States can pick a whole host of variations and get the Federal Government to administer free of charge a very complex support program, with variations in payment levels for people living in all different types of situations. The panel proposes to restrict that range of State supplementation if there is to be Federal administration. Under the panel's proposal, the States would be told that if they choose not to simplify, they can either pay for administration or they could administer their own supplements.

The other thing the panel recommends regarding State supplements is to relieve the States of the obligation to maintain their supplements when the Federal benefit level reaches 100 percent of poverty.

Mr. Chairman, I have taken longer than I was supposed to. I appreciate your patience.

Thank you for the opportunity to be here. I would be glad to respond to any questions or to help in any way I can in the future with the work of the subcommittee.

Chairman FORD. Thank you, Mr. Fulton.

[The prepared statement follows:]

# PREPARED STATEMENT
BY ROBERT FULTON
FOR HEARING ON SUPPLEMENTAL SECURITY INCOME PROGRAM
March 1, 1994
SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

I THANK CHAIRMAN FORD AND THE OTHER MEMBERS OF THE SUBCOMMITTEE FOR GIVING ME THIS OPPORTUNITY TO TESTIFY ABOUT THE SUPPLEMENTAL SECURITY INCOME PROGRAM. THIS IS A VERY IMPORTANT PROGRAM FOR MILLIONS OF AMERICANS, AND IT HAS RECEIVED ENTIRELY TOO LITTLE POLICY ATTENTION WITHIN THE EXECUTIVE BRANCH AND IN THE CONGRESS.

## PERSONAL INVOLVEMENT WITH SSI ADMINISTRATION AND POLICY

I SPEAK TO THE COMMITTEE OUT OF A BACKGROUND OF MORE THAN 35 YEARS OF FEDERAL AND STATE PUBLIC SERVICE. I JOINED THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE IN 1973, NOT LONG AFTER THE SSI PROGRAM WAS CREATED. WHEN I WAS A MEMBER OF SECRETARY DAVID MATHEW'S EXECUTIVE STAFF IN 1976, SSI WAS STILL IN ITS EARLY IMPLEMENTATION PHASE.

WHEN I WORKED FOR THE SENATE BUDGET COMMITTEE AS A SENIOR HUMAN RESOURCES ANALYST FROM 1977 TO 1983, I HAD THE RESPONSIBILITY TO ADVISE MEMBERS OF THE COMMITTEE ON ALL INCOME MAINTENANCE PROGRAMS, INCLUDING SSI. DURING THOSE YEARS, SSI WAS NOT CONSIDERED TO BE A BUDGET PROBLEM BECAUSE IT WAS A SMALLER PROGRAM THAN HAD ORIGINALLY BEEN PREDICTED AND WAS NOT GROWING VERY RAPIDLY. THE ONE ASPECT OF SSI THAT ATTRACTED SOME BUDGETARY ATTENTION IN THOSE YEARS WAS THE GROWTH IN THE DISABILITY ROLLS. THIS GROWTH WAS BEING OFFSET BY DECREASES IN THE NUMBER OF ELDERLY RECIPIENTS, HOWEVER, AND SO THE BUDGET COMMITTEE DID NOT CONSIDER SSI TO BE A HIGH PRIORITY PROBLEM.

FROM 1983 TO 1987 I WAS DIRECTOR OF THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES, WHICH ADMINISTERED THE STATE SUPPLEMENTS TO SSI, ALONG WITH NUMEROUS OTHER INCOME MAINTENANCE, HEALTH AND SOCIAL SERVICE PROGRAMS. AT THAT TIME, OKLAHOMA HAD ONE OF THE LARGEST STATE SUPPLEMENTS IN THE NATION, PAYING $79 PER MONTH ON TOP OF THE FEDERAL PAYMENT. BECAUSE OF A CRISIS IN STATE FUNDING, WE WERE FORCED TO CUT THE LEVEL OF SSI SUPPLEMENTS, AND WERE FORTUNATE TO HAVE THE COOPERATION OF THE WAYS AND MEANS COMMITTEE IN PUSHING THROUGH A LEGISLATIVE CHANGE THAT ENABLED

US TO MAKE A MODEST REDUCTION. THE $64 A MONTH SUPPLEMENTAL PAYMENT THAT OKLAHOMA ADOPTED AT THAT TIME STILL LEFT OKLAHOMA AMONG THE LEADERS IN STATE SUPPLEMENTS. INDEED, ACCORDING TO THE 1993 GREEN BOOK, ONLY EIGHT STATES NOW PAY HIGHER SUPPLEMENTS THAN DOES OKLAHOMA.

AS WAS THE CASE DURING MY WORK AS A SENATE STAFF MEMBER, THE SSI PROGRAM WAS NOT CONSIDERED A MAJOR PROBLEM DURING MY YEARS AS A STATE WELFARE ADMINISTRATOR. OKLAHOMA'S SSI ROLLS WERE STABLE, AND, ONCE WE MADE THE BENEFIT CUT I JUST DISCUSSED, THE PROGRAM WAS PRETTY MUCH LEFT TO THE FIELD STAFF OF THE AGENCY TO ADMINISTER. OKLAHOMA HAD NO CONFLICTS WITH THE FEDERAL GOVERNMENT OVER SSI DURING THE TIME I WAS IN STATE GOVERNMENT. AS FAR AS I KNEW, THE PROGRAM WAS WORKING QUITE WELL.

AS A STATE OFFICIAL RESPONSIBLE FOR THE AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM AS WELL AS SSI, HOWEVER, I WAS KEENLY AWARE OF THE DISPARITY BETWEEN THE LEVEL OF SUPPORT WE WERE PROVIDING TO THE ELDERLY AND THOSE WITH DISABILITIES COMPARED WITH THE SUPPORT PROVIDED TO MOTHERS AND CHILDREN DEPENDENT UPON AFDC. ONE OF THE REASONS I SUPPORTED A REDUCTION IN OKLAHOMA'S SSI SUPPLEMENT WAS THAT I FELT IT ESSENTIAL THAT WE AVOID CUTBACKS IN AFDC PAYMENTS.

THE FUNDAMENTAL DISPARITY IN THE WAY WE TREAT THE POOREST OF OUR CITIZENS CAN BE SEEN IN THE NUMBERS FROM THE GREEN BOOK. THE FEDERAL GUARANTEE FOR A SINGLE ELDERLY OR DISABLED PERSON LIVING ALONE WHO IS ELIGIBLE FOR SSI IS $446 IN 1994. MOST OF THOSE ELIGIBLE GET $20 MORE THROUGH THE DISREGARD OF OTHER INCOME. BY CONTRAST, THE MAXIMUM AFDC BENEFIT IN THE MEDIAN STATE FOR A FAMILY OF THREE WAS ONLY $367 IN JANUARY 1993, AND THE MAXIMUM IN THE MEDIAN STATE FOR A FAMILY OF FOUR WAS ONLY $435 -- SLIGHTLY LESS THAN THE FEDERAL GUARANTEE FOR A SINGLE INDIVIDUAL ON SSI. A MOTHER AND THREE CHILDREN OBVIOUSLY CANNOT LIVE AS CHEAPLY AS MOST SINGLE ELDERLY PERSONS. IT IS CLEAR THAT OUR NATIONAL COMMITMENT TO CHILDREN WHOSE FAMILIES ARE POOR IS FAR WEAKER THAN THE COMMITMENT TO THE ELDERLY AND THOSE WITH DISABILITIES.

IN OKLAHOMA AND OTHER STATES WHICH PAY A SUPPLEMENT TO SSI RECIPIENTS THE DISPARITY IS EVEN GREATER. THE LATEST NUMBERS AVAILABLE TO ME FOR OKLAHOMA SHOW A TOTAL SSI CASH BENEFIT OF $506 FOR A SINGLE INDIVIDUAL, CONSISTING OF A COMBINATION OF THE FEDERAL GUARANTEE AND THE STATE SUPPLEMENT. OKLAHOMA'S MAXIMUM AFDC BENEFIT FOR A FAMILY OF THREE AS OF JANUARY 1993 WAS $324, AND FOR A FAMILY OF FOUR IT WAS $402 PER MONTH.

## THE SSI MODERNIZATION PROJECT

SERVICE ON THE PANEL FOR THE SSI MODERNIZATION PROJECT GAVE ME AN OPPORTUNITY TO "CATCH UP" ON THE DETAILS OF THE SSI PROGRAM. FRANKLY, I WAS QUITE SURPRISED BY THE NUMBER AND SERIOUSNESS OF THE POLICY AND ADMINISTRATIVE PROBLEMS WHICH PLAGUE THE PROGRAM. THE PROGRAM NEEDS SIGNIFICANT REFORM. I AM STILL HOPEFUL THAT THE MODERNIZATION PROJECT WILL HELP GENERATE THE NEEDED REFORMS. IT IS ENCOURAGING THAT THE SUBCOMMITTEE IS HOLDING THIS HEARING, ALBEIT A YEAR AND A HALF AFTER THE REPORT OF OUR PANEL WAS ISSUED.

THE MODERNIZATION PANEL MEMBERS WERE WITHOUT EXCEPTION CONCERNED ABOUT THE WELL-BEING OF THE CURRENT AND FUTURE RECIPIENTS OF SSI AND OTHER AMERICANS WHO ARE ELDERLY OR HAVE DISABILITIES AND COULD BE HELPED BY SSI TO MEET THEIR NEEDS FOR A DECENT STANDARD OF LIVING. OUR DISTINGUISHED CHAIRMAN, DR. ARTHUR FLEMMING, WORKED TIRELESSLY TO GIVE ALL PANEL MEMBERS THE OPPORTUNITY TO PRESENT THEIR VIEWS AND TO SEEK SUPPORT BY OTHER MEMBERS. ON MANY POINTS THE PANEL MEMBERS WERE UNANIMOUS OR NEARLY SO. AS THE WORK OF THE PANEL MOVED ALONG, HOWEVER, IT BECAME APPARENT THAT A MINORITY OF THE PANEL MEMBERS FAVORED A MORE GRADUAL APPROACH -- A MORE CAUTIOUS APPROACH IF YOU WILL -- TO IMPROVING THE SSI PROGRAM THAN DID THE MAJORITY.

THE FUNDAMENTAL PROBLEM WITH THE PANEL'S RECOMMENDATION IS CAPTURED CONCISELY IN CHAIRMAN FORD'S PRESS RELEASE OF FEBRUARY 23RD REGARDING THIS HEARING. YOU STATED, MR. CHAIRMAN, "THE ESTIMATED COST OF ALL PROPOSED CHANGES TO THE SSI PROGRAM IS APPROXIMATELY $39 BILLION ANNUALLY BY 1997, NEARLY TRIPLING THE CURRENT COST OF THE PROGRAM."

GIVEN THE CURRENT AND FORESEEABLE BUDGET SITUATION, AND GIVEN THE MANY OTHER PRESSING NEEDS FACING THE FEDERAL GOVERNMENT, IT SEEMS HIGHLY UNLIKELY THAT PROGRAM ENHANCEMENTS OF THE MAGNITUDE PROPOSED BY THE PANEL'S MAJORITY COULD RECEIVE SERIOUS CONSIDERATION ANY TIME SOON. CONCERNED THAT THE GOOD WORK OF THE PANEL NOT GO FOR NAUGHT, THE MINORITY SOUGHT TO OUTLINE A MORE REALISTIC REFORM AGENDA. I TOOK THE LEAD IN NEGOTIATING THE LANGUAGE OF THE MINORITY STATEMENT WITH THE OTHER FOUR PANEL MEMBERS WHO JOINED IN IT. ARTHUR HESS, WHO WAS DEPUTY COMMISSIONER OF SOCIAL SECURITY WHEN THE SSI PROGRAM BEGAN, WAS ONE OF THOSE WHO HELPED DRAFT AND JOINED IN THE STATEMENT OF ADDITIONAL VIEWS. ALSO JOINING IN THE ADDITIONAL VIEWS WERE KENNETH BOWLER, FORMERLY A KEY MEMBER OF THE HOUSE WAYS AND MEANS STAFF, RICHARD NATHAN WHO WAS HEAD OF THE HUMAN RESOURCES STAFF IN THE OFFICE OF MANAGEMENT AND BUDGET DURING

THE FIRST NIXON ADMINISTRATION, AND TIMOTHY SMEEDING, AN ACADEMIC EXPERT ON INCOME MAINTENANCE PROGRAMS AND POLICIES. A SEPARATE SET OF VIEWS WAS SUBMITTED BY MICHAEL STERN, FORMERLY STAFF DIRECTOR OF THE SENATE FINANCE COMMITTEE.

I ASK, MR. CHAIRMAN, THAT THE STATEMENT OF ADDITIONAL VIEWS OF MYSELF AND THE OTHER FOUR PERSONS I JUST NAMED BE INCLUDED IN THE RECORD OF THIS HEARING RIGHT AFTER MY TESTIMONY. THAT STATEMENT APPEARS ON PAGES 169 THROUGH 171 OF THE PANEL'S FINAL REPORT.

## RESPONSES TO ISSUES IDENTIFIED BY CHAIRMAN

IN YOUR LETTER INVITING ME TO TESTIFY AT THIS HEARING, MR. CHAIRMAN, YOU ASKED THAT I ADDRESS SEVERAL ISSUES. THE FOLLOWING IS A BRIEF COMMENT ON EACH OF THOSE ISSUES. I SHALL BE GLAD TO ELABORATE FURTHER DURING THE QUESTION AND ANSWER PERIOD.

### 1. INCREASING THE FEDERAL BENEFIT STANDARD

THE COST OF RAISING THE BENEFIT LEVEL TO 120 PERCENT OF THE POVERTY LINE AS RECOMMENDED BY THE MAJORITY OF PANEL MEMBERS IS CLEARLY PROHIBITIVE. NEVERTHELESS, BENEFITS IN SSI SHOULD BE IMPROVED, WITH THE SSI PAYMENT LEVEL RAISED TO AT LEAST THE FEDERAL POVERTY LINE OVER A PERIOD OF SEVERAL YEARS. THE STATEMENT OF ADDITIONAL VIEWS PROPOSES THIS BE DONE BY ADDING TWO PERCENTAGE POINTS TO THE ANNUAL COLAS FOR SEVERAL YEARS. THIS WOULD ADD ONLY MARGINALLY TO THE FEDERAL BUDGET IN ANY YEAR AND WOULD, AFTER SEVERAL YEARS, PROVIDE AN INCOME FLOOR ABOVE THE OFFICIAL POVERTY LINE FOR ELDERLY AND DISABLED AMERICANS. I BELIEVE THAT THIS IS THE MOST THAT SHOULD BE ATTEMPTED, GIVEN THE FEDERAL BUDGET PICTURE, THE PRESSING NEEDS OF LOW INCOME FAMILIES WITH CHILDREN, AND THE MANY OTHER NEEDS WHICH CONFRONT THE FEDERAL GOVERNMENT.

### 2. IN-KIND SUPPORT AND MAINTENANCE

THE CURRENT RULES ON IN-KIND SUPPORT AND MAINTENANCE ("ISM" AS IT IS CALLED BY THE SOCIAL SECURITY ADMINISTRATION STAFF) ARE MONSTROUS TO ADMINISTER AND THE SOURCE OF SERIOUS INEQUITIES AMONG RECIPIENTS OF SSI BENEFITS. THEY ALSO HAVE COUNTER-PRODUCTIVE EFFECTS BY DISCOURAGING FRAIL ELDERLY INDIVIDUALS AND PERSONS WITH SERIOUS DISABILITIES FROM LIVING WITH OTHERS WHO CAN HELP THEM COPE WITH THE CHALLENGES OF DAILY LIVING.

IT IS SIGNIFICANT THAT STATES WHICH PROVIDE SSI SUPPLEMENTAL PAYMENTS HAVE IN MOST CASES IGNORED HOUSEHOLD COMPOSITION AND HAVE DISREGARDED ANY IN-KIND SUPPORT IN ESTABLISHING THEIR PAYMENT LEVELS. SOME STATES HAVE TRIED TO COUNTERACT THE EFFECTS OF THE FEDERAL APPROACH TO "ISM" BY CALCULATING THEIR SUPPLEMENT SO AS TO OFF-SET THE FEDERAL REDUCTIONS.

THE MODERNIZATION PANEL WAS UNANIMOUS IN URGING THAT THE CURRENT APPROACH TO "ISM" BE SCRAPPED. THE TOTAL DISREGARD OF SUCH SUPPORT, AS RECOMMENDED BY THE MAJORITY OF PANEL MEMBERS, WOULD, HOWEVER, BE QUITE EXPENSIVE. AS THE CHAIRMAN'S PRESS RELEASE POINTS OUT, THIS WOULD COST NEARLY $8 BILLION OVER THE FIRST FIVE YEARS.

THE MINORITY GROUP OF WHICH I WAS A MEMBER ENDORSED ELIMINATION OF IN-KIND SUPPORT AND MAINTENANCE, BUT DID NOT PRESENT A SPECIFIC PLAN FOR DOING SO. IN HIS SEPARATE STATEMENT OF ADDITIONAL VIEWS, HOWEVER, MICHAEL STERN LAID OUT A THOUGHTFUL PLAN FOR REPLACING "ISM" WITH A NEW APPROACH WHICH WOULD PROVIDE A STANDARD 25% REDUCTION FOR ANYONE LIVING IN A HOUSEHOLD WITH TWO OR MORE PERSONS. MR. STERN'S APPROACH HAS MUCH TO COMMEND IT. IT WOULD BE CONSISTENT WITH THE TREATMENT OF MARRIED COUPLES BY BOTH SSI AND SOCIAL SECURITY. IT WOULD BE FAR EASIER TO ADMINISTER. IT WOULD NOT REDUCE BENEFITS FOR ANY EXISTING RECIPIENTS. IT WOULD PRODUCE SUBSTANTIAL SAVINGS WHICH COULD BE APPLIED TO OTHER PROGRAM ENHANCEMENTS IN THE YEARS AHEAD. PERHAPS BEST OF ALL, THE STERN SOLUTION WOULD BE EASILY EXPLAINABLE TO APPLICANTS AND RECIPIENTS AND WOULD, I BELIEVE, BE REGARDED BY MOST OF THEM AS BEING FAIR.

### 3. CHANGE THE TREATMENT OF RESOURCES

WITH THE POSSIBLE EXCEPTION OF MICHAEL STERN, ALL MEMBERS OF THE MODERNIZATION PANEL WANTED TO DO SOMETHING TO LIBERALIZE THE TREATMENT OF RESOURCES AND TO MAKE IT EASIER TO ADMINISTER RESOURCE LIMITATIONS. THE MAJORITY PROPOSED TO RAISE THE RESOURCE LIMIT FROM $2,000 TO $7,000 FOR A SINGLE RECIPIENT AND FROM $3,000 TO $10,500 FOR A COUPLE. THE MINORITY GROUP WITH WHOM I JOINED PROPOSED A MORE MODEST INCREASE, BUT DID NOT SPECIFY PROPOSED NEW LIMITS.

MY OWN VIEW IS THAT MORE GENEROUS LIMITS, WHICH ENCOURAGE PEOPLE TO MAINTAIN AT LEAST SOME SAVINGS, SHOULD BE ADOPTED FOR ALL MEANS TESTED PROGRAMS. ABSENT SOME ACTION OF RESOURCE LIMITS FOR

AFDC, I CANNOT RECOMMEND MORE THAN A 50 PERCENT INCREASE IN THE RESOURCE LIMITS FOR SSI.

### 4. EFFECT OF ZEBLEY DECISION ON WORKLOAD

I HAVE HAD NO FIRST-HAND OBSERVATIONS OF THE IMPACT OF THE ZEBLEY DECISION ON WORKLOAD IN SOCIAL SECURITY OFFICES AND IN STATE DISABILITY DETERMINATION UNITS. LIKE THE REST OF THE MODERNIZATION PANEL, I ENDORSED A SIGNIFICANT INCREASE IN STAFFING OF SOCIAL SECURITY OFFICES IN ORDER TO ENABLE THEM BETTER TO HANDLE SSI AS WELL AS OTHER WORKLOAD. BY REQUIRING A LARGE NUMBER OF PREVIOUSLY CLOSED APPLICATIONS TO BE REOPENED AND CONSIDERED FULLY, THE ZEBLEY DECISION OBVIOUSLY PUT A MAJOR CRUNCH ON OFFICES WHICH WERE ALREADY HAVING SERIOUS DIFFICULTY IN PROCESSING THEIR WORKLOADS. UNDOUBTEDLY, THE ZEBLEY-GENERATED WORKLOAD HAS FURTHER DETERIORATED THE QUALITY OF SERVICE PROVIDED TO MANY APPLICANTS AND RECIPIENTS. TESTIMONY PRESENTED TO THE MODERNIZATION PANEL MADE CLEAR THAT THE SERVICE DELIVERED TO MANY RECIPIENTS WAS ALREADY SUB-STANDARD IN MANY OFFICES. ZEBLEY COULD ONLY HAVE MADE IT WORSE.

### REDUCED RELIANCE ON STATE SUPPLEMENTS

THERE IS ONE MATTER ADDRESSED IN THE PANEL'S REPORT ABOUT WHICH I WOULD LIKE TO COMMENT, ALTHOUGH THE CHAIRMAN DOES NOT SPECIFY IT AS ONE OF THE TOPICS ON WHICH THE SUBCOMMITTEE PARTICULARLY WANTS TESTIMONY. I AM REFERRING TO THE RECOMMENDATIONS RELATING TO STATE SSI SUPPLEMENTAL PAYMENTS.

PAGES 34 AND 35 OF THE MODERNIZATION PANEL'S REPORT SET FORTH TWO RECOMMENDATIONS WHICH WOULD HELP MOVE SSI TOWARD FULL FEDERAL TAKEOVER OF INCOME MAINTENANCE SUPPORT FOR THOSE WHO ARE ELDERLY AND PERSONS WHO HAVE DISABILITIES. I BELIEVE CONGRESS EXPECTED WHEN IT CREATED SSI THAT IT WOULD BE ONLY A MATTER OF A FEW YEARS UNTIL STATE SUPPLEMENTATION COULD BE ENDED AND SSI APPLICANTS AND RECIPIENTS WOULD BE ABLE TO LOOK EXCLUSIVELY TO SOCIAL SECURITY OFFICES FOR THEIR BENEFITS. THE INTERVENING 20-PLUS YEARS HAVE NOT BROUGHT A FULL FEDERAL TAKEOVER. RATHER, THE STATES AND THE FEDERAL GOVERNMENT HAVE LOCKED THEMSELVES INTO A SET OF RELATIONSHIPS THAT ARE UNHEALTHY FROM AN INTERGOVERNMENTAL STANDPOINT AND ARE CONFUSING AND OFTEN DETRIMENTAL TO THOSE DEPENDENT UPON SSI BENEFITS.

THE MODERNIZATION PANEL RECOMMENDS TWO BASIC CHANGES. ONE IS TO PROVIDE THAT WHEN THE FEDERAL BENEFIT LEVEL REACHES 100 PERCENT OF

THE POVERTY LINE, STATES WOULD NO LONGER BE BOUND BY PROVISIONS IN SECTION 1618 OF THE SOCIAL SECURITY ACT WHICH RESTRICT THE ABILITY OF STATES TO REDUCE THEIR SUPPLEMENTAL PAYMENTS. THE PANEL'S RECOMMENDATION CONTAINS CAVEATS WHICH WOULD PROTECT RECIPIENTS ALREADY RECEIVING BENEFITS AT THE TIME THE STATES WERE GIVEN THE ADDED FLEXIBILITY AND WHICH WOULD REQUIRE ANY STATE SAVINGS TO BE INVESTED FOR AT LEAST THREE YEARS IN SERVICES TO NEEDY AGED, BLIND OR DISABLED PERSONS.

THE SECOND RECOMMENDATION OF THE MODERNIZATION PANEL RELATIVE TO STATE SUPPLEMENTS WOULD ESTABLISH SOME BOUNDARIES FOR STATE SUPPLEMENTAL PAYMENTS WHICH ARE ADMINISTERED BY THE FEDERAL SOCIAL SECURITY ADMINISTRATION. CURRENTLY, STATES ARE FREE TO DESIGN COMPLEX SUPLEMENTATION PLANS AND THEN HAND THEM TO THE FEDERAL GOVERNMENT TO ADMINISTER WITHOUT HAVING TO PAY THE FEDERAL GOVERNMENT FOR THE ADDED COSTS. SOME STATES HAVE USED THIS OPTION AS A SUBSTITUTE FOR STATE-ADMINISTERED HOUSING SUPPLEMENTS AND OTHER SERVICE PROGRAMS. THE PANEL'S RECOMMENDATIONS WOULD REQUIRE STATES TO PAY FOR FEDERAL ADMINISTRATION UNLESS THEY RESTRICTED THEIR SUPPLEMENTS TO A DEFINED RANGE OF VARIATIONS.

## CONCLUDING COMMENTS

I URGE THE SUBCOMMITTEE TO MAKE A THOROUGH REVIEW OF THE SSI PROGRAM AND TO PROPOSE LEGISLATION WHICH WILL SIMPLIFY ADMINISTRATION, IMPROVE FAIRNESS AND EQUITY TO APPLICANTS AND RECIPIENTS AND PROVIDE IMPROVEMENTS IN BENEFIT LEVELS AS RAPIDLY AS THEY CAN BE ACCOMMODATED IN THE FEDERAL BUDGET. THE MODERNIZATION PANEL'S REPORT IS AN EXCELLENT ANALYSIS OF PROBLEMS IN THE DESIGN AND DELIVERY OF SSI. THE SOLUTIONS IT OFFERS ARE IN MY VIEW SOMETIMES UNREALISTIC, BUT IT CAN NEVERTHELESS BE A VERY USEFUL REFERENCE FOR IDENTIFYING NEEDED CHANGES IN THE PROGRAM. I STAND READY TO ASSIST THE SUBCOMMITTEE IN ANY WAY I CAN IN THIS IMPORTANT WORK.

Chairman FORD. Elaborate a little bit more on the financing mechanisms of your suggestions regarding the SSI growth outlays. You started talking about how we could finance them.

Mr. FULTON. Well, I didn't say where you would get the money.

Chairman FORD. Elaborate a little bit. I want you to tell us where we can get the money.

Mr. FULTON. This year the COLA for SSI was 2.6 percent, I believe, the same as Social Security. You can argue that Social Security and SSI ought to be locked together for the COLAs, but SSI is a means-tested program. It is supposed to be providing the income floor for elderly and disabled Americans.

So one kind of incremental approach would be to simply provide in the law that when the annual COLA is determined, SSI recipients receive a "kicker." That is, they would get an additional increase to help move the benefit gradually up toward the poverty line.

You will get a compounding effect from that, of course. If you put in 2 percent one year, then it will be figured into the base the next year. It will gradually bring benefits closer to the poverty line. Our recommendation was simply a way of holding down the annual budget hit in any given year and yet provide progress toward the goal that we all support.

Chairman FORD. What about any suggestions on controlling the growth of the SSI outlays? We have had other witnesses to testify, and we see how fast the program is growing.

Mr. FULTON. Well, the one credible proposal I saw coming from our group on that was presented by Michael Stern. I didn't join it because he didn't ask for additional signers. But Mr. Stern's proposal would save significant dollars over time because he would standardize the living arrangement provisions and get rid of inkind support and maintenance reductions. He would grandfather all of the existing recipients. His proposal would have the effect of causing some people on SSI to start out with a lower benefit when they come on the rolls, and it would free up a couple billion dollars a year by about the fifth year. I would urge you to look at that proposal.

Other than that, I don't think there are big dollars to be saved anywhere in the elderly benefits parts of SSI.

In regard to disability benefits, the issues are enormous. There is a table in the panel's report showing that, as late as 1991, 60 percent of all the cases appealed to an administrative law judge were won by the appellant. That means that the appeals process found that almost two out of three cases that had been denied, and appealed once already through the reconsideration process, had been wrongly denied.

When I worked for the Senate Budget Committee back in the early 1980s, Senator Henry Bellmon succeeded in getting a provision in one of the annual appropriation bills requiring the Secretary of Health and Human Services to review some of the approved disability cases. The initial feedback from that review was terrible. Something on the order of 75 percent of the cases that were in the initial sample were determined by those that conducted that review to have been wrongly approved. So if you have 60 percent of the disapprovals being wrong and 75 percent of the approvals being wrong, it means there is a tremendous problem.

The reality is that disability reviews are basically subjective rather than objective to a very great extent.

I think, since 1971—I am sorry, 1981—the disability rolls in SSI have doubled. The elderly rolls have gone down by 300,000 persons. So the problems are in the disability portions of the program. If there is abuse or unnecessary spending, it is in the disability area.

A lot of people are concerned that so many disability applicants get turned down on the first application. So if we didn't have the appeals process, there would be a lot more hardship out there. The process doesn't seem to be working very well.

Chairman FORD. Thank you, Mr. Fulton.

There is no shortage of recommendations for this program. We have heard a lot of them from you and Mr. Flemming and even others from the modernization project. Do you have any cost estimates for these recommendations?

Mr. FULTON. We didn't cost out our recommendations. It is obvious that raising the resource limit and dropping the age from 65 to 62, are among the less expensive changes the panel recommended. Our recommendation on the 2 percent COLA kicker would add about $400 million a year to the cost of SSI. And, of course, as the program grew it would cost more than that. But at this point, when the program costs about $20 billion, a 2 percent added kicker would cost the Federal Government about $400 million.

As I said, our group didn't propose a specific course of action for getting rid of inkind support and maintenance. Mr. Stern's proposal would actually save money.

Chairman FORD. Thank you very much.

Dr. Flemming, can you tell us where are those areas within the SSI program where savings can be accrued and redistributed within the program, maybe to adopt some of the recommendations from the modernization project?

Mr. FLEMMING. I am not prepared at this point to refer to specific areas and make specific suggestions as to amounts. But I am convinced of the fact that if, for example, the philosophy that is in back of Vice President Gore's report was applied to SSI that we would be able to save money that we could use in other parts of the program.

For example, that process is really already underway, Rhoda Davis is now Assistant to the Commissioner in charge of what they call a reengineering project on disability. And, in fact, in effect, it is a sunset provision. They are taking a fresh look at the whole disability area to see if they can come up with recommendations which will result in simplicity in handling the cases.

I am also convinced that if we adopt a general policy of saying to the claimspeople that you are in a position to act not only on approval of claims but on disapproval, instead of relying on these regulations, we could save money.

For example, when SSI was started in 1974 there was one thin manual that the claimspeople followed in making determinations. Today, that one thin manual has grown to six volumes. I do not feel that we can justify the existence of six volumes. I believe that we could sunset some of the operations and then proceed on the basis that we are going to put responsibility with the claimspeople and cut out a lot of the rules and regulations and save the money that we are now expending in connection with trying to apply those rules and regulations to given situations.

I have watched government for a good many years and have had a good deal of experience. I believe that this multiplicity of rules and regulations is at the heart of our spending a lot of money on programs that we don't need to spend.

For example, SSI is a Federal program, and because it is a Federal program we assume that everybody must be treated equally all over the Nation in the interest of equity. Well, that is a valid principle to keep in mind, but, great Scott, you take this Nation as a whole, it is almost impossible to do it. But we believe it can be done, and we issue a regulation designed to achieve that particular objective, and that regulation impedes the operation of the program all over the country.

For example, you take this question of living arrangements. I believe personally if I were to rate our recommendations I would probably put that No. 1. It really burns me up the way that law operates in particular cases. Here we already have a law, the SSI, where the benefits are below the poverty line. Then we say to an older person or a disabled person below the poverty line, if you are able to find members of the private sector, your family or friends, who are willing to take you into their household, we will cut your benefits by one-third. What kind of an incentive is that to the private sector to join us in helping others?

Many of our claims representatives told me that they spend a fourth of their time in an effort by the government to keep the poor poor—that would seem to me to be the only reason for this provision of law—and to rebuff the private sector in its efforts to cooperate with the national community.

I regard SSI as a challenge on the part of the President and the Congress to the entire national community, private sector and public sector, to take the poorest of the poor and really elevate their living standards. And yet it seems that some of our rules are designed to keep the poor poor.

And in this particular case we rebuff an effort upon the part of the private sector, family or friends, to come in and say we will help you on this problem. Lord knows, these people are still the poorest of the poor when they get into a family household. If that is abused, and it could be at various points, give the claimspeople a chance to act on that particular abuse, but don't have this law on the books.

Chairman FORD. You are making reference to the claims representatives, giving them what authority? Giving them the authority that DDS offices might have? Giving them authority as it relates to what? Police powers? I know you need additional claims representatives. You have made that clear with the request for 6,000 additional claims representatives. But, what power?

Mr. FLEMMING. Let me take a specific example of some of the abuses that you referred to as far as disability is concerned. I would say to the claims representative who faces that abuse, and it is very real to him, if you believe there is abuse, refer it to the U.S. Attorney's office.

Chairman FORD. Should the claims representatives become case managers?

Mr. FLEMMING. What the claims representative does is clear—he is acquainted with the resources of this government, and he acts in conformity with that understanding. He refers a case to the U.S. Attorney or to civil officials if it is a civil matter. She or he shouldn't be required to make a recommendation that goes up a couple of layers. He should act now. And the U.S. Attorney may decide that there is a case or not a case, but that is the province of the U.S. Attorney.

Chairman FORD. But we would need the claims representatives to do more than just to identify the fraud. I was thinking that we were saying the 6,000 claims representatives would do more to help expedite review and approval of some of these disability claims that are before the Social Security Office today. What is the number, over 700,000, that is pending today?

Mr. FLEMMING. Between 700,000 and 800,000. You take the claims representatives that are in the State offices—paid by the Federal Government, of course. Their main job is to act on claims—I mean, act on claims that are presented to the Federal Government and approve or deny them.

Now we did make a recommendation that no claim be turned down by a claims representative unless there has been a face-to-face interview. They can turn it down today by just some paper record. And yet if a disabled person walks into the office, it is obvious that the person is disabled and so on.

So we did recommend that in the case of the initial claims that if a person walked in—that before they closed out the record that they would arrange to have a personal interview. We recommended that the reconsideration level which you say today should be abolished and the appeal be to the administrative law judge.

Chairman FORD. How do they file the application if the claimant doesn't appear before the claims representative?

Mr. FLEMMING. Well, they do it on the basis of a paper record, as far as the State claimspeople are concerned.

Chairman FORD. Oh, you are speaking of DDS.

Mr. FLEMMING. The local office of SSA helps prepare that case initially, but then it goes to the claims representative at the State level, and they can't——

Chairman FORD. And these claims representatives at the local field offices can't make recommendations?

Mr. FLEMMING. They can make—they can close out a case at that level without——

Chairman FORD. I mean the State DDS.

Mr. FLEMMING [continuing]. A personal interview. We think that that is wrong. We think it would speed up the whole project by requiring a personal interview. While we are on that, we also recommended that you enact a law which says that SSI has got 90 days to handle a claim or, if they don't handle it, it is approved for the period of time that elapses before they reach the case. Then SSI cannot move to have the claimant pay back the back payments they have received.

You mention the backlog. I think we are talking about an average of 3 or 4 months that you have to wait if you file an application for disability. As you say, you may die in that period of time, and if you decide that the decision is wrong and want to appeal it, then you sit around for 1 year or more. You may not be here at that time, as your constituent is not.

This is a terrible way to deal with the people who face the hazards and vicissitudes of life. It seems to me that that kind of a situation contributes to violence.

Somehow or other we have got to come to grips with the problem. I know we have financial problems, but somehow or other we have got to get the SSI in a position where they are reasonably current with the applications and with appeals. They are not at the present time. I think it is a tremendous challenge.

That is why I say that if we got some money for investment in people, Lord knows we should have our fair share of that for SSI. Let me say that I recognize that the AFDC situation is worse than the SSI situation, and I look forward to what the President is going to recommend on that because I think that situation should be cleared up.

Of course, I go back to 1972 when Pat Moynihan and President Nixon recommended an income floor for the entire population. The House accepted that. The Senate turned it down. We have never had another opportunity to bring that back again. The result is we have an AFDC situation that is worse than the SSI situation.

Chairman FORD. Is there any reason why these two means-tested programs should not merge at some point? As we reform the welfare system should we include SSI? The administration certainly does not suggest that at all, and they won't talk about SSI in the framework of welfare reform.

Mr. FLEMMING. Richard Nixon and Pat Moynihan recommended it. They recommended that we have an income floor for the entire population. That would have revolutionized our welfare program. I still think it makes good sense.

Chairman FORD. What does Dr. Flemming recommend?

Mr. FLEMMING. I think it would make good sense. But I recognize that you are probably going to get recommendations and that does not call for a merger. I certainly will support the administration's recommendation to reform AFDC, because we have children out there who are desperate for help. I think we ought to respond to that. Because we are not responding to it, some people give up and they turn to violence. This is the kind of a situation that we have confronting our country at the present time. So I think you and your committee have a wonderful opportunity to consider AFDC recommendations and get the ball rolling.

As far as SSI is concerned, I recognize that we made about 50 recommendations. Not all are going to be accepted at once, but let's get started. You will have the welfare program before you; am I not correct?

Chairman FORD. That is correct. Hopefully in a couple of weeks.

Mr. FLEMMING. When that comes before you, I hope you will be able to consider both programs together.

Chairman FORD. We are certainly not ruling it out at all.

Mr. FLEMMING. Good. Good. You encourage me.

Chairman FORD. Thank you. Thank you, Dr. Flemming. Thank you, Mr. Fulton, very much. Thank you for waiting and thank you for your testimony and the response to the questions.

Mr. FLEMMING. We will be prepared to work with you all the way through.

Chairman FORD. Thank you very much. I look forward to that myself.

The subcommittee will call the next panel; the American Association of Retired Persons, Ms. Paschall; along with the National Caucus and Center on Black Aged, the president and chief executive officer, Samuel Simmons; and also Jonathan Stein, general counsel for the Zebley Implementation Project.

How are you, Ms. Paschall.

Ms. PASCHALL. Thank you.

Chairman FORD. Let me thank you for waiting. I am sorry it has taken us a little bit longer than anticipated today with the witnesses. I welcome the three of you before the subcommittee. Let me recognize you and start with you, Ms. Paschall.

## STATEMENT OF LUCRETIA PASCHALL, MEMBER, NATIONAL LEGISLATIVE COUNCIL, AMERICAN ASSOCIATION OF RETIRED PERSONS

Ms. PASCHALL. Thank you very much, Mr. Chairman. I am Lucretia Paschall, member of the National Legislative Council of the American Association of Retired Persons. AARP appreciates this opportunity to present its views regarding the SSI modernization panel's recommendations.

Improving SSI is an important priority for AARP. Congress has made some changes in the program since it began 20 years ago. A number of restrictive requirements have been eliminated and some modest benefit improvements have been adopted. However, SSI falls short of the goal of reducing poverty among the poor who are aged, blind, or disabled. The modernization project completed its review of SSI in 1992 and made over 50 recommendations for change. AARP believes these suggestions deserve serious consideration. We recognize that some changes will be difficult to implement because they are costly and because Federal budget rules require that new spending be offset. However, the modernization panel's proposals have merit and should be more thoroughly examined.

Today the committee is looking at four of the panel's four major recommendations. The first and most expensive is increasing the maximum Federal benefit. The average monthly benefit of older SSI recipients is about $235. The current SSI maximum benefit level for an individual is about 75 percent of poverty. And for a couple, it is about 83 percent of poverty. This is woefully inadequate.

The modernization panel recommended a phased-in increase in the Federal benefit to 120 percent of poverty. Such a recommendation might be difficult to achieve in this period of fiscal austerity. However, AARP believes the present benefit level is too low and needs to be raised at least to the poverty level.

The second recommendation under review is an increase in the asset level. Many whose monthly income qualifies them for SSI do not receive benefits because the countable assets exceed their allowable limit of $2,000 for an individual or $3,000 for married couples. Although these assets are modest, their value still exceeds levels established in 1972 and revised only once.

The SSI panel recommended raising the resource limit to $7,000 for an individual and $10,500 for a couple, slightly above the thresholds that would be in effect if they had been adjusted annually for inflation. Being able to keep a larger amount of resources would be particularly helpful to older SSI recipients.

The increase is smaller than it appears, however, since the SSI modernization proposal eliminates existing resource exclusions. AARP believes this new level is appropriate and would not alter the fundamental nature of the SSI program.

The SSI panel also called for the elimination of the rule that reduces benefits by one-third for those who live in the household of another and receive inkind assistance. AARP supports the panel's recommendation.

The one-third reduction is a disincentive to families helping each other. Further, the rule does not make economic sense. It is not likely that an individual with an SSI benefit already reduced by one-third can accumulate the resources to begin paying his pro rata share of expenses. And the rule is an administrative nightmare for the Social Security Administration.

The modernization panel also called for a staff increase at Social Security. AARP believes SSA must receive adequate resources. SSI applicants, especially those seeking a disability benefit, and SSI recipients have suffered unnecessarily because SSA is understaffed.

AARP urges Congress to approve the additional resources for SSA that the administration recommended in its fiscal year 1995 budget. This is a necessary first step to improving SSA service.

Mr. Chairman, the SSI modernization project fulfilled its mission. Now it is up to Congress to implement as many of its recommendations as possible. Congress should act on at least some of the recommendations in order to ensure that the panel's efforts make a difference in the lives of SSI recipients.

Chairman FORD. Thank you very much, Ms. Paschall.

[The prepared statement follows:]

# TESTIMONY OF LUCRETIA PASCHALL
# MEMBER, NATIONAL LEGISLATIVE COUNCIL
# AMERICAN ASSOCIATION OF RETIRED PERSONS

The American Association of Retired Persons (AARP) appreciates this opportunity to present its views regarding the recommendations for reform made by the Supplemental Security Income (SSI) Modernization Panel. Improvement and expansion of SSI continues to be an important priority for the Association.

## BACKGROUND

This year SSI celebrates its twentieth birthday; it is not a happy one. The program was implemented in 1974 to reduce poverty among the poor who are aged, blind or disabled. It provides a monthly cash benefit to eligible low-income persons of all ages. In 27 states, the federal benefit is augmented for some beneficiaries by a state supplement. Even with this supplementation, benefits generally remain below the poverty line. As a result, the program falls short of the goal to substantially reduce poverty among the SSI-eligible population.

Congress has made a number of modest improvements in the SSI program over the years. Some unduly restrictive eligibility requirements were removed, and modest benefit improvements were implemented. (The program has experienced only one across the board benefit increase in 1983). However, additional reforms are needed to meet SSI's goal.

In 1990, then-Social Security Commissioner Gwendolyn King appointed a panel of experts headed by Dr. Arthur Flemming to study the SSI program and recommend changes. Called the SSI Modernization Project, the group undertook the first review of the program since it began.

The SSI Modernization Project's preliminary suggestions were published in the Federal Register for comment in 1991. Based on the 14,000 responses received, the panel issued a final report in September 1992. It contained over 50 recommendations covering 20 categories. Some suggestions were broad in scope, and others affected specific aspects of the program.

AARP believes the Modernization Project's comprehensive recommendations deserve serious consideration. We acknowledge that current federal budget rules, which require that new spending be financed, represents a formidable barrier to enactment of all of the recommendations. However, Congress has not acted on any of these proposals. We are pleased that this committee is taking another look at them.

AARP believes the most sorely-needed changes in SSI are:

- increasing the federal benefit level to at least the poverty line;
- raising the assets limit to reflect inflation;
- continuing an aggressive outreach effort so that all SSI-eligible persons know about and can participate in this important program;
- eliminating the rule that reduces benefits for those who live in a household with another; and
- ensuring that the Social Security Administration (SSA) is adequately staffed so that SSI applications are processed in a timely manner.

Many of these recommendations are part of H.R. 2676, introduced by Representative Carrie Meek.

## POVERTY AND BENEFITS LEVELS

The SSI program has been a lifeline to the over 5.8 million people who receive monthly benefits. Approximately 40 percent of the recipients are aged 65 and over. For many, SSI is their only income source; for others, it is an essential supplement. The average monthly overall benefit for an SSI recipient aged 65 and over is about $235.

While the overall poverty rate for older Americans has declined from that of two decades ago, it has inched up. Moreover, the incidence of poverty among many subgroups is shocking. For example, according to Census Bureau data for 1992, about 35 percent of all black persons aged 65 and over lived in poverty, and older black women experienced an even higher poverty rate.

The current SSI maximum benefit level, which is about 75 percent of poverty for individuals and about 83 percent of poverty for couples, is woefully inadequate. SSI recipients struggle to meet daily living expenses, scramble to meet unexpected ones, and rarely can set aside even a modest sum for the proverbial rainy day.

AARP believes the basic federal benefit must be raised. The increase would make a considerable difference to those already receiving SSI and to those with incomes currently above the maximum federal benefit but below the poverty line who would begin receiving benefits. Not only would these newly eligible individuals be helped by the added income, but many could then also qualify for Medicaid and food stamps.

The Modernization Panel recommended a phased-in increase in the federal benefit to 120 percent of poverty. The Association recognizes that this recommendation would be difficult to achieve in this period of fiscal austerity. However, we believe that the present benefit level is too low and needs to be raised at least to the poverty level.

## ASSETS

Unfortunately, many whose monthly income is sufficiently low to qualify for an SSI benefit are excluded from the program because their "countable" assets exceed the allowable limit of $2,000 for an individual or $3,000 for married couples. Although certain assets such as a home and a wedding ring are excluded, it is very difficult for poor persons to meet asset criteria that were developed in 1972 and revised only once. Another problem is that excluded assets under SSI are more narrowly defined than in other means-tested programs such as Food Stamps.

In 1988, Brandeis University conducted a study for AARP of individuals found to be ineligible for SSI. They found that 34 percent of older persons who meet the income requirements are disqualified by their asset holdings. Moreover, a substantial number of these income-ineligible older persons have countable assets relatively close to the asset test limit.

Satya Kochhar's study of all those denied SSI in 1989 because of excess resources ("Denial of SSI Applications Because of Excess Resources", Social Security Bulletin, Summer 1992, pp. 52-56) shows that 37 percent were applying for aged benefits. Their total assets (liquid and non-liquid) had a mean value of $10,500. Most often, the 65 and over ineligibles had excess bank accounts, but 64 percent had accounts that were less than $4,000 over the limit. Cash was the next most common factor leading to disqualification. Most of those with excess cash had less than $1,000 over the limit. An automobile was the third most common asset causing ineligibility. About 58 percent of these ineligibles owned a vehicle that was less than $2,000 over the $4,500 exclusion for automobiles.

The SSI panel recommended raising the resource limit to $7,000 for an individual and $10,500 for a couple -- slightly above the thresholds that would be in effect if the thresholds had been adjusted annually for inflation. This ability to keep a larger amount of resources would be particularly helpful to older recipients who are more likely to face an unforeseen medical emergency or may simply need to replace a broken appliance or a leaky roof.

Since the SSI Modernization proposal eliminates existing resource exclusions, the proposed increase is not as large as it might appear at first glance. AARP believes the new level would not alter the fundamental nature of the SSI program.

## IN-KIND SUPPORT AND MAINTENANCE

In-kind assistance, unless provided by a nonprofit organization or specifically excluded by statute, is counted as income in determining SSI eligibility. An SSI recipient who resides in the home of another, usually a family member, and does not contribute his fair share, is usually subject to a one-third reduction in benefits. This reduction occurs regardless of whether the recipient is contributing his entire SSI benefit. The reduction lowers the individual's benefit level to about half the poverty line.

AARP supports the Modernization Panel's recommendation to eliminate the one-third reduction. Although the proportion of SSI recipients whose benefit level standards are reduced because they live in the household of another is low, those affected are hurt because they do not receive a full benefit.

The one-third reduction is a disincentive to families helping each other. Informal caregiving from friends and relatives provides valuable assistance to elderly recipients. The rule places a greater financial burden on families that try to help one another and may even force some recipients out of a family environment.

Further, the rule does not make economic sense. It is highly unlikely an individual with a reduced SSI benefit will accumulate the resources to begin paying his pro-rata share. Moreover, some individuals will end up in a care facility, which costs Medicaid even more than the full SSI benefit.

The in-kind maintenance and support rule is an administrative nightmare for SSA. Collecting the information and enforcing the rule is time-consuming and diverts agency resources from other tasks, such as helping SSI beneficiaries in other ways. Currently, SSA's instructions regarding the rule take up 100 pages of the instruction manual. Also, verification of a recipient's living arrangement can occupy up to one-third of some SSA employees' time.

## AGENCY STAFFING

The SSI program has suffered because SSA is understaffed. No program can achieve its goals if those who administer it lack the resources they need. Inadequate resources cannot be overcome even by the most well-intentioned employees, and even a dedicated staff can get worn down by pressure and frustration.

SSI recipients and applicants are among the first to notice the effects of chronic SSA understaffing. The mounting disability backlog in both the SSI and the Social Security programs is the most visible and distressing symptom of this understaffing. For those awaiting SSI disability benefits, the wait is particularly cruel. Not only is their income limited, but they lack the resources to sustain themselves until a determination is made. If the initial determination is negative, they must wait even further until their appeal is heard. This delay exacerbates an already difficult financial situation.

The increased disability backlog comes at the worst possible time as states, seeking to balance their budgets, either terminate or severely reduce their general public assistance programs. For more Americans than ever before, SSI has become the only safety net.

AARP believes SSA must receive adequate resources in order to reduce the disability backlog and to ensure that SSI applicants receive the assistance they need in completing the complex application form. We urge Congress to approve the additional resources for SSA which the Administration recommended in its Fiscal Year 1995 budget. It is a necessary first step to improving SSA service.

## FUNDING FOR OUTREACH ACTIVITIES

Since 1989, AARP has sponsored SSI outreach projects throughout the United States. It is estimated that only about half of those 65 and over who are eligible for SSI actually participate in the program. The success of AARP's outreach activities indicates that program enrollment will rise as knowledge increases. However, in a time of tight resources, funds will not be used for outreach unless money is specifically earmarked.

AARP believes that the Modernization Project's recommendation to earmark a portion of the administrative budget for outreach is the only way to ensure meaningful outreach.

## PROGRAM REVIEW ISSUES

Until the convening of the Modernization Project, the SSI program had not been formally assessed. While modest modifications have been made since the program began in 1974, the changes were not part of a comprehensive plan. The Modernization Project demonstrates that a detailed evaluation can result in reasonable recommendations for revitalizing the program.

AARP prefers a separate SSI advisory council to requiring the Social Security Advisory Council examine SSI every four years. The Social Security Council is already responsible for a range of programs; adding SSI would simply limit the time that can devoted to this important program. A separate SSI panel would be in a better position to recommend changes and to evaluate progress.

## CONCLUSION

The SSI Modernization Project undertook a comprehensive examination of the program and made specific recommendations for its improvement. It is up to Congress to enact some of those recommendations for those who are among the most vulnerable.

Chairman FORD. Mr. Stein.

## STATEMENT OF JONATHAN M. STEIN, GENERAL COUNSEL, ZEBLEY IMPLEMENTATION PROJECT, AND ZEBLEY NATIONAL CLASS COCOUNSEL, COMMUNITY LEGAL SERVICES, INC.

Mr. STEIN. Yes, Mr. Ford. Thank you. Good afternoon. I am here this afternoon as general counsel at Community Legal Services in Philadelphia and also cocounsel to the *Zebley* SSI child disability national class action. I won't be reading my testimony but will highlight some aspects of it and perhaps respond to some of the points that you may have heard about the program earlier.

Chairman FORD. The full statements will be made a part of the record for all the witnesses who have testified today.

You may proceed.

Mr. STEIN. Thank you.

My colleague, Mr. Weishaupt, was here last October and I think the two most important points you heard then were that, due to the *Zebley* case, nationally, 135,000 children illegally denied in the period 1980 to 1990 have now been able to secure benefits. In Tennessee, you have about 3,000 children who were able to secure benefits, children who were denied in the 1980 to 1990 period.

That fact explains a good percentage, perhaps 25 percent or more, of the growth of the program in the early 1990s. What is of great concern to us is that some people are only looking at numbers and they are not looking at reasons for the program's growth including the retroactive—the unprecedented retroactive scope of the *Zebley* case.

The second important thing you heard, which relates to this afternoon's hearing, is the absence of any documentation of abuse. You didn't hear one witness last October present any confirmation of even one child who shouldn't be getting benefits. And as you recall, the program's sole congressional critic couldn't cite one such case.

This afternoon with a second hearing on SSI, and we do appreciate your interest, we have yet to hear of any documented abuse whatsoever. Representative Lambert has spoken about concerns and about allegations and she repeats the word "allegations" of coaching. But even from her testimony, we find no cases of children, even ones "coached," who we would consider healthy and normal kids who are getting SSI.

Chairman FORD. What about that Arkansas State University report? I have not read the full report and I am not cutting you off. But, I looked at portions of Ms. Lambert's testimony and portions of that study that was conducted by Arkansas State University.

Mr. STEIN. I haven't seen the study either, but I recall the testimony.

Chairman FORD. That is one of the reasons why I was questioning my colleague about it. We want to see it. Naturally, there have been a lot of these.

Mr. STEIN. We all do, sir, but even the allegations in that, in those excerpts from that report don't talk about kids who are normal, who are not eligible, getting the benefit. It talks about "allegations" of some parents allegedly "coaching" kids—whatever "coaching" means. (It may only mean informing a child about a confusing, bureaucratic examination.)

It doesn't say that any "coached" kid who was normal or we would consider normal ever got SSI, and that speaks really to the heart of some of these allegations which are not connected to facts that we should really be concerned about.

I am not saying that coaching kids is something to ignore; but even on the face of these unconfirmed, anonymous reports that some presspeople pick up on, do they mean that the 12-year-old, the 5-year-old, is going to fool an experienced Ph.D. psychologist or an M.D. psychiatrist who has been testing kids for 20 years, who is not treating the child, who works for the State, and has no vested interest in that kid getting benefits?

Where is the link between these allegations which I think are virtually incredulous, where is the link that says, even if that is true, there are any kids in the system much less any numbers to worry about of kids who are getting benefits because they have fabricated conditions or fabricated behavior?

I think what that bespeaks, aside from people perhaps running with flimsy evidence a little too rapidly, is the fact that there is a lot of misinformation in the country about the SSI child disability program. The Federal agency, which is absent today, has not done a very good job of educating the public, particularly the public that for the first time in 20 years is interacting with the program, namely the school system.

Before 1990, not one school teacher or psychologist had to have any dealings with the program. But what the Supreme Court mandated in requiring realistic evaluations of kids was, let's see how a kid is doing in the environment where the kid acts out most or performs most, that is, in a school situation. So for the first time, perhaps 1 million school teachers in this country, school psychologists have to give reports about kids.

They are not paid one penny for them. They probably don't have secretaries, typewriters, or word processors to do them. We have heard about enormous hostility in the school community about doing these reports. They have to do reports for every kid, whether the kid is ultimately eligible or not.

And, States like your own, sir, 55 percent of disabled children applying are being denied SSI; a higher percentage is being denied in Tennessee than in many States. For the disallowed kids, you still need the schoolteacher to fill out a report but the teacher doesn't know that that kid may not and may well not get benefits. So there is a lot of misinformation, especially in the school community that is the source of complaints.

Frankly, there is some real bias out there. You are dealing with lots and lots of folks who don't like to see many poor kids, often minority kids get benefits. We have been talking to people throughout the country and we have looked at some of these reports and they simply have no basis in fact, and thus we can only question the motives of some of these complaining individuals.

When a schoolteacher writes in and says, "send the money to our school instead of to the child's family," and some of these letters to some Congressmen actually say this, you have to really wonder what the true motivations of these people are.

Chairman FORD. That is one of the reasons why I wanted my colleagues to look at that newspaper article in my hometown newspaper this morning. It does not suggest that, but it falls under Medicaid. They made reference to the Medicaid provision that applies only to children receiving SSI who would qualify for the Medicaid benefits.

Mr. STEIN. Well, I think our point is simply that, you know, let the SSI system have at least a chance to evaluate itself. Remember we virtually have a program that is just 2 years old. Sure, SSI goes back to 1974, but the current SSI child disability program is virtually 2 years old because of the changes coming from the Supreme Court decision. SSA's Office of Disability is doing a review of 600 cases. The HHS Inspector General is doing an investigation in 12 or 13 States. Let's find out what their findings are and let's all take a critical look, but let's not run with some unconfirmed, anonymous, "undeserving neighbor" kind of stories, which there is out there. It really saddens me to have some people of stature run with these stories without any real confirmation or corroboration.

The real stories, and I have just a few in my testimony rather than anonymous stories, are children like a South Carolina child who is paraplegic whose mother in South Carolina actually carried the child out to an outhouse three or four times a day because there was no bathroom facility. With *Zebley* money, this mother put plumbing in her house so this child could use a facility that we all take for granted.

There is the Ohio family, an extraordinary story about a 12-year-old, Nathan Guyer, who even though he was 12, was reading at the first grade level. He had attention deficit disorder, various seizures and other very serious learning disability problems. His teacher told him he would never read in his life. He was put in the back of the classroom with paintbrushes and no books despite the fact he had a 126 IQ. This "uneducable kid" became so depressed at the prospect of never reading, that he had a plan to take his life through suicide. He was then hospitalized for 2 weeks.

Last summer, his SSI claim was finally granted. He wasn't a *Zebley* retroactive case, he was a new claimant. Nathan is now in a private school for special learning disabled kids. In a few weeks, he came to his mother crying: "Mom, I am a learning machine. I can read for the first time in my life." And this child is writing his autobiography.

Part of it is in my testimony, "The Gift of Understanding," and this child who thought he could only cut grass as a vocation because he knew you didn't have to read to cut grass, now, with the SSI money, he is able to get the special help he needs to really excel. Now he wants to "save the rain forest and be a scientist." And this much more typical story is a real story, not just a phony, anonymous neighbor story circulating around.

The other cases we have brought to your attention—and we have talked to probably over 10,000 real people throughout the country—south, north, east, and west—in the last 3 years—show that money is being used for children's education and for necessities of life. Take the family of Onetha Brown and her two retarded girls who are now adults, Alice Jean and Jackalyn. Mrs. Brown refurnished these children's room so they have heat for the first time.

One of these young women is housebound and has to live in that room her entire life. She is not living in an institution thanks to SSI, but she is living in a room that now has a bed, a mattress, and heat and the other sister, Jackalyn, who was denied benefits virtually for the same mental retardation that the other sister got money for, this sister now has SSI and a *Zebley* award and can begin to go to technical college and learn math and reading. These were foreclosed to her before.

These are real stories. They are not anonymous neighbor stories and we ask the subcommittee to acknowledge these as the beauty of this program and demonstrating why this program is so essential.

My written testimony does respond to some of these anonymous neighbor stories which some people in the press, I think, irresponsibly have run with, without doing their homework and ignoring the solid benefits of this program. What we have done further in our written testimony is to speak to some needed fine tuning, and I think that is exactly what the program needs at this juncture.

We have seen it work for 2 years most successfully. It has grown because the numbers had been kept artificially low. For example, only after *Zebley* was there an outreach program including the States of Arkansas and Tennessee and other States around the country. The government, before 1990, kept this program a virtual secret! SSA never went on TV. They never went to the media to tell the public about a program for which hundreds of thousands of kids were eligible but who were never receiving aid in the past.

What we have done in the reforms that we have listed is include some of the modernization report reforms that deal with income deeming, but we have also tried to zero in on some of the concerns that this subcommittee and others have heard that need addressing.

One is the obvious 6-month rule. If a family gets a lump sum check, they shouldn't have a gun to their head from Social Security saying you have to spend the money in 6 months. A parent of a newborn infant or a 6-month-old, should have the discretion to put money aside for the child's future needs.

Right now, there is pressure in the system that comes from the law that says you virtually have to spend this in 6 months or your child will not be eligible. The pressure coming from that 6-month rule, I think, fueled some of the jealously and enmity out there that has led to some people complaining about people down the street or in the school getting *Zebley* retroactive sums.

If we can change that rule and allow, with a plan approved by Social Security, a bank account, not a fancy trust involving lawyer fees, but a simple bank account to be set aside to preserve money for the future needs of the child, I think we would make enormous headway. It wouldn't cost money. We would essentially say, look, poor parent, you can plan just like a middle class parent can for your kid's future needs even if you don't fully know now what those needs may be, what school, for example, your newborn, who has a congenital disorder, is going to need in the future. With this reform, the government will help not force the parent to spend money in a prudent way.

We also suggest reforms in the plan for achieving self-support [PASS], a good work incentive policy that is mainly geared to adults because I don't think anybody ever considered kids in the PASS program. Reforms would help particularly older adolescents nearing the employment market.

We think that for the "alleged" concerns that parents may be misspending money (and again where is the evidence for that, I ask), let's not tarbrush three-quarters of a million parents and micromanage their lives and assume that every parent is not going to do well by their kid. But let's assume some parents may not know of all the services available in their State or city or county, without making SSA into a socialwork agency. Let them recognize that some poor folks may not know of certain services. Let's then require SSA to make referrals to social agencies, to make families aware of needed services that are available and services that are available in their communities or State. I think service coordination is really necessary.

Other ideas are sort of streamlining reforms that I hope would improve the quality of the system. Perhaps I should stop at this end.

I will end it at this point. Thank you, sir.

[The prepared statement and attachments follow:]

# STATEMENT OF JONATHAN M. STEIN
# GENERAL COUNSEL AND ZEBLEY NATIONAL CLASS COCOUNSEL
# COMMUNITY LEGAL SERVICES, INC.
# ZEBLEY IMPLEMENTATION PROJECT

Thank you Mr. Chairman and members of the Subcommittee. My name is Jonathan M. Stein and I am General Counsel at Community Legal Services, Inc. in Philadelphia. Our office brought the Zebley national class action case that put the children's SSI program back on the right track after almost 20 years of denials of SSI to 600,000 children--denials a very conservative Supreme Court in 1990 found in vio-lation of the Social Security Act because Social Security was not providing fair and realistic evaluations of childhood disability as they had been doing for adult disabilities.

Since the Supreme Court's 7-2 decision, our office has been deeply immersed in the operation of the SSI childhood disability program. We maintain and staff a toll free "800" number to answer questions from parents and others who have questions about the childhood SSI program or their cases in particular. We monitor all SSA policy and interpretations relating to the Zebley case. We also have participated in the national Children's SSI Campaign, along with the Bazelon Center for Mental Health Law, the San Francisco Youth Law Center and Rural Legal Services of Tennessee. The purpose of this privately funded campaign[1] was to publicize the change in the program and encourage families to apply. We are proud that our joint efforts have played a part in increasing new childhood SSI applications to unprecedented levels. Currently, about 800,000 children are receiving SSI benefits. We estimate that the program is still not reaching 50% of the eligible children, although considerable progress has been made.

We would estimate that through our hotline and outreach activities we have been in contact with over 10,000 children and families alleging disabilities. Many of these children were unjustly turned down for SSI benefits (and the accompanying Medicaid) and are only now having their cases properly decided. Tragically, several thousand children have died before they have had the opportunity to have their cases readjudicated. Ironically the impairments that led to their death were deemed not sufficiently severe to justify an award of SSI.

My colleague and Zebley national class co-counsel, Richard Weishaupt, spoke at your October 14, 1993 Subcommittee hearing of the 1990-1993 successful implementation history, where he suggested some problem areas to consider for further reform. At that hearing, in particular, you heard that about 135,000 children were added to SSI solely on the basis of readjudications of old denials, 1980-1990. This was a one-time phenomenon, which explains over 25% of the growth of those on children's SSI. (Note that about 145,000 readjudicated claims were also denied from this period.[2]) Also,

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[1] The Campaign has been funded by the Robert Wood Johnson Foundation, The Nathan Cummings Foundation, The Annie E. Casey Foundation and the Pew Charitable Trusts.

[2] Source: SSA Zebley Court Case Quarterly Summary Report, December 8, 1993.

significantly, in light of your hearing notice asking for testimony on unconfirmed reports of alleged abuse in the program, you did not hear of even one case of a healthy or normal child improperly receiving SSI.

I appear today in part to address a February 4, 1994 Washington Post story on SSI--a story that has already received substantial condemnation as misinformed, inaccurate and lacking a reliable factual base. Since the article was widely distributed it requires some response here.

More importantly though, we wish to address future needed reforms in the program that will help needy children who your Ways and Means Committee, when including disabled children in the SSI program in 1971 called "among the most disadvantaged of all Americans" and "deserving of special assistance." H.R. Conference Report No. 231, 92d Cong., 2d Sess., 1972.

First, the Washington Post article that appeared February 4. The theme of the piece was that many children have begun receiving SSI disability since 1990, but then, ignoring verifiable, sound reasons for the growth, the writers speculated that it was because of a too liberal eligibility standard established based on the Rhenquist Court Zebley decision of 1990. (Our detailed rebuttal of the article is attached, as are Letters to the Editor of the Post from the American Academy of Pediatrics, Bazelon Center on Mental Health Law and others, as yet unpublished, as is the press criticism in the February 22, Village VOICE, "Crowning a New Welfare Queen," p. 6.)

It is no surprise the numbers of children were bound to grow--they had been kept artificially low by years of applying a rigid, illegal standard. Once the Supreme Court decided the Zebley case, deciding that many children had been turned down incorrectly, the agency set out to find all the children who had been rejected since 1980 and offer them a chance to have their cases looked at again. Approximately 453,000 children had been denied since 1980 and about 300,000 were given another chance and, after careful examination, approximately 135,000 have been awarded benefits. Tragically several thousand children died from impairments that proved fatal, although they had not qualified for benefits under the old standard.

Adding to the increase in SSI eligible children, in 1990 Congress directed Social Security to conduct outreach to the families of disabled children, encouraging them to avail themselves of benefits, if they were qualified. The federal court decree in Zebley further required a national media outreach campaign, and several private foundations supplemented these outreach efforts by funding the National Children's SSI Campaign to do even more outreach to ensure that families were aware of this program. These three outreach efforts were unprecedented; in almost 20 years, SSA had effectively kept this program a secret from great numbers of poor an low income families. Not a word of these unprecedented outreach efforts appears in the Post article.

Also beginning in 1990, SSA, belatedly, implemented revisions to the childhood Listings of Mental Disorders, a revision required by the 1984 Social Security Disability Reform Act. SSA thus acknowledged in this post-Zebley period the specific impairments of autism and Down's Syndrome, which medicine had known for years, as well as recognizing functional manifestations of listed mental disorders.

Finally, the income eligibility rules were streamlined to do away with an anomaly that kept many working families from qualifying for benefits. Unlike other programs, the SSI program rewards families for working despite all the odds and especially given the additional difficulty that arises when a family member is disabled and needs extra care.

All of these very real factors increased the SSI children's caseload, although much of the growth was on a one time basis rather than contributing to an ever increasing program. You will not find any of this analyzed or even acknowledged in the Post story.

Ironically, the SSI childhood program is now being criticized for succeeding: doing justice to illegally denied children, conducting an effective outreach campaign and making the program more available to working poor, blue collar and lower middle income families. One can, I suppose take issue with these objectives but, opponents should at least acknowledge why the program has grown, and why the rate of growth is now likely to taper off, given the one time nature of these factors. To do otherwise is to engage in the basest form of demagoguery at the expense of children with disabilities.

To show some concrete benefits to beneficiaries we attach case examples of children, some now adults, who received Zebley awards.

One extraordinary but representative story is of a 12 year old Ohio boy, Nathan Guyer, with severe Attention Deficit Disorder, seizures, and various learning disabilities, who could not read or write, and was functioning at a first grade level. He was deemed "uneducable," by a special education teacher, denied books and told to paint in a classroom backseat. He became depressed at being told by teachers that he was never going to be able to read, and when he developed a plan for his suicide he was hospitalized for 2 weeks.

With the SSI, Nathan's mother enrolled him in a private school for learning disabled children and those with Attention Deficit Disorder, and in a short time he excitedly told his mother,

"Mother, I'm a learn-ing machine." He can now read at his age level, and plans to be a scientist to "save the rainforests." He had earlier aspired to a lawn care job because he thought it was a way to make a living without being able to read. Nathan is beginning to write a book to help "other kids to understand ADD" and in his mother's words, "understand that they are not alone." His beginning of this book, "The Gift of Understanding," is attached.

This and many other real case histories given to the Post reporters were never considered newsworthy by writers who seemed like they did not want the truth to get in the way of their pre-determined "story-line."

Every program, public or private is occasionally subjected to criticism by people who allegedly know a neighbor who gets benefits and doesn't deserve them. The problem with these facts is that they are irrefutable in their anonymity. No one is naive enough to think that an agency as large as Social Security does not make occasional mistakes but they try very hard to rectify any mistakes that are made. The problem is that it is impossible to deal with the "undeserving neighbor" story when no one will put an identity to this mythical ripoff artist. Like the story of alligators in the sewers of New York, some people desperately want to believe they are there and no lack of evidence can ever persuade people to alter their belief. (Who after all really goes looking for them?

Unfortunately, the Post article repeats these "anonymous neighbor" stories without a shred of hard evidence. The article asserts, largely based on one renegade bureaucrat in Harrisburg, Pa., since fired from her job, that all that's needed for a child to qualify for SSI is a few incidents of bad behavior. Nothing could be further from the truth.

The SSI test requires a medically determinable impairment, verified by an independent doctor or psychologist, and one that either meets quite strict "Listings of Impairments" or has such substantial deviations from normal functioning as to have very serious impacts in multiple areas of functioning, like cognitive, motor coordination and communication.

Mental health professionals are quite experienced at diagnosing borderline cases. Can we really place any credence in reports of parents who allegedly coach their kids to mislead professional, experienced psychiatrists and psychologists? Ask any parent who's tried to coach their child to keep a family secret ("No grandma, Mom always vacuums just before you come over" Can't we expect more of investigative journalists than a rehash of stories about anonymous cheaters? Whatever happened to having two independent sources for every reported fact? The fact is that Social Security only approves of about half (55%) of children's SSI disability claims; under the new Zebley standard, from February

1991 to the present, over 600,000 children have been denied SSI But, of course, not one word of denials in the Post story to provide a balanced view.

The problem, of course, is not that people express such views. Certainly they are free to do so. The problem with such irresponsible journalism is that it ignores the needs of real people struggling with very real problems. What parent, even of a healthy child, has not felt pressed to the limit? And what extended family has not known the heartache and trials of children with serious and sometimes fatal conditions? It is these families that SSI is meant to help.

Children with disabilities, are among the neediest of all Americans, as your Ways and Means House Committee said in 1972 in recommending passage of this provision of the SSI program. They need support for a plethora of special needs, ranging from sophisticated, expensive child care and special schooling to special diets, medical services and equipment that is not covered by Medicaid or private insurance. Rather than micromanage the lives of three quarters of a million families, we afford these families a modest ($454 per month--considerably less than the poverty level) allowance and we expect them to do what is best for their children. We know that the vast majority of American families who receive this aid do just that. Theirs is the story that should be told; their successes are what deserves coverage.

The Post authors would have us believe that somehow this provision was somehow sneaked into the bill creating the SSI program and that Congress was unaware of what it was voting on. This is sheer fabrication, as they should know if they read either the Government's Brief or the Brief filed on behalf of Brian Zebley in the Supreme Court. Both Briefs discuss the legislative history of the provision adding children to those covered under the disability benefits of the SSI program. There was clearly debate and awareness of the provision both in Committee and on the floor. Indeed, as the article acknowledges at another point, Senator Long a die hard opponent of many progressive programs, spoke against the inclusion of disabled children; he lost, however, a fact the authors fail to appreciate. A majority of Congress rejected his specious argument that children with disabilities don't have special needs.

While Congress in 1972 did not write detailed regulations, a job better left to experts in the field, you did mandate that children be treated fairly, by looking at how they function overall just as adults were evaluated. The system that Social Security eventually devised, however, missed the mark and required that kids, unlike adults, had to meet one of 57 listed impairments. (In the adult program these listed impairments are merely starting points for the inquiry, a shortcut to award benefits for the easiest and most severe cases.) If a child's impairment was not on the list (as thousands were not), they were denied benefits. This was too much for seven Justices of the Supreme Court, including three conservative Reagan nominees, Justices Scalia, Kennedy and O'Connor. Indeed, even the dissent argued that injustices were clearly being done to children--they disagreed only as to how to remedy the situation.

Once the case was decided it was sent back to the federal district court, where a judge ultimately approved an order to revisit the denial of 453,000 children's cases denied since 1980. SSA then attempted to notify these children and readjudicated cases of children who responded to notices, only this time looking at the whole picture, not just at some circumscribed list of medical pigeon holes. Not surprisingly, they found that thousands of children with AIDS, Down Syndrome, cerebral palsy and cystic fibrosis had been erroneously turned down; several thousand, SSA also found, had died from their "non-disabling" impairments. All of these children awarded benefits were seriously impaired and, contrary to the authors' solitary source in Harrisburg, they did not exhibit merely minor deviations from some norm of perfection.

If anything, in the period after 1990, SSA was extremely cautious and erred on the side of denying benefits. Indeed SSA's Quality Assurance program revealed unprecedented, high error rates in denied cases for most of the post-Zebley implementation period, error rates not appearing in allowed cases.

Eight hundred thousand disabled children in a country of almost 300 million hardly suggests a program out of control.

Looking ahead, we wish to present a more detailed agenda of needed SSI child disability reforms arising from the national experience with Zebley, the implementation of new standards, and the income/resource reforms affecting children in the SSI Modernization Report. Below is our Agenda for SSI Childhood Disability Reforms:

### 1. Safeguarding Disabled Child's Future Needs--Modifying the 6 Month Resource Rule

Everyone agrees that the resource rule requiring expenditure of SSI lump sums down to the current $2,000 resource limit discourages parents from careful planning for a child's future needs. Back awards must be spent down to the $2,000 resource limit within 6 months, regardless of the size of the award. Current statutory and regulatory provisions for preserving back awards are inadequate: trusts are complicated, costly, tricky to administer and require lawyers; PASS's (Plans to Achieve Self-Support) are too rigid and limited by statute to 4 years; burial reserves have little relevance for children.

We propose a number of reforms:

a. increasing the resource limit to a more realistic level;

b. afford those with large back awards additional time to reach the resource limit;

c. allow recipients to set up earmarked bank accounts for special purposes (such as education, training, or adopting a home) without having to set up a complicated trust.

These reforms, along with better guidance from the Social Security Administration would significantly improve the program in a way that fosters responsible financial planning.

### 2. **Ameliorate the PASS Policies**

A Plan for Achieving Self Support (PASS) is an SSI work-incentive, to set aside either income or resources to fund a plan to achieve self-support. Nationally, there are less than a half-dozen PASS's established for SSI children. The PASS provision of the law needs reformation if it is to serve the needs of children.

PASS policy needs reformation so it does not have an arbitrary 48 month limit that effectively excludes the younger disabled person, who will still be a minor at the end of the four year period, and to encompass more flexibility in what services and education can be contained within it. Especially if a time limit for the plan is to be enforced, that time limit should not begin to run until the child's 18th birthday.

### 3. **Disability Service Coordination Needed**

Many poor parents of SSI children are not aware of medical and social services, not provided by SSA, that may be available for their children and which also may not be provided under Medicaid. To respond to this pressing need and to some as yet uncorroborated criticism that some parents may need professional advice on how to spend their SSI monies, especially initial lump sum payments, there needs to be a social service component or referral component in the SSI program. Since SSA will not likely wish to take on direct provision of services, SSA should make regular referrals to relevant state and local social service agencies such as Title V programs for Children with Special Needs and Part H Early Intervention programs specializing in services to disabled children. Legislation should be enacted to require these referrals and to provide support for such state and local agencies.

### 4. Address Needs of School Teachers and School Psychologists

There is some resentment and misinformation in the educational community about the SSI program arising from the new emphasis on gathering evidence from a child's school. (School personnel often do not realize that the child may indeed be denied later, but the information must be obtained to complete a fair evaluation.) Legislation or administrative reforms are needed to pay schools for this "functional" evidence, just like SSA pays doctors for relevant medical evidence. SSA should also offer teachers and school psychologists aids like direct telephone dictation of reports to the state disability agency, just as they do to doctors. And, SSA needs to do much more "educating of the educators" into the workings and value of these SSI programs.

### 5. Improvements in State Disability Determination Agencies

**a. Specialization**: There is no incentive for specialization in childhood disability case evaluations in state disability agencies despite the great complexity and uniqueness of both the Childhood Listings of Impairments and the new Zebley Individualized Functional Assessment rules. A few states specialize, with generally good results. Accessing relevant evidence for children and evaluating often multiple-source evidence requires great skill. SSA headquarters has specialization, i.e. a Children's Disability Branch at OD, established when the Zebley Supreme Court decision was handed down. But SSA has taken a hands-off a approach on specialization for state agencies. SSA should be required to collect and synthesize the ad hoc experiences of specialization in these state agencies that do so, and then to require it if deemed appropriate. Congress may wish to mandate it specialization now or to require SSA to do more to encourage the practice.

**b. Advisory Committees:** State disability agencies need to interact with a considerable number of professional disciplines to achieve high quality childhood disability evaluations. Yet with two exceptions (Pennsylvania and Massachusetts) there are no Advisory Committees to state agencies to provide input and consultation from pediatricians, child psychologists, educators, social workers, child disability groups, etc. Establishing State Advisory Committees is a low cost means to improve quality and communication, and respond to criticism and suggestions from the public.

### 6. Income/Resource Deeming Rules Reforms

The SSI Modernization Report and others have pointed to inequities in the SSI program that penalize families trying to do their best with very limited means. Needed reforms are:

### a. Modify the rules for deeming family resources to the disabled child to recognize the need of other children in the family.

The SSI Modernization Report recommended a change in the resource deeming rules to permit a $2,000 resource allocation for each additional child in the family. The current limits on allowable resources do not consider the overall size of the family. This is in contrast to the income deeming rules which permit the family to allocate a portion of their income for each child in the household.

This current, arbitrary limit on allowable resources means the family with several children cannot save for the education, emergencies or numerous other needs of the family without endangering the SSI of the disabled child.

### b. Disregard special expenses for child care of a child with a disability.

The Modernization Report also recommended disregard of the portion of family income used to pay for special expenses related to a child's disability--many of which are not offset by SSI. These can include the purchase and installation of adaptive equipment that makes the home accessible, specialized transportation, and child care. (One mother told the Modernization Panel, she spent $157/month for disposable diapers for her 13 year old.)

### c. Change the way certain unearned income intended to substitute for earnings is treated.

SSI parental deeming rules treat "earned" income from employment much more favorably than "unearned" income like veteran's benefits or Unemployment Insurance. SSA counts a much higher proportion of the latter as "available" to the child, essentially reducing SSI dollar for dollar. This inequity is felt most severely when the wage-earner parent of the SSI disabled child loses his or her job, or gets injured. In the midst of the wage loss and financial crisis, the family usually sees a reduction in the child's SSI in some cases, complete ineligibility, just when the program is needed the most. If direct wage replacement programs such as Unemployment and Worker's Compensation were considered "earned" income, this problem would be solved. The Modernization Report recommended a change, as did Representative Pete Stark in H.R. 3009 (introduced Aug. 6, 1993).

## 7. Assure All SSI Children have Medicaid Protection

Since access to regular health care is so important to an individual with a disability, the SSI Modernization Report recommended that all SSI recipients, adults and children, be automatically eligible for Medicaid regardless of the state in which they live.

In 31 states and the District of Columbia, an individual who is eligible for SSI benefits is automatically enrolled in Medicaid. In seven states, SSI-eligible individuals are automatically eligible for Medicaid, but must fill out a separate application: Alaska, Idaho, Kansas, Nebraska, Nevada Oregon and Utah. Studies indicate that the need to file a separate application represents a barrier to children obtaining Medicaid.

Twelve states, representing approximately 20% of SSI children, have established separate, and more restrictive, income, resources and/or disability criteria for Medicaid eligibility based on criteria that were in effect in these states on January 1, 1972. These "209(b)" states are Connecticut, Hawaii, Illinois, Minnesota, Missouri, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma and Virginia. SSI disabled children in these states should receive Medicaid.

### 8. **Protect Medicaid During Months When Parents are Over-Income**

The Modernization Report's recommendations would consider or "deem" an individual eligible for SSI for purpose of retaining Medicaid coverage in months when a parent's five weekly (or three bi-weekly) paychecks resulted in temporary suspension of cash eligibility as being "over-income." Currently, when the child is ineligible for SSI for a month because the parent earned too much, the child also loses Medicaid coverage for the month.

* * *

Thank you Mr. Ford and Members for this opportunity to testify and your continuing commitment to better the lives of disabled children.

# THE GIFT OF UNDERSTANDING

By Nathan Guyer

Dedicated To Conni Guyer, my mom, and Lynn Guyer, my dad,
also to N.G. my dog and my birds, Lovey and
Cabluey, and Gary Brown, who are all my best friends.

1992

My name is Nathan Guyer and I was 11 years old when I started this book. I'm 12 year old now. I was adopted by Lynn and Conni Guyer when I was 2-1/2 years old. When I came home to my mom and dad I was very active and I was nearly starving to death. I lived in a foster home before I was adopted and then I my mom and dad came and got me and rescued me. We lived in Illinois at that time in a nice house, and I am an only child.

We moved to Ohio when I was 3-1/2 years old and my father whet back to college. I began doing things that no one could understand, like yelling at my mom and dad, running around the house when I wasn't supposed to. I used to get very very angry at everything. Sometimes it seemed like I was so angry I could have picked up a car. When I was angry I sometimes hurt my cat, I would scream and run and sometimes accidently hurt myself. My mom was a very kind lady. She would hold me and tell me that it would be all right. It was very scary to be so out of control.

When I was 4 years old I told my mom that there must be something wrong with my brain. Lots of things that I used to be able to do, like work jig saw puzzles, I couldn't do anymore. I used to love to draw, but I couldn't do that anymore either. I couldn't concentrate long enough to do anything. I often did things without thinking, like cross the street without looking, even though I had been taught all about traffic lights and dangers.

I was in trouble all the time and I felt like I was a brat, bad, and a wimp. I thought that I must be really stupid because I couldn't do the simplist things I was supposed to. When I felt bad my mom and dad felt bad too. But my mom and dad did not understand why I behaved the way I did. I didn't either, I just couldn't help myself.

I used to bounce off of the walls. Other people thought I was weird. I used to throw tantrams. My grandma was always saying "You need to get that kid under control", but my mom would tell her, he is trying, he just can't help it.

When I was 5 years old my mom and dad took me to a Psychologist, Dr. Rick. He was my friend. We played and drew pictures and he tried to help me understand my feelings. I had lots of bad feelings thinking about my birth mother and then my foster mother. It took me a long time to believe that my mom and dad would not ever leave me and that I wouldn't get lost.

Also, when I was 5 years old I went to Head Start. I liked it very much, but things were so noisy and there were so many things going on that it was even harder to concentrate that at home. I especially loved my teacher who came to my house every week and did neat things with me like make real butter.

When I was six years old I went to Kindergarden. I had speech problems and began speeh therapy at school. This was embarrasing because I had to leave class to go to the therapist and because no one could understand what I said. My teacher made fun of the way I talked. She couldn't understand what I said either so the other children would have to tell her what I said. She made me sit next to another child who was mean and liked to get me in trouble for things he had done. A lot of time I had to sit in the hall and was not allowed to participate in the class work. When my mom and dad found out what was going on they had a meeting with my teacher who insisted that I was a troublemaker and that I should be put on medicine. She said that I didn't try to behave and that I bothered the other children. But I did try. I only got to be helper of the week one time in the whole year. She told the other children not to play with me because I was a troublemaker.

By the end of the year I was so unhappy that I said I wanted to kill myself. I tried to figure out a way to hurt myself. My parents were very upset and took me out of school.

When I was 7 years old my mom and dad decided to home school me. This was great. I didn't have to go to school, but my mom worked every day with me with fun games and workbooks. We had a treasure chest and sang songs. Once a month a teacher came to our house to talk to my mom and help her teach me. I worked very very hard, but it was difficult beause I had so much trouble paying attention. When we started each day my mom would close the curtains, take the phone off the hook and put the cat in the bathroom. She read lots of stories to me, and we went on lots of trips. But it was still difficult for me to behave. By the end of the school year I was still behind, but I had learned all of my phonics and could add simple numbers and subtract simple numbers.

Dr. Rick thought I had ADD. He did some testing. The tests were easy to do. He would ask me questions and sometimes we would draw pictures together and sometimes he would take me to McDonalds.

When the testing was done Dr. Rick suggested I go see a Pediatrician and that he could give me some medication that would help, but that medication would not solve all of the problems.

We went to see our Pediatrician who suggested I take a medicine called Melleril. This medicine helped me calm down, but it did not help me pay attention. Because of this medicine I gained a lot of weight and this made me feel bad too. Other children would called me fat and made fun of me. I was still very unhappy. I didn't understand what ADD was, so I just thought I was different and not a good person. I kept trying to be good and do what I was supposed to do, but I just couldn't.

Then the doctor took me off of Melleril and we tried a drug called Cylert. The first week I took Cylert was very hard. I couldn't sleep and I wasn't hungry. I also couldn't stop talking. My mom and dad stayed up with me and gave me lots of juice and water to drink and made sure I had my vitamins. Finally by the end of the week things began getting better. I could sleep better and began to eat some. But the best thing of all was that, for the very first time I could pay attention. After I got used to my new medicine, I could do puzzles again and draw and watch nature shows on television. I didn't fight and argue like I used to and I didn't loose my temper so often either. It was a really good summer. I learned to ride my two wheeler and got along better with other kids too.

Then we moved to Yellow Springs, Ohio because my dad started Graduate School to become a doctor of Psychology. I started the second grade at Mills Lawn Elementary School. I was placed in an L.D. class. L.D. stands for "learning disabled". Learning Disabilities have nothing to do with how smart you are, even though lots of kids think it is the dummy class. Learning disabilities have to do with different learning styles. My special education teacher told my mom that there wasn't such a thing as ADD, that I was just badly behaved because I had been home schooled.

I didn't want to go to school. I wanted to go on being home schooled. The first days of school I really acted up. I through my books, I tipped over a desk and I left school and they had to go find me. But my mom explained that she would not home school me that year and that I had to go to school and do my best so I tried.

Mills Lawn School at first I did not like it. Then after a couple of weeks I sort of liked it. I felt bad, my heart ached. No one would be my friend, no one would play with me. My teachers were always mad at me. I had to go to the principals office lots. I had my feelings hurt almost every day. I did my very best but the teachers always said I wasn't good enough. I often got mad. I tore my papers up and scribbled on some of them because I knew they weren't good enough. There was one boy in my class who used to follow me around and hit me and call me names. But when he got in trouble so did I. I tried to stay away from him, but the teachers would have us sit next to each other. My mom would get notes from the teachers saying that there had been trouble, but that it was not my fault. The worst thing that happened to me at school was when my teacher told me and the rest of the class that I would never be able to learn to read. She sure was wrong, but I believed her then. That was my L.D. teacher, but my regular teacher must have talked to her because she moved me to the back of the room and gave me paper and markers to draw with but I didn't get to do the work the rest of the class was doing. I didn't get to go on trips with the class even though I was able to behave myself.

My L.D. teacher called my mom and dad and told them I wouldn't ever be able to read either. They were very angry with her and took me to a nice lady named Ann Wolf who was a school psychologist (who worked in private practice). She worked with me for three Saturdays and gave me lots of tests. She said that I was very smart and that I was two grades ahead in Science, History and Social Studies, but that I had a learning disability in Reading and Math. She suggested that we go to our "Regional Center" (A state funded Center providing services to parents and teachers of L.D. and other handicapped children), and talk to a reading specialist. That's when I met Mrs. Zappin. She worked with me for two more Saturdays and then told my parents that I most certainly would learn to read. I just needed to learn my sight words and gain confidence so that I would believe I could read.

It is very hard for me to remember these times because it hurts so much even now. Some things I have just forgotten and my mom is going to tell you about some of the things that happened because I don't want to remember.

My mom and dad took me out of school again and home schooled me for the rest of the year (about 6 weeks).

When I was still 11 years old, we moved to Xenia, Ohio because my dad was going to have hip-replacement surgery and we needed a house without an upstairs. We couldn't find one in Yellow Springs so we moved to Xenia. It was Winter and my mom and dad decided that we would go on home schooling.

By this time I was growing a lot and the Cylert didn't seem to help as much as it did so our doctor, Dr. Duby at Children's Medical Center in Dayton, changed my medication to Ritalin. Boy did this make a difference. Dr. Duby helped me out by giving me Ritalin and by paying attention to what I said and felt. He also missed lunch breaks to see me. He really likes me. He thinks I'm great.

I forgot to tell you that I also have some other physical problems. I have two kinds of seizures. One is called Absance seizures. This means that every once in a while I just sort of blink out. Like starring and not moving for a moment. These made me have a lot of bike accidents and once I fell down the stairs and didn't even known it. Dr. Lacey at Children's Medical Center in Dayton gave me lots of tests (EEG's). Once for one of them I had to stay up all night before the test. My mom and dad took turns staying awake with me. My mom saw that I was going to sleep, so we got in the car and went out to Young's Dairy at 2:00 in the morning, and stood outside looking in a window and watched them makeing ice cream for about two hours. It was pretty cold that night so the cold helped me stay awake.

Then we went back to Yellow Springs and just drove around. My mom had me check each house to see if there were any light on which would mean that someone was up. We talked about what they were doing, getting ready for work, or school, or maybe they just couldn't sleep just like me. A policeman stopped us and wanted to know what we were doing. My mom explained to him and he was very nice. He told me to hang in there and stay awake.

I take medication now for these seizures and usually don't have them any more.

I also have Grande Mal seizures sometimes. These are the kind where you fall down and shake. I only have them when I am very frightened and anxious. My medication doesn't stop these, but I've only had six of them in my life. My mom and dad said that we all hope that if I continue to work with my therapist, Dr. Hayes, then I will learn to overcome my anxiety and fear and maybe I won't have these anymore.

Last Fall I went to the Hearing and Speech Center in Dayton, Ohio and was tested by an audiologist. She discovered that I have something called an auditory perception problem. The test was very easy. I just put ear phones on and told her what I was hearning. It is hard to explain what an aduitory perception problem is. Sometimes I just don't hear part of the words people are saying to me, even though my ears work very well. Sometimes, especially if there is a lot of noise around me, I don't hear the ends of words or maybe the beginnings of words. I misunderstand what my teachers are saying to me lots of times.

Most of my life I have been very lonely. I never really had a best friend. Being an only child and not being good at making friends is really hard. I often do things without thinking first and sometimes those things get me in trouble or make other kids mad. I don't mean to be thoughtless or rude to them and they don't understand ADD so it is hard.

1993

Last Spring I met my best friend Gary. Gary is 13 yrs old and very smart. He gets all A's in school and is a good athlete. He thinks I am very smart too. He is really suprised at all the things I know about Science and nature. He says I have a good brain for solving problems. He doesn't mind that I have ADD. He helps me calm down when I'm getting out of control and he won't let other kids be mean to me. We have a lot of fun together.

Last summer I had my 12th birthday. Gary and I went to a special race track where there are little race cars you can actually drive. The cars can go 45 miles per hour. It was the best birthday present ever. We both have "drivers licenses" for the track with our picture on them.

Last summer Gary and I started our own Lawn Mowing business together. We call it the Brown and Guyer Lawn Mowing Service. My dad made flyers on the computer and we took them to everyone's house in our neighborhood. My mom and dad taught us how to take care of lawns and how to be polite when collecting our money. We had a schedule and made quite a bit of money. I bought a bike and some cloths then began saving at the bank so that I would get a minature schnauser puppy.

This Fall my parents arranged for me to go to ALPHA School in Dayton, Ohio. ALPHA School is a special school for ADD kids and for L.D. kids. They are very strict, but not mean. I am beginning to read and I know that I will be a good reader if I just keep working at it. It took me a long time to learn to ride my bike but I just kept trying and finally I became a good rider. I will do the same thing with reading too.

I have always wanted to be a scientist. I have made lots of plans so that I can go to the rain forest and find new plants, animals and insects. I hope that I will be able to help save the rainforest and the wonderful things that live in them. I knew that I could never do this if I couldn't learn to read. I told my mom and day that I had given up my dream because I couldn't read. They told me never to give up, that I had to trust in myself and in God and to work really hard and I could overcome my reading problem. They also said that thev would always be there to help me. I have my dream back again. This time I'm never going to let it go.

Every night my mom or dad listen to me read. I'm still slow and some words I still haven't learned, but I am reading and I'll get better all the time.

Having ADD is hard, but you get to learn a lot about life and how to succeed. I have a really good imagination and I can draw quite well. I'm very good at taking things apart and always am interested in how things work. I understand what it is like to have a handicap. It's really hard sometimes especially since I have a handicap that no one can see.

The reason I wanted to write this book is because I know lots of ADD kids now. I understand what ADD is. It's just a disability like any other. It's not any different than a kid who had to wear glasses or needs a hearing aid, except that you can't see it. I know lot of ADD kids who are still very unhappy and who get treated badly by other people. Even grandparents, aunts and uncles, sisters and brothers. Sometimes their parents don't really understand this disability either so they get mad a lot at things we just can't help doing. I want other kids to understand ADD especially kids who also have ADD. If you understand then you know that you are not a bad kid, a mean kid or a stupid kid.

I like to play Nintendo. I have a dog named N.G. and I like to cook. I like to look at my birds, Lovey and Cabluey. I love Corvetts and have a collection of models I have made. Someday I want to buy a Corvette of my own. I like to fish and I have ADD too but I can do anything anybody else can do. My dad and my mom are great. They are the ones who taught me all about it. I wouldn't be where I am today without them. They love me very much.

## QUINCY MONROE MEADOWS,
## EPILEPTIC AND FORMERLY HOMELESS

Quincy Monroe Meadows suffers from epilepsy and is currently 30 years old. He knows that he was denied in SSI in 1980 but does not recall the other dates that he was also denied child disability benefits.

The epilepsy has made Quincy's life difficult. As a result of the disease and the fact that his father left his family, he has been on his own since he was 13 years old. From the time that he was 13 until he was 23, he was homeless and had to live on the streets and eat food from garbage cans. He also spent some time in foster care. He was never able to finish school. Quincy's living conditions changed somewhat when he married at the age of 23, but the epilepsy always prevented him from having the quality of life that he desired.

Mr. Quincy says that his life changed completely when he received Zebley back payments in late 1992 and early 1993. According to Mr. Quincy, the money has really made a difference in his life. For the first time he was able to pay his medical bills. Quincy had previously been refused medical treatment because of the unpaid bills. He noted that receiving this type of treatment from care providers was "embarrassing."

The use of dilantin to treat his epilepsy had destroyed Quincy's teeth, but he was able to use part of the money to have them pulled. Unfortunately not all of his medical needs have been met yet and he still needs to have an operation on his shoulder. Mr. Quincy was also able to purchase food and clothing and repairs made to his home. To express his gratitude, Quincy stated that he wished that "God, would bless you all."

Mr. Meadows is willing to have story disclosed.

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## MICHAEL MARTIN ZAHARIEV, ORPHAN OF AIDS-DECEASED PARENTS

School children can be very cruel... to skinny little boys that stutter... to kids with club feet, cleft palates and disfigured spines ... to classmates who act and read many years below their age. School children can be very cruel to little boys like Michael Martin.

Life, too, can be very cruel. And, Michael Martin knows this all too well. After all, it is rough to be a little boy who can't run and play. It is hard to be a teenager when you don't look like everybody else. And, it is unbelievably tough to watch both of your parents die, slowly and painfully, from AIDS in recent years. Michael has seen so much and hurt so deeply. How does a boy like Michael ever learn to smile?

Michael's grandmother, Marina Zahariev, in Bearsville, N.Y. who cares for Michael and his 3 younger sisters, knows how Michael found his smile, and it has everything to do with the Zebley case and the SSI award that Michael received in back benefits. The money can't buy happiness, but, as Ms. Zahariev will tell you, money certainly makes it easier to smile. Despite severe physical and mental impairments, Michael was denied SSI around 1982-83 at the age of 6. He was a national "class member" who the U.S. Supreme Court in 1990 decided was illegally and unfairly denied SSI.

Thanks to the Zebley award, Michael's life is more comfortable. He now lives in a house with furniture; he now has his own room. When Michael's parents were dying, Michael's grandparents had to sell everything to support the family. Ms. Zahariev sold her wedding ring; she sold all the furniture in the house except for 3 beds and a couple of chairs. She even lost her house and her family business due to foreclosure and mounting debts. The grandmother will tell you that it didn't matter. It didn't matter because she didn't have a choice. She had to provide food and make sure that each of her grandchildren had a pair of shoes and an outfit for school.

With tears in her eyes, the grandmother knows that Michael finally has the happiness that he deserves. Michael is a great little boy. He now has nice clothing and shoes that hide his disfigurement. He is not as shy anymore and he has friends. He wants to go to trade school after high school and study electronics. The Zebely money will guarantee that Michael will be able to continue his schooling. Perhaps, he'll soon learn to drive. Zebley has given Michael the chance to dream, and his self-less grandmother emphatically declares, "You couldn't do better things for a kid."

And, as Grandmother Zahariev watches skinny Michael devour a homecooked nutritious meal, she knows that the young man lurking within has the chance for a better future.

Ms. Zahariev has authorized the release of this story. She also welcomes the chance to give further details if need be.

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* * *

### ONETHA BROWN,
### MOTHER OF THREE MENTALLY RETARDED CHILDREN

Imagine having 11 children, 3 of whom are mentally retarded. This is the real life situation of Ms. Onetha Brown. Ms. Brown has raised her children by herself. Of her 3 mentally retarded children, Christopher, Alice Jean and Jackalyn, only Jackalyn received a lump-sum payment from SSI.

Christopher, who is 34 years old, has been living at the Pedie Center for the disabled and needy for the past 10 years. Although Ms. Brown wanted Christopher to stay with her, she knew she had to be pragmatic. Christopher was difficult to control, and he needed 24 hours supervision daily. He needed special care -- so now he's gone -- over 60 miles from her home, but Ms. Brown visits him at least 3 times a month. For someone who has no money, the transportation costs alone would be high enough to deter time from visiting. Ms. Brown obviously loves her children enough to make that long, expensive ride to the Center.

Alice Jean, on the other hand, lives, homebound, with Ms. Brown. Alice Jean is 32 years old, but has a mental capacity equivalent to a 10 year old. Unfortunately, Alice Jean has no control over her bladder. She is constantly uncomfortable - not only does she need to wear special protection, she must sleep with a bed pan every day. Although Alice Jean has been receiving SSI disability since age 16-17, her equally retarded sister, Jackalyn was repeatedly denied by SSA since age 8 or 9 from 1980 onwards. Finally, in 1992 as a result of <u>Zebley</u>, Jackalyn was found eligible and received back award.

The money that Ms. Brown received for Jackalyn helped not only Jackalyn, but her other disabled siblings. Prior to March 5, 1992, the date Ms. Brown received the <u>Zebley</u> back award, Ms. Brown's house was deteriorating. The roof was leaking massively, the bathroom floor was falling apart, and certain areas of the house were inaccessible to Jackalyn and Alice Jean. Medical bills needed to be paid; and simple things, such as a mattress needed to be replaced. Ms. Brown refurnished Jackalyn's room, which she shares with Alice Jean. The room now for the first time has a kerosene heater to supply warmth in winter. To most people, refurnishing someone's room may not seem important; but for Jackalyn, this was the best thing that has ever happened to her. Jackalyn spends almost all of her day in her room. She cannot wander off alone like most people. She does not have the freedom to travel and explore - her room is her haven, and the rest of her life will be spent in it.

Now, thanks to SSI, Jackalyn is living comfortably. She has even started attending Technical College. Jackalyn is taking reading and math courses. She has friends, lunch money, and transportation money. For most people, this would not be enough. For Jackalyn, this is a dream come true.

Because Jackalyn is able to get SSI, Ms. Brown can better meet the needs of her sister, Alice Jean, who although receiving SSI, could not have all her needs met in this poverty household. Alice Jean's incontinence requires special personal needs to be met, and for the first time the mother can now purchase disposable diapers for this adult child. Their cost $76/month, made them prohibitive before Jackalyn began receiving her own SSI.

Both retarded daughters can now look to a brighter future life thanks to SSI.

Ms. Brown has consented to have her story shared with others.

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Feb. 22, 1994

the village VOICE

**PRESS CLIPS** James Ledbetter

## CROWNING A NEW WELFARE QUEEN

FEDERAL BUDGET SEASON is not a time of precision or fairness. Would-be slashers speak of Washington Monument Syndrome (WMS): if funds, no matter how small, have to be cut from the National Park Service, inevitably the agency announces the only way to meet it is to close the Washington Monument. There's no doubt that bureaucrats resort [illegible] protective coloring. But WMS's inverse also emerges around this time: the image of a runaway, thoroughly abused federal handout begging to be sliced. Here the archetype is Ronald Reagan's welfare queen.

*The Washington Post* did its best to crown a new welfare queen on February 4, with a lengthy front-page scare story by Bob Woodward and Benjamin Weiser. Headline—"Costs Soar for Children's Disability Program; How 26 Words Cost the Taxpayers Billions in New Entitlement Payments." The piece wasted little time. In the second paragraph, the reporters referred to a renegade Pennsylvania pediatrician who helps administer a federal aid program for disabled children whose files "show, she says, that children who curse teachers, fight with classmates, perform poorly in school or display characteristics of routine rebellion are often diagnosed with behavioral disorders and therefore qualify for the program's cash benefits, which average $400 a month." The federally subsidized juvenile delinquent became Washington's fastest growing myth: by February 7, *Post* columnist Jonathan Yardley had lumped it, along with Lorena Bobbitt and the Menendez brothers, on a pile of images designed to prove that Americans don't take responsibility for anything anymore.

Vital to the myth is the paper's account of how such kids became eligible to soak up taxpayer dollars. The children's disability program is a division of Supplemental Security Income (SSI), enacted in 1972 to provide benefits to the poor who are disabled, blind, or elderly. The *Post* reported that an obscure welfare worker named Thomas Joe inserted a 26-word clause in the 697-page SSI bill to expand its coverage to children. Because no standards were established for what constitutes a disabled child, it fell to regulators to determine, and before the *Post* noticed, 770,000 kids were getting money at an annual cost of $3.6 billion.

Makes your blood [illegible] it? Veteran budget watchers know that such [illegible] stories have a symbiotic relationship [illegible]. When *The New York Times* [illegible] Clinton administration was considering taxing benefits to the poor, one of the programs that showed up on the chopping block was—surprise!—SSI.

There are clearly problems with SSI, including questionable uses of funds and a silly provision that payments must be spent in six months. But there are problems with Woodward/Weiser's SSI account as well. First, while the 26-word clause may have been small, it was hardly unnoticed. The House Report on SSI called the intended beneficiaries of the children's program "among the most disadvantaged of all Americans . . . deserving of special assistance." Second, nowhere in the *Post*'s 3300-word analysis is there even an attempt to provide an overall picture of who benefits from the program. In a letter to the editor that the *Post*—as of our February 14 deadline—hasn't published, an SSI advocate writes, "About one fourth of the children who receive SSI have physical disabilities. Of the rest, children with mental retardation are the largest single group, about 43% of all children in the SSI program. Another 15% have severe neurological or sensory conditions, such as cerebral palsy or severe vision or hearing impairments. The remaining children are the 17% with severe mental disabilities, such as autism and various kinds of psychiatric conditions, including severe emotional disorders." Not exactly kids cursing at teachers.

More important, the *Post* strongly implies that the reason for the growth in SSI children disabilities expenditures is the lax qualification standards that have been established. The real reason stems from the Supreme Court ruling in 1990 that some 600,000 children had illegally been denied benefits since the program's inception. In addition to the back payments, tens of thousands that had once been denied benefits were now given them. As a *New York Times* editorial said at the time: "Federal budget makers might be forgiven for recoiling from such numbers. But the law is the law, and its intent, affirmed by the Court, reflects legislative decency at its best." Again, the *Post* hinted at none of the history of reasoned support for the program.

But surely the story's weakest point is those two words that ran on the front page: "she says." That is, if all these routinely rebellious kids across the country are qualifying for handouts, why don't any of them actually appear in the *Post* story? Woodward assured the *Voice* that he knew of such cases, but couldn't use the names because of "privacy problems." Wasn't their a way to protect their privacy by changing names? Woodward said that effort would get "bogged down in details."

**Zebley**
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February 9, 1994

### TALKING POINTS/RESPONSES TO WASHINGTON POST, FEB. 4 STORY ON SSI CHILDHOOD DISABILITY PROGRAM

. By relying largely on a disgruntled state employee in Harrisburg, PA to critique SSI eligibility policy, Woodward/Weiser misrepresented the new test that allows disabled children only with "severe" disabilities to receive SSI. This employee, confessed to Woodward she had worked to "subvert" the program yet she is the only source quoted as to how the policy works. Refusing to apply legally mandated disability evaluation standards, she rationalized her actions on the grounds that "any deviation" from "age-appropriate behavior" would qualify a child -- a complete distortion of federal policy.

Woodward/Weiser ignored what many in and out of government told them that only serious deviations in multiple functional/behavioral domains (e.g. cognition, communication, etc.) could qualify a child. For example, infants and toddlers qualify only if they function at developmental levels of between 2/3 to 3/4 of chronological age in 3 domains.[1] (This also is interpreted to be more than 2 standard deviations from the norm in standardized testing, e.g. IQ below 70.) See 20 C.F.R. § 416.924b. Rather than give the reader an understanding of the true policy, the authors use their questionable source who cannot and does not speak for HHS or SSA to resurrect anonymous anecdotes about children who get benefits by misbehaving.

. The writers assert that the Harrisburg doctor was suspended because "of her repeated protests." Even the facts in the article do not substantiate this charge. If indeed she told Woodward she

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[1] Thus a 3 year old infant with a "medically determinable" and "severe" impairment would have to think, talk and move around like a 2 year old.

acted to "subvert the program,"[2] (and it is not disputed that she refused to apply federal regulations), yet Woodward paints her not as a renegade bureaucrat who has taken it upon herself to deny benefits to needy children but as an innocent, martyr-like whistle-blower to reinforce his story and avoid the truth.

. The article reports on the 1972 legislative enactment of the SSI program, but then ignores the next 18 years of SSA misadministration during which over 600,000 children were denied SSI in a manner which even the Rehnquist Supreme Court, via a commanding 7-2 vote in 1990, decried as overly restrictive and illegal under the Act (an unusual decision by a very conservative Court). The reader is never given any sense of <u>why</u> this conservative Supreme Court found the program to be so arbitrarily run that it denied benefits regularly to children with a host of severe mental and physical impairments (e.g. cystic fibrosis, muscular dystrophy, mental retardation, autism, Down's Syndrome, etc.). Surely this would give some relevant insight into how the Court determined that the program did not reflect the will of Congress. Although Woodward selectively quotes the law's opponent, Senator Long, who lost in the legislative process, he totally ignores the House Conference Report available to all Members,[3] and the impassioned remarks of Rep. Mikva and Senator Hathaway, who both spoke persuasively about this group of the most needy Americans to the full House and Senate who the program was getting underway in 1976. Senator Hathaway's staunch support of the program, however does not gibe with the story's theme - that some little known staffer slipped it into the bill and put one over on Senator Long and the rest of Congress. Of course nothing could be further from the truth - it just does not make for a good story.

. The article failed to explain, as the writers heard from most of those they spoke to across the nation and in D.C., that the increased growth of SSI for disabled children, 1990-1993 came from a variety of factors, not just the new Court-mandated "Individualized Functional Assessment" test (the actual qualifying test never mentioned in the story). These factors included: (1) The two decade/long legacy of arbitrary, illegal denials the Rehnquist Court had found, and the Court ordered class relief to reach these children and review their claims; (2) The unprecedented national outreach and media campaigns of both SSA and those funded by

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[2] Woodward called her director, Howard Thorkelson on Feb. 2 in Harrisburg, asking him for a reaction quote to her statement. Neither statement or reaction appear in the story.

[3] The Report to Congress was quite open in describing the program and these children as "among the most disadvantaged of all Americans" and "deserving of special assistance." H.R. Conf. Rep. No. 231, 92d Cong., 2d Sess., 1972 U.S.C.C. and A. N. 4989, 5133.

private, national foundations. Previously there had never been a concerted outreach campaign in the program's history. The Mental Health Law Project in D.C. estimated in 1990 that there were over 1 million disabled children eligible for SSI but not receiving it, a figure that no one at SSA questioned. Woodward and Weiser knew these facts well, knew the value of outreach program to poor, entitled and uninformed parents, but never considered this relevant.

. The article reports that 770,000 children now receive SSI, but by suggesting that an overly liberal eligibility standard (as misdefined by the Harrisburg doctor) is the prime cause, seriously misrepresents the growth to the public.

. The long article says not one word (beyond a case example of how one mother spent funds for her son) of how beneficial the program has been to improving the lives and providing access to necessities of life, therapy and medical care for tens of thousands of children. It is irresponsible to report on the growth of a program directed to those living below or near poverty levels without inclusion of these beneficial outcomes. Both reporters were given access to professionals and families across the nation to document these widespread benefits, but deliberately chose not to report these facts or even suggest positive consequences for children. Reducing a contemplated "series" down to one long piece, is no excuse for such irresponsible reporting.

. Failing to find and document the widespread abuse they seemed to anticipate, they were unable to let the truth of a program's success alter their initial story line of a run-a-way entitlement program. (Note: The "series" they said they planned for last summer, became this delayed one-story item with a total absence of real facts on how the program impacts on families.)

. The article gives the impression that changes in the new test were simply the result of clever lawyers and a receptive Supreme Court with no congressional oversight. This, not only ignores the legislative history referred to above, but more recent congressional hearings in 1989-90 addressing inadequacies in the program and bi-partisan legislation introduced by the late John Heinz (S.2290, 101st. Cong., 2d Sess.) and Don Reigle and others in the Senate and Rep. Downey (H.R. 4229) to clarify that the Act indeed required an "individualized functional assessment" of disabled children (the test the Supreme Court ordered). Other congressional efforts, such as Senator Dole's amendment to the 1990 OBRA requiring SSA to notify Zebley class action parents that they could legally shelter lump sum payments in trusts to safeguard the child's future needs, illustrate substantial Congressional involvement, knowledge and support for the program and its expansion. Despite Woodward/Weiser's access to this legislative history, one will not see even a hint of it in the story, because again these truths didn't comport to what journalists call the "story-line."

. The article also ignores any reference to the many mainstream professional medical, psychological and impairment-related organizations and 30 states who criticized the pre-1990 practices and submitted 10 Amicus briefs to the Supreme Court, and after the Court's decision offered their expertise to SSA to devise a sound new test. The American Academy of Pediatrics was a very active participant among others, and their ignored involvement (totally unreported in the story) stands in stark contrast to the extraordinary credibility accorded one non-practicing doctor in Harrisburg. (Dr. James Perrin, chair of the Academy Committee on children with Disabilities, is sending a critical letter into the Post.)

. Lastly, part of the articles's misrepresentation of an uncontrolled expansion of the SSI program and an unrealistic, too liberal "age appropriate standard that Porter [the Harrisburg doctor] criticizes," is the writers' complete failure to show that in the actual operation of the "new standard," 45% of children nationwide have been denied SSI from 2/1/91 to 7/31/93. This totalled 471,455 children denied SSI. And in Pa., where Porter worked and according to Woodward's slant, "protested" the new rules (essentially by refusing to apply them), about 43% of children have been denied in this period, or about 19,000 seeking aid. None of this appears in the story, as it might have suggested strict standards that do not reflect an open door to eligibility.

. Finally, among these great numbers of denials we shared voluminous SSA data with Woodward/Weiser of unprecedented high error rates found by SSA's own Quality Assurance staff. The national error rate average in denied claims totalled 21% nationally--meaning that state agencies were erroneously denying even after the Supreme Court decision one of every five children applying. There were never similar error rates among allowances to children.

Since this data represented samplings of tens of thousands of cases by the DQB Regional staff of SSA, who are very separate from the disability claims evaluation staff, they provide at least relevant and one would think objectively news worthy information to suggest an absence of abuse and a totally unreported problem of severely disabled children still not making it through the bureaucracy to obtain aid. But, again why confuse the "story line."

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February 14, 1994

Letters to the Editor
The Washington Post
1150 15th Street, N.W.
Washington, D.C. 20071

Gentlefolk:

I am writing in response to your February 4, 1994, article on Social Security's Children's Disability Program following the Supreme Court's decision in *Zebley*. I work with families with children with severe disabilities. I know the reality of their lives and the importance of SSI and Medicaid in maintaining family stability and in meeting children's health needs. Before *Zebley* only infants and toddlers with the most catastrophic of disabilities would qualify -- even children everyone knew would meet Social Security's restrictive pre-*Zebley* rules once they reached age 4 or 5. Now when such infants and toddlers qualify for SSI they also qualify for Medicaid to cover early intervention and treatment services. For some the timely services has meant that they have improved so that there is no longer a significant or substantial disability by the time they reach age 5 or 6!

One positive change brought about by the implementation of *Zebley* has been the requirement that children be evaluated individually to determine the severity of the overall impact of their impairments. When a child applicant does not fit into one of Social Security's disability categories or listings, the child is then compared to his nondisabled peers because substantial and significant discrepancies in functioning may indicate a disability which meets the SSI standard. While the individual approach makes the job of disability evaluators like Dr. Porter a lot harder, the system is now a lot fairer. Before *Zebley* Dr. Porter would take a child's medical records and see if the child fits in one of a limited number of cubbyholes. If the child did not fit, then regardless of the child's disability problems Dr. Porter was excused from the hard job of individually evaluating the child. For instance, before *Zebley* there was no place in the disability evaluation process to consider the impact on a child of having a a tracheostomy. A tracheostomy is a surgical opening in the neck through which the child breathes.[1] Since Zebley tracheostomies are considered in individual evaluations and, for children under the age of three, Social Security has concluded that children with tracheostomies have a disability which meets its disability standard. Before *Zebley* we would see children who qualified for nursing home placement but whose disabilities were not among those recognized by the SSI Children's Disability Program!

A disturbing aspect of the article was its "blame-the-parents" tone. I have been around long enough to remember when it was presumed that such disabilities as autism were caused by inadequate "mothering." We since have come to understand that although autism manifests through a variety of behaviors, autism has an organic, physical basis. Further, even where it can be established that family environment contributes to a disability and where the disability is so severe and chronic that it meets the SSI standards, then eligibility for SSI means access to treatment and case management services that would not otherwise be available. Treatment and case management services linked to the receipt of SSI may mean for that child a chance to improve his ability to function, a chance at becoming a contributing adult.

Finally, I agree something needs to be changed about a family's options when there is a large retroactive award. Now families are required to spend down the award in six months or be cut off SSI -- even though most want to set aside some or all for their child's future special needs. Some families have gotten an attorneys to set up special needs trust so that the retroactive award remains available to cover their child's future medical, rehabilitation and educational needs not covered through other sources. Families should not have to involve a lawyer in order to be able to set up such a special account which is not counted as a resource and where expenditures for special needs would not be counted as income.

Sincerely,

Marilyn Holle

Marilyn Holle
Senior Attorney

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[1] A tracheostomy prevents the child from being able to speak, unless temporarily blocked off, because the opening is below the voice box. Secretions are suctioned out through the tracheostomy so as to avoid lower airway obstruction and aspiration pneumonia from the pooling of secretions in the lungs.

BAZELON
CENTER
MENTAL
HEALTH
LAW

*Formerly Mental Health Law Project*

February 8, 1994

Letters to the Editor
The Washington Post
1150 15th Street N.W.
Washington D.C. 20071

The Post's portrayal of the Supplemental Security Income program for low-income children with severe disabilities ("Costs Soar for Children's Disability Program," February 4) is an unfortunate caricature. Far from being a program that has "gone haywire," SSI is consistent with both liberal and conservative thinking about family policy: It encourages low-income families to stay together, promotes work and is founded on the principle that families, not bureaucracies, are in the best position to meet the needs of a child with a severe disability. It is a program that works.

You would never know any of this from an article featuring baseless charges that SSI subsidizes children who curse teachers or who engage in "routine rebellion"—a charge so inflammatory that it was immediately picked up by other journalists (Jonathan Yardley on February 7). Indeed, the article never explains what kinds of disabilities qualify children for SSI benefits.

About one fourth of children who receive SSI have physical disabilities. Of the rest, children with mental retardation are the largest single group, about 43% of all children in the SSI program. Another 15% have severe neurological or sensory conditions, such as cerebral palsy or severe vision or hearing impairments. The remaining children are the 17% with severe mental disabilities, such as autism and various kinds of psychiatric conditions, including severe emotional disorders.

Contrary to the article's assertion, no child could qualify for benefits just by being a disciplinary problem. That is because the eligibility rules are so tight. The 1991 rules, written by a panel of the nation's most respected pediatric and mental health experts with knowledgeable officials from the Social Security Administration, were designed to end the wholesale exclusion of children with severe mental and psychiatric disabilities. The new rules did not open the floodgates, however, but simply gave these children access to the family support and health care that had been available to other impoverished children with severe disabilities.

The SSI program for children is about helping low-income families and making it possible for them to stay together. SSI enables parents to meet the complex needs of a child with a severe disability, helping the child learn, gain independence and, as an adult, be productive. Most parents use the monthly checks to pay for such things as transportation to therapy and specialized services and equipment that health insurance or Medicaid won't cover. By paying for services like rehabilitation, special tutoring and respite care, the extra dollars often enable a severely emotionally disturbed child to remain at home and avoid the pain and staggering cost of institutionalization.

To be sure, the SSI program could be run more effectively. Some of its irrational rules, particularly the requirement that back benefits be spent within six months, need to be changed. But in the end, a program ought to be judged by whether it helps most of the people it was designed to serve. Contrary to the misleading picture painted by the *Post*, the SSI program for children does.

Leonard S. Rubenstein, Executive Director
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which operates a national Children's SSI Campaign

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February 8, 1994

Letters to the Editor
The Washington Post
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To the Editor:

The recent report by Woodward and Weiser represents a serious misreading of the Supplemental Security Income program for children with disabilities and a superficial investigation of the key changes that have occurred in this program over the past decade. Although the report commendably reviewed the limited legislative history for this program from the early 1970's, the investigators seemed unable to review the Supreme Court decision in Zebley vs. Sullivan, the several changes in Federal regulations affecting the determination of children's disability both before and after the Zebley decision, or basic information on who is enrolled in the program currently.

The report misleads especially by stating that the majority of children who qualify have mental disorders rather than physical ones. Only about one SSI child in ten has a primary mental health disorder; rather, the majority of children have primary developmental retardation (with strict IQ requirements to meet this listing) or major diseases of the nervous system. The 10% with mental health disorders include children with such serious conditions as autism and schizophrenia. Children who curse teachers, fight with classmates, or perform poorly in school do not receive benefits just for these behaviors. Other children who do receive benefits are those with Down Syndrome, severe congenital heart disease, major paralytic conditions, and cystic fibrosis, among others.

The Post article appears to associate all the growth in the children's SSI program to the 1990 Supreme Court Zebley decision. An additional fundamental change in the program, begun well before the Zebley decision, came from the revision of the children's mental impairments listings, first published for comment in August 1989. This listing revision used the term "age appropriate" and described assessment of children's functioning to determine mental health disorders. The final new rules for assessing children's mental health conditions were published in late 1990, shortly after the Zebley decision. To say that the age appropriate standard was written by regulators after the Supreme Court ruling is inaccurate. Rather, it represented a serious attempt by the Administration in the late 1980s to recognize that children's disability must be understood in functional terms. Furthermore, despite the comments attributed to Dr. Porter, the age appropriate criterion does not determine eligibility based on minimal variations from norms, but rather substantial variations from expected development and behavior, recognizing the wide variety of ways that children grow and develop.

The Washington Post report raises questions about the justification for a children's disability program. Ample data demonstrate that raising a child with a significant physical or developmental disability greatly increases family costs and decreases family income. Although health insurance, private or public (Medicaid), covers many medical care costs, these families face many additional costs that are paid out-of-pocket and indeed have the highest out-of-pocket cost of any identifiable population. Furthermore, having a child with a disability significantly increases the likelihood that both parents in two-parent families are employed. Thus diminished income makes these extra costs even harder to bear. Essentially all other industrialized countries provide cash benefits to families who have family members, including children, with significant disabilities, recognizing these additional costs to families.

Data from before the Supreme Court decision indicated that far fewer children received SSI benefits than did adults with comparable levels of disability. Indeed, a number of us advising the Administration at that point estimated that a realistic number of children who would be eligible for SSI, using criteria comparable to those used for adults, would be between 1 and 1.2 million. Thus, despite the growth in the program in the past four or five years, children with disabilities have not yet achieved equity in comparison to adults with disabilities.

The vast majority (over 90%) of children and adolescents with disability will survive to become young adults. With effective community support and appropriate interventions, the large majority of these young people can become effective, participatory, and employed members of our society. The SSI children's disability program represents an important investment in this population.

Very Sincerely,

James M. Perrin, MD, FAAP
Chair, American Academy of Pediatrics Committee
on Children with Disabilities

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February 16, 1994

Letters Editor
Washington Post
1150 15th Street, NW
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Fax: 202-334-1008

To The Editor:

We write to express our deep dismay over the Woodward/Weiser February 4 story on SSI childhood disability. Every program, public or private is occasionally subjected to criticism by people who allegedly know a neighbor who gets benefits and doesn't deserve them. The problem with these facts is that they are irrefutable in their anonymity. No one is naive enough to think that an agency as large as Social Security does not make occasional mistakes but they try very hard to rectify any mistakes that are made. The problem is that it is impossible to deal with the "undeserving neighbor" story when no one will put an identity to this mythical ripoff artist. Like the story of alligators in the sewers of New York, some people desperately want to believe they are there and no lack of evidence can ever persuade people to alter their belief. (Who after all really goes looking for them?) One would hope that a reporter like Bob Woodward would do better.

Unfortunately, the Post article denounces the SSI children's program without a shred of hard evidence. The article quotes a renegade bureaucrat who asserts that all that's needed for a child to qualify as mentally disabled for SSI is a few incidents of bad behavior. Nothing could be further from the truth. Both before and after we won the Zebley Supreme Court case that reformed the SSI program for children, only those children with severe impairments, documented by physicians can qualify for benefits. SSI regulations require a severe, medically determinable impairment causing substantial deviation from age appropriate norms in multiple categories of childhood functioning.

Mental health professionals are quite experienced at diagnosing truly impaired individuals. Can we really place any credence on unsubstantiated reports of parents who allegedly coach their kids to mislead teams of SSA psychiatrists and psychologists? Ask any parent who's tried to coach their child to keep a family secret. Can't we expect more of investigative journalists than a rehash of stories about anonymous cheaters? Whatever happened to having two independent sources for every reported fact? The fact is that Social Security only approves of about half (55%) of children's SSI disability claims; under the new standard over a half million children have been denied since 1991.

The problem with such irresponsible journalism is that it ignores the needs of real people struggling with very real problems. What extended family has not known the heartache and trials of children with serious and sometimes fatal conditions? It is these families that SSI is meant to help. Children with disabilities, are among the neediest and most deserving of all Americans, in the words of the House Conference Report (ignored by Woodward/Weiser) that recommended passage of this provision of the SSI program. They not only have all the normal needs of kids but they also support for a plethora of special needs, ranging from sophisticated, expensive child care and special schooling to special diets, medical services and equipment that is not covered by Medicaid or private insurance.

Rather than micromanage the lives of three quarters of a million families, we afford these families a modest ($454 per month--considerably less than the poverty level) allowance and we expect them to do what is best for their children. We know that the vast majority of American families who receive this aid do just that. Theirs is the story that should be told; their successes are what deserves coverage.

Sincerely,

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Chairman FORD. We will address some questions shortly, but Mr. Simmons is recognized at this point.

## STATEMENT OF SAMUEL J. SIMMONS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL CAUCUS AND CENTER ON BLACK AGED, INC., AND CHAIRMAN, SAVE OUR SECURITY COALITION COMMITTEE ON SSI REFORM

Mr. SIMMONS. Congressman Ford, I appreciate the opportunity to testify at this hearing on the SSI modernization project. I am appearing today as the president and chief executive officer for the National Caucus and Center for the Black Aged and as the chairman of the Save our Security [SOS] Committee on SSI Reform.

Nearly 50 organizations are members of this committee and Dr. Flemming, who chairs the SOS, established this committee to follow through on the recommendations. The board of directors of SOS strongly favors the activities that we are undertaking and I favor them as well.

At the outset, I recognize that these proposals are costly. I know, as you do, that Congress will not enact the entire package now because of political, budgetary, and economic considerations.

Consequently, I am here today to talk with you and your staff about adopting positive alternatives to improve SSI and to take an important first step toward implementing the recommendations of the SSI modernization project proposals. There is no need for me to go into the litany of the 5-year costs. You have that on the record. And I think there is a middle ground, however, that we can use in terms of working on some improvements.

I sincerely hope that this hearing can help to lay the groundwork for measures to improve and perfect SSI. In my view, the No. 1 need for SSI is to improve the benefit levels. I strongly support the SSI modernization's long-term recommendation. I recognize that it may be years before we can achieve this objective. However, Congress intended that SSI should protect needy aged, blind, and disabled persons from the humiliation of living in poverty.

The Senate Finance Committee report made this point clearly and emphatically when it established the SSI program saying that SSI was created to provide a positive assurance that the Nation's aged, blind, and disabled persons would no longer have to subsist on below poverty level incomes.

Poverty has risen steadily and ominously for persons age 65 and older during the past 3 years. In fact, the number of elderly poor individuals has jumped by more than 600,000 during the latest 3 years that the Census Bureau has information—from 3.4 million in 1989 to 4.4 million in 1992. The poverty rate for older Americans has also climbed from 11.4 percent in 1989 to 12.9 percent in 1992.

For older blacks, SSI reform without a benefit increase would be a total copout. As you may recall, Congressman Ford, NCBA worked with the Congressional Black Caucus in the House Committee on Aging during 1986 to assess the status of elderly blacks throughout the Nation. The witnesses who testified at these forums throughout the Nation and leaders made several points.

The message from elderly blacks was brief and blunt. They are among the poorest of the poor in our Nation by any objective standard. In fact, older blacks are more than three times as likely to be poor as elderly whites: 33 percent versus 10.9 percent in 1992.

It is truly disappointing for me to report today that the economic plight of aged blacks has deteriorated in recent years. In 1986, 31 percent of all blacks 65 years of age or older in the United States were poor. As I stated earlier, this proportion has swollen to 33.3 percent in 1992.

Economic depravation is especially widespread for certain aged blacks, particularly women, those living alone or with nonrelatives, and the very old. For example, 57.9 percent of all aged black females living alone in 1992 were poor and nearly three-quarters were either poor or marginally poor.

These statistics really demonstrate the magnitude of the problem. And I have some proposals that I would like to make in this regard at a later time with you and members of your staff. There are a number of other recommendations that I could make, but they have been made by others. And the major thing that I really want to do is talk about this issue relating to poverty and the need to increase the benefit level.

First of all, I am always asked the question, how can you cut down on the number of people under SSI? Well, after all, poor people don't create poverty. Society creates poverty. The SSI program is nothing but a safety net there to protect people who are in poverty. And society has to help them get out of poverty. Yes, you can improve the efficiency of the program, but there is no way in the world that you will ever be able to squeeze all the money you need out of it to take care of what is a society problem.

I took a look at some things and I said here in this Nation today there are about 115 million people who send in tax returns. I said, if we gave all of the single persons $10 a month more and the couples $15 a month more, how much would that cost? That is the typical tax return payer. It would cost about $6.75 a week per year per taxpayer. Or 13—$6.75 per week per taxpayer. Now, that isn't a lot of money.

Also, I took a look in terms of trying to fill out for every dollar of return what would that cost, how much money is that? If you wanted to give a typical SSI recipient $1, that would really amount to about $59 million for each dollar that you give them. And so if you ask me what is a fair amount, what should we do, my response would be how many $59 million are you willing to spend.

And, see, there isn't any question in my mind that we can find—the Ways and Means Committee can find ways to sweat this out of all these enormous things over which they have jurisdiction. They were clever enough to find ways to cut back on the deeming to make it now in order to pay for the unemployment, they cut it back to say that the deeming period is 5 years rather than 3 years.

They were creative enough to do that, and I say that they are creative enough to do other things in terms of being able to improve the amount of money that is made available to people who live below the poverty level on an incremental basis. I say that the challenge is there, I say that the opportunity is there. Let's get with it. We can find a creative way to do it.

Thank you.

[The prepared statement follows:]

## TESTIMONY OF SAMUEL J. SIMMONS
## PRESIDENT AND CHIEF EXECUTIVE OFFICER
## NATIONAL CAUCUS AND CENTER ON BLACK AGED, INC.

Congressman Ford and Members of the Human Resources Subcommittee, I appreciate the opportunity to testify at this hearing on the SSI Modernization Project. I am appearing today as the President and Chief Executive Officer for the National Caucus and Center on Black Aged and as the Chairman of the SOS (Save Our Security) Committee on SSI Reform. Nearly 50 organizations are members of the SOS SSI Committee. Dr. Arthur Flemming, who chairs the SOS Coalition, established this Committee to work for the prompt adoption of the SSI Modernization Project's recommendations. The SOS Board of Directors enthusiastically endorses the key elements of the SSI Modernization Project report.

I fully support these recommendations, too. I believe that they are urgently needed to improve conditions for some of the most economically deprived persons in our society today.

At the outset, I fully recognize that these proposals are costly. I know as well as you do that Congress will not enact the entire package now because of political, budgetary, and economic considerations.

Consequently, I am here today to talk with you and your staff about adopting positive alternatives to improve SSI and to take an important first step toward implementing the recommendations of the SSI Modernization Project proposals. There is no need for me to go through the litany of the five-year costs for key elements of this comprehensive package because you have already documented this in your press release. I think that there is a middle ground, though, to achieve a compromise in order to make long overdue improvements for SSI and in a fiscally responsible manner.

I sincerely hope that this hearing can help to lay the groundwork for measures to improve and perfect SSI. In my view, the number one need for SSI is to improve benefit levels. I strongly support the SSI Modernization Panel's long-term recommendation to raise SSI benefits in increments until they eventually reach 120 percent of the poverty line. I recognize that it may be many years before we can hope to achieve this objective. However, Congress clearly intended that SSI should protect needy aged, blind, and disabled persons from the humiliation of living in poverty. The Senate Finance Committee report made this point clearly and emphatically when it established the SSI program, saying that SSI was created "to provide a positive assurance that the Nation's aged, blind, and disabled people would no longer have to subsist on below-poverty-level incomes."

This, of course, has not been achieved. The federal SSI benefit standard represented 74.4 percent of the poverty threshold for a qualifying individual and 82.7 percent of the poverty threshold for an eligible couple when the SSI Modernization Panel issued its report. These figures have been fairly consistent, within a few percentage points, over the years.

Poverty has risen steadily and ominously for persons 65 years of age or older during the past three years. In fact, the number of elderly poor individuals has jumped by more than 600,000 during the latest three years that the Census Bureau has information -- from 3.4 million in 1989 to 4 million in 1992. The poverty rate for older Americans has also climbed from 11.4 percent in 1989 to 12.9 percent in 1992.

For older Blacks, SSI reform without a benefit increase is a total copout. As you may recall, Congressman Ford, NCBA worked with the Congressional Black Caucus and the House Committee on Aging during 1986 to assess the status of elderly Blacks in the U.S. The witnesses who testified at these forums throughout our nation -- and these include senior citizen leaders, government officials, business leaders, program administrators, professionals in the field of aging, and older Americans themselves -- made several key points. The message from elderly Blacks was brief and blunt. They are among the poorest of the poor in our nation by any objective standard.

In fact, older Blacks are more than three times as likely to be poor as elderly Whites: 33.3 percent vs. 10.9 percent in 1992. It is truly disappointing for me to report today that the economic plight of aged Blacks has deteriorated in recent years. In 1986, 31.0 percent of all Blacks 65 years of age or older in the U.S.

were poor. As I stated earlier, this proportion has swollen to 33.3 percent in 1992.

Economic deprivation is especially widespread for certain aged Blacks, particularly women, those living alone or with nonrelatives, and the very old. For example, 57.9 percent of all aged Black females living alone in 1992 were poor, and nearly three-quarters (73.3 percent) were either poor or marginally poor.

These statistics dramatically demonstrate, in our view, that inadequate income in retirement is clearly the number one dilemma for elderly Blacks, as well as many other older Americans. This is why I am very emphatic in stressing that SSI benefit levels need to be raised if our nation is serious about removing the ugly cancer of poverty for the aged, the blind, and the disabled.

I have a proposal, which I would like to discuss at a later time with committee members and your staff, because the current time allotment will not allow me to cover other recommendations. However, this measure can provide welcome relief for needy recipients and at a very modest cost -- and for only pennies a week for each tax return filed in the U.S.

If our nation cannot do this for an economically deprived grandmother or grandfather or a mother or dad, then there is something radically wrong with our society. I personally believe that Americans are basically good. They would, in my view, make this very small sacrifice if they fully understood the facts. I think that most Americans would be willing to give up one soda or a beer during a month to help needy aged, blind or disabled persons live more decently.

I strongly endorse other major elements of the SSI Modernization Project. Compromise will probably be necessary for these measures because of cost considerations, such as repealing the one-third benefit reduction when an SSI recipient lives in the household of another and receives in-kind maintenance and support. This provision is anti-family because it clearly discourages family members from helping needy relatives. Unfortunately, it may also have the unintended effect of causing some low-income persons to be unnecessarily or prematurely institutionalized. Moreover, Social Security Administration (SSA) personnel have emphasized that the administration of this provision is one of the most complex and time-consuming tasks confronting them. Ideally, I would like to see this provision repealed. However, this measure is projected to have a $1.7-billion total cost in terms of SSI, administration, and Medicaid when it is fully implemented. There may be some mid ground to lessen the harmful effects of this provision and at a lower cost. In any event, I am prepared to work with you and your staff to improve upon the existing one-third reduction. There is also an added benefit if the Subcommittee improves the existing provision. Fewer SSA personnel would be required to administer this cumbersome measure. They could therefore be freed up to perform other urgent tasks confronting SSA, such as reducing the waiting period for processing disability applications. Consequently, action on the one-third reduction provision can also be beneficial in responding to SSA's staff requirements.

In addition, I support updating the countable resource limitation to adjust for past and present inflation. Finally, I urge that the Subcommittee approve permanent authority for SSI outreach to ensure that more eligible persons receive the benefits that they are legally entitled under the law.

Thank you again Congressman Ford and Members of the Human Resources Subcommittee for this opportunity to testify. The SOS SSI Committee and the National Caucus and Center on Black Age look forward to working with you. I shall be glad to respond to any questions that you have.

Chairman FORD. Just following up on that Mr. Simmons, I know you said we should be creative enough to make it cost neutral and, naturally, anything that is reported from this subcommittee or the full Committee on Ways and Means would basically have to be cost neutral.

Can you give us some modest recommendations as to where we should be looking. Not shifting it back to you, but I am going to be charged with that responsibility if we accept any of these recommendations and I will try to move forward with them. I won't be able to say to my colleagues, you will find a way to do it. We are going to have to package recommendations with financing mechanisms to be adopted by this subcommittee and reported from the full committee.

I am looking for suggestions from those who indicated that we make SSI reform cost neutral and fit within the budget. I don't like working under these budget restraints in legislating and making new policy in the Congress, but the leadership and the administration see fit for that to happen, so we have to be governed by those rules.

Mr. SIMMONS. Do you want me to be creative or do you want me to try to come up and give you the thing that is the most politically responsive? Because if you ask me to just be creative, and if I could just wave a magic wand in terms of how I would do it, I would reduce the amount of money that people can write off their income tax for property, and use some of the savings from that to pay for the kind of modest increases that I am talking about.

I made that recommendation to one Congressman.

Chairman FORD. You made it to me in my office.

Mr. SIMMONS. I was about thrown out.

Chairman FORD. I am the one that you made the recommendations to, but I didn't mean for you to reiterate that one.

Mr. SIMMONS. But those are the kind of things and, of course, there are some tax loopholes relating to foreign corporations and things of that sort.

Chairman FORD. Just basically speaking, really trying to limit it to the area of the jurisdiction of this subcommittee. There has been some other things that have been talked about. What about the COLA, should it be tied to the Social Security COLA for the SSI recipients, since this is a means-tested program and Social Security is not?

Mr. SIMMONS. No, I wouldn't tamper with the COLA because I don't know enough about what the full implications of that would be in terms of impact upon people. But, again, I get back to what I had said to you before about is $59 million a lot of money. Is $590 million. When we talk about $1 trillion, the budget, is $590 or $600 million a lot of money or $800 million a lot of money for this committee to come up here.

Chairman FORD. Well, $400 million over here, $600 million over there, $800 million, when you finish with all the recommendations that are being made and you look at the bottomline, it adds up to some dollars that are really out of our control.

I have listened to the evidence, whether it is drug addicts or alcoholics. We are looking at other areas involving maybe some fraud and abuse in the SSI program. I have stated very clearly, as the chairman of this subcommittee, the aged, the blind, and the disabled, will be given the attention they deserve. We will consider these recommendations, especially increasing the benefit level, when we report to the full committee.

But there are other concerns that are out there such as cost neutral proposals, and it would be tough to pass or suggest to the full committee any reforms recommendations in this area.

Mr. SIMMONS. One of the things——

Chairman FORD. To offset the costs, I am speaking of.

Mr. SIMMONS. One of things we could do is restore what was taken away to pay for unemployment compensation. That is one of the things. We could go back and correct that. That was one case where Peter robbed Paul for programs.

Now, beyond that, the only thing that I can say to you is that I think we have a chance to make a modest beginning, because, as you said, $400 million here and $400 million there, there is no money. So at the end of the year, if you told me all that you could come up with was $800 million, I would strongly urge everybody to vote for you again.

Chairman FORD. Let me ask you this. You have expressed concern over the inadequate amount of income aged African-Americans face in retirement. The modernization project made two recommendations that may benefit African-Americans. One, eliminate consideration of inkind support and maintenance as income; and two, increase resource limits to $7,000 for individuals and $10,500 for couples while streamlining the exclusions.

Do you support it?

Mr. SIMMONS. Yes. I support those but, again, we are having a tough time getting $15 or $20 a month on benefits. And when we start talking about some of these others in terms of the inkind contributions, that is going to add money that really has to be totaled. And after I said yes to those, your retort to me is, "Where is the money going to come from?" I don't have the answer for where the money is going to come from for those important gains.

Chairman FORD. And we are certainly not asking the witnesses and those who work in this field and represent the aged, the blind, the disabled, and the elderly to come here and find the ways for us to do it, but oftentimes, we certainly like to hear suggestions from those that testify before these subcommittees.

But back to that question, do you support these recommendations? Would these recommendations benefit the aged as they enter into retirement?

Maybe I can ask Ms. Paschall.

Ms. PASCHALL. We believe that these recommendations would in fact benefit the elderly poor and the needy. We do believe that.

Chairman FORD. You do believe that?

Ms. PASCHALL. Yes.

Chairman FORD. And if you had to prioritize these recommendations, what would you recommend?

Ms. PASCHALL. We did not. I know you are asking me if I would prioritize.

Chairman FORD. Knowing that we are not going to adopt all of these items because it would be a big ticket item, and I think the members who served on the modernization project realized that

that panel would know that this subcommittee would not adopt all of their recommendations, what do you think we should focus on?

As chairman of this subcommittee, I will make recommendations to my colleagues both on the minority and the majority side, but I would just like you to prioritize your recommendations. I didn't ask Dr. Flemming this earlier, to prioritize, but he served on the modernization project.

But I want those of you who work with these organizations and are very much in tune with the elderly population, disabled population, and blind population of this country, to prioritize your recommendations.

Ms. PASCHALL. I would say that, Mr. Chairman, we would first need to raise the benefit level to the poverty level at least. With regard to the——

Chairman FORD. See, we are talking about the elderly population, what happens here, when we take into consideration food stamps, medical assistance, or in some cases housing assistance? We aren't talking about 75 percent of the poverty level when these others are considered as well.

Mr. STEIN. Mr. Ford, may I just speak on this point. I think there is a misassumption that you can fold in medical assistance to reach the poverty level. The poverty level really is a standard that is separate and apart from medical assistance.

Chairman FORD. Well, food stamps and housing assistance.

Mr. STEIN. But when you have such a small percentage of people nationally getting housing assistance, probably 10 percent or 5 percent of poor people are in section 8 or public housing. So you really have a very small percentage. Medical assistance, I think is certainly inappropriate to fold in. And then many people are very critical of even the 100 percent of the "poverty level" index as being an inadequate standard because it was put together years ago on the fairly arbitrary assumption of taking three times the value of a low-income food diet as the measure of poverty.

Many people believe that 150 percent of poverty is really a more realistic level, so I think my cowitnesses here are saying that even if you were to add food stamps to an increased SSI grant at 100 percent of poverty level, it would really not bring people out of poverty.

Chairman FORD. A statement was made that maybe we ought to bring the SSI recipients up to the poverty threshold. I am just wondering whether or not when we take into consideration the SSI cash benefits along with food stamps and medical assistance, excluding housing assistance, recipients are closer to the poverty threshold.

Mr. STEIN. Well, you have to also ask what percentage of SSI recipients are getting food stamps. One of the problems with the food stamp program is a takeup; that is, the people who are eligible are not all getting food stamps. Also, the average amount of food stamps received by SSI may be about $20 a month, much less than for a welfare recipient. I am just raising some questions for you and the staff to look at that you can't just assume that everyone in SSI is getting food stamps, or that it is very much, and if they are not, I think that may complicate the assumption.

Chairman FORD. All right. Let me shift back to your testimony and the testimony of one of my colleagues, Ms. Lambert of Arkansas. Would it be better to give children services to help them overcome their disabilities rather than a cash payment? In some cases, kids are in fact placed in an uncomfortable position, maybe, because of the cash benefit.

Mr. STEIN. Well, I think from our experience, which is real life experience with thousands of parents, we can trust parents to make good decisions, the great majority of parents do make good decisions about their kids. The needs of disabled kids are so varied, they are enormous. They go from the South Carolina paraplegic kid who needed plumbing facilities, to a child who needed private schooling for his learning disability, to another family that needed to make their home accessible to a child. The needs are so vast that only a cash benefit could meet them; you couldn't use vouchers or a particular service.

I think you really need to trust in parents and I think the great majority can be trusted, but you can also take steps to make some advice services available to them. Connect a kid with motor problems with the United Cerebral Palsy in the State or the Muscular Dystrophy Association or State agency for children with special health needs or an early intervention service and help a family in that situation.

If you find the very rare case of an irresponsible parent, we are saying those are parents who shouldn't be the representative payee. Let SSA find another parent or another adult relative to be the payee and pay that other adult. But that is a rarer situation than the great majority of parents who I think can be trusted and who are doing extraordinary jobs.

We just talked this week with a mother in Illinois who gave up her own kidney for a child's kidney transplant and she is struggling. I mean, the kidney transplant is not taking hold and she is dealing with the multiple needs of her son. What were the most pressing material needs this last year? The home was flooded three times; they lost the bed, the mattress, the basic living environment of that child who had to undergo daily kidney dialysis in that three-times flooded home.

Could anyone anticipate with a voucher or a service what would be the needs of this family? It would be impossible. But having cash available for that mother allows that child now to have, in the house a clean, dry bed and a mattress for home kidney dialysis and that is what cash does for a poor family. In sum, I think we should look in a realistic way about what parents really do for their kids, and I think we shouldn't make assumptions—I am not saying you or anyone here has made them—that parents can't be trusted to do those things.

Chairman FORD. By no means am I making that statement. If I said anything that would lead you to let me clarify.

Mr. STEIN. I understand that.

Chairman FORD. I have not said that at all.

Mr. STEIN. I have heard some other people make that. I think one can ask valid questions, and I think since everything needs fresh looks, I think the experience is that parents are doing extraordinary jobs with very limited money (which still keeps most families below the poverty level).

But we do suggest some fine tuning adjustments like setting aside lump sums in a bank account, that may let a parent do the kind of planning and looking out for that kid's future that a middle class family does all the time. Let's not create artificial rules that are not in the kid's best interests. And these are some of the fine tuning changes spelled out in more detail in my written statement that I think could make this a better program.

Chairman FORD. I would be in agreement with that, but I have a problem with some of the things that have been suggested because I don't find the scenarios to be true in my area. It is very, very difficult for the State Disability Office to approve claims for the elderly and for children with disabilities. Well, maybe not for the elderly, if the Social Security check does not exceed the Federal benefit rate, but it is very difficult to approve disability benefits for children.

I have heard from other witnesses that this is not true. In cases where immigrant claimants who might have middlemen with some type of scheme going on, or in areas where drug addicts and alcoholics sometimes burden the program down with some type of abuse and fraud, it is not difficult for DDS to approve benefits. We have heard from you today that some children are allegedly being coached to receive and continue benefits. It is not that this subcommittee is just accepting these statements by these witnesses, but it is an area that we are going to have to look into.

Mr. STEIN. I understand. And in that inquiry, I think you should pursue the issue about eligible people having problems getting benefits. I mean, in Tennessee, the SSA quality assurance statistics that we have had access to for 3 years show that of the 1,500 children disability cases that have been sampled by Social Security from Tennessee, the error rate on the denial side is twice as high—over twice as high as errors for allowances.

The Tennessee error rate in allowances is 4 percent, which is about the norm for adults. For denied kids in Tennessee, it is 10 percent. Which means one out of every 10 kids is being denied in error under the new rules required by the Supreme Court decision. I think that is where focus of your inquiry needs to be given.

If there are still problems as we think there are with eligible kids who are getting denied, we would welcome your subcommittee's interest in that, too.

Thank you.

Chairman FORD. Thank you very much.

Mr. Simmons, thank you very much again for your testimony. Ms. Paschall, thank you very much.

Ms. PASCHALL. One more thing.

Chairman FORD. Please.

Ms. PASCHALL. Mr. Chairman, with regard to the priorities, we would be very happy to have our staff study this issue and make a report to you.

Chairman FORD. I certainly would welcome that from you, as well as from the National Caucus on the Black Aged and the AARP.

[The information follows:]

AARP

[illegible]

August 24, 1994

The Honorable Harold Ford
United States House of Representatives
2211 Rayburn House Office Building
Washington, DC 20515

Dear Representative Ford:

This letter responds to your request at the March 1st hearing for additional information on the legislative priorities of the American Association of Retired Persons (AARP) regarding the Supplemental Security Income (SSI) program. Improving SSI has been a longstanding and important Association goal, and we have lobbied actively for legislative improvements in the program. In addition, we have undertaken more than 40 SSI outreach projects on our own or in collaboration with others, as well as having undertaken two outreach projects funded by grants from the Social Security Administration.

The Association's SSI priorities are as follows:

- Increase the federal SSI benefit up to the poverty level. Individual recipients should no longer be forced to subsist on an income that falls below a rock-bottom definition of poverty. We recognize, however, that in this time of fiscal restraint such a goal might have to be reached incrementally.
- Raise the asset level to reflect growth in the economy. The current level, which has been raised only once, in the program's history are far too low. These low levels hinder a recipient's ability to set aside even a modest sum for the proverbial rainy day or a medical emergency.
- Eliminate unnecessary restrictions that limit eligibility and benefit levels. Our highest priority in this area is modifying or eliminating the one-third reduction in benefits for those who receive in-kind support and maintenance. It is a significant deterrent to family members helping one another.

Over the last several years, AARP has worked with this Committee to put into law modest changes to improve the lives of those who receive or are eligible for SSI. We look forward to the opportunity to work with you and this committee for the adoption of additional improvements.

Sincerely,

John Rother

John Rother, Director
Legislation and Public Policy Division

American Association of Retired Persons 601 E Street, N.W., Washington, D.C. 20049 (202) 434-2277

Eugene I. Lehrmann *President* Horace B. Deets *Executive Director*

Mr. SIMMONS. There isn't any question that the whole SOS would be willing to work with you in looking at all aspects of the program to see if there is any way that you can sweat out savings such as being able to count the earnings in terms of the work incentive programs and things of that sort, but we can go through that and really see all of the savings that we could come up with.

Now, after we go through that, and it is not enough to reach what we are talking about, then where are we? The real challenge is, we can find ways to make the program more efficient. We can find ways to achieve savings, but in the end, ultimately we are going to have to find some dollars from someplace else to shift to this program, and it doesn't have to be a monumental amount. As you said, $400,000 here $400,000 there. We are willing to work on it.

Chairman FORD. It is a $20 billion program as we speak with 700,000-plus applications that are pending now or backlogged, rather.

I thank the panel very much for coming. Thank you for your testimony and your response to the questions.

And we call the last panel now, Elizabeth Boggs, member of the National Governmental Affairs Committee with ARC; James Gashel, the National Federation of the Blind, director of Governmental Affairs; and Norm Matloff, professor at the Department of Computer Science, University of California at Davis.

Thank you very much. The subcommittee will recognize Dr. Boggs at this point.

## STATEMENT OF ELIZABETH M. BOGGS, PH.D., MEMBER, NATIONAL GOVERNMENTAL AFFAIRS COMMITTEE, THE ARC (FORMERLY ASSOCIATION FOR RETARDED CITIZENS)

Ms. BOGGS. Thank you, Mr. Chairman.

First of all, I want to commend you and your committee for focusing on the report of the SSI modernization project panel. A lot of effort went into that and I think a good deal of sophisticated information was brought forward, and I want to express our appreciation for your focusing on that.

Chairman FORD. You were a member of the modernization project?

Ms. BOGGS. I was a member of that panel. I am here representing The Arc of the United States.

Chairman FORD. Could you pull that mike, Dr. Boggs, a little closer to you.

Thank you.

Ms. BOGGS. Is that better?

Chairman FORD. Yes, it is.

Ms. BOGGS. I am here representing The Arc, which was formerly called the Association for Retarded Citizens of the United States. I am an octogenarian.

Chairman FORD. Would you pull that mike down like that? Just drop it down.

Ms. BOGGS. Had I better start again?

Chairman FORD. No, ma'am, you are fine. I wanted you to pull it down so I could make sure I hear you. I didn't want to miss anything. Dr. Flemming and others made reference to you when they were testifying earlier, so I didn't want to miss anything.

Ms. BOGGS. I think I am representing disability in this category. Jim Gashel is representing people who are blind.

At any rate, I did have a very enlightening and stimulating experience I think. I reiterate to Mr. Fulton, I learned a lot. I have been tracking SSI since 1970 when it was just an idea in the minds of the Congress and I must say that the fact that I am a Social Security beneficiary and that my 48-year-old son who has been disabled since childhood also receives Social Security on the record of his deceased father to such an extent that he is not eligible for SSI, the longer I work with the SSI program, the more grateful I am that I don't have to contend with the hassle that goes along with getting that check.

People who get Social Security have a much easier time in managing their lives, going about their business than people with SSI, and not only do the recipients have the hassle, but it became clearer and clearer to us—and you have heard this from other witnesses—that the Social Security staff, administrative staff, has a terrible hassle in a lot of these provisions.

I agree with the implications of several things that were said earlier by witnesses, that we can streamline these procedures. And we, particularly, are looking forward to seeing what Rhoda Davis produces out of the reengineering of the disability determination process, because that is one of the most time consuming administrative tasks that are undertaken.

And that leads, of course, to the question that you are asking about our recommendation that there be an increase in staff. I think that our recommendation basically is premised on the need to have efficiency and timeliness in that disability determination process because it is the disability determination process part of this whole thing that is holding up the full parade.

People who are claiming on the basis of age don't have these delays. The claims representatives process there——

Chairman FORD. Only on the disability claims?

Ms. BOGGS. The disability claims are the ones that are holding up the show and creating such accumulation. I understand that the budget document anticipates 1.1 million people in the backlog by 1995. So that is getting to be a problem, and we do have this problem—"getting to be" is an understatement. It is and it has been for some time a problem, and we certainly hope that the reengineering improves it. But I don't think the reengineering can do it all and the question of how many staff members is really a question of, not only of how many, but how many and what they can accomplish. The quality of staff will depend on training and on their experience, and you can't just go out and find 6,000 people who are ready to do the job.

Certainly, we support the notion that the benefit level should be increased. I am not going to go into that. That has been discussed at some length. We would also like to see the resource limits increased to the levels mentioned.

I think that the evidence is that, with the exception of the rise in benefit levels, these other proposals are modest proposals in terms of the cost. The most expensive one of the four that are on the priority list, the most expensive one of the three left after you take out the benefit levels, is the one having to do with the inkind support and maintenance.

I noticed that in Congresswoman Meek's report from the CBO, they have included administrative costs for administering something which they propose to delete. In other words, it is going to cost more, they say, to administer a nonthing than it now costs to administer this complicated and nuisance program of deducting, giving people deductions for inkind support or maintenance.

Something is funny if you can have an administrative cost for deleting a requirement.

At any rate, finally, I want to speak quickly to the question of the work incentives. The proposal that is included in Mrs. Meek's bill on the work incentives—liberalization, if you will—was in fact brought to us, to the panel by the Social Security Administration itself, where they have a strong belief the work incentive program is desirable. And I point out in their proposal, what appears to be a very substantial increase in the basic original disregard, taking it from $65 a month to $200 a month, although nobody has mentioned it, it is a fact that $65 a month is a constant that has been in the program since it went into effect in 1974. It has never been indexed, so that is really not an extraordinary leap when you think about that.

I want to say a word or two in response to the questions that have been raised about should disabled children receive rehabilitation services in addition to or instead of cash assistance. Certainly they should receive rehabilitation services in addition to the cash assistance. However, the system has many sources for paying for rehabilitation services, and if they are not available, it is because there has been some failure in that system. We have not only Medicaid, we have the children with special health needs program under the maternal and child health program. We have several other sources through which people can get—children can get—rehabilitation services and they should be entitled to them as medical or social services and they should not be expected to choose between having rehabilitation services and having cash to pay for their food and clothing.

Finally, I want to say a thing or two about the growth in the program or the apparent growth in the program. Actually, the SSI program, if you set aside the effect of the *Zebley* decision, the growth in the program has not been spectacular when it is all added up. There has been a decline, as has been said here, in the number of elderly people who are receiving SSI. That is a result of the intentional interlock between Social Security and SSI.

Social Security benefits have risen. They have risen somewhat more than inflation and, as a result, fewer people, fewer elderly people, have to rely on SSI because they get Social Security benefits which are in excess of the SSI benefit level.

In the case of disability, we have a number of factors at work, one of which is that some time ago the Congress tightened up on the disability program, the Social Security program, making it somewhat more likely that people in that category would have to have some supplementary SSI.

A very significant portion of the young adults who are on SSI will eventually become eligible for benefits, such as my son, based on their father's—or their parent's Social Security record. But those benefits are only one-half or three-quarters of the benefits of the primary insurance amount in that account. Consequently, they are more likely to have to have a partial supplemental security addition to their total income to be counted on the list of SSI recipients. In addition to that, it is very clear that the people who were born in the post-World War II era had a much better chance of surviving if they had a disability than had been the case in the prewar period. That goes for spinal cord injury, head injury, and also survivorship with congenital conditions, such as Down's syndrome, and so forth, so there are reasons. As someone said, let's look at the reasons. And the reasons are there, and the baby boomers, we are about 10 years off from their coming—becoming of preretirement age (50–64).

We will be seeing more people with disabilities appearing at that stage in the game because the onset or the prevalence, or I should say, the incidence of disability increases, both the incidence and the prevalence increase with age, so it is a complex situation. And we have submitted the suggestions that we have, which very much, I think, conform to the opinions that have been expressed during the afternoon. And with that I will end.

Chairman FORD. Thank you, Dr. Boggs.

[The prepared statement and attachment follow:]

TESTIMONY OF ELIZABETH M. BOGGS, Ph.D. FOR THE ARC
COMMITTEE ON WAYS AND MEANS, SUBCOMMITTEE ON HUMAN RESOURCES
MARCH 1, 1994

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## INTRODUCTION

My name is Elizabeth M. Boggs, from Hampton, NJ. As one of the "experts" convened in 1990-92 by then Commissioner Gwendolyn King to advise SSA on its "SSI Modernization Project", I want to congratulate and thank the Subcommittee on Human Resources for calling this hearing to focus on the experts' recommendations. The subject is of truly vital importance to nearly 6 million recipients, not to mention every state government.

Mrs. King brought together a diverse group of extraordinary people under the inspired leadership of Dr. Arthur Fleming. In addition to the excellent statistical analyses that were supplied in response to our many questions, we learned much from the series of regional hearings we held in various parts of the country. Here we heard from applicants and recipients, and the people who care for and about them, - the people on the front line, the true "experts". This is indeed a discussion about Human Resources and how to conserve and enhance them.

## THE CONCEPT OF SSI - Supplementing Social Security

When SSI was enacted in 1972, it was given the name Supplemental Security Income to emphasize the intent that it should become an adjunct to OASDI, a supplement for those whose retirement benefits were for some reason (usually a low earnings record) inadequate, and for those whose disability benefits (public and private) were either lacking or were even less than the subpoverty level at which SSI payments were established. We have yet to reach the original target of providing a subsistence level of cash income for people who, by definition, cannot support themselves. We also have not fully implemented the concept of SSI as a safety net for people leaving the work force because of age and disability. We are still too much preoccupied with administering the program on the same assumptions that permeate AFDC. There is a need to recognize that people with severe disabilities, even when they work, have impairments that interfere with their activities, and often cause them to get less accomplished in an hour than the rest of us, whether on or off the job. Accordingly, we need to organize income maintenance supports as well as social supports to minimize the extra hassle they experience.

When SSI was inaugurated in 1974, the majority of recipients were aged and the program was organized primarily with their needs in mind. Today, individuals under 65 make up nearly two thirds of the total and an increasing proportion are adults under 50. The attached chart shows how the age distribution has changed. (In assessing the visual impression from this chart please note that the age intervals are not equal). There is now no doubt that survivorship with disability of people of all ages in the post World War II era has very much improved.. It is on the young adults and the children that I wish to focus your attention. These individuals contribute more person years to the prevalence of disability than do individuals whose impairments develop later in life.

## MENTAL RETARDATION AS A FACTOR IN DISABILITY

I am pleased to be here representing The Arc, an organization which I helped to found in 1950, when it was known as the National Association of Parents and Friends of Mentally Retarded Children. Children and adults of all ages who are disabled by mental retardation form a substantial subpopulation among recipients of SSI. They constitute more than 40 percent of the children under 18, 50 percent of those between 18 and 21, and 34 percent of those in the 22-39 age groups, for a total of approximately 800,000 under 40. Another 190,000 can be found in the age group 40-64, with an estimated 30,000 over 65.

Because mental retardation is by definition a condition that is manifest before age 18, most of these individuals have come into the system early, and have a variety of characteristics that impact not only on their ability to work but also their social self sufficiency. For example, although only 30 percent of all adult disabled recipients have representatives payees, among those with disabilities originating in childhood, 80 percent have been identified as being unable to manage their benefits in their own self interest. They come to adult status after a childhood in which their disabilities have interfered with normal learning in school, and they lack normal workforce experience prior to becoming disabled.

## THE RECOMMENDATIONS OF THE EXPERTS

It is now more than two years since the Experts met to debate and make their final recommendations. Some things have changed since then, but our four priorities remain. The Arc still supports these priorities:

### 1. Raise the basic payment level to 120% of poverty, over a planned period of time.

We in The Arc recognize that no immediate action will be taken on this recommendation, but we believe that everyone should continue to acknowledge that poverty levels as presently calculated do not recognize the true current costs of living even for the most advantaged SSI recipients - those couples who are not disabled, have Medicare and already own a house at the time they apply for SSI. Most people with mental retardation are not married, do not own real property, have to depend on the vagaries of Medicaid in their respective states, and have costs of living not experienced by people without disabilities. For example, although SSI rules permit them to own a car, their disability prevents most of them from getting a license to drive. Since the Experts last met, several interesting articles have appeared emphasizing the obsolescence of the poverty index. We also wish to point out that studies of SSI adequacy usually use the same poverty level, - the lower one calculated for the elderly who are not disabled - for all SSI recipients regardless of age. (See references at end.)

### 2. Do away with "In kind support and maintenance" as countable income.

The Arc strongly supports this recommendation and asks for its early consideration and implementation. Only 5 percent of recipients are affected adversely by this test of countable income. The Experts became persuaded of the need to abolish it when we found what a disproportionate amount of time is spent by SSA staff in trying to administer it consistently. We also learned of the anomalous situations that are sometimes created by it. There is also an inhumane aspect that has not been emphasized enough. If applied diligently, it sets recipients apart from the rest of society in a particularly cruel way. They may not be able to accept ordinary hospitality or gifts of food or clothing from friends. During one discussion we were told of a blind recipient who was observed to have a new jacket when he came to the District Office. On being complemented on it, he remarked that it had been a Christmas gift from his mother. The claims representative promptly deducted its value as countable in-kind income for the month of December.

### 3. Increasing resource limits and streamlining resource exclusions.

We hope you will look beyond the claims of the funeral industry and consider the effect of overly stringent resource limitations on people during their lifetime. This insistence on tight resource limits may be seen as necessary for individuals whose needs are more temporary, but it is out of place in SSI. SSI recipients, like the rest of us, should be encouraged to have checking accounts and to receive their monthly payments by direct deposit. Have you considered the cost and hassle of trying to maintain a bank account with a balance of less than $2,000? Banks do not necessarily extend their senior citizen courtesies to younger people with disabilities, nor should they be expected to do so.

Specifically a majority of the experts recommended an increase in the allowable resource limits from the current $2,000 per individual to $7,000 and from the current $3,000 per couple to $10,000. Included in this recommendation is elimination of some current categorical exclusions, such as burial funds, since the higher resource limits would provide ample room to accommodate such funds at the option of the recipient. Certain non-liquid resources would continue to be excluded (that is not counted) within the resource limits. They include the home owned and occupied by the recipient, an essential car, business property essential to self support, household goods, and personal effects.

The Arc supports the $7,000 - $10,000 recommendation and urges the Subcommittee to expedite its adoption. In addition, we believe that the resource limits should be indexed for inflation to avoid the kinds of erosion that have occurred in the past.

In connection with the treatment of resources, we have specific recommendations pertaining to the treatment of trust assets that were not discussed by the experts because the circumstances were not the same two years ago. These are outlined on page 4.

**4. Increasing staffing for processing of applications, especially in the disability track.**

The backlog of applications based on disability has been growing steadily and is now expected to reach 1.1 million in FY 1995. The experts estimated that 6,000 additional positions were needed in 1992 when the backlog was only 533,000. Since then SSA has begun "reinventing" the process, taking a fresh look at the steps and stages, reviews, and appeals in the disability determination process. We welcome this development, but remind the Committee that in the meantime, many people are being denied benefits to which they are entitled and which will eventually have to be paid to them.

## OTHER CONSIDERATIONS

### Work Incentives

Although only about 5 percent of all recipients who are disabled take advantage of work incentive provisions, the proportion increases to about 14 percent when one focuses on the age group 22-39. A high proportion of these are people with disabilities (such as mental retardation) that have originated in childhood. In fact, recipients with mental retardation make up 52 percent of those of working age who have responded to the work incentives incorporated in Title XVI. I hasten to add that this does not mean that recipients with other disabilities are less willing to attempt work; rather it means that workers with mental retardation are more likely to earn inadequate wages and therefore continue to need some income supplementation. While this phenomenon makes for a low termination rate, it should be pointed out that earnings over $65 a month result in a reduced SSI payment, and hence a reduced cost to the system. This package of programs serves several useful purposes: (1) It provides a bridge between "no work" and work at a minimum wage. Some people are able to use this bridge to move off SSI entirely. (2) It enables some individuals to enjoy the satisfaction of participating in the workforce, thus reducing, even if not eliminating, their dependence on SSI. (3) By allowing certain necessary expenses to be deducted from countable earnings or from assets, the equity between workers who are disabled and nondisabled is increased.

The Experts considered and endorsed a proposal developed within the SSA to provide more realistic earned income disregards as a way of making these positive outcomes even more attractive and effective. We endorse this proposal as cost effective and humane.

**Treatment Of Trusts**

In general, current policy for treatment of trusts in the SSI program has worked well, and has been widely relied on by families and attorneys, although at present it exists only as Social Security Administration interpretation of SSA regulations. There have been some criticisms of the ways in which "windfall" assets that belong to the SSI recipient may be handled in trusts; these concerns as they arise in relation to Medicaid were addressed earlier this Congress in OBRA '93. The Arc believes that, with comparable revisions as indicated, SSA's present policies on trusts should be codified to make them more visible, citable, durable, and reliable.

The issue of treatment of trust assets and income as standby and auxiliary resources for individuals disabled by mental retardation is a very important one for The Arc, many of whose members are parents of people with mental retardation or related disabilities. Like other parents, they are not legally liable for the support of their adult sons and daughters; yet they recognize that SSI barely covers the cost of food, shelter, and clothing, and that Medicaid may also fall short of meeting all health care needs. During the life of the parent, the parent may supplement these basic entitlements by paying for such things as telephone service, transportation, personal assistance, recreation, and other social or educational services that are not covered by state or charitable agencies. In order to maintain these options for an adult with mental retardation after the death of the parent, parents seek to create durable trusts that do not jeopardize the basic benefits of Title XVI and XIX.

For these reasons we seek codification of the SSA policy on trusts, modified to track the action taken by Congress in the Omnibus Budget Reconciliation Act of 1993 regarding treatment of trusts under Medicaid.

OBRA '93 included some major changes in the Medicaid treatment of assets, transfers of assets, and recovery of Medicaid expenditures from estates of deceased Medicaid beneficiaries. While the overall package of amendments establish stricter requirements for transfers of assets and establishment of trusts and harsher penalties for the average person applying for Medicaid coverage of nursing home costs, these changes include important improvements to Medicaid treatment of trusts from the perspective of families of people with mental retardation.

We believe that, rather than adopting the Panel's recommendation to count trust assets which belong to the individual or result from a settlement or a judgement, SSI law should be made parallel to the Medicaid amendments so that people are not penalized for actions in one program which are legitimate in the other program. In addition, the provisions calling for remaining amounts to go to the state would seem to address any issues about people with their own resources being allowed to remain in the SSI program: funds could be used to supplement SSI and Medicaid during life while state Medicaid programs are reimbursed for services to the extent possible from such funds remaining at death. This will result in some tightening of the current SSI approach.

Given the statutory clarification and improvements in Medicaid treatment of trusts, The Arc believes that it is time to codify the SSI policies regarding treatment of trusts. Codification should allow parents, family members, and others to more securely rely on the rules for making arrangements, which will last long after the parent (or other) is no longer living, to benefit an individual with disabilities who needs on-going assistance.

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## SSI Children's Program

The Arc believes that it is important to view the developments stemming from the *Zebley* case, the subsequent revised childhood disability criteria, and the revised childhood mental impairment regulations in historical context with an understanding of the problems which existed prior to these major developments. Essentially, it must be remembered that the U.S. Supreme Court issued a landmark opinion in the case of *Sullivan v. Zebley* on the basis of the finding that the Social Security Administration's (SSA) regulations regarding childhood disability criteria were inconsistent with the law.

The judicial resolution of this issue came after years of effort by many advocacy organizations in the courts, in Congress, and through SSA to correct the failure of the regulations to correctly deal with childhood disability.

In a nutshell, the final rules for childhood disability determination in response to the *Zebley* decision, the childhood mental impairment regulations, and the regulations for Down syndrome and other serious hereditary, congenital, or acquired disorders were the result of much careful deliberation over the course of several years and involving numerous experts on child development and disability. While there may be problems here and there, overall the new regulations are a tremendous improvement for children and long overdue. At the 20-year mark for the SSI program, children are just now beginning to receive the consideration of their disabilities which should have occurred from the beginning of the program. With such a long delay in implementation of the original intent of the program, it is no wonder that the numbers of children becoming eligible for the program are increasing rapidly. The dramatic increase in the numbers of eligible children must be seen in historical context and must not be allowed to serve as the basis for inappropriate cutbacks.

Further, where there are problems, resolutions must be carefully and surgically crafted to ensure that they are not overreaching in effect. Frankly, we believe that many of the "problems" which have been reported are the result of misunderstandings of the SSI program, generally, and of the process for determining childhood disability, specifically. Where instances of abuse or exploitation are reported, proper avenues for redress exist in the state child protective services systems and within the SSA representative payee system. In addition, we understand that SSA is engaged in a thorough internal study of the application of the regulations and, as particular problems are noted, is taking immediate steps to resolve the issues. We believe that most legitimate issues can be handled in this manner. We would, of course, be willing to work with the Subcommittee to deal with those few areas where statutory solutions are necessary.

Regarding the Subcommittee's question about providing rehabilitation services, cash assistance, or both to children, we believe that, while additional services may certainly be useful, it is critical to continue cash assistance to children with disabilities in low income families. The SSI program is intended to provide basic, minimum supports to qualified people who have very little income and resources. SSI benefits are intended to pay for food, clothing, and shelter. People who receive the highest monthly benefit level that SSI allows are still living below the poverty level. For the thousands of children with disabilities living in families with incomes below the poverty line, these cash benefits can mean a significant level of improvement in their standard of living and in the family's ability to meet the needs of the child with a disability.

We would of course be happy to work with the Subcommittee in improving the availability of family support services, therapies, and various other important habilitation and rehabilitation services which eligible children need. However, we believe it is essential that the cash assistance remain available (at least at current levels indexed for inflation) to meet the basic life needs of food, clothing, and shelter for which SSI is intended.

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## CONCLUSION

In October of 1993, I also had the privilege of testifying before this Subcommittee. The Arc's lengthy testimony submitted for the record contained more detail on many of the issues I have addressed today, as well as details of several additional issues including concern about treatment of married couples. The Arc would be pleased to work with you on passage of legislation to address these and other issues for people with disabilities.

Thank you for this opportunity to testify.

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## REFERENCES

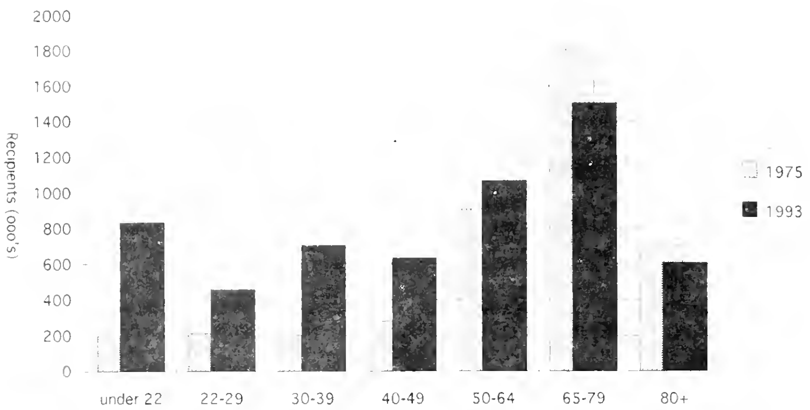
Fisher, G.M. (1992). The development and history of the poverty thresholds. *Social Security Bulletin* 55(4) p. 3.

Fisher, G.M. (1992). Poverty Guidelines for 1992. *Social Security Bulletin* 55(1) p. 43.

Vaughn, D.R. (1993). Exploring the use of the public's views to set income poverty thresholds and adjust them over time. *Social Security Bulletin* 56(2) p. 22.

Bartolomei-Hill, S. & Meyer, D.R. (1991). *Relative benefit levels and benefit adequacy in the Supplemental Security Income program.* Office of Human Services Policy, U.S. Department of Health and Human Services.

U.S. Department of Health and Human Services (1993). The 1993 Federal Poverty Guidelines. *Social Security Bulletin* 56(1) p. 91.



Age Distribution SSI Recipients 1975 & 1993

Chairman **FORD**. Mr. Gashel.

## STATEMENT OF JAMES GASHEL, DIRECTOR OF GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND

Mr. **GASHEL**. Thank you, Mr. Chairman.

I am James Gashel, director of governmental affairs for the National Federation of the Blind.

I want to add my words at the beginning of this statement to the others who have commended you for holding this hearing and really placing the SSI issues on the congressional agenda.

You know, I think too often in this country we are ambulance chasers, we kind of go from crisis to crisis and try to put out one fire and another one pops up somewhere else. Maybe in part that is a problem that faces us today with respect to the SSI program. Because while we are not looking at a crisis necessarily today, I think we are looking at a looming crisis for this program as we go down the line in the future, and we can see certain trends and patterns developing which show you that that crisis is going to come about.

For example, the resource limits are constantly declining as inflation occurs, the income disregards, their value is constantly declining as inflation occurs, and we are getting down to this fact where this program is really only serving the poorest of the poor and then keeping them in poverty. And so this is a problem which Congress must address or it will ultimately be more expensive to do so in the long run.

After 22 years I think, you know, who we represent. These populations need to expect that the Congress will be attentive to this program. And I commend you, Mr. Chairman, for demonstrating that kind of attentiveness which you always have. Let me just say that in terms of priorities, and I am just going to depart from my written statement since it is printed, but in terms of priorities——

Chairman **FORD**. Your full text will be made a part of the record.

Mr. **GASHEL**. In terms of priorities for our population, which is blind people, I don't really think there is the potential for major growth in terms of the numbers who would qualify for SSI. Those numbers stay pretty constant, anywhere from 82,000 to 87,000, let's say, in the whole Nation. We are a pretty small group, around 2 percent of the SSI population or a little bit more than that, but—so we wouldn't be looking at major increases in numbers. But I think the emphasis for our people should be placed on work incentives, because most of the SSI-blind population are adults age 18 to 65, and once they become 65, in most cases, they are counted among the over age 65, so we are talking about people in their working years.

Substantial gainful activity is not a factor in determining whether or not people are eligible, just the condition of having a particular limit of visual acuity that defines blindness for the program. Many blind people can work if they can get the opportunity to do so, and the opportunity is the big problem.

You introduced a bill 4 or 5 years ago, H.R. 852, in one of those Congresses back in the past, which I actually helped you in crafting. It was a bill which would give these beneficiaries greater selectivity in the choice of rehabilitation programs that they would use.

A demonstration project fashioned after that bill was enacted in the title II program, but quite frankly, the Social Security Administration has, in my opinion, dropped the ball and never really implemented that. I think we ought to get back, at least with respect to this population, to something like that, where people actually can design, develop, and pursue their own selected rehabilitation programs leading toward employment.

I would emphasize that making the plan to achieve self-support more flexible, as Jonathan Stein suggested, it is now strictly a 4-year limited kind of thing. I would make that more flexible to accommodate to the particular needs of people who may have either longer or shorter plans to achieve self-support.

I would also emphasize the work incentive features allowing people to earn more. I mean, $2,400 a year, which is proposed by the modernization panel, is not that much of a basic income disregard, and certainly we don't want to get to the point where—you know, recipients are not unable to analyze the economic effects of what they are doing.

They are not going to work significantly if it is going to cost them to do so. That minimum wage job doesn't mean that much if it is going to mean the loss of SSI benefits in the process. And so what we have got to do is make it worth a beneficiary's while, so to speak, to work.

If we combine that concept of making it worth their energy to work with the concept of providing meaningful rehabilitation programs that the beneficiary themselves have bought into from the very beginning, that they helped to design and select, as your bill H.R. 852 proposed, and accommodating them with a helpful plan to achieve self-support, I think that with very good training, most blind people would work. I think approximately 7 percent of the blind population now in SSI work. Probably as many as 40 or 50 percent in the SSI population could work. And that would be a savings to the revenues appropriated for this program ultimately. So that is one of the areas where I think I would try to achieve some cost savings.

I might have to put some money into it up front to make sure that the rehabilitation occurs, and that has been the problem in implementing the demonstration project that I mentioned.

Thank you very much, Mr. Chairman.

Chairman FORD. Thank you very much.

[The prepared statement follows:]

# TESTIMONY OF THE NATIONAL FEDERATION OF THE BLIND

Before the Subcommittee on Human Resources
Committee on Ways and Means

United States House of Representatives
Washington, D. C.

March 1, 1994

Mr. Chairman, my name is James Gashel. I am the Director of Governmental Affairs for the National Federation of the Blind. My address is 1800 Johnson Street, Baltimore, Maryland 21230; telephone (410) 659-9314. I appreciate very much your invitation to testify in this hearing on modernizing the Supplemental Security Income (SSI) program. Blind people who meet the income and resource limits under SSI are eligible for benefits as a categorical group. Therefore, SSI is a high-priority program for us.

The National Federation of the Blind--the organization which I represent--has often been described as the "voice of the nation's blind." Blind people guide and direct the Federation at all levels. All of our elected officers and the vast majority of our members are blind. In each state, the District of Columbia, and in Puerto Rico there is a state affiliate of the National Federation of the Blind. Local chapters can be found in most sizable population areas. The positions we express before the Congress and other public bodies are determined by the blind themselves.

The subject of the hour is modernizing SSI. The key provisions and concepts which form title XVI were crafted by the Congress in 1972, and the first cash benefits were paid to recipients in 1974. Some amendments have been enacted since that time, but certainly in its broad outline and major components the SSI law is essentially unchanged. This is in large part a tribute to the enlightened policies which Congress incorporated into the original bill. Times change, however, bringing new demographic patterns and evolving economic conditions.

A panel of experts assembled by the Social Security Administration has acknowledged the need to review and update certain legislative provisions in the SSI program. The panel's findings point to a need for program restoration to achieve the goals which Congress envisioned for SSI. Changing demographic and economic conditions have brought with them a gradual deterioration in the capacity of the SSI program to respond adequately to human need. On behalf of both present and future recipients, and indeed on behalf of all Americans, Congress has a responsibility to address this situation before deterioration becomes a full-scale crisis.

Mr. Chairman, you are particularly to be commended for placing SSI modernization on the agenda for this subcommittee and for bringing the present need to the attention of your colleagues in the Congress as a whole. No one should doubt the need for action to address long-standing and growing deficiencies in this program. In my opinion the initiative to bring SSI into the mainstream of current social and economic trends must come from the Congress. The facts are on the table, and there is no real dispute as to the direction which must be taken.

Mr. Chairman, I want to highlight just a few major points of concern to those whom I represent in the SSI, blind, category. In many instances the modernization report speaks quite clearly to our concerns. In other instances we may have some divergence or perhaps give greater emphasis to particular matters. In every respect, however, we are foursquare behind the effort to improve and update SSI. Here are the reasons why.

(1) Payment Standard.

The federal benefit rate leaves most recipients in poverty. Congress did not intend that this should happen. The federal standard is 75 percent of poverty-level income for single individuals. For couples the standard slightly exceeds 80 percent of the poverty level for two-person families. State supplementation, where it occurs, rarely brings the benefit rate above the poverty line. The panel has recommended gradually increasing the individuals' rate to 120 percent of poverty and retaining the couples' standard as 150 percent of the individuals' standard.

We certainly support raising the individuals' benefit rate as proposed. As for couples, we would prefer to eliminate this classification and treat all SSI recipients as individuals. It is generally recognized that SSI benefits are intended to meet the basic subsistence needs of recipients. By definition the recipients are aged, blind, or disabled. Subsistence needs do not take into account the special needs which often arise. For example, blind people must obtain and often must compensate persons to read printed matter to them. Although their medical bills may be covered by Medicaid, special transportation costs for medical appointments must be paid by them from their SSI funds. It is not uncommon to find that recipients must choose between meeting necessary special costs or putting food on their tables. Forcing people to live in such circumstances is not acceptable.

(2) Unearned Income Disregards.

The experts have recommended increasing the general $20 unearned income disregard to $30. The original level was one-seventh of the federal benefit rate. We favor restoring that ratio and maintaining it as benefits are increased by automatic cost-of-living adjustments. As proposed by the experts, eliminating in-kind support and maintenance from being counted as income would go a long way toward achieving our objective of restoring the value of the unearned income disregard.

Viewed from the recipients' vantage point, the erosion in purchasing power of the original $20 general income exclusion is actually a cut in the standard of living provided under SSI. Although the benefit rate has increased with automatic annual adjustments, the value of total funds available--SSI and disregarded income, combined--is not increasing as much as inflation. This should be corrected.

When title XVI was first enacted, the benefits were not indexed to increases in the cost of living. Congress soon discovered, however, that indexing would be necessary. Unfortunately the income and resource limits, which are actually decreased in value by inflation, were not similarly indexed. Until this is done, there will certainly be a need from time to time for Congress to update the values which are stated in the law. Failure to do so in over 20 years shows the need for annual indexing.

(3) Earned Income Disregards.

We strongly support the recommendation to increase the basic earned income disregard from $65 to $200. Continuing the point about indexing, we favor making automatic annual adjustments in this exclusion just as in the general income exclusion. We also support changing the exemption on earned income above the basic exempt amount to two-thirds rather then one-half. Increasing and indexing the earned income exclusion is in my opinion the best way to help substantial numbers of recipients to become attached to the work force and eventually to achieve self-support.

The experts' report is somewhat confusing in presenting a recommendation which could affect the exclusion of "blind work expenses." We strongly favor retaining the current exemption and applying it after (not before) two-thirds of the remaining earned income has been subtracted in the sequence of deductions. This would be no change from present law. The experts' report is ambiguous in suggesting streamlining of the earned income disregard with the proviso that a work expense deduction would still be used if more favorable to the recipient. This would be confusing and no doubt disadvantageous to most working recipients who are blind.

I have already noted our recommendation that all SSI recipients should be treated as individuals, eliminating the couples classification altogether. The experts rejected this idea with respect to the federal benefit rate, but seem to favor it with respect to the treatment of earned income. We support their recommendation that a full set of earned income exclusions should be available to each person in a couple. The earned income disregards are expected to serve as work incentives. The effect of the present law is to give members of a couple a less rewarding work incentive than that provided to individuals. There is no rational basis for this distinction. All recipients should be given equally beneficial incentives to work.

(4) Resource Exclusions.

The current resource exclusions of $2,000 for individuals and $3,000 for couples are well below an acceptable standard in today's economy. Congress should give high priority to raising the resource limits. We favor the proposal to streamline the exclusions as proposed and to increase the individuals' limit to $7,000. The new higher limit of $7,000 should apply to each SSI recipient, whether single or married. This amount should be indexed and adjusted annually to retain the value of the exclusion.

With the passage of time, accumulating excess resources is more frequently encountered as a reason for overpayments. The circumstances which lead to the receipt of countable resources are often not within the recipient's control. Also, the resource exclusion provisions are hard for many people to understand and apply in particular situations. How resources are handled can make the difference between continuing eligibility or loss of benefits and a serious overpayment. Therefore, we support the recommendation to limit the amount of an overpayment, if caused by excess resources, to no greater than the amount by which the resource limit has been exceeded.

(5) Plans for Achieving Self-Support.

The plan for achieving self-support (PASS) provisions have become increasingly important, especially to younger recipients. A PASS allows for the receipt of income or resources in excess of the otherwise applicable limits. The income and resources so excluded must be used for costs incurred or anticipated to achieve self-support goals. Payment for training or for job-related equipment is a typical use for the excluded funds.

Many if not most activities relating to self-support efforts must occur within fairly rigid time schedules, such as in the case of vocational training or higher education classes. An applicant or recipient who submits a PASS for approval by the Administration cannot count on timely action. But the PASS cannot be implemented until accepted by Social Security. With the time delays that occur, valuable training opportunities can be lost. Therefore, we strongly favor the recommendation to establish presumptive PASS approval if no action has been taken within 30 days of a plan's submission.

(6) Outreach Issues.

The modernization report recommends funding for SSI outreach activities. Funds should be available to support ongoing cooperative agreements with agencies and organizations outside of Social Security and to meet internal costs associated with outreach provided by the Social Security Administration itself. Continuing outreach activities are justified in the SSI program by the fact that matters relating to eligibility and payment amounts are enormously complex and may often pose a somewhat daunting challenge to persons who are potentially eligible. Also, the conditions for eligibility may easily be misunderstood by potential beneficiaries. Since these circumstances are unlikely to change, outreach is essential.

Unfortunately the current approach to outreach largely excludes significant projects which could have a substantial impact on potentially eligible blind people. This is partly due to the fact that blind people are quite thoroughly dispersed in the population. Our numbers in any particular local area are quite small relative to the disabled or elderly. SSA, however, views outreach as a locally based activity--having local groups designated to work with local Social Security field offices. This approach, while undoubtedly well-suited to finding disabled or elderly persons, will never yield significant, cost-beneficial results in conducting outreach for blind people.

The outreach strategy employed should be flexible enough to respond to our comparatively small and scattered numbers. In the country as a whole, blind people are approximately 2 percent of the eligible SSI population. Therefore, a project on a statewide or even regional scale is apt to be more effective than a local effort. Several such efforts combined into one national project could yield meaningful results for the blind population. So far that approach has not been compatible with SSA's plans.

Targeted outreach for blind persons would meet an important and recognized need. Buried within title XVI there are numerous provisions which have special application to blind people. Blindness, for example, is defined. The substantial gainful activity criteria do not apply. There is also a unique work expense deduction which must be applied at the correct point in the sequence of deductions to obtain countable income. These are fine points, and the population of blind people is small. Therefore, we experience many errors largely due to lack of correct information. Targeted outreach to address this situation is definitely justified.

Mr. Chairman, there is ample documentation that after twenty years of operation the SSI program is long overdue for reform. Many of the issues which I have presented here are not new or unknown. The modernization report discusses most of them quite thoroughly. This report and the initiatives and modifications related to it should not be allowed to grow dusty on the shelf. The quality of life for several million Americans who have the lowest income in our country is at stake. President Clinton has made a commitment to the public to present a welfare reform plan to the Congress. The plan which emerges from the Congress should, in addition to reforming AFDC and other programs, include SSI modernization provisions, as well. This must be on our national agenda, and for that reason I once again applaud you for holding this important hearing today. On behalf of the National Federation of the Blind, I thank you.

Chairman FORD. Dr. Matloff.

## STATEMENT OF NORMAN MATLOFF, PROFESSOR, DEPARTMENT OF COMPUTER SCIENCE, UNIVERSITY OF CALIFORNIA AT DAVIS

Mr. MATLOFF. Thanks.

A quick comment on the version of the written testimony that—well, I faxed it in, and in the transcribing there was an error in my phone number. The last digit should be a 4 instead of a 1.

At any rate, I am here to talk about welfare use by Chinese immigrants. I myself have been immersed in the Chinese immigrant community for about 20 years in various ways. My wife, for example, is an immigrant from Hong Kong.

I am a former volunteer worker in San Francisco's Chinatown. I speak Chinese, et cetera, et cetera, et cetera.

What happened a few years ago was I started to notice that there was an alarming number of elderly Chinese immigrants who were on SSI, people that I knew did not need the money, and so basically I am here today to be, I suppose, the first person in this hearing to tell you how to save money, instead of how to spend more. Indeed, maybe some of the increases that people have proposed might come out of this.

Essentially, what I am proposing is I do not believe that most immigrants need SSI, and I will go into the details. First, a quick statistic. I think you have statistics available. I am mainly here to talk about the qualitative side. But basically from the 1990 census data, you have 55 percent, over half of elderly Chinese immigrants on SSI, and that is compared to a native-born rate of 9 percent, a factor of six difference.

Moreover, the consensus among the people I have talked to and observed myself, also, is that that rate is higher today in 1994, even higher than the 55 percent. This is, I think, quite remarkable given the model minority image of Chinese immigrants, and also, by the way, their fundamental political conservatism.

The second point, I am not going to go over everything in the written testimony here, but just the highlights to give you a quick idea of the key points first.

The second key point is they don't consider it a stigma. They really do consider it an entitlement in the truest sense of the word. They think this is something that everybody ought to have. They look at it like a library card, that is the analogy I use, that, you know, everybody is—anybody is encouraged to use a library card, and they view it that way, as the government wants them to take this money.

Third key point, and maybe this is the keyest point of all, they don't need the money. We have heard testimony here from a number of people describing other SSI recipients who are indeed genuinely needy. This is not the case for the elderly Chinese immigrants, and I will go into details in 1 minute.

Another key point, the way that people find out about SSI is very interesting. The books and newspapers, word of mouth, and also community activists' promotion.

Another key point, it is arguable that this is actually having a negative impact on Chinese families, which I will go into. And the last one which I think is also very relevant to this hearing.

Some people ask, well, why pick on immigrants, is this immigrant bashing; and it is not.

Again, I hope that I have enough credentials here to portray myself correctly as a defender of immigrants. My wife is one, my father was one, et cetera. I was a volunteer worker in Chinatown and all this. It is not immigrant bashing, but there is a difference for immigrants here because of the fact that when somebody applies to immigrate, they are supposed to certify that they will not go on SSI or receive other forms of public assistance, so there is a distinction there. I will go into that later.

I wish to point out here very clearly that we are talking about legal immigrants, that both the elderly people we are talking about are legal immigrants and their children are legal.

Chairman FORD. Nonlegal immigrants wouldn't be eligible anyway.

Mr. MATLOFF. That is right. That is right.

Second, I want to emphasize that they are fully complying with SSA regulations. In other words, I don't want this to be confused with the middleman you spoke of. This is a different situation. They are playing by the rules, at least SSA rules. INS is a different story.

Chairman FORD. Well, since you are talking about that, why don't you just touch upon in your testimony about the outreach of SSA as it relates to those legal immigrants.

Mr. MATLOFF. Yes, the outreach is there. You see it. For example, a few months ago there was one of the community service programs on Chinese TV in the Bay area, San Francisco Bay area.

Chairman FORD. Should SSA terminate those outreach efforts?

Mr. MATLOFF. Well, let's put it this way, I think in the Chinese case, they have far outlived their usefulness. Right now—the outreach may have gotten the ball rolling, but the—OK, the outreach may have gotten the ball rolling a long time ago, but right now, word of mouth is extremely powerful. And, no, I don't think outreach is needed at all, at least in the Chinese community.

Chairman FORD. So you think they should terminate outreach?

Mr. MATLOFF. Yes, I do. Further, I would say that I think the outreach is helping to further this misconception that this is a library card.

Chairman FORD. Do you think that SSA should terminate the SSI benefits to immigrants who are generally welcomed to the United States?

Mr. MATLOFF. Yes, I do, and I will talk about that in more detail also.

Now, second, what did I do? Well, you know, I am—although my affiliation now is computer science, I formerly was in the statistics department. I am a statistician, so the first thing I did in looking at this problem was to go to the census data as a statistician and look at the numbers, but beyond that, I think it was very important to talk, to look into the qualitative side, the human element, as it were, especially because I had seen some of it firsthand, so basically I started interviewing people. I went to Chinese senior citizen areas in the Bay area, interviewing social workers, interviewing the immigrants themselves, interviewing immigration attorneys that specialize in Chinese clientele, and also some INS and SSA officials.

I would also like to just enter into the record here, so to speak, the social workers were extremely helpful, they are very, very dedicated people. They truly care for their clients, and they have been of enormous help in my preparing this report.

All right. Now, just a little bit on the data. I looked at people, here are the specifics, who in 1990 were living in California. I did that because the data is just too voluminous to look at the whole country. I restricted it to people who had been there at least 3 years because of the deeming period and also to people who came after 1980.

Now, the reason for the latter is because the general consensus was that there has been a change since 1980, that the people—well, it is not that there is any sharp change in the year 1980, but somewhere around that time the attitudes start to change, that the—before that time, it was considered a stigma and after that time, it was considered all right, and in fact desirable to take SSI, so that is the reason for that.

Now, I do have some other groups mentioned here, but again I can only talk about a group I know about, and that is the Chinese. But it is worth noting that the overall rate for all immigrants was 45 percent, which is still five times the native-born rate, that is a really striking difference.

OK. Now, very quick comment, the word "Chinese" here includes not only people who come from China, but Taiwan and Hong Kong. I mentioned Taiwan because some of the social workers felt that they were the most adept at exploiting the system and getting SSI. When I say "exploiting," again, going through legal channels, but they are the most adept at getting all the benefits they could find. That was, in fact, one of the phrases one of the social workers used. OK.

Chairman FORD. Why do you think there is such a big influx of that population in the California area? Is it because of the State supplemental benefits?

Mr. MATLOFF. No, I don't think so. I think it is just because Chinese people like to come to California. I don't think the size of the——

Chairman FORD. I have a problem with people who are obviously disabled and go to the SSA office for SSI but are denied benefits. But in California we have had more testimony and more witnesses who have testified before this subcommittee that either through the middleman, or whatever it might be, some of the evidence is suggesting now it is easy to get on disability benefits and SSI in the State of California.

Mr. MATLOFF. Well, I think that may well be true. I certainly haven't seen—where do Chinese people congregate? You know, California and the New York area, and, you know, some other places, you know, Houston, Seattle, but I just don't think that is a major factor, but I can't say.

Chairman FORD. All right.

I don't think he had finished testifying.

Ms. BOGGS. I just wanted to ask whether the people, the Chinese people that are getting on SSI are primarily disabled or whether they are primarily elderly?

Mr. MATLOFF. They are almost all elderly because they wouldn't have been allowed to immigrate if they were disabled or blind in the first place. Within the 3-year deeming period——

Chairman FORD. Well, refugees wouldn't have to be in the United States for 3 years.

Mr. MATLOFF. That is true, but most of these are people who came, you know, we know how it is, family reunification, fourth preference, and then the parents and children, you know, they are immigrants, not refugees.

Chairman FORD. We were talking about SSI. I was talking about immigrants from Southeast Asia, are they still coming?

Mr. MATLOFF. Some of the people who are Vietnamese nationals are of Chinese ethnicity, but—well, I don't have a statistical breakdown for you on that, but I can just tell you with a fairly high degree of confidence that we are talking almost entirely in terms of elderly and not disabled or blind.

All right. Now, there is something in my written testimony about housing subsidies. I won't go into that here to save time. It is not the purview of this hearing, but it is important to note that this is viewed as one big package, and it is also important to note the housing subsidies, because to a lot of people when you say, OK, in California, $600 a month for a single person, SSI sounds like a small amount. But when they are only paying $200 a month for rent in a subsidized housing unit, then actually they have money to spare.

Chairman FORD. I thought someone testified earlier that it was only 10 percent of the SSI population that would be receiving any type of housing subsidy?

Mr. MATLOFF. Well, for this type of population, talking about Chinese elderly, you are talking about the majority, the vast majority. Again, they view it as a package.

Chairman FORD. In other words, they are not living with their sponsor anymore?

Mr. MATLOFF. No, they are not, and that is going to be an important point that I will get to. All right.

Just a little bit on the fact that they don't consider it a stigma.

Chairman FORD. I figure I have taken about 3 minutes of your 5 minutes, so I am going to yield you 1½ minutes more for your testimony.

Mr. MATLOFF. OK. It is not a stigma. In fact, they view it as free money. You are viewed as foolish if you don't take it. The lack of financial need I think is very important to look at here. These are people—first of all, they lack financial need by definition.

As I said, if they have their sponsor, which is typically their children, their children said yes, I can support you, and they are supported at least for the deeming period. If there were no SSI, they would simply be supported by their children, OK. So by definition, they don't need the money in that sense.

Now, second, their children are generally well off. They are upscale people, professional people. You go to the Silicon Valley, which there are a lot of Chinese immigrant engineers there, it is very, very, very common for both husband and wife to be, let's say, computer engineers, their combined household income is in the upper 3 to 4 percent nationally, and yet their parents are on SSI.

The same thing for I mentioned one of the seniors I interviewed, his son was a successful gynecologist, et cetera. They travel, they live a nice life. It is not at all—that is why I am saying, they are not truly needy.

We heard earlier witnesses talk about people who really are desperate, who really are the people who don't know whether to buy food or medicine, that is a tradeoff, they can't buy both. We are not talking about that in this case. We are talking about people who travel internationally. It is typical for them to go back home to Asia once a year. Some of the people I talked to had gone on cruises, Mediterranean cruises. They have been to Europe. They are living comfortable lives. Again, they don't need the money.

The impact on the family, well, basically I would claim that it is arguable that the existence of welfare is helping to break up the traditional Chinese-extended family. Basically, you have a lot of parents that are—children that are kicking their parents out of the house and on to the SSI rolls because the SSI gives them what one of the social workers euphemistically referred to as "an option." If SSI were not available, then the children would be stuck with them. And I think this is really sad.

One of the earlier witnesses talked about the losers being the kids in the crazy money. In this case, I believe the entire family and especially the seniors are being victimized, and they do feel that they are emotionally traumatized by the process. I will just speed this up, but you can look in the details in the written version.

The word of mouth and other ways of finding out about SSI are just tremendous. I have a book here which it is, "How To Live Life In America." It is written in Chinese. It has a chapter on benefits, including SSI, disability, Medicare, Medicaid, Social Security, et cetera.

You can tell, this is a better example, this is from the most popular Chinese-language newspaper in the United States. I know you can't read this, but this section down here is basically a "Dear Abby" style advice column on SSI and other immigration issues. And you may even see it says SSI here. They are asking, well, what can I do, my mother went out of the country for a while, when she comes back will she still be eligible?

You can see how important they treat this. These numbers on the side are current magic numbers for what is the upper limit you can have in bank accounts for SSI and things like that. But again the word of mouth is extremely important.

Now, another point here is do they know about this before they come. Yes. I mean, this thing, this book is printed in Taiwan, it is sold here, also. A lot of them do know about it before they come, a lot of them do plan to go on SSI before they come. But what is more common instead of that is that it is the children who plan ahead. At the time the children apply for the parents to immigrate, the children are asking around, they are asking their friends, the social workers, the lawyers, how can I get out of supporting my parents. So it is actually, in most cases, it is more the children who are the ones who are planning ahead.

OK. Now, that last point relates then to the INS stuff I was talking about before. Let's suppose a daughter applies for her father to immigrate. At that time, the INS asks her to assure the United States that her father will not become a public charge, and what is very common is that at that same time that she is making such an assurance, she is also planning for her father to go on SSI.

Now, whether she is doing that deliberately or not, is another question. In a lot of cases, they just blindly sign a form, but the bottomline is nevertheless that this should not be occurring.

Potential solutions, this is basically the last page, the idea that has been brought up about making aliens ineligible for SSI, well, that is a good start. It would certainly have a significant effect. But I have to point out that the degree of reduction in SSI usage under that plan is unknown, because, let's suppose right now we have the deeming period temporarily extended to 5 years, let's suppose it somehow stays at 5 years, then you need 5 years to become a citizen. So what would happen is that most of these people would speed up the process by which they became citizens, and they would get—they would become citizens in record time because the money would be such a draw. So from that kind of person you wouldn't have any savings accruing.

Another possibility is lengthening the deeming period. In Canada, their analog of the deeming period is 10 years compared to our 3, temporarily 5 years. If you think about Canada, which has a much more liberal immigration policy than we do, 10 years would not seem harsh. Some people feel, at least one of the social workers I talked to thought it should be permanent.

Also, not written in—I also mentioned the INS forms could be changed. That is an administrative thing. That could be done quickly. To force—my hypothetical example of the daughter applying for her father to immigrate, to force her to say what is he going to do after the deeming period. She can't say he is going to go out and look for work, if he is retired, if he is over 65. She is going to have to say, I am going to have to support him permanently. That wouldn't be enforceable, but at least it would force her to address that question formally.

I should add this which is not in my testimony on the written version here, what would happen if SSI were to be discontinued for immigrants today? In the Chinese case, there would be no harm. You would not see people out on the street.

The majority of them, the vast majority would just simply move back in with their kids. A lot of them are already living with their kids, because as other speakers have talked about it, it is certainly possible to receive SSI while you are living with somebody, you are getting at least partial support from somebody else. Some of them would go back to China or to Taiwan or Hong Kong, but the vast majority would simply move back in with their kids. Nobody would be out on the street. OK.

Now, one final point. Another possible——

Chairman FORD. I am going to have to cut you off. It has been 20 minutes. We want to try to wrap it up.

[The prepared statement follows:]

# Testimony for the House Ways and Means Committee

## Welfare Use by Chinese Immigrants

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March 1, 1994

## 1 Executive Summary

We as a nation are justifiably proud that we have in place a system which provides a "safety net" which protects the truly needy in times of financial desperation. As is well known, though, this safety net in some cases becomes a permanent way of life. What is much less well known is that in the last decade or so, a "new" class of permanent welfare users has arisen, growing at an alarming rate-elderly immigrants.

As someone who has been immersed in the Chinese immigrant community for 20 years, I became particularly interested in welfare (SSI) usage among that group. Drawing upon 1990 Census data and interviews with those involved, I found that:

- Despite their Model Minority image and political conservativism, approximately 55% of elderly Chinese immigrants are on welfare, a striking contrast to the 9% figure for native-born seniors.
- The Chinese seniors do not consider receiving welfare to be a stigma. On the contrary, they view it as a normal benefit of immigration, whose use is actually encouraged, like a library card. They are unaware of the fact that welfare is intended only as a safety net.
- The Chinese senior welfare recipients do not need the money. They typically come from upscale families, with their children being upper-income professionals and successful entrepreneurs.
- Through Chinese-language books and newspapers, and most importantly through an extremely efficient word-of-mouth process, the Chinese seniors are extremely well-informed about the welfare process.
- The easy availability of welfare is arguably helping to destroy the fabled Chinese extended-family structure. Many Chinese immigrants are in essence pushing their elderly parents out of the house and onto the welfare rolls.
- The legal mandate of the INS to exclude applicants for immigration who are "likely to become a public charge" is widely flouted. Pledges by both the immigrant seniors and their immigrant children-sponsors that the seniors will not rely on public assistance are routinely broken. Yet INS

and SSA officials say that their hands are tied, and state that the solution must rely on new legislation.

Details, both statistical and anecdotal, are presented in the following sections. Before continuing, though, it should be noted that we are discussing legal immigrants (both the seniors and their adult children). Furthermore, the immigrants I am describing are fully complying with SSA regulations in applying for public assistance.

## 2. Background and the Scope of My Investigation

I believe that it will be relevant to first give a brief overview of my personal involvement in matters involving Chinese immigrants. I have been immersed in the Chinese immigrant community for 20 years. My wife is from Hong Kong; I have done extensive Volunteer work in San Francisco's Chinatown; many of our close friends are Chinese immigrants; I speak Chinese; and so on.

In the last few years I began to notice an alarmingly high rate of use of public assistance among elderly Chinese immigrants, especially among those whom I knew to not need the money. As a former statistics professor (now computer science), my first thought was to investigate the problem through the Census data tape. However, statistics alone do not tell the full story, so subsequently I investigated the qualitative side, interviewing dozens of people involved in the general process: social workers at Chinese senior citizens' centers; immigration attorneys; welfare officials; and the immigrant Chinese seniors themselves.

## 3 Extent of the Problem

Data analysis was done on the 1990 Census data (PUMS tape). Due to the enormous amount of data involved, my study was restricted to California. The data are for immigrants residing in California who in 1990 had been in the U.S. at least three years (for SSI eligibility) but had arrived after 1980.

The restriction to post-1980 immigrants was due to the fact that demographics of immigrants changed starting around 1980. This has been stated by the Census Bureau (San Jose Mercury News, September 23, 1993), and more importantly, was stated by many of the social workers to whom I spoke; their consensus was that earlier Chinese immigrants did consider welfare use to be a stigma, while the more recent Chinese immigrants do not.

The table below presents the percentage of welfare use by immigrants over the age of 65, both overall and from some of the larger immigrant groups, in 1990.

| group | % on welfare |
|---|---|
| all immigrants | 45% |
| Chinese | 55% |
| Filipino | 39% |
| Mexican | 21% |
| Soviet Union | 66% |
| Vietnamese | 74% |
| all native-born | 9% |

As can be seen, 45% of elderly immigrants in California are on welfare. For the elderly immigrant Chinese, the group on which I am focussing here, the figure was even higher, 55%. By comparison, the figure for native-born Americans is 9%.

(Note: I am using the word "Chinese" in terms of ancestry, and thus including people from not only China but also Taiwan and Hong Kong. For technical reasons involving the structure of the Census data, there is no good method for desegregating numbers from these three places. I would mention, though, that I personally have found that in terms of welfare use, the patterns are similar for people from all three places.)

The Chinese social workers and immigrants I talked to felt that the Chinese rate is even higher than 55% today, in 1994, and is continuing to rise. According to many of them, the effect of word of mouth in propagating the news of the availability of welfare is just now coming into full effect.

In addition, it must be noted that the 55% figure is just a "snapshot," an instantaneous measurement. It does not take into account that a person who today is not on SSI is likely to go on SSI in the future. For example, if the senior still has children or siblings back in Asia whom he wishes to sponsor for immigration as well, he may postpone applying for SSI until those relatives' green cards are approved (this could be as short as a few months, or as long as 10 years, depending on the type of relative). The senior realizes that his petition to sponsor his relatives for immigration would probably be denied if he himself were on welfare, so he postpones going on welfare until all the relatives are here. Or, the senior may not yet qualify, because he has not yet used up enough of his savings to meet the $2,000 limit on bank accounts for SSI.

For these and other reasons, the consensus among most of the Chinese social workers I talked to is that eventually the vast majority of Chinese who immigrate here at or near retirement age will be on welfare.

By the way, recent SSA statistics which have appeared widely in the media (e.g. Washington Post, December 19-20), showing an explosive growth in SSI usage by immigrants, actually <u>understate</u> the problem. The reason for this is that these statistics are for aliens only, i.e. permanent residents, and do not count naturalized citizens.

(I did Census data analyses restricted to naturalized citizens too. The welfare rate there was also high, though slightly lower than the overall rate. It is important to note that this difference exists <u>not</u> because the seniors went off welfare once they became citizens. Instead, it is due to the fact that those who are citizens tended to have come to the U.S. earlier, and as mentioned above, it is the more recent immigrants who regard welfare as nonstigmatic and use it more.)

My use of the term "welfare" throughout this document refers to cash payments, specifically SSI. Yet SSI is only part of an even larger problem. Most of the seniors view SSI as part of a comprehensive package of benefits: cash in the form of SSI; medical care through Medicaid (Medi-Cal in California); subsidized housing; and a number of miscellaneous subsidies, such as Universal Lifeline telephone service.

The housing subsidies are interesting, for example. (Here I am using the term "housing subsidies" to include not only direct subsidies but also other arrangements, such as public housing and also below-market-rate-housing provided by quasi-governmental nonprofit agencies.) Though the general public image of subsidized housing is that of tenants coming from the native-born underclass, a very significant number of recipients of such subsidies consists of immigrants, especially (see below) elderly immigrants from upper-income families. Unfortunately, the Census data do not provide information on housing subsidies, but the large extent of immigrant use can be seen indirectly in various ways. There are numerous subsidized buildings in and surrounding the San Francisco and Oakland Chinatowns, for example, and it was recently stated on a Chinese-language San Francisco television station that the demand for subsidized housing in Chinatown is so great that there is now a seven- or eight-year wait for elderly couples.

## 4 Receiving Welfare Is Not Considered a Stigma

It was essentially universal consensus among all the Chinese social workers and the seniors themselves that the immigrant Chinese seniors do not consider taking welfare to be a stigma. On the contrary, they view welfare as a normal benefit of immigration, whose use is actually encouraged, like a library card. The seniors are unaware of the fact that welfare is intended only as a safety net.

Indeed, many of the Chinese seniors I interviewed praised the U.S. for being so generous in providing this "free money." One senior pointed out that a common attitude among the seniors about SSI was "mh hou sit dai" -- "don't miss this great opportunity." Another senior described the attitude as "everyone else is getting this money, so why shouldn't I?"

Interestingly, this seems to be in contrast to Hispanic communities, whose residents do consider welfare to be stigmatic, according to Virgil Kocher, a welfare official in San Francisco who has worked in those communities. This may explain why the welfare rate among senior Mexican immigrants was 21%, higher than for the native-born seniors, but much lower than the 55% among the Chinese.

## 5 Lack of Financial Need for Welfare

The majority of the immigrant Chinese senior welfare recipients do not really need the money.

This is almost by definition, because of the manner in which the immigration process is set up. The seniors are typically sponsored for immigration by their adult children (who themselves immigrated earlier), and the children must demonstrate to the INS that they have the financial resources to support their parents. If welfare were not available, the seniors would simply continue to be supported by the children. In other words, the seniors would not be "out on the street" if welfare were unavailable.

In fact, it is essential to note that the elderly immigrant welfare recipients tend to come from upscale families, with their children being upper-income professionals, successful entrepreneurs and so on. The 1990 Census data show that 50% of households in which the senior recipients lived with their adult children had income over $50,000, and 11% were over $100,000, truly staggering percentages, in view of the fact that median household income in California was $33,000.

In other words, you see an immigrant professional, say an engineer in the Silicon Valley, you may appreciate his contribution to the economy, but what you do not see is that he has probably put his parents on welfare. May Yue, director of a Chinese senior citizens' center in the Silicon Valley noted this too, as did Edna Law, program coordinator at another Chinese senior center in Palo Alto, one of the wealthiest cities in the Bay Area. One senior I interviewed who effusively praised the U.S. for its generosity in providing him with welfare money has a son who is a successful physician, a specialist in ob-gyn. An office manager I talked to confided that not only was his mother-in-law on welfare, but also all of his aunts as well. I found similar cases in which the recipients' children are company controllers, owners of popular restaurants, and so on.

Thus, the seniors do not fit the picture of financial desperation which we normally associate with those on public assistance. And though they often live in small, simple apartments, many senior welfare recipients enjoy international vacations. Edna Law said that the seniors will typically make a trip home to Asia once a year, especially if they still have children there. Some seniors I interviewed had been on Caribbean cruises, and some had even been to Europe. This is a far cry from welfare kids in South Central Los Angeles who have never even seen the ocean, less than 10 miles away.

Some argue that since the seniors' children are paying taxes, this gives them the right to put their parents on welfare, i.e. that tax revenues paid by immigrants exceed the amounts they receive in welfare services. (Again, such services include not only SSI, but also Medicaid, housing subsidies, and so on.) But as pointed out by UC San Diego economist George Borjas, this argument is fallacious. The correct comparison is that of immigrants to native-borns: immigrants are paying less in taxes than the native-borns, yet are receiving more in welfare services than are the native-borns. That is a net loss, because it implies that the immigrants are not paying their fair share for other government services, such as roads, the national defense, and so on; their taxes are disproportionately going to welfare.

In any case, whatever the economic arguments are, there is no excuse for welfare abuse. Most governments at the federal, state and local levels are in quite precarious financial condition, and many of the truly needy are not receiving sufficient aid. It is intolerable that welfare monies be spent on those who do not need it.

## 6 Negative Impact on the Chinese Extended Family Structure

In addition to the negative fiscal impacts on federal, state and local governments (many states add a supplement to the federal SSI checks, and expenditures for Medicaid, housing subsidies and so on occur at a variety of governmental levels), the easy availability of welfare is facilitating the breakdown of the traditional Chinese extended family structure. Many Chinese immigrants are in essence pushing their elderly parents out of the house and onto the welfare rolls.

When I asked why so many of the seniors were living apart from their children, counter to Chinese tradition, the automatic answer given by many social workers and immigrants was that the seniors, most of whom speak no English, find life boring in the suburban areas where the their children tend to live. Thus, this line of reasoning goes, the parents move to Chinatown, a move which is accompanied by applying for SSI, subsidized housing, and so on.

Yet this explanation is really a rationalization. The seniors offering this explanation conceded, for example, that most of them could live with their children and yet still take public transit into Chinatown for socializing, shopping and so on. Moreover, this "boring suburbs" rationale completely fails for the senior welfare recipients in the Silicon Valley, since they continue to live in the suburbs after moving out of their children's homes.

Instead, the general consensus was that it is more typically the children, not the parents, who are to blame. Most seniors come to the U.S. with the intention of living with their children permanently, but sadly, the children themselves have no such intention. A number of the social workers -- deeply dedicated people who have real affection for their senior clients -- were quite critical of the children for, in effect, pushing their parents out of the house and onto the welfare rolls. Even the immigration lawyers, belying their hard-bitten reputation, expressed the same concern.

One motive for the children is clearly financial, with money taking precedence over family ties. Edna Law said that the children feel that "It's nice that they don't have to support their parents." Others used blunter terms, with "greedy" being a popular choice. Another common impetus for having the parents move out is interpersonal conflict. As one senior put it, "Daughters-in-law don't want to live with their mothers-in-law," and welfare, by enabling the seniors to live separately at no cost to the children, provides an all too easy alternative to working out family differences.

All of this is far from the Chinese tradition of filial veneration for one's parents. Instead, the seniors are emotionally traumatized by the process. Yue cited as typical a recent case, in which a couple she was helping were shocked because "the son wanted them to move out. They couldn't accept that. They felt really hurt." And in spite of the well-appreciated activities offered in the senior centers, loneliness is a common problem. I was touched when a client at one of the senior centers even tried to enlist my help in convincing her children to let her move back in with them.

Perhaps this breakdown of the traditional Chinese extended family structure would occur anyway. But the availability of welfare, which gives financial incentives for the children to push their parents out of the house, is certainly facilitating the process.

## 7 Awareness of Welfare Policies and Procedures Among the Chinese Immigrant Community

Coupled with the high rate of welfare use among senior Chinese immigrants is a remarkably high degree of awareness of welfare policies and procedures. Some of the information sources are:

- Word of mouth. This is an extremely efficient method of disseminating information among Chinese immigrants, arguably more so than among some other groups.

- Books. A popular Chinese-language book on life in America, "Zai Meiguo Sheng Huo Xu Zhi" ("What You Need to Know About Life In America," ISBN 957-677-008-4, Sixth Edition, 1992), sold in Taiwan and Hong Kong, and in Chinese bookstores in the U.S., includes a 36-page guide to SSI and other forms of public assistance.

- Newspapers. The largest-circulation Chinese-language newspaper in the U.S., "Shijie Ribao" ("World Journal," especially popular among immigrants from Taiwan), runs an advice column on SSI and other immigration-related matters.

- Promotion by community activists. There is a tremendous effort made by the activists, via the Chinese senior centers, Chinese-language television programs and so on, to educate the seniors about welfare benefits.

I wish to stress here that word of mouth is by far the most powerful of all of these sources. Edna Law, whose job includes helping seniors apply for welfare, marveled, "Sometimes I'm amazed-the seniors know more than I do!" She also remarked that the seniors from Taiwan "are very sophisticated [about welfare]...They get all the benefits they can." One immigrant I talked to not only had an impressive knowledge of American immigration laws, but also knew that in Canada the sponsoring son or daughter is financially responsible for the parents for 10 years, compared to the American three-year limit; even the American immigration lawyers I talked to were not so knowledgeable as this concerning Canadian policy. Other magic numbers, such as the $2,000 limit on bank accounts for welfare eligibility (and the fact that one can legally circumvent that limit by transferring one's assets to one's children, providing it is done two years before applying for SSI), are considered standard components of one's civic literacy.

Putting it more succinctly, most of these seniors do not speak English, and thus do not know standard American acronyms such as CBS, NBC and ABC. But there is one that they all know quite well: SSI.

## 8 Do Immigrants Plan in Advance to Go on Welfare?

Do the immigrants know about the availability of welfare services before they immigrate? This is of interest, in light of the debate as to whether immigrants come to the U.S. with the goal of availing themselves of these services. For the case of elderly Chinese immigrants, neither side of this debate is completely correct.

On the one hand, it is very clear that a number of immigrants know about welfare services, and make plans to use them later on, at the time they apply to immigrate to the U.S. Among Chinese immigrants, the number of such cases is rapidly increasing, again due to word of mouth. This oral "information superhighway" among Chinese has busy "offramps" in China, Taiwan and Hong Kong. The director of a Chinese senior center in New York told me, for example, that among many new immigrants who become his clients these days, their first order of business after arriving in the U.S. is to ask him about welfare benefits.

On the other hand, the consensus of most of those I interviewed is that in the majority of cases it is the still seniors' children, not the parents, who plan from the beginning for the parents to go on welfare. Before filling out the forms in which they petition the INS for their parents' immigration, they consult with immigration lawyers, social workers and friends, to make sure that they (the children) will not have to personally pay for their parents' food, clothing, housing, medical expenses, and so on.

## 9 Reactions by Chinese-Americans

I would presume that one or more Chinese social-activist organizations would oppose efforts to reform policy on immigrant SSI use. With all due respect to such organizations, I would point out that most Chinese-Americans have no connection to such organizations, are quite unaware of the lobbying done by them, and in many cases would disagree with the positions they take.
Among mainstream Chinese I have talked to, many consider present welfare policies far too lax. One immigrant senior complained, "I worked here in the U.S. and paid taxes for 30 years, yet they come in without having worked a day, and get a welfare check twice as large as my Social Security check. It's really unfair." Another immigrant senior, also a nonrecipient, said, "America is stupid" for allowing people to take advantage of the system in this way. One community worker, a Chinese woman who had been so positive in tone when I talked to her at work, startled me by calling me at home the next day and angrily saying, "These people are greedy! They're hurting our country"' And Cindy Yee, a social worker in Oakland's Chinatown, noted that "The system is not well put together...not strict enough to make the sponsors [permanently] responsible."

## 10 Relation to Immigration Law

In investigating SSI use, why focus on immigrants? One very practical reason is the high usage rate among immigrants, as seen earlier -- 45% for all elderly immigrants (55% for Chinese), as opposed to the 9% rate among native-born seniors.

But an equally important reason is that immigrants are not supposed to be on welfare in the first place. The INS has a legal mandate to reject any applicant for immigration who is "likely to become a public charge." Yet, this is not really enforced.

Consider a typical scenario (others are possible), in which a hypothetical Ms. Wong, having immigrated earlier, wishes to have her father, Mr. Wong, immigrate as well. One of the forms Ms. Wong will fill out, number I-134, will request her to demonstrate that she has the financial resources to support her father. In addition to asking Ms. Wong to list her financial assets, form I-134 specifically asks her to affirm "that this affidavit is made by me for the purpose of assuring the United States Government that the person(s) named in item 3 [Mr. Wong] will not become a public charge in the United States."

Form I-134 weakens its own case a bit, by stating that the form is binding on Ms. Wong only for Mr. Wong's first three years in the U.S. (This was recently changed to five years, on a temporary basis, until 1996). Nevertheless, it clearly states that the form's goal is to assure that Mr. Wong will not become a public charge even after that period, i.e. he "will not become a public charge during [his] stay in the U.S."

Later, various forms (e.g. OF-230) will ask Mr. Wong himself to assure the INS that he will not become a public charge in the U.S.

As mentioned in a previous section, if Ms. Wong is typical, at the time she is filling out form I-134, assuring the INS that Mr. Wong will not become a public charge, she is already planning precisely the opposite, i.e. planning that he <u>will</u> go on SSI after the deeming period ends. She is then on shaky legal grounds at best, and is possibly even guilty of perjury. Similarly, if Mr. Wong has such early plans, he is also is skirting the limits of the law.

In other words, large numbers of senior Chinese immigrants, and especially their children, are indeed flouting immigration law. Whether they are doing this intentionally or simply signing forms without reading them (the latter is probably common) is another issue. But the bottom line is that all these immigrant SSI recipients are violating pledges they made about SSI use, and the seniors should not be on the SSI rolls.

## 11 Possible Solutions

Changing the INS forms -- e.g. asking Ms. Wong and Mr. Wong above just how Mr. Wong intends to support himself after the three-year (temporarily five-year) deeming period ends -- would at least carry symbolic value. Since Mr. Wong is past employment age, Ms. Wong would probably say that she would support Mr. Wong permanently. Of course, under current law such a pledge would presumably be unenforceable. However, by forcing Ms.Wong to pro-actively address the question of Mr.Wong's post-deeming period means of support, at least it would clarify for Ms. Wong that the government does indeed care whether Mr. Wong becomes a public charge after the deeming period ends, dispelling a misconception which is common among Chinese immigrants. Nevertheless, INS and SSA officials have stressed to me that while they feel that abuse is rampant and they would be thrilled to see a solution to the problem, their hands are tied (especially by certain court decisions). The only real solution would be legislative.

What kind of legislative solutions are possible? One possibility would be to simply make immigrant aliens ineligible for welfare. This would reduce SSI to a significant degree. However, the degree of such a reduction is unknown. Some resident aliens who would otherwise not opt for citizenship would, with SSI as an incentive, decide to become naturalized after all. Since one can apply for naturalization after five years in the U.S., for many people the new policy would be functionally equivalent to the current five-year ineligibility period, with no savings in expenditures accruing from such people.

(Though I do support this policy, i.e. making immigrant aliens ineligible for welfare, I am concerned that this would add yet another item to the list of "wrong" incentives to become naturalized. In interviewing the Chinese seniors, I asked whether they planned to become citizens. Most said yes, and cited as their motivations that citizenship would (a) make it easier for them to travel abroad, and (b) expand their rights to sponsor their relatives to immigrate. Conspicuously absent were motivations such as voting rights, pride in being an American, and so on.)

Another class of solutions would involve making changes to the length of the deeming period (directly, or possibly in some indirect way). As mentioned earlier, in Canada our hypothetical Ms. Wong would have to support Mr. Wong for 10 years, as opposed to our three (temporarily five) years. Given that Canada's immigration policies are in general much more liberal than ours, it would seem that a 10-year period is certainly not harsh, and indeed longer periods may well be justified, including making Ms. Wong permanently responsible for her father.

I believe a combination of these approaches would be the best way to really insure that only the truly needy use SSI.

Chairman FORD. Dr. Boggs, there has been extensive discussions that have taken place on the continuing disability reviews. In terms of the CDRs, should they continue to be a priority by the Social Security Administration?

Ms. BOGGS. Well, I confess that I am not particularly expert in this area, but basically you have a range of expectations, that is to say, when you determine a person to be disabled in the first instance, they must have a prospect of being disabled for at least 12 months, but the Social Security Administration sets up tickler files which vary with the diagnosis and the condition and the prospects for improvement. There are some conditions which you are quite sure are not going to improve or not going to improve before the person becomes 65 or whatever the case may be, so that——

Chairman FORD. Any recommendations on how we can improve the review process?

Ms. BOGGS. The CDR process?

Chairman FORD. Yes, the CDR process.

Ms. BOGGS. I think it has the same potentials for improvement as the initial determination process has, and clearly that is under review at the present time. You have heard already that Rhoda Davis is heading up a reengineering project for doing the process of the disability determination. Clearly, the number of appeals and denials and reversals, and what not, that goes in, suggests that the whole process of determining disability or redetermining disability needs to be more sophisticated than it has been in the past.

Chairman FORD. Let me ask you a question about the representative payee system. There has been a lot of focus and a lot of discussion, as you know, on that lately. In fact, GAO reported that the community organizations should be offered more of an incentive to handle more of this responsibility.

Ms. BOGGS. Yes. Well, there was discussion in the panel about the need for—which I share incidentally, a view which I share, which is that there is a need to supplement the work of relatives and others who are willing to serve, to be a representative payee on a volunteer basis, and can do so adequately. There is an increasing need to have community organizations available to do this, and there is a need to underwrite the administrative costs of doing that.

Chairman FORD. That is the modernization project that you worked on, right?

Ms. BOGGS. That was part of our analysis.

Chairman FORD. What effect would this have on the constituents that you represent?

Ms. BOGGS. Well, let me say two things. One is the constituents I represent have a very high ratio of, a rate of need for representative payees, the fact of being mentally retarded generally means you don't handle your money very well, and of the adults who are disabled in childhood, which includes people who are not mentally retarded, along with those who are, 80 percent have representative payees, so it is something which is very much related to the constituency that I represent.

The panel recommended that where it was necessary to pay payees that the cost be taken out of the Social Security Administration's administrative account. We would like to see it structured a little differently so that the benefit is augmented by an amount which the payee can legitimately deduct as an expense of doing the service.

Chairman FORD. Yes, because we don't want to get these responsible representative payees confused with others discussed in the joint hearing last week with one of the other subcommittees on Ways and Means.

Ms. BOGGS. What do you mean? I don't quite understand.

Chairman FORD. They were talking about representative payees, and someone testified that liquor store owners were representative payees. Not in your population?

Ms. BOGGS. The majority of my constituents have——

Chairman FORD. I understand. I am not referring to your population.

Ms. BOGGS [continuing]. Have one or two kind of payees. Either they have relatives, parents or siblings, or whatever, or they have agencies which are serving them. They have institutions. Institutions are often payees, the State government is often payee. We do not believe that that is an appropriate form of representative payment, the representative payee status. Representative payees should know their beneficiaries individually and they should be using the money as is appropriate for those individuals.

Chairman FORD. OK. Thank you.

Ms. BOGGS. I am not sure I responded to your question. I think you perhaps were driving at something——

Chairman FORD. No, I just wanted it for the record, and it certainly was not a reflection on the population that you represent or your organization.

Ms. BOGGS. No, I didn't take it that way.

Chairman FORD. The representative payee system is not a bad policy that is set in place. But there have been those who testified about problems with representative payees.

Ms. BOGGS. I know there are real problems in finding payees for people for whom a representative payee is mandatory, such as drug addicts, and so on, and it is often difficult to find a person or agency to do it. When I say that we need some opportunity for legitimate agencies to do it, I am referring to nonprofit social agencies which do not have these individuals as clients in a competing capacity.

Chairman FORD. I was basically referring to the drug addicts and alcoholics, and I guess the testimony that came into the subcommittee last week.

Ms. BOGGS. Well, I didn't see that, so I can't comment on that particular instance, but there are certain problems related to the independence and the sagacity of payees. I think the vast majority of payees that we have are serving adequately, and we don't need to turn over the whole applecart because there are some errors in it, but there are some weak points.

Chairman FORD. Thank you.

Mr. Shaw.

Mr. SHAW. Mr. Chairman, I would like to go back to Mr. Matloff for just a few minutes.

I think that the testimony that you gave, in many ways, is really quite shocking. In looking at your testimony, I see that the Vietnamese seem to have figured this thing out better than anybody else.

Going back to that portion of your testimony, and I am reading at the top of page 10, it says that before filling out the forms in which they petition the INS for their parents' immigration, "they" being the sponsors, they counsel with immigration lawyers, social workers and friends to make sure that they, the children, will not have to personally pay for their parents' food, clothing, housing, medical expenses, and so on. I am sorry to say, I have never seen the form that they have to fill out.

I know basically what it says; but is it an affidavit?

Mr. MATLOFF. OK, there are a number of forms. I think what you are asking is one of the forms, at least one of them does say: I state under penalty of perjury the following thing. The last time I looked at this particular form, I think it used the word affidavit, and I don't know what the legal distinction is there. But I think one of the complicating factors, though, is—which I did mention on the written version here, it says at one point because of the deeming, it says: I understand that this is binding upon me only for 3 years.

Probably, now it has been changed temporarily to 5 years on that same form. But in other parts of the form, it does say clearly that this is—that the purpose of this form is to assure that the beneficiary, you know, the father in my hypothetical example, will not become a public charge ever. And, in fact, one of the lines specifically says, and I quoted it here: "During his stay in the United States," which is permanent.

Now, again, I want to clarify that when I have talked—for example, I have talked to immigration paralegals that work with Chinese clientele and a lot of them just don't care what they are signing. They are told to sign, and they sign, so I don't want to give the impression that a lot of people are consciously doing this. They may or may not be.

Mr. SHAW. I understand that. But I would say it appears that we are the biggest suckers in the world to allow this to continue.

Mr. MATLOFF. Yes.

Mr. SHAW. I would like to ask, Mr. Chairman, that the forms that are filled out pertaining to Mr. Matloff's testimony, the INS forms, be put in the record.

Chairman FORD. We might already have them.

Mr. SHAW. I assume it is not too voluminous. I think it ought to be made a part of the record of this hearing because I think it is a very important part of the history of this.

Chairman FORD. We will, I think we made them part of another hearing, but if not, we will be happy to make them part of this hearing.

[The following was subsequently received:]

OMB No. 1115-0062

**U. S. Department of Justice**
Immigration and Naturalization Service

## Affidavit of Support

*(ANSWER ALL ITEMS: FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK.)*

I, ______________________ (Name), *residing at* ______________________ (Street and Number)

______________________ (City) (State) (ZIP Code if in U.S.) (Country)

**BEING DULY SWORN DEPOSE AND SAY:**

1. I was born on ____________ (Date) at ____________ (City) (Country)

If you are ***not*** a native born United States citizen, answer the following as appropriate

a. If a United States citizen through naturalization, give certificate of naturalization number ____________

b. If a United States citizen through parent(s) or marriage, give citizenship certificate number ____________

c. If United States citizenship was derived by some other method, attach a statement of explanation.

d. If a lawfully admitted permanent resident of the United States, give "A" number ____________

2. That I am ________ years of age and have resided in the United States since (date) ____________

3. That this affidavit is executed in behalf of the following person

| | | |
|---|---|---|
| Name | Sex | Age |

| | | |
|---|---|---|
| Citizen of—(Country) | Marital Status | Relationship to Deponent |

Presently resides at—(Street and Number) (City) (State) (Country)

Name of spouse and children accompanying or following to join person

| | | | | | |
|---|---|---|---|---|---|
| Spouse | Sex | Age | Child | Sex | Age |
| Child | Sex | Age | Child | Sex | Age |
| Child | Sex | Age | Child | Sex | Age |

4. That this affidavit is made by me for the purpose of assuring the United States Government that the person(s) named in item 3 will not become a public charge in the United States

5. That I am willing and able to receive, maintain and support the person(s) named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person(s) will not become a public charge during his or her stay in the United States, or to guarantee that the above named will maintain his or her nonimmigrant status if admitted temporarily and will depart prior to the expiration of his or her authorized stay in the United States

6. That I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person(s) named in item 3 and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services and the Secretary of Agriculture, who may make it available to a public assistance agency

7. That I am employed as, or engaged in the business of ____________ (Type of Business) with ____________ (Name of concern)

at ______________________ (Street and Number) (City) (State) (Zip Code)

I derive an annual income of *(if self-employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instruction for nature of evidence of net worth to be submitted.)* $____________

I have on deposit in savings banks in the United States $____________

I have other personal property, the reasonable value of which is $____________

Form I-134 (Rev. 12-1-84) Y

OVER

I have stocks and bonds with the following market value, as indicated on the attached list which I certify to be true and correct to the best of my knowledge and belief $ ____________

I have life insurance in the sum of $ ____________

With a cash surrender value of $ ____________

I own real estate valued at $ ____________

With mortgages or other encumbrances thereon amounting to $ ____________

Which is located at ____________
(Street and Number) (City) (State) (Zip Code)

8 That the following persons are dependent upon me for support. *(Place an "X" in the appropriate column to indicate whether the person named is **wholly** or **partially** dependent upon you for support.)*

| Name of Person | Wholly Dependent | Partially Dependent | Age | Relationship to Me |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

9 That I have previously submitted affidavit(s) of support for the following person(s). If none, state "*None*"

Name ____________ Date submitted ____________

10 That I have submitted visa petition(s) to the Immigration and Naturalization Service on behalf of the following person(s). If none, state none

Name ____________ Relationship ____________ Date submitted ____________

11 ***(Complete this block only if the person named in item 3 will be in the United States temporarily.)***

That I ☐ do intend ☐ do not intend, to make specific contributions to the support of the person named in item 3. *(If you check "do intend", indicate the exact nature and duration of the contributions. For example, if you intend to furnish room and board, state for how long and, if money, state the amount in United States dollars and state whether it is to be given in a lump sum, weekly, or monthly, or for how long.)*

### *OATH OR AFFIRMATION OF DEPONENT*

***I acknowledge at that I have read Part III of the Instructions, Sponsor and Alien Liability, and am aware of my responsibilities as an immigrant sponsor under the Social Security Act, as amended, and the Food Stamp Act, as amended***

***I swear (affirm) that I know the contents of this affidavit signed by me and the statements are true and correct.***

***Signature of deponent*** ____________

***Subscribed and sworn to (affirmed) before me this*** ______ ***day of*** ____________, 19____

***at*** ____________ ***My commission expires on*** ____________

***Signature of Officer Administering Oath*** ____________ ***Title*** ____________

***If affidavit prepared by other than deponent, please complete the following: I declare that this document was prepared by me at the request of the deponent and is based on all information of which I have knowledge.***

***(Signature)*** ***(Address)*** ***(Date)***

*(Please tear off this sheet before submitting Affidavit)*

**U. S. Department of Justice**
Immigration and Naturalization Service

**Affidavit of Support**

## INSTRUCTIONS

**I. EXECUTION OF AFFIDAVIT.** A separate affidavit must be submitted for each person. You must sign the affidavit in your full, true and correct name and affirm or make it under oath. If you are **in the United States** the affidavit may be sworn or affirmed before an immigration officer without the payment of fee, or before a notary public or other officer authorized to administer oaths for general purposes, in which case the official seal or certificate of authority to administer oaths must be affixed. If you are **outside the United States** the affidavit must be sworn to or affirmed before a United States consular or immigration officer.

**II. SUPPORTING EVIDENCE.** The deponent must submit in duplicate evidence of income and resources, as appropriate.

A. Statement from an officer of the bank or other financial institution in which you have deposits giving the following details regarding your account:

1. Date account opened.
2. Total amount deposited for the past year
3. Present balance

B. Statement of your employer on business stationery, showing.

1. Date and nature of employment
2. Salary paid.
3. Whether position is temporary or permanent

C. If self-employed

1. Copy of last income tax return filed or,
2. Report of commercial rating concern

D. List containing serial numbers and denominations of bonds and name of record owner(s)

**III. SPONSOR AND ALIEN LIABILITY.** Effective October 1, 1980, amendments to section 1614(f) of the Social Security Act and Part A of Title XVI of the Social Security Act establish certain requirements for determining the eligibility of aliens who apply for the first time for Supplemental Security Income (SSI) benefits. Effective October 1, 1981, amendments to section 415 of the Social Security Act establish similar requirements for determining the eligibility of aliens who apply for the first time for Aid to Families with Dependent Children (AFDC) benefits. Effective December 22, 1981, amendments to the Food Stamp Act of 1977 affect the eligibility of alien participation in the Food Stamp Program. These amendments require that the income and resources of any person who, as the sponsor of an alien's entry into the United States, executes an affidavit of support or similar agreement on behalf of the alien, and the income and resources of the sponsor's spouse (*if living with the sponsor*) shall be deemed to be the income and resources of the alien under formulas for determining eligibility for SSI, AFDC, and Food Stamp benefits during the three years following the alien's entry into the United States. An alien applying for SSI must make available to the Social Security Administration documentation concerning his or her income and resources and those of the sponsor including information which was provided in support of the application for an immigrant visa or adjustment of status. An alien applying for AFDC or Food Stamps must make similar information available to the State public assistance agency. The Secretary of Health and Human Services and the Secretary of Agriculture are authorized to obtain copies of any such documentation submitted to INS or the Department of State and to release such documentation to a State public assistance agency.

Sections 1621(e) and 415(d) of the Social Security Act and subsection 5(i) of the Food Stamp Act also provide that an alien and his or her sponsor shall be jointly and severably liable to repay any SSI, AFDC, or Food Stamp benefits which are incorrectly paid because of misinformation provided by a sponsor or because of a sponsor's failure to provide information. Incorrect payments which are not repaid will be withheld from any subsequent payments for which the alien or sponsor are otherwise eligible under the Social Security Act or Food Stamp Act, except that the sponsor was without fault or where good cause existed.

These provisions do not apply to the SSI, AFDC or Food Stamp eligibility of aliens admitted as refugees, granted political asylum by the Attorney General, or Cuban Haitian entrants as defined in section 501(e) of P L 96-422 and of dependent children of the sponsor or sponsor's spouse. They also do not apply to the SSI or Food Stamp eligibility of an alien who becomes blind or disabled after admission into the United States for permanent residency.

**IV. AUTHORITY/USE/PENALTIES.** Authority for the collection of the information requested on this form is contained in 8 U S C 1182(a)(15), 1184(a), and 1258. The information will be used principally by the Service, or by any consular officer to whom it may be furnished, to support an alien's application for benefits under the Immigration and Nationality Act and specifically the assertion that he or she has adequate means of financial support and will not become a public charge. Submission of the information is voluntary. It may also, as a matter of routine use, be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies including the Department of Health and Human Services, the Department of Agriculture, the Department of State, the Department of Defense and any component thereof (if the deponent has served or is serving in the armed forces of the United States), the Central Intelligence Agency, and individuals and organizations during the course of any investigation to elicit further information required to carry out Service functions. Failure to provide the information may result in the denial of the alien's application for a visa, or his or her exclusion from the United States.

Form I-134 (Rev 12-1-84) Y

Mr. SHAW. Fine, I would like that. I think there are really some deep-rooted problems here, and this is becoming institutionalized among certain communities, and I think basically these people are honorable people, but I think that they are so badly on the wrong track that it is absolutely shocking, it is fraudulent, and it could be that there is room here for criminal prosecution for what these people are signing, particularly if it can be shown at the same time that they are doing this that they are looking into the benefits that their parents, or whomever they are signing for, might receive. Maybe there is another side to this, but I don't see it.

I would guess that the person migrating to the United States, or immigrating into the United States, probably signed something——

Mr. MATLOFF. They do as well, but then you have even more.

Mr. SHAW. I would like to see that made a part of this hearing record, particularly in light of this book that you talk about that is, I guess, getting pretty close to a bestseller on the Chinese bookstands.

Mr. MATLOFF. True, but by now word of mouth has obliterated any effect of this book. It is a bestseller, it has got a lot of other stuff that has nothing to do with welfare in it. But word of mouth is extremely powerful, and it forms an information superhighway. And this information superhighway has off ramps in Taiwan and China and places like that.

Mr. SHAW. Well, Mr. Matloff, if your testimony is even 20 percent correct, and I am sure it is, and I am sure it is much more than that, we have got a massive fraud that Uncle Sam is being duped out of—and the taxpayer is being duped out of lots of money at a time when we look so desperately for dollars to try to pass legislation and we resort to accounting gimmicks and everything else in order to squeeze out a few more bucks. Now we find that there are people who are immigrating to the United States with the plans of playing the system. I think this is just horrible.

Mr. MATLOFF. Well, one of the senior immigrants that I quoted here who is not a recipient, used words very similar to yours, she said, "America is stupid for allowing this."

Mr. SHAW. Well, Mr. Chairman, I think this has been a very enlightening hearing, and I think that you have to look no further than page 3 of Mr. Matloff's testimony and the graph that he has got there to show that this is one of the most incredible things that I have ever seen.

And I think we need to pursue this. I think we need to seek out the people who are violating the immigration forms that are being made out. I think in some instances that this superhighway should contain instances of criminal prosecution, because I think criminality is there, and I think that for aliens to come to our shores and demand welfare payments when we are not even adequately taking care of our own, is horrible.

I think we ought to cut it off. I think for us to continue these payments to noncitizens is outrageous, and particularly when you find that the percentages are so off balance, as your testimony indicates, and we see that there are indications where legal advice is being sought at the same time that these affidavits, or what we think to be affidavits, are being signed by the same people. This is just—this is absolutely outrageous. It has got to stop.

Thank you, Mr. Chairman.

Chairman FORD. Thank you, Mr. Shaw.

Let me just add to that.

Last week we had a joint hearing with the Oversight Subcommittee, and the OIG of Health and Human Services along with the Commissioner of SSA testified. Both testified before the subcommittees, and there are criminal investigations that are going on now in several cases that could have 200, 300, 400 or 500 people per case.

Mr. SHAW. You know one of the problems that we have here, and we are doing it to ourselves over and over again, we are doing it in Medicare, we are doing it in just about every area where we have jurisdiction, when we look for something to cut, we cut the people who are doing the investigations first, and that is the only place where we really are stopping some of this stuff. And I think what we need to do, Mr. Chairman, and maybe this committee ought to be specifically active in this, is to—in cracking down on fraud for the various subcommittees of this committee, look into beefing up the prosecutors and investigators so that people know that this isn't a way of life and that everybody does it, so no one gets caught.

I had two townhall meetings over the weekend about welfare reform, and in both of those meetings it came back to people wanting to talk about welfare fraud. They were giving me names and addresses of people who had full-time jobs and yet collected welfare benefits. One of them was someone who has a full-time job and is receiving disability benefits from SSI. Something is wrong here. I am going to have that one looked into specifically.

But there are people, there are plenty of people out there that are deserving of these benefits, and for those that are playing the system, it is just robbery. And they are robbing not only from the taxpayers, but from the people who otherwise legitimately are entitled to those benefits.

Chairman FORD. May I add on to that, Mr. Shaw?

It certainly was the intent of the chairman of this subcommittee, and I think your colleague and my colleague, Mr. Pickle, go even beyond that. But sometimes these prosecutions take 1, 2, and 3 years. If there is anyone who is believed to be abusing the system or defrauding the government to receive benefits, we want to remove them from the system, not just for the criminal prosecution to take place, but for the civil procedures, and whatever it will take for Health and Human Services and SSA to remove them entirely from the system. We do not want to continue to pay someone until criminal investigations are completed over a given period of time.

Mr. SHAW. Maybe you better talk to some of our friends on the Judiciary Committee and see what we can do.

Chairman FORD. We will continue to collect the information and the testimony from witnesses and study the evidence because these are areas that I am equally as concerned about. Any fraud and abuse in the system should be purged, there is no doubt about it.

The Chair and the subcommittee would like to thank the panelists for coming today.

Thank you very much for your testimony, and your response to the questions.

Once again, I want to apologize for delaying everyone today. It has been extremely long for the three panels. But thank you very much for putting up with us, and traveling here to be with us and give us the information that we need from you and your organizations. Again, thank you very much.

This will conclude the hearing unless, Mr. Shaw, you have another comment.

This will conclude the business of the subcommittee today.

The committee is now adjourned. Thank you.

[Whereupon, at 5:25 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

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SUBMITTED TO SUBCOMMITTEE ON HUMAN RESOURCES, WAYS & MEANS COMMITTEE

COMMENTS ON THE SUB COMMITTEE HEARING ON SSI MODERNIZATION REPORT ON MAR. 1, 1994
submitted by Jean Little, Chairperson of SSI/Trust Committee of the
New York State Alliance for the Mentally Ill

I attended the above-named hearing on March 4th, traveling to Washington by car from the Mid Hudson River area in order to hear the latest testimoney by the SSI Modernization Panel, and in particular, the reaction of Mr. Harold Ford, Chairman of this Subcommittee, and others of his Subcommittee.

The recommendations of the SSI Modernization Panel are on the generous side, asking for a benefit increase from 75% of poverty level to 120% of poverty level in increments over a five year period. Also they recommend an increase in the resource level from $2,000 to $7,000 for individuals, and elimination of the 1/3rd rule regarding in-kind support and maintenance.

It is certainly time to be giving these recommendations serious thought, and it is up to Congress to level out the playing field for the poor elderly and the permanently disabled. But I noted that to every appeal for these improvements, Mr. Ford's response was to ask "where do you propose that we get the money from?" To which question the response was mainly, "I'm not sure, but it should be found in our federal budget somehow."

I was in the audience but not allowed to testify. This was an "by invitation only" hearing. So I am writing to give my thoughts on these issues. I don't think anyone, with the exception of Mr. Arthur Flemming and the others of the Panel, have given these matters more deep thought than I have. I have to. I have relied on SSI benefits to maintain my son with cerebral palsy for almost as long as the program has been in operation. He became a beneficiary when he was 10 in 1975 and has been on it ever since. Although he has a fine mind, he cannot walk without crutches, cannot write or type with any speed whatsoever, and of course cannot drive to work, or even take buses, since he doesn't see too well due to eye problems. (He only sees out of one eye at a time). Due to all these handicaps, it is reasonable to expect that my son David will rely on SSI for the rest of his life. Can he do it without me is the question.

Since David and I are both low income (I am now retired and getting $298 a month Social Security, plus I now have a 20 hour a week job with AARP Senior Employment at minimum wage, giving me another $312.00 per month) I know what it takes to survive decently. IT TAKES MORE MONEY THAN $446 a month no matter where you live. One reason we have homeless people on the streets is because it is impossible to find housing that the mentally ill living on SSI can afford. Which brings me to subsidies - provided by localities, usually with federal Section 8 money. Those subsidies provide 2/3rds of a poor person's rent, thereby boosting the SSI beneficiary's actual government largess to something like $746.00 per month. They can live on that, provided they get the Section 8 voucher and find an apartment that fits in the program's guidelines, which in itself is not easy. So there is more than one way to relieve the plight of the poor elderly and the permanently handicapped. One is increase the benefit level, and the other is to provide more funding for Section 8 housing and build more public housing units.

There is a third way that will provide adequate living standards for the disabled, and that way is by sharing a rental with another person. It is often done now in families, especially when it is the child that is disabled and the parent that is able to earn a living. ¶ I learned at the hearing in question that the disabled now account for 75% of the SSI beneficiaries, while those that receive the monthly SSI check who are elderly has gone down to 25%. That is due to the fact that most elderly now get social security checks, which are above the SSI maximum, AND BECAUSE DEINSTITUTIONALIZATION OF THE MENTALLY ILL has caused hundreds of thousands more people to be eligible for SSI. This eligibility has made it easier and easier for states to discharge patients from their hospital care and out "into the community" for outpatient care and housing. Also the Zebley decision made many more children eligible.

Therefore, if you are looking for ways to fund an additional benefit level, you might tax the states, who up until 20 years ago took full responsibility for the care and treatment of the seriously mentally ill. Now they are closing their hospitals and expecting Medicaid to pay all the bills in private hospitals and county outpatient clinics. This is something else I am most familiar with, since I had a son who was mentally ill from the age of 14 (in 1976) to the age of 28 (in 1989, when he died accidentally). This system of medicating serious psychosis and then sending the patient home to make it back into the mainstream has serious flaws in it. One is that the returning patient forgets or refuses to continue with the medication. As the person's mental condition deteriorates again, he or she may leave home, become disoriented, get into trouble with the law, or just plain get lost and not be found.

It is not all the fault of low federal benefit levels for SSI that we have these ex mental patients wandering our streets. You remember John Hinkley, don't you. He came from a very wealthy family, but he was living on his own courtesy of advice from his psychiatrist. John is still in St. Elizabeth's hospital, but mainly because his crime was the shooting of a President of the United States. Other patients get discharged a lot sooner, and often times without proper discharge plans and follow up.

The bad news is that even if you don't follow any of the recommendations of the SSI Modernization Panel, SSI applications are going to keep going up and more caseworkers will be needed to follow through with these applications, and more federal taxes will be needed to pay for the entitlements of millions of disabled people. This is especially so since the hundreds of thousands of families who are now supporting their mentally ill sons and daughters, or at least subsidizing them by paying for their rent and/or food, will be dying off. Many are dying off now, but you haven't seen a thing yet. A whole generation of 60, 70 and 80 year olds, who have been caring for their disabled adult children, are going to be dying out over the next decade, and then you really will have to come up with something better than we have now. Some of those elderly people have already put their children totally into the care of the "system," and find it totally inadequate. Adult homes are a disgrace most of the time. Overcrowded, dirty - they have become mini mental institutions but without the doctors and nurses on call. And they cost the fed. Gov. $750.00 per

Washington, D.C. is no stranger to these problems, and so I have to believe that you understand the points I am making. The situation is not going to get better, it is going to get worse.

Do I have anything encouraging to say? Perhaps.

Those parents in their senior years are not all living in poverty. Many of them are middle class, have worked all their lives and saved some of their income, and are home owners. While they are alive they must worry about the expenses of their own old age. They cannot afford to impoverish themselves to take on the heavy financial burden of caring for a seriously disabled son or daughter. These people are probably great supporters of President Clinton's Health Care Bill, or one that at least will result from his efforts to provide health care for all of us citizens.

I know I am. And in particular I hope the health care plan includes long term care in nursing homes for the elderly that need it. Without such a provision, [illegible] of us seniors will certainly die without a sou to leave behind. Which wouldn't be too bad if we didn't have disabled children who will outlive us. Assuming that Congress will not be able to see its way toward raising the benefit level for SSI, we parents must figure out a way that we can leave a subsidy behind in the way of an inheritance that can be used to help our adult, disabled children survive in this expensive country.

And the answer is a trust, to which we can leave our property when we no longer need it, but our children do. Right now the SSI laws for resources allow us to put money into a discretionary trust; & property that is not attached for nursing home care can also be put into a trust. The rules that SSI have devised from the law allow the principal of the trust and the income from the trust to follow the same rules as help from families. Direct cash payments are treated as unearned income and are subtracted from an SSI benefit check two months down the line. Payments for rent, food and clothing paid to third parties from trust accounts fall under the 1/3rd rule.

Please note that in several states there is a kinder and gentler way of administeri the "in kind support and maintenance" rule. In New York State where I live, it is called the Rupert vs. Bowen decision of the 2nd Circuit Court of Appeals. In this ruling a judge ruled that if a person paid as much as 1/3rd of his SSI check toward his rent he was entitled to a full federal benefit. Please see attached item taken from Vox Populi, entitled "Attention SSI Recipeints. YOU MIGHT BE ENTITLED TO MORE SSI." If more parents knew of this ruling they could take advantage of it and poor families, especially, would be a lot better off. The worst part of this one/third "in kind support and maintenance" rule is that when a person applies for SSI as a disabled person, and has been supported by parents up to that point, the SSA assumes, often incorrectly, that the parents are willing to go on providing the support even after the SSI checks start coming regularly. That is absurd. The reason for applying for the benefits is to get funds to pay your own rent and food and clothing. That is what it is for to begin with. For SSA to assume that families want to continue to pay for the upkeep of their disabled children after the children get on SSI is certainly erroneous, and wrong. Children over 21 are responsible for their own upkeep, and that is why SSI payments are made to them. Somebody really ought to straighten out this terrible, unlawful way the SSA administers the program.

The 1/3rd rule was meant to simplify matters when food and rent is donated by family. However, because of the "pro rata" rule, things really get complicated. This is where TONS OF MONEY IS WASTED and you can save hundreds of millions of dollars.

The reason you can save money is because untold countless hours of expensive caseworker time is spent with this nit picking rule. For my son's case alone there was at least ten hours of time spent when I appealed the caseworker's decision. It had to go to a hearing board, who spent hours going over the case. It was so complicated that they didn't follow the logic of it, which I painstakingly set out for them. They turned me down, and in my humble opinion, the program still owes me hundreds of dollars that they denied my son, David, when he was living alone. If you care to try to figure it out, I enclose a letter I wrote to Mr. Spencer which outlines some of the problem I encountered because of this "pro rata" rule, which is enough to give a computer a headache, and certainly is too complicated for most disabled people to contend with. They just have to grin and bear it when the caseworker says they are going to get a deduction in their check because somewhere somebody gave them a break.

IF we get a good health care bill which takes care of the medical bills for out bulging senior population, then many families will have savings and property to leave behind to help support their disabled children (adult children I am thinking of). When the mentally ill are covered by medical insurance like everyone else, families won't be so reluctant to find a way to support their own. One reason why even well off families apply for SSI for their adult children is because Medicaid often goes with it. New York State guarantees Medicaid coverage along with an SSI check. Seriously mentally ill persons need psychiatric help that is costly, and Medicaid is paying for most of it. Another reason why our "entitlement" programs are growing by leaps and bounds. As I said before, states used to take care of the mentally ill in state hospitals. But no more. New York still operates Psychiatric Centers, for which I am thankful, but California and Massachusetts, to name two, have closed them all down and a sick person either goes to a private hospital or a county clinic.

Lest$_{ex}$ you think that my family is only on the receiving side let me clarify. My/husband and three of my other sons are tax paying individuals. I did some work in my lifetime that qualifies me for SS , but I am one of those who will probably get more out of the system than I put into it... due to the fact that I got no credit with SSA for the years I spent raising five sons. If you count those years in which I worked very hard but received no pay, then surely I am entitled to the $298.00 per month that I now get. And thank goodness for the AARP Senior Employment program. That allows me to hang on to my mobile home, pay house insurance, car insurance, and take in a movie now and then. David and I could not live here on only $787.00 a month - our SSI S combined income. Two people could live in a subsidized apartment on that amount, but not out here in the country, where you need a car and you pay $420.00 a month just for the land that your mobile home sits on. So I work for AARP, and when my health fails, I too will apply for SSI. And I'll be able to manage because both David and I will receive a check for a person "living alone," because we are both responsible for the rent here.

So I am not writing to ask you to make life easier for me, personally. But for you to look at the fine print of the program and see to it that SSA follows the intent and the letter of the law. The 1/3rd rule only applies if and when others provide "food and rent" - and I would assume that this would have to be willingly, not forced by SSA caseworkers decisions.

A final point I would like to make to Mr. Ford, which is in answer to his question, where is the money to come from to pay for the increases? Every time I get a magazine in the mail (U.S.News & World Report) or the Washington Post National Weekly Edition, or the National Enquirer, it seems that there is an article about wasted taxpayers money on really frivolous research projects, ridiculously high defense bills, overruns on building projects, and most annoying of all, articles like the one I enclose which point out subsidies that the generous (or criminal) U.S. Congress pays out to millionaires, either for not planting crops we don't need, or in this article, forgiving the huge debts of extremely wealthy individuals who happen to be losing money (so they say) in a farm venture they went into. I mean to tell you, us little guys can read, and we don't like what we read about rich taking advantage of programs meant for poor farm families by wealthy, unconscienable crooks.

That Congress allows such fraudulent waste to go on, and then leaves mentally ill people to fend for themselves on the streets of our big cities is not to be borne. Not by me. I protest.

Collect on those debts by any means possible. The IRS will take your home, your car, maybe even your kids if you don't pay up. I suggest that Congress find a way to play tough with people who obviously have the means to repay their debts. And incidentally, who writes laws that allow this to go on?

And speaking of repaying debts. How many doctors and lawyers still owe the U.S. government for their education loans? A lot I understand. Well, send them a bill, with a statement to the effect: You have six months to pay this bill or we will take measures to collect it - like the IRS. My guess is that they will pay, promptly.

I'll be keeping my eyes out for further news items about crooks robbing our federal treasury, so you can get after them and have money for the really needy.

I think Uncle Sam is broke because of its generosity to the Middle Class, not the poor. I also think that if you try to tighten up on them that they will squawk loudly. Please keep in mind that to be middle class today you need a family income of $50,000.00 to pay the mortgage and raise the kids. Don't think those making $20,000 as middle class. After income taxes, social security taxes, state taxes and city county/school taxes, they have about $10,000 per year to live on, which is no doubt why wives and mothers have to go out and try to earn another $20,000.00 per year - to make up for the loss of the husband's paycheck. And of course the government taxes her income even more, because she doesn't have any dependents.

I truly hope that someone on your staff that reads this will call it to your attention. We really need help out here to survive. I am truly sorry there are so many needing help. It would make it easier Congress to be generous to people in that category. Please do try to improve the SSI program.

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February 24, 1994

The Honorable Harold E. Ford
Chairman
Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We understand that on Tuesday, March 1, 1994 the Human Resources Subcommittee will hold a hearing on the recommendations of the Supplemental Security Income Modernization Project.

The American Bar Association has worked actively over the years to promote increased efficiency and fairness in the Supplemental Security Income program and in the Social Security Administration's disability benefits review process. We have endorsed legislation to remove inequities in the SSI program, and to improve its administration; made recommendations for improving the disability claims process and protecting the rights of current beneficiaries; supported legislation requiring the Social Security Administration to expand outreach and access to benefits for homeless persons; and called for welfare programs to be funded at a level required to meet basic needs. In furtherance of this effort, at the 1994 ABA Midyear Meeting, the Association adopted policy supporting in principle the recommendations of the SSI Modernization Project.

We enclose a copy of that policy, along with the backgroud report considered by our House of Delegates when our policy was adopted, and request that this letter and these documents be included in the record of the March 1 hearing. Please note that the report is provided only as background; it does not constitute ABA policy. We support the Subcommittee's review of the SSI program and appreciate the opportunity to express the Association's views on these issues, and would be pleased to provide additional information.

Sincerely,

Robert D Evans

Robert D. Evans

Enclosures

# Resolution of the
# AMERICAN BAR ASSOCIATION
# adopted by the
# House of Delegates
# February 1994

**BE IT RESOLVED**, That the American Bar Association supports in principle the recommendations of the Final Report of the Supplemental Security Income Modernization Project, to improve access to the Supplemental Security Income program for all eligible persons, to ensure that claims are processed fairly and efficiently, and to eliminate rules and procedures that are unreasonable, demeaning and harsh.

**BE IT FURTHER RESOLVED**, That the American Bar Association supports the following priorities as set forth in the Final Report of the Supplemental Security Income Modernization Project:

- Increase Social Security Administration staffing.
- Increase the Federal benefit standard
- Stop counting in-kind support and maintenance as income.
- Increase the resource limits, while streamlining the resource exclusions.

## REPORT

## BACKGROUND

The federal Supplemental Security Income (SSI) program was created in 1972 to supplement the nation's existing social insurance programs by providing a monthly cash benefit to lift out of poverty needy persons who were aged, blind or disabled.[1] SSI provides basic benefits for persons 65 and older with little or no retirement income; younger adults who have disabilities but who have not worked long enough or recently enough to receive disability benefits; and disabled children whose parents may still be working, but at very low wages. For many individuals, SSI and Social Security benefits constitute the sole source of income and access to health care.

There is no doubt that during the past twenty years, SSI benefits have helped needy people of all ages. But while Congress has made several improvements in the program over the years, millions of eligible individuals remain unaware of their eligibility, or if they do apply, continue to be faced with unwarranted delays in processing claims; procedures which are unreasonable, harsh and demeaning; and benefits which are inadequate to support the basic necessities of life.

In 1990, in an effort to address these issues and others, then Social Security Commissioner Gwendolyn King appointed a panel of twenty-one experts, chaired by Dr. Arthur Flemming, to review the fundamental structure and purpose of the SSI program. The Supplemental Security Income Modernization Project was charged with determining the extent to which the SSI law, and the policies developed by the Social Security Administration to implement the law, are meeting the needs of those whom they were designed to serve.[2] To this end, the panel reviewed all applicable laws, regulations and policies; held public hearings at locations around the country; and solicited comments from SSA employees, individuals (including former and current SSI recipients), professional organizations, advocacy groups, legal services organizations, private agencies, and federal, state and local governments, among others. The Project published an issues paper in the Federal Register in July, 1991, (to which 14,600 comments were received), and a final report in September, 1992.

The Final Report of the Experts suggests more than fifty reforms, covering twenty categories, which a majority of the panelists believe would improve the effectiveness of the SSI program. Of these, the panel finds the following to be of equal importance and top priority:

- An immediate staffing increase of 6,000 in SSA. This would constitute a first step in eliminating growing backlogs and enabling the agency to move forward providing the level of personalized services which many of the SSI population so sorely need.

o Increase the Federal benefit standard over a period of five years, so that it reaches 120 percent of the poverty guidelines by the fifth year. In 1992 the standard for an individual is roughly 75 percent of the poverty guideline for an individual and the standard for a couple is roughly 83 percent of the poverty guideline for two people.

o Repeal the law which requires that receipt of in-kind support and maintenance (food, clothing and shelter) must be considered as income. This would remove a harsh and demeaning provision and it would further the goal of simplication.

o Change the resources test from $2,000 for an individual and $3,000 for a couple to $7,000 for an individual and $10,500 for a couple and streamline the exclusions. This would make the rules easier for beneficiaries to understand and give them more flexibility in use of funds while simplifying program administration.[3]

On October 14, 1993, the Project presented its recommendations to the U.S. House of Representatives, Committee on Ways and Means, Subcommittee on Human Resources. Legislation to codify some of the recommendations has been introduced by Hon. Carrie Meek, (D-FL.). This legislation proposes to increase SSI resource levels and simplify the exclusion rules; to raise the benefit levels; and to eliminate in-kind support from determination of income.

## EXISTING ASSOCIATION POLICY

Recognizing that the quality of decisionmaking can have a profound effect on the lives and well-being of millions of Americans, the Association has worked actively over the years to promote increased efficiency and fairness in the Supplemental Security Income program and in the Social Security Administration's disability benefits review process.

In 1984, the ABA began advocating for improvements in the SSI program, going on record in support of legislation designed to resolve inequities in such areas as income and resource exclusions, personal needs allowances and overpayment procedures. In 1985 the ABA and the Administrative Conference of the United States (ACUS) sponsored a symposium on the Social Security administrative appeals process. The symposium produced a set of recommendations that resulted in the development of an extensive policy statement adopted by the House of Delegates in August 1986.

In 1986 and again in 1991, the ABA adopted policies aimed at further improving the disability claims process and protecting the rights of persons who may be entitled to or who are already receiving benefits. Also in 1991, the Association urged Congress to enact the Homeless Outreach Act, requiring SSA to undertake affirmative efforts in locations where homeless people congregate, to ensure that eligible individuals receive SSI benefits to which they are entitled. And in 1992, the Association approved a resolution calling for welfare programs to be funded at a level required to meet the need for the basic essentials of life.

The Association has advocated these positions effectively in a variety of forums, testifying before Congressional committees and the Administrative Conference of the United States; commenting on proposed regulations; and directing projects affecting persons eligible for benefits under these programs. In 1986, the Association filed an amicus curiae brief in the landmark United States Supreme Court case, Bowen v. City of New York,[4] in which the Association successfully argued that the Social Security Administration should reopen the cases of thousands of claimants with mental disabilities who were denied disability benefits because they failed to meet sub rosa requirements and appeal deadlines.[5] In September, 1991, the ABA commented on the draft report and recommendations of the SSI Modernization Project, and in December, 1992, submitted comments to the Final Report of the Experts.

## PROPOSED RESOLUTION

It is with this background that the House of Delegates is urged to support the goals and objectives of the Final Report of the SSI Modernization Project. While the ABA does not have policy addressing each of the more than fifty recommendations of the SSI Modernization Project, and while we have not taken positions on the specific timing and financing of the recommended reforms, existing policy is in accord with the principles underlying the creation of the Project; and with the issues which the Panel deems most compelling.

### Staffing

The ABA is committed to promoting improvements within the entire justice system, by advocating for balanced and adequate funding for, and timely access to, each element of that system, including administrative agencies.[6] As a public agency, the Social Security Administration is charged with the duty to provide benefits to all eligible applicants. But between 1984 and 1990, the Social Security Administration underwent significant staff reductions. Also during that time, the ongoing workload increased, creating massive backlogs in the processing of claims before the agency. The backlog of disability cases (social insurance and SSI) alone currently numbers in the hundreds of thousands. Without changes in staffing patterns, including increases in staffing, many of the substantive and procedural improvements for which the ABA has advocated over the years in all likelihood will not be achieved.

For example, the Association has worked to improve the quality of medical and vocational evidence at the initial stages of the disability review process. We have recommended that SSA be directed to make vigorous efforts to compile necessary documentation and to supplement reports which are not sufficiently detailed or comprehensive. We have further recommended that SSA increase its efforts to educate the medical community regarding the eligibility criteria used in the disability program, and the kind of medical evidence which SSA requires. Since medical reports may not provide a sufficient picture of the claimant's total functional capacity, we have urged that SSA obtain evidence concerning claimants' symptoms and limitations from non-medical sources such as social service workers, family members, previous co-workers and others.

To ensure that the review process is efficient and fair, the ABA has argued that SSA must afford claimants the oportunity to review their files, and provide them notice of any information not in the file, which normally should have been included, and an opportunity to submit further evidence in support of their claim. Only after the evidence has been properly developed, and the claimant afforded the opportunity for a personal interview with agency decisionmakers, should a decision be made on the claim.
Currently, a claim which is denied at this stage in the process is submitted for reconsideration. Association policy, however, endorses appeal directly to an Administrative Law Judge. If the quality of intake and case development is improved, there would be little reason for reconsideration at the state level of the appeals process, particularly given the low reversal rate and delays involved at this step.

Increased staffing will also be essential to the Social Security Administration's outreach programs. The Panel proposes continuing and expanding the Social Security Administration's efforts to reach the significant numbers of low-income, elderly and disabled individuals who are eligible for SSI, but do not receive benefits. Mental illness, physical disability or social isolation have prevented many eligible persons from applying. In 1990-91, the ABA's Commission on Legal Problems of the Elderly, along with the National Senior Citizens Law Center and the American Association of Retired Persons, administered an outreach demonstration project under a cooperative agreement with SSA. That effort provided an opportunity for first hand observation of the vast numbers of SSI-eligible individuals who are never reached.

The ABA is on record in support of outreach programs targeted specifically to homeless people. Since 1988, the Association has provided assistance to state and local bar associations and other legal organizations to develop and maintain programs offering pro bono legal services to homeless clients. Several programs are designed specifically to serve the needs of homeless mentally ill people. According to staff at those programs, "persons who are homeless and those who have mental impairments (comprising 30%

to 35% of the homeless) are the least capable of accessing and securing SSI benefits, without some external outreach and advocacy support"; (San Diego Volunteer Lawyers Program) and "the needs of the homeless cannot be met without vigorous outreach programs" (University of Chicago Mandel Legal Aid Clinic).

Reports from around the country demonstrate that homeless people face extraordinary difficulties in trying to apply for SSI benefits. Isolated in shelters or on streets and lacking any financial resources, eligible homeless people are often unable to travel to government offices to inquire about or apply for benefits. Lacking a permanent address or telephone, potential applicants who are homeless face often insurmountable barriers in communicating and maintaining communication with government offices. For homeless persons with mental disabilities, negotiating the complex application process is even more formidable a task.

Increased staffing for the Social Security Administration will improve access to services, alleviate delays, and better develop evidence at the early stages of the SSI claims process. Careful decisionmaking at the administrative level also will relieve the federal courts of many appeals now before them. The Association therefore supports the Project's recommendation that this issue be accorded top priority.

## Benefits and Resources

As far back as 1984, the ABA urged that the Social Security Administration resolve inequities in the SSI program by increasing benefit levels; raising resource limits and eliminating consideration of in-kind support as income to the beneficiary. In addition to being outdated and demeaning, these policies impose an administrative burden on SSA. Implementation and enforcement take up valuable staff time, adding to the number of benefit denials and appeals and as a consequence, delaying access to the system for other claimants.

### Benefit Levels

Monthly SSI income standards in 1993 are roughly 75% of the federal poverty guideline ($434.00) for a single person, and roughly 83% of the federal poverty guideline ($652.00) for a couple. (Some states supplement federal benefits). These percentages have remained relatively unchanged since the program began in 1974, and produce benefits which are simply inadequate to meet basic expenses for food clothing and shelter.

The Panel points out in its Final Report that Congress has lifted the criteria for program access to 120% of the poverty level or more, for approximately fifteen other programs which serve poor people.[7] Benefit levels at 100% of the poverty guidelines, or greater, would at least begin to approach the standards used in most other needs based programs.

**In-Kind Support and Maintenance**

In calculating benefit levels, the SSI program takes into consideration income received by a person from a variety of sources, including work, other benefit or retirement programs, etc. The program also counts as income "in-kind support and maintenance," the value of food, clothing or shelter a beneficiary receives. Calculation of in-kind support varies depending upon the circumstances and living arrangements involved, but can include a one-third reduction in benefits for an individual who is living in the home of another.

This arbitrary reduction severely penalizes truly needy elderly persons or persons with disabilities who, for a variety of legitimate reasons, live with friends or relatives. Many SSA claims representatives spend between one-fourth and one-third of their time verifying living arrangements and computing benefit amounts, following program instructions which comprise 150 pages in the Propram Operations Manual![8] This unnecessary burden on an already inadequately staffed agency further increases the backlog of pending cases. And in these times of encouraging voluntary support, the policy serves only to discourage informal caregiving and to weaken the family structure.

**Resource Limits**

Like most other needs-based programs, the SSI program considers resources to be cash, personal property, and real property that a person owns and has the right to convert to cash. Certain property, such as the home, an essential automobile or a burial plot or funds, is excluded. In addition, resources belonging to certain other people, such as a spouse, may be deemed to be available to the SSI recipient. If an individual's resources exceed the established limits at any time during a given month or months, he or she will be ineligible for benefits for the entire month(s)
individual and $2250 for a couple; they remained unchanged for the first ten years of the program, until they were increased to the current figures over a four year period beginning in 1985. The current limits are $2,000 for an individual and $3,000 for a couple. Like the benefit standards and in-kind income rules, the resource guidelines involve issues which recipients may not understand, and complex calculations to which SSA representatives must devote significant time. Moreover, the rules severely restrict the ability of persons who are elderly or who have disabilities to meet medical needs not covered by Medicaid (i.e. major dental work, customized wheelchair), or to retain even a small "nest egg" for emergencies. The ABA's 1984 policy supports raising the resource limits and streamlining the process by which certain resources are excluded, so as to simplify administration of the program and allow greater flexibility to beneficiaries in the conservation and use of their funds.

## CONCLUSION

To date, most efforts by Congress and the Administration to initiate improvements in Social Security Administration programs have been piecemeal. When then Commissioner King charged the SSI Modernization Project "to create a dialogue that provides(s) a full examination of how well the SSI law, and the policies developed to implement the law, serve people with very low or no income who are over 65 or blind or disabled," she recognized the need for a comprehensive review of structure and purpose of the SSI program.[9]

Endorsement in principle of the efforts of the SSI Modernization Project will allow the ABA to promote dialogue in Congress and other forums, to participate therein, and to reaffirm its long-standing position that a fair and equitable Supplemental Security Income program, efficiently administered, goes far toward ensuring equal access to justice for those members of our society who are least able to protect their own rights -- low-income older persons, individuals with disabilities, and those who are homeless and otherwise disenfranchised.

The improvements recommended in the Final Report will increase the expenditures of the SSI program. Recognizing this, the Panel states

> Many experts believed that the identification of potential sources of financing program improvements should be under the purview of persons with expertise in public finance; and they, in general, are not such experts. Thus, the Commissioner of Social Security has asked the Chairman to chair a follow-up group of public finance experts to develop options for financing the improvements identified in this report and to complete their work in six months.[10]

That analysis was delayed by the change in Administration, but when it becomes available, and the options are presented, our Commission will study them and report further to the House, with our recommendations. Meanwhile, the House should go on record as supporting in principle the Recommendations of the Final Report of the Supplemental Security Income Modernization Project.

Respectfully submitted,

Alexander D. Forger
Commission on Legal Problems
of the Elderly

February, 1994

## Endnotes

1. 42 U.S.C. § 1381 *et seq.*, 20 C.F.R. Part 416.

2. Supplemental Security Income Project, Final Report of the Experts, 57 Fed. Reg. 40732 (1992).

3. Id. at 40743.

4. Bowen v. City of New York, 476 U.S. 467 (1986).

5. Brief for the American Bar Association, *Amicus Curiae*, in Support of the Respondents.

6. Working Group on Civil Justice System Proposals, American Bar Association, ABA Blueprint for Improving the Civil Justice System, (1992).

7. Final Report of the Experts, at 57 Fed. Reg. 40746.

8. Id. at 40746.

9. Id. at 40743.

10. Id. at 40747.

## STATEMENT OF STEPHEN L. MORGAN
## CCE, EXECUTIVE VICE PRESIDENT
## AMERICAN CEMETERY ASSOCIATION

Chairman Ford and Members of the Subcommittee:

The American Cemetery Association (ACA) respectfully submits its views regarding the Supplemental Security Income Modernization Project in conjunction with the March 1, 1994 hearing held by your Subcommittee. Our comments also supplement the views expressed in our October 22, 1993 letter to you on this issue. We request that this statement be made a part of the hearing record.

The ACA represents over 2,000 members including private, religious, and municipal cemeteries throughout the United States and in twenty foreign countries. Our concern with the SSI Modernization Project is limited to a proposal in the Final Report, as published in the Federal Register at 57 FR 40732 et seq., to "streamline" certain resource exclusions.

Specifically, the Final Report proposes the elimination of the current burial space and burial fund exclusions in determining SSI recipient eligibility. The current dollar resource exclusion of $2,000 per individual and $3,000 per couple would be increased to $7,000 and $10,500 respectively, in part as an offset to the loss of the burial exclusions (57 FR 40760-61, 40763). While ACA agrees that the current dollar levels are unrealistically low and should be increased, we oppose the elimination of the burial space/fund exclusions.

In 1982, Congress specifically provided that funds set aside for funeral and burial expenses should not be considered assets to meet "living expenses" in determining SSI eligibility. Current policy allows that: 1.) irrevocable funeral and burial arrangements made in advance of death, known as "preneed," are excludable resources; 2.) up to $1500 set aside in a revocable burial fund are excludable; 3.) burial spaces under a revocable preneed contract are excludable; and 4.) interest and accruals on burial funds and spaces are excludable.

The reasons behind enacting these resource exclusions were aptly summed up by Senator Howard W. Cannon when he stated that "many elderly Americans...(were) being faced with the macabre choice between lifesaving welfare assistance and giving up their plans for the disposition of their bodily remains." Enactment of section 185 of the Tax Equity and Fiscal Responsibility Act of 1982 ended what Senator Cannon called "an insensitive and appalling test of eligibility" for SSI benefits.

Elimination of the burial space/fund exclusion as proposed in the SSI Modernization Report will revive "the appalling test of eligibility." The Final Report does acknowledge that "certain property is so essential to one's well being...that its owner should not be expected to sell it and use the cash to meet day-to-day living expenses."

However, the Final Report then proceeds to blur the fundamental distinctions between "living expenses" and funds set aside for the "final expenses" of a funeral and burial by recommending that an overall increase of excludable resources to $7,000 and $10,500 will provide an offset for the elimination of the burial space/fund exclusions. These kinds of resources serve two entirely different purposes: the one for living and the other, quite literally, for death.

In addition, the Report provides no data or evidence as justification for eliminating these exclusions, but provides only a conclusory observation that administrative time and expense would be saved. In fact, a new layer of bureaucracy would be created by the need to evaluate the worth of the assets which were previously excluded.

Even assuming a "grandfather clause" were added to the proposal whereby burial funds or spaces acquired prior to a certain date would continue to be excludable, who would evaluate each claim? Would installment contracts be excluded where a balance remained? If an SSI recipient inherited burial property (a relatively common event in families), would that person then be disqualified?

The complexity of such procedures is self-evident and unfairly penalizes individuals who, for personal, ethnic or religious reasons, merely wish to settle their own funeral and burial arrangements. SSI recipients will be given a strong incentive <u>not</u> to make their own final arrangements due to the increased risk of losing their eligibility. This proposal will also penalize taxpayers by increasing the likelihood of increased welfare funeral and burial payments by government agencies.

The ACA believes that the recommendation to increase the dollar amount of resource exclusions merits serious consideration. However, the proposed "trade-off" by eliminating the burial exclusions is ill-considered and punitive in nature. For the reasons discussed, the American Cemetery Association urges the Subcommittee to reject any proposed elimination of the SSI burial space and burial fund exclusions. Thank you.

## STATEMENT OF GLENN PLUNKETT
## PROGRAM ASSOCIATE
## AMERICAN COUNCIL OF THE BLIND

This testimony is submitted for the record for the March 1, 1994 hearing on the SSI Modernization Project before the Honorable Harold E. Ford, Chairman, Subcommittee on Human Resources Committee on Ways and Means, United States House of Representatives by the American Council of the Blind.

The American Council of the Blind (ACB) is a national membership organization established to promote the independence, dignity, and well-being of blind and visually impaired people. Members are blind, visually impaired, or fully sighted people from all walks of life. By providing numerous programs and services, ACB enables people to live and work independently, contribute significantly to their communities, and learn to advocate for themselves.

ACB works in coalition with other disability groups worldwide to strengthen the effectiveness of the organization's advocacy efforts.

To the extent feasible, ACB wishes to respond to the questions set out in Press Release #13, February 23, 1994. However, we are concerned that Congress address the updating of the entire Supplemental Security Income (SSI) Program to meet the needs of those aged, blind, and disabled persons whose income and resources are so low that they meet the standards set when the program became effective twenty years ago. As the Chairman recognizes, the program does not bring the standard of living of SSI recipients up to the poverty level.

Our major recommendation is to increase the income and resource levels in the program to at least the poverty level and to index them to maintain that; with subsequent increases.

As for the recommendations of the SSI Modernization Project, the ACB supports the basic intent of the four priorities of the Report:

- Increase SSA staffing;
- Increase the Federal benefit standard;
- Stop counting, as income, in-kind support and maintenance; and
- Increase the resources limits, while streamlining the resources exclusions.

**Staffing/Backlog Issues**

The backlog in eligibility determinations, especially for a program providing assistance to the very poor, is particularly harmful. SSI-eligible individuals obviously have little or no resources or income on which to rely during delays in eligibility determinations. While altering the definition of disability under the SSI program could alleviate some of the backlog at the Disability Determination Services (DDS), ACB believes that some of the backlog could also be eliminated with a change in the determination of blindness. Because the definition of blindness is not functionally-based, it is unnecessary for the condition of blindness to be reviewed at the DDS level. <u>Eligibility determinations and backlog could be improved by adopting one of the following changes:</u>

1. Empowering field staff to determine whether or not the available medical evidence supports an applicant's claim of blindness; or,
2. Establish a central federal determination system to review the medical evidence submitted by an applicant alleging blindness.

In either case, an individual denied for SSI because of insufficient evidence to support blindness could then submit an application alleging some other disability (conditions which cause partial vision loss often also cause other disabilities). Alternatively, the individual could appeal the denial.

### Federal Benefit

The American Council of the Blind has long called for an increase in the cash payment to SSI recipients as a high priority in bringing rational improvement in the SSI program. However, accomplishing this needed change will require a great deal of effort.

We completely support the SSI Modernization Project Panel's recommendation to raise the SSI Federal benefit standards to 120 percent of the poverty guideline for individuals and couples. Our society must assure subsistence at least equivalent to the federal poverty level for individuals dependent on SSI.

The higher proportional costs for essential items such as food, clothing, housing and transportation borne by the poorest individuals and families in our society is now well established. These individuals do not have access to the variety of choices which are typically available to the majority of Americans who live in or near suburban housing/shopping developments. **People who are blind or who have other disabilities usually face even higher proportional costs of living or additional expenses not generally faced by nondisabled individuals.** For example, because of inadequate public transportation and difficulties in getting around independently, blind people often must use taxicabs to travel to work, conduct business and perform personal errands, while other individuals can drive a personal automobile, take public transportation or even walk. In most communities, taxi fares, even for relatively short distances are quite steep.

Individuals with disabilities often pay for personal assistance services in order to live independently. In addition, individuals with disabilities, particularly blind people, often need special technology to help them carry out basic tasks such as communication, including reading and writing. These devices often cost thousands of dollars and few dependable means of financial or technical assistance are available. Therefore, we strongly urge the Congress to move forward on implementing this minimal level of federal benefit which the SSI program was supposed to guarantee.

### In-kind Support and Maintenance

Few aspects of the Supplemental Security Income program are as bureaucratically burdensome and mean spirited as the counting of in-kind support against a recipient's cash payment. The amount of staff effort expended in determining the value of support, pursuing the contributions provided by a recipient's housemates and establishing the amount of overpayment, let alone processing the paperwork generated by these inquiries, is a tragic waste of time, resources and staff morale. The damage caused to SSI recipients' self esteem, independence and initiative is tragic as well. ACB believes that the resources expended in this effort, and the harm done to individuals warrants the elimination of the counting and assessment of penalties for in-kind support. SSI field staff should be spending their time in more rewarding and useful ways than pursuing documentation of the meager in-kind and other supports which recipients are able to achieve. Indeed, recipients should be encouraged to seek this kind of assistance as part of an overall strategy to lessen dependence and enhance individual self respect.

### Assets/Resources

SSI is a need-based program which justifiably includes eligibility criteria to assess an individual applicant's need. An assessment of an individual's available resources and assets is one necessary criterion. **However, the current resource test used to establish eligibility for the SSI program is unnecessarily restrictive and deleterious to the important goal of enabling a recipient to gain independence and self sufficiency**. Indeed, the current approach is especially damaging to the recipient, or applicant, whose long-term goal is independence from SSI.

The American Council of the Blind urges Congress to amend the SSI program to enact these changes to the current approach to "countable resources" as part of a package to improve the prospects for independence for SSI recipients:

**1. Increase resource limits to at least $7,000 and $10,500 as recommended in the SSI Modernization Project Report**

While a $7,000 limit (individual) and $10,500 limit (couples) is a very modest amount of assets, this level allows the recipient to establish a minimal amount of security in order to address emergency needs such as home repair or, a modest step toward self-sufficiency if he or she elects to leave the SSI program.

**2. Maintain current exclusions**

ACB believes that even with an increase in the resource limit, maintaining current exclusions such as a home, life insurance and burial funds is a sensible and humane approach. The current exclusions should be maintained even if resource limits are raised to the levels recommended above.

**Deeming of Parents' Resources**

The American Council of the Blind supports the SSI Modernization Project Panel recommendation regarding the deeming of parental resources where one or more SSI-ineligible children are in the child's family. The Report calls for the exclusion or deeming of $2,000 (index) to each ineligible child in the family. In addition, the special disability-related costs which parents must bear should also be excluded from the child's resources since these dollars are obviously not available to meet the child's other needs.

## WORK INCENTIVES

Taken together, implementing the above recommendations will lead to substantial improvements in the SSI program. However, ACB strongly supports the need for amendments to and changes in the administration of the SSI program in order to improve the work incentives available to SSI recipients who strive for independence and self-sufficiency.

The American Council of the Blind believes that most people with disabilities want to work. Presumably, SSI recipients are not an exception. Passage of the Americans with Disabilities Act and the accompanying publicity of its provisions, as well as the enhanced emphasis on employment in the 1992 amendments to the Rehabilitation Act should dramatically improve employment opportunities for people with disabilities. The documented desire of people with disabilities to work, combined with the protection against discrimination and enhanced opportunities provided by the ADA and the Rehabilitation Act make the work incentive provisions of SSI doubly important. Issues around Medicaid eligibility must also be addressed in any improvements in work incentives under the SSI program, e.g., the provision under Sec. 209 (b) which allows states to establish separate Medicaid eligibility should be eliminated.

With reference to the question of whether a disabled child should receive rehabilitation services in addition to, or instead of, cash assistance, the ACB views the receipt of both as vital to the child and to society. The disabled child's living requirements need to be met while in receipt of rehabilitation services.

As well, the rehabilitation services are needed to enhance the child's life and enable the child to provide some or all of its needs in the future.

The question of developing program costs for any or all of the needed improvements are beyond the ACB's data resources. However, we believe the costs can be supported in view of the alternative of letting a large number of aged, blind and disabled people in need sink lower and lower into poverty.

We wish to point out that the money paid SSI recipients goes back into the economy through the purchase of food, clothing and shelter.

The ACB appreciates the opportunity to comment.

## TESTIMONY OF HELENE GELBER-LEHMAN
## ASSOCIATION FOR THE RIGHTS OF DISABLED CONSUMERS, INC.

Chairman Ford and Members of the Subcommittee

My name is Helene Gelber-Lehman I appreciate the opportunity to provide testimony regarding the Modernization of Supplemental Security Income (SSI) I appear as an individual with a disability and as one who has served as a volunteer advocate for the disabled intermittently since 1974 In fact the Association for the Rights of Disabled Consumers, Inc. (ARDC, Inc.) was founded in New York as a consequence of the overwhelming tide of tragedies that flooded the disabled community as a result of the SSI legislation implemented contemporaneously with the repeal of New York City's Rent Control laws

### INTRODUCTION

According to the Legislative History of SSI, the original legislation was designed to
(1) replace earnings lost due to age, disability or blindness and to compliment those aged, blind and disabled whose income from contributory social insurance, pensions and annuities did not prevent them from falling below the poverty level;
(2) to provide incentives and opportunities for the aged, blind and disabled who are able to work so that they may be rehabilitated and escape their dependent situations, and
(3) to provide an efficient and economical method of administering this program P.L 92-603

Additionally, the current language of 20 CFR 416.110(c), states that SSI is to provide *"protection of personal dignity"* for the aged, blind and disabled

**The Social Security Administration (SSA) however, has not Administered this legislation in a manner consistent with these purposes and in fact the law itself cannot be administered to achieve its own purposes because it contains self-defeating, counterproductive and contradictory language.**

Instead of helping the disabled to recover physically, mentally and economically, SSI and the SSA have largely thwarted *most* SSI recipients from achieving success at independence from it or at survival on it with even a modicum of personal dignity In fact, having to live under the restrictions of SSI has prolonged dependence upon itself because it was drafted with onerous, penny-wise/pound-foolish restrictions that demoralize those who are recipients These restrictions are far more costly to the taxpayers and in many cases impossible to enforce and are so antagonistic to those they purport to serve that the consequences are far more costly than a realistic and compassionate policy would have been

Contained within the list of grievances advanced in the Declaration of independence, Thomas Jefferson accused the King of England of having *"waged a war against human nature itself, violating the rights of life and liberty in the persons of a distant people who never offended him."*2*

We declared independence from England, our spirits railing against onerous restrictions that created antagonism within our spirits However today, while appearing to relieve massive suffering, those administering SSI are covertly waging a war against human nature itself, violating the rights of life and liberty of people who never offended the laws of this country We have made those helplessly dependent on SSI prisoners of the war on poverty, humiliating and exacerbating the hardship of men, women and children who have "never offended" by forcing them to live under the tyranny of restrictions more harsh than those that govern convicted criminals.

*"The venerable Magna Carta blazed its first uncertain steps along the trail to legal equality when it established a rule of law equally applicable to sovereign and subject alike...it set forth equal access to the law of the land for all free men...denying differential justice based on wealth"*

*In 1774, Thomas Jefferson drafted instructions to the Virginia State legislature...[which] suggested that "laws may equalize [people] in some degree by laying burdens on the richer classes, and encouraging the poorer ones."*

Any law that demands that millions of disabled individuals, in their time of shock and grief engage in a contract demanding they relinquish their fundamental rights to freedoms enjoyed by all other Americans while purporting to lift them out of poverty to avert starvation, loss of life or limb or home and property, can only be a contract that makes Daniel Webster's deal with the devil, pale

Not only has the Social Security Administration failed to provide the necessary assistance to lift any disabled person out of poverty, SSI laws thwart recovery by binding people with illusional poverty lines creating psychological disabilities even in those who never suffered from them before

It is a fundamental principal of law that any contract made while " under disability" is invalid Any disabled human being in shock at the devastating circumstances must be considered "under disability" until they have had an opportunity to recover

*"The essence of the republican form of government sought to be established in America was a political equality that enabled all to have an equal voice in the formation and the policies of civil government. In [freedom], a man is governed by the laws to which he has given consent, either in person, or by his representative: In [slavery], he is governed by the will of another..."* (Alexander

Hamilton)

If it is argued that constructive receipt of SSI benefits constitutes *consent* to becoming hostage to these laws, this would be deceit of the boldest sort

Even if a disabled individual were advised of the passive and covertly hostile and onerous restrictions attached to receipt of these benefits, it is unreasonable to expect that one faced with the threat of continued pain, starvation, loss of home and property, life and limb is in any position to make such a commitment

Disabled people are "the people", but we have never had anything to say about these laws Even though the disabled community barrs entry to no one, regardless of age, sex, race or religion, we are a silent minority Silenced by fear and poverty..

SSI recipients are not just poor people. They are poor people who have no choice. The conditions that make it impossible to be self supporting without compensatory services

To create laws that force people already in distress to chose between their survival and obedience to laws that further compromise their health and human dignity is waging a war against human nature itself.

**ANALYSIS OF THE FUNDAMENTAL PROBLEMS UNDERLYING THE SSI LEGISLATION:**

1- SSI based its eligibility requirements on poverty guidelines calculated using a false conceptual model *1 constructed on false premises and erroneous assumptions that had no empirical, scientific or actual resemblance to the national or geographical cost(s) of sustaining life and health in this country

2- SSI replaced Federal Grants to States for aid to the aged, blind and disabled without taking into account the dramatically different geographic cost of living differences;

3- SSI payments were calculated to only cover the cost of food, clothing and shelter, on the false assumption that these were the *only* necessities of life in the United States, ignoring other fixed and essential costs such as (1) protection form thermal extremes, cost of communication , transportation, personal and household consumables, cost of moving, (made inevitable as SSI did not cover the cost of even the most minimal rents in urban areas), etc.;

4- Compounding the massive hardships created by the above, SSI Regulations had the constructive effect of prohibiting the family or friends from helping the disabled. By considering contributions of funds or tangible gifts of food, clothing, household/personal consumables etc. as income- in kind support and,

(a) requiring that the disabled report any gifts or contributions to their household;
(b) considering such gifts or contributions , (termed "in kind support") as income
(c) counting any unearned income over $20.00 per month as overpayment;
(d) requiring any "overpayment" be paid back directly or by reducing future payments;
(e) if the "in kind support" exceeded SSI payments, the disabled person was no longer considered eligible for SSI (Medicaid),

5- Additionally, SSI denies benefits to those in any month a recipient is :

(a) out of the state for a period exceeding 30 days. This has the constructive effect of denying a recipient their implied constitutional right to travel. (*Shapiro v Thompson, 394 US 618)*To mandate that one stay within the state on threat of losing their home and possessions is tantamount to treating a disabled person like a criminal on parole, when they have done nothing to offend.

(b) residing in a medical or other institution/ household for a period exceeding 30 days; By considering any month in which a recipient leaves their residence or state for more then 30 days, as month they are ineligible for SSI payments and requiring repayment, does not take into account that even one on SSI, if temporarily out of state or in a medical residential facility, still is bound to rental contracts, contracts to utilities companies etc.

6- SSI reduces benefits if a person lives in the household of another or if a person rents out a portion of their own quarters to another. Given that SSI purports to provide adequate funds to cover food, clothing and shelter, but in fact does not, it is outrageous and offensive to not only leave the SSI recipient without adequate support but then when it becomes clear that SSI will not cover even their most meager expenses, to penalize them for having to compromise their living circumstances in order to survive. For an adult, having to share living quarters with another (other than an intimate other) is a less than desirable alternative.

7- SSI considers any "lump sums" received by an individual through legal judgements or settlements, insurance awards etc. as income. While the laws have a provision for time limits in which the individual may spend down these benefits, the time limits proscribed are often inadequate No other form of disability compensation requires a person to be continually suffocated under a contrived poverty line, unable to even retain an interest in sums they are legally entitled to.

Even those who have committed the most heinous crimes against society are permitted to retain ownership of their personal and real property while incarcerated, and are permitted to use that property or receive gifts from family and friends to improve their quality of life and make their incarceration bearable These funds are put in trust for them with no time restrictions and no mandate that these funds be used to pay for *their food, clothing or shelter* while confined. It is cruel and unjustly harsh to subject innocent disabled individuals to financially debilitating regulations, treating them more harshly that convicted criminals.

8- SSI reduces payments made to disabled individuals who either lived together or are married to each other. This has the constructive effect of discriminating against people because of their religious or spiritual beliefs by pitting the *survival* of disabled people who cannot afford to relinquish any amount of SSI benefits *against their spiritual needs to marry*.

9- SSI considers a disabled individual ineligible if they lived with or are married to an individual whose income exceeded the same falsely calculated federal poverty threshold. Until this poverty threshold is properly revised, it is suggested that this rule be suspended.

10- Based on the false poverty line, SSI counts any earned income (gross income over $60.00 *received* in a month), as income and deducts 1/2 of the *gross* income from subsequent payments allowing earnings only to the amount of the SSI payment before disqualifying the recipient. Because the falsely calculated poverty line is less than 40% of any real or socially accepted measure of poverty, this disallows an SSI recipient any chance of ever rising above poverty.

11- SSI allows only $30.00 per month to those in medical, residential facilities, for *all* expenses other than those provided by the facility, ignoring the disabled persons needs for: tele-communication (telephone service is not provided gratis by these facilities), transportation to see friends or family, personal sundries, personal food preferences, nutritional supplements, clothing, shoes, stamps, hair cuts, etc.

Human beings have individualized needs It is cruel to deprive those hostage to their disabilities even some modicum of leisure in life.

12- Considering that the national SSI payment is only $434.000 per month and that this amount is so far below even the fictitious poverty guideline, that even if doubled it would not afford a recipient sufficient funds to meet their needs, to keep SSI recipients hostage to the regulations which do not provided adequately for their needs and deny them the same rights as any other disabled individual has to accept help financial or otherwise from family or friends is discrimination against the poor and is extremely offensive People on SSDI, veteran's befits, Workman's Comp or any other form of disability compensation have no such demeaning restrictions. Gifts cannot and shouldn't be considered as income because they are not subject to contract and cannot be legally relied upon.

Moreover these restrictions provide disincentives to families and friends who want to help their loved ones who they cannot afford to support entirely but who are suffering as a consequence of inadequate SSI payments. This cruel law further isolates the SSI recipient from family and friends and serves to further disenfranchise them from their community.

Incarcerated criminals are guaranteed 3 meals a day, clothing, shelter, protection from thermal extremes, shelter and personal and institutional consumables by virtue of receiving financial or tangible gifts to improve their quality of life while confined in penal institutions.

SSI purports to provide sufficient funds for food, clothing and shelter but does not even meet those needs.

13- It is a known fact that most "mental" or emotional disabilities have their origins in early childhood. However those applying for benefits who (a) are clearly psychiatrically disabled, or (b) are disabled children from poor families, often have not had sufficient resources or awareness to pursue psychological care prior to making application.

Many children and adult children of abuse have serious mental/emotional problems but do not learn how seriously these problems will hamper their ability to be self supporting until after they have failed Usually by the time they apply for SSI, it is long after the age of 23. They have no way to prove they were disabled before age 23 and are deemed ineligible fore medicare and Social Security child's benefits because they have no way to prove the date of onset.

These people should automatically be put on Medicare and Social Security child's benefits regardless of their ability to prove date of onset.

14- SSI engages people while "under disability" in illegal, unenforceable contracts which deprive those who by necessity must be subjected to them to be deprived of the fundamental rights and freedoms guaranteed to all other Americans. These laws are antithetical to the principals upon which this country was founded

15- Remedies such as Special Needs Trusts which provide for additional needs not be provided for by SSI or Medicaid/MediCal, must be continued Disallowance of such trusts will only result in disinheritance, again sentencing the disabled to having no hope of ever getting their needs met.

**MODERNIZATION OF SSI MUST BE THE TOP NATIONAL DOMESTIC PRIORITY!**
**CURRENT INADEQUACIES MUST BE ACKNOWLEDGED AND CORRECTED**

Acknowledging the budget crisis, it seems elemental that the domestic policy priorities of this

Congress must be to (a) repeal laws that are self-defeating and which are shortsighted, penny-wise and pound-foolish that cost the taxpayers billions that could be far better utilized

Any future SSI legislation that purports to help the economically disadvantaged aged, disabled and blind, must be drafted with (a) sound psycho-social principles, (b) sound economic principles, (c) sound legal, moral, ethical, and spiritual principles that do not further victimize those they purport to serve, (d) sound occupational-and work incentives which eliminate all self-defeating disincentives.

No other domestic policy problem can be assigned priority over the modernization of SSI without continuing to endanger the lives of millions of innocent American, without compromising this country's integrity, or without further jeopardizing the future of the federal budget.

*"For nations, as well as individuals, are not only defined by their highest point of civilized achievement, but also by the weakest one in their collective identity:" Erik H. Erikson*

**PART I**

## SSI LAWS HAVE BEEN BASED ON 3 FALSE PREMISES: (1) THE "POVERTY THRESHOLD IS ACCURATE, (2) SSI PAYMENTS ARE "FAIR" IF NATIONALLY UNIFORM, (3) FOOD, CLOTHING AND SHELTER ARE THE *ONLY* REAL NEEDS OF ALL DISABLED PEOPLE IN THIS COUNTRY.

The grounds for the onerous restrictions created by SSI "in-kind" laws, eligibility requirements, resource limits and income limits are based on these three underlying fallacies, (1) SSI incorrectly presumes that payments based on the falsely contrived poverty line, are adequate to provide for food, clothing and shelter, (2) SSI law incorrectly presumes it is "fair" that SSI payments be nationally uniform despite the dramatic differences in cost of housing, and cost of living urban, suburban or on a farm areas; and (3) SSI law incorrectly presumes the only real needs of a human being in these United States are food, clothing and shelter.

### 1- ANALYSIS OF THE CONCEPTUAL MODEL USED TO CALCULATE THE FEDERAL POVERTY LINE

The Social Security Administration and Congress knew or should have known that the conceptual model which the Bureau of the Census has used for over 30 years to calculate the federal poverty threshold, is riddled with false assumptions had no empirical foundation.

This analysis is based on an article titled, *THE DEVELOPMENT AND HISTORY OF THE POVERTY THRESHOLDS* by Gordon M. Fisher which was published in the Social Security Bulletin, Vol. 55, No. 4, Winter 1992.

In an article titled COUNTING THE POOR. ANOTHER LOOK AT THE POVERTY PROFILE, *S.S. Bulletin Vol. 51, No. 10 October 1988*, Mollie Orshansky, the designer of the model, acknowledges that the surveys did not include those who were very poor as they were not subject to the census and states that her calculations were arbitrary and crude and were not intended to be used as budgets Additionally she acknowledges that the cost of living for urban dwellers and farm families are very different.

However, CEA and OEO have ignored these facts and have continued this folly, updating this originally faulty model by layering upon it nominal increases.

### A- UNDERLYING FALSE ASSUMPTIONS

1- Ms. Orshansky made the incorrect assumption that by averaging expenditures for food for all families of three and comparing that average to the averaged income for all families of 3, she could arrive at a multiplier that could be considered a reasonable cost of food to income ratio.

Unfortunately, the ratio of the national averages of these factors provides no rational or scientific basis for calculating poverty thresholds.

Even if purchased in the priciest of neighborhoods, basic grocery items do not fluctuate that dramatically in cost and a person can just eat so much food. However, incomes do vary far more dramatically. As a consequence,

a- wealthy families of 3 may only use perhaps one one-millionth of their budget for food
b- upper income families ($500,000. per year) may use only one one-thousandth of their income for food,
c- families with high-middle incomes ($120,000. per year) may use one one-hundredth,
d- families with mid-middle incomes ($50,000. per year) may use one tenth (1/10)of their income for food,
e- families with low-middle incomes ($30,000 per year) may use one seventh (1/7) of their income for food, and
f- families with low incomes ($20,000 per year) may use one fifth (1/6) of their income for food, sacrificing nutrition,
g- but very low income or poor families ($14,000. per year) may use one one-

thousandth (1/1000) of their budget for food because that is all they have left after paying for fixed necessities such as rent, gas/electricity, transportation, etc

h- on the other hand very poor families may spend one hundred percent (100%) of their income for food, because they are generally homeless, and not able to afford rent or other necessities of life without starving

2- The cost of food has not increased proportionately to the cost of housing, electricity, gas, transportation and other consumables over the past 30 years Today the average ratio of food usage to income, though clearly irrelevant to the issue of determining poverty ( the variables in diet, restaurants, etc make this an unreliable statistic), is more like one-sixth (1/6) of an average family of three's budget today

3- Ms. Orshansky made the incorrect assumption, that if she multiplied the most austere food plan for three (developed by the department of agriculture as a bare subsistence diet) by three that this would then represent a general level of poverty in this country

There is no empirical basis for this assumption because

a- the first premise is inaccurate and irrelevant Poor families do not necessarily spend 1/3 of their incomes on food

b- even if a poor family did use 1/3 of its income on food, the only instance in which the cost of the economy food plan could be used to evaluate degrees of poverty is after all other fixed costs are known and it is determined that there are not sufficient funds to even purchase sufficient food for such an austere diet

The Department of Agriculture's economy food plan was $284 10 for a family of 3 OEO and the CEA did not allow for the fact that one cannot avoid paying for fixed costs such as rent, gas, electricity and other essential consumables without jeopardizing life and health. No attempt was made to find any average cost for those fixed necessities of life, because it was claimed, and still is, that there is no generally accepted standard for cost of housing, electricity, gas, transportation, consumables, etc.

According to an article by Patricia Ruggles, called MEASURING POVERTY published in FOCUS magazine, Spring 1992, and as a part of a book called Alternative Poverty Measures and Their Implications for Public Policy (Washington D.C. Urban Institute Press, 1990), "The national average fair market rent, as calculated by HUD would be almost $500. per month for a two bedroom apartment - and rents are of course even higher in the large cities where many of the poor live."

In the same article by Patricia Ruggles, the poverty threshold calculated by multiplying the economy food pan for 3 by three, was $9,435 per year in 1988

When Social Security and Medicare taxes were deducted @ 7.65%= $721.77 , the result is $8713.23 or a monthly income of $726.10.

After deducting the cost of housing (at the national average) this family of three has $226. per month for all other expenses including food, clothing, heat, gas, electricity, telecommunications, transportation, stamps, consumables such as toilet paper, soap, funds for personal emergencies, replacement or repair of furniture, appliances, clothing, etc. This obviously does not leave sufficient funds for even housing and food

According to the SSI Modernization report in 1992, SSI provided considerably less (80%) of the falsely contrived, clearly inadequate poverty line. Even if the current SSI payment were doubled, they would still be far too low to cover recipients real needs

## DEPARTMENT OF HEALTH AND HUMAN SERVICES STILL RATIONALIZES THE USE OF CURRENT POVERTY GUIDELINE

In his historical retrospective of the poverty threshold, Mr. Fisher wrote,

> *"If generally accepted standards of minimum need had been available for all or most of the major essential consumption items of living, (for example housing, medical care, clothing and transportation ) the standard budget approach could have been used by costing gout the standards and adding up the costs.However, except for the area of food, no definitive and accepted standards of minimum need for major consumption items existed either then or today."*

While the same standards for major necessary consumption items are not the same in Bangaledesh as in the U.S., most American housewives know what the minimum needs are for living in this country with any semblance of personal dignity. They must include adequate housing , protection from unhealthful thermal extremes (in the case of aged or disabled persons these costs are more necessary and are usually higher than average), electricity, gas, drinkable water, food, telephone services (these are more essential to the disabled, aged and blind because they are more isolated and have more frequent medical emergencies), transportation, cost of laundry and consumables such as soap, toilet paper, stamps, stationary supplies, etc Cost of repairing, maintaining or replacing furniture, clothing, major appliances, car, etc dental and medical expenses, and funds for emergencies If a family of any size cannot meet these basic needs in this country, I think it would be fair to assume that they are living below the poverty threshold

When asked to define an "accepted standard of minimum need" Mr Fisher said they were defined in terms of ordinary usage.

When asked, Why haven't the above outlined socially accepted standards of minimum need been used? He replied, The experts can not agree on the minimum needs nor their costs.

When asked why the generally accepted standards for housing used by the Department of Housing and Urban Development (HUD) were not used, Mr. Fisher replied stating that those figures weren't generally accepted by the Social Security Administration. HUD, also a Federal agency applies the fair market rental values compiled in over 3,000 geographic areas in the country to all subsidized housing, in the contiguous United States with some very minor exceptions of lands that are virtually unoccupied by residential buildings

When Ms Orshansky was asked to define a generally accepted standard, she explained

There are two facets to defining a generally accepted standard.

(a) a standard that is socially and culturally acceptable and

(b) secondly, but more importantly a politically acceptable standard

Q What is a politically acceptable standard?

A. That is a number that corresponds to the amount congress wants to spend on a program

Notwithstanding the glaring fallacies upon which the currently used model was based, the Council of Economic Advisors and the Social Security Administration eagerly adopted Ms Orshansky's model, ostensibly because there was no other model available. In fact the OEO and SSA have used this faulty model to (a) rationalize under-budgeting SSI payments, (b) create unreasonably low eligibility standards, (c) to rationalize grounds for the onerous in-kind income, in-kind-support, income and resource restrictions for disability programs upon which this country's most vulnerable and needy citizens must rely for their survival , (d) to rationalize punishing those who do comply by reducing benefits, and prosecuting those who risk non-compliance in order to survive because the payment levels are insufficient to meet even their most basic needs.

## NATIONAL ACADEMY OF SCIENCES STUDIES THE PROBLEM BUT STILL NO CHANGE IN POLICIES THAT MAKE IT IMPOSSIBLE TO COMPLY WITHOUT BEING FURTHER CRIPPLED

While Congress has finally acknowledged the inaccuracy of the "poverty line" and has commissioned the National Academy of Sciences to "study the problem", SSI laws and the SSA continue to hold the disabled poor hostage to payments that are grossly inadequate to meet their needs, and then penalize them if they receive help from family and friends, or prosecutes them for fraud if they fail to report receipt of such essential help

Apparently to date and over the past 30 years, no "panel of experts" has been able to agree on what the "major consumptions items" are and what they should cost, and while they are arguing about these notions, no one is willing to at least tentatively create a more realistic, cost-basis standard for poverty and raise the SSI benefits so that recipients would not have to lose their homes, their sanity, their health and their lives while the experts continue to deliberate

## NO ALLOWANCES FOR GEOGRAPHICAL DIFFERENCES IN COST OF LIVING

2- SSI legislates that benefits be uniform throughout the United States. However, except for allowing states to voluntarily supplement SSI, (state supplements are still inadequate to compensate for this error) no provisions were made to accommodate the differences in the costs of living in these different areas. The consequence is that thousands of SSI recipients who live in urban areas have become homeless. The laws SSI replaced were far more reasonable and accounted for the differences in cost of living in differing geographical areas

In areas such as Contra Costa County in California (which is by no means the most costly area in California) the average fair market rents for a low income,1 bedroom apartment is approximately $600. per month. The SSI payment to an individual is $434 per month The California state supplement increases that amount to $620. per month which in spite of being one of the highest benefit levels in the country,(excepting Connecticut and Alaska) the SSI payment cannot possibly meet even the shelter needs of its recipients

## 3- BY FALSELY PRESUMING SSI PAYMENTS TO BE SUFFICIENT TO MEET NEEDS FOR FOOD, CLOTHING AND SHELTER, IN-KIND INCOME/SUPPORT RULINGS FURTHER THWART THE INTENT OF THIS LEGISLATION

Many regulations legislated into the SSI program are based on the other false assumption that the only necessities in life in these United States are food, clothing and shelter. Protection from thermal extremes, electricity, gas, maintenance of major appliances, transportation, communication, etc. are not considered as basic needs. If SSI were just a transient, temporary payment for emergency subsistence, it would not be so damaging. But people on SSI must live on this amount daily for the rest of their lives

**PART II**

## THOUGH SSI PAYMENTS ARE GROSSLY INADEQUATE AND SSI LAWS CANNOT BE OBEYED WITHOUT FURTHER INJURY, RECIPIENTS ARE PUNISHED OR PENALIZED FOR RECEIVING HELP.

Notwithstanding the glaring fact that SSI payments ($434. per month for an individual ) are grossly inadequate to provide adequate food, clothing or shelter for its disabled citizens anywhere in this country, these restrictive laws demand that SSI recipients *report* in-kind-support, or in-kind income (food, clothing or shelter provided by family, friends or member of the community as gifts or in exchange for work)

It is a grossly inaccurate calculation of human nature to presume that if you humiliate, demoralize and otherwise make the lives of people who are dependent unbearable, that they will miraculously find a way to either get well, go to work, find other support or disappear.

People who are too ill or debilitated to work or have disabilities that require compensatory services do not have the luxury of other choices. Further crippling people who are already suffering from profound grief and despair is beyond cruelty and does not inspire productivity

All but those SSI recipients who have representative payees, have been faced with the cruel and heartless dilemma of having to either (a) report in-kind gifts or support (knowing that their already inadequate benefits will be further reduced jeopardizing their lives, their health, their homes and whatever little property they have left) (b) refuse help from family or friends even though they may be starving, facing homlessness or other disastrous consequences, or (c) risk being prosecuted for fraud.

SSI and the SSA have tormented millions by creating personal anguish and self-hate in those hostage to its irrational rules It is unreasonable and unrealistic to expect people to heal when their are continually devalued and caused to hate themselves for their needs.

It is impossible to be hostage to a dysfunctional family or hostage to dysfunctional laws and not be seriously affected

***The SSA administers these inhumane restrictions while sanctimoniously purporting to be beneficently lifting the aged, blind and disabled out of "poverty".***

**PART III**

## LAWS THAT EXACERBATE AND CREATE MENTAL ILLNESS & HOMELESSNESS IN THOSE THEY PURPORT TO SERVE, MUST BE CHANGED.

No law should subject human beings to a moral, ethical and spiritual no-win dilemma that pits their survival against compliance. It is particularly sadistic to subject the disabled to such onerous restrictions knowing they have no choice but to remain dependent on the system.

Those from strict religious backgrounds or with high moral ethical principles, suffer extreme anguish, self-hate and loss of self-esteem as a consequence of having their physical and material survival pitted against their religious and ethical integrity Frequently these people will refuse to sacrifice their principles for their survival and starve, end up homeless, or otherwise become tragic victims of this hard-core and legislated cruelty

Those with less severe beliefs painfully yield to the realities and exigencies of their lives They suffer dramatic loss of self esteem and give up on being law abiding citizens, joining the "subculture of SSI recipients" who provide emotional support and helps to rationalize and alleviate the emotional and spiritual stress of having to live as hostages to such dysfunctional authority

It is elemental to all Psycho-Social theory that when a child is hostage to a family that does not have its best interest at heart, the child subjected to dysfunctional rules incur serious mental/emotional disorders Additionally, the Stockholm syndrome, another well known Psycho-Social paradigm, explains the long-term ill effects of adults being hostage to dysfunctional demands when their survival is threatened by non-compliance.

For Centuries clever cult leaders have employed the vulnerability of their victims' underlying dependency needs, manipulated them into conformity, sexual slavery, or economic and cultural bondage The result is always severe mental and emotional disorders and dysfunction which is devastating to the individual and which requires years of expert de-programming

No such de-programming is provided for SSI recipients Medicaid or MediCal only provide the most inadequate of psychiatric care, demeaning any patient or psychiatrist subject to Medicaid laws, as they disallow proper and appropriate treatment and falsely presume the oversimplistic view that all mental disabilities are amenable to psycho-active prescription

In fact this offensive perspective combined with the severely restrictive fees and time constraints governing mental health professionals who treat those on Medicaid or MediCal, make it impossible to provide proper treatment Professionals over-utilize prescription drugs as a last resort to alleviate the anguish of psychic torment, but they only mask the real problems and create still further and unnecessary dependencies, iatrogenic complications and never facilitate the resolution of the problem.

***And then we ask, why are the numbers of people on SSI rising?***

According to several well known, published and established Board Certified Psychiatrists, current and proposed managed care plans, should be more accurately described as *rationed care or managed costs.* They clearly do not have the patients best interest at heart and eliminate any real possibility of effectively treating those who have been subjected to problems that develop either in childhood, or in adulthood in those subjected to prolonged periods of dependency on any dysfunctional system that demands compliance for survival.

These kinds of mental and emotional disabilities cannot be resolved by a dozen or so brief sessions of psychotherapy, pills or time-rationed therapies, but need long term support, re-parenting wherein a trusting relationship can be nurtured and developed between patient and professional and re-conditioning of the patients fundamental responses to life can occur. Those who require treatment for mental/emotional disabilities but do not receive proper treatment, frequently resort to substance abuse in order to self-medicate away their emotional pain.

Not all substance abusers require financial assistance The factors that cause them to need SSI have their roots in developmental disabilities, dissociative disorders and major depressive disorders If left untreated, people who suffer these disabilities will remain emotional cripples for a lifetime and will continue to inflate the cost of SSI and Health care in this country.

**In the long run, it is never cost effective to opt for superficial solutions that are ineffective to meet real needs, simply because they seem cheaper at the time.**

## PART IV

## BY CREATING DISINCENTIVES THAT MAKE IT FUTILE FOR ANY SSI RECIPIENT TO SEEK EMPLOYMENT, SSI HAS EXACERBATED THE DEPENDENCY NEEDS OF THE DISABLED, KEEPING THEM IN BONDAGE TO LAWS THAT DON'T MEET THEIR NEEDS.

Instead of creating incentive and opportunities, SSI and SSA has created impossible, schizophenogenic and self-defeating disincentives to the disabled seeking employment by insisting on regulations that make any attempt at economic self-sufficiency futile By so doing, these laws and the SSA have knowingly inextricably bound millions to humiliating dependence on a program that is clearly unable and unwilling to meet even their most fundamental survival needs.

SSI recipients who are barely employable at a minimum or low wage can't afford to risk employment with the current disincentives in place. There is no way they can possibly make ends meet. As long as income limits and eligibility, in kind support etc. remain based on the same faulty poverty guidelines, even if they were to earn an amount equal to their SSI benefit, this would still not be sufficient for them to be above the real poverty level.

The kind of stress, pain and discomfort, not to mention the additional expenses incurred by working, ie transportation clothing, food etc. make it unlikely that any SSI recipient will try to work under the current program that provides such harsh disincentives to doing so.

## PART V

## NOTHING GAINED BY DISALLOWING SPECIAL NEEDS TRUSTS FOR THE DISABLED

Special Needs Trusts created for the disabled by those concerned about the welfare of their loved ones who must live under the tyranny of such impossible and draconian disability laws, are designed to provide the same degree of supplemental care after the death of the grantor as they were accustomed to providing for the disabled individual during their lifetime.

Generally, Special Needs Trusts are designed to compensate for those needs not covered by SSI, Medicaid or MediCal so as to insure the Grantor's loved ones will be provided for in the same manner after the grantor's death as they have been during the grantors lifetime. The hope is that while the grantor may not be able to support the beneficiary, that the trust will allow the beneficiary to survive with some modicum of dignity and quality to their painfully limited lives.

These trusts do not contain funds sufficient to permanently supplant or replace disability benefits After a disabled individual reaches majority, parents have no further legal obligation to support their child However most parents do not want to see their disabled children devastated by poverty Special needs trust allow them to supplement the SSI income and provide a level and quality to life they could not otherwise have.

Some resent the use of these trusts which help to make the painfully limited lives of their beneficiaries bearable, alleging that because SSI and Medicaid/ Medical are programs of last resort for the poor, Trusts should be spent down or render the beneficiary ineligible for benefits.

This accomplished little but postponement of eventual total dependence on SSI and simply legislates a guaranteed destitution and deprivation for all that are hostage to its laws

It seems that those who so heartily resent these trusts cannot stand to see a person on SSI live comfortably but do not resent the disabled person who has SSDI child's benefits who receives such help and has no resource restrictions.

The glaring evidence is that SSI cannot, (and probably will never) meet even the most basic needs of an individual must be acknowledged and these harsh attitudes and laws be changed.

However instead of acknowledging the deficiencies of SSI there is a movement to disallow these trusts and further cripple the disabled who might have a chance otherwise causing still further hardship and grief for all concerned.

If disallowing these trusts could save taxpayers even one dollar, there could be some basis for denying the use of these trusts. However these trusts are designed to terminate and distribute the remainder to another party if challenged. Additionally, if this avenue of relief is eradicated the parents of these disabled children will resort to disinheritance

Nothing will be gained

## PART VI
## SSI HAS ENGAGED THOSE 'UNDER DISABILITY' IN AN INSIDIOUS CONTRACT TO BARTER FUNDAMENTAL RIGHTS AND FREEDOM FOR FALSE PROMISE OF PROTECTION

SSI and the SSA's administration of these laws, have deceptively engaged people *"under disability"* while in desperate times of shock and grief " in a contract which barters their most fundamental rights and freedoms as American citizens in exchange for the false promise of averting starvation, loss of life or limb, or loss of home and property.

One of these freedoms denied the SSI recipient is the right to travel.

According to the Supreme Court decision Shapiro v Thompson, the decisions of no less than three lower courts were upheld in their decisions to declare unconstitutional welfare laws that restricted the mobility and right to travel of American Citizens by denying welfare to individuals unless they lived in a particular state for a period of time. SSI laws deny benefits to those who leave the state for more than 30 days, to those who reside in places other than their own homes for more than a certain amount of time, and to those who accept help offered to provide for their essential needs where SSI fails to do so. As of 1992 when the SSI Modernization project published their report, SSI payment levels fell 20% below the current poverty line.

Due process of law dictates that those "under disability" may not engage in any legally binding contract without the benefit of a guardian ad litem. While not all SSI recipients are or could be considered "under disability" surely they are temporarily compromised in their mental and emotional judgement by the circumstances which have reduced them to applying for SSI in the first place

**GUARDIAN AD LITEM COMMITTEE OF SSI RECIPIENTS TO EQUALIZE THE LOBBYING EFFORTS OF SPECIAL INTEREST GROUPS COMPETING FOR FEDERAL $$**

## IN CONCLUSION

If confronted by the harsh reality that the Federal Budget can not afford to raise the SSI income level to meet the "real" poverty line or even the suggested 120% of the existing but fictitious poverty line, it remains a necessary priority to change those laws that are most oppressive and do not allow the SSI recipient to receive much needed help from family and friends.

**SUGGESTED LEGISLATIVE PRIORITIES**

1- **REPEAL IN-KIND-SUPPORT AND IN-KIND INCOME RULES**
2. **INCREASE RESOURCE LIMIT**
3. **REMOVE DISINCENTIVES FOR SSI/SSDI RECIPIENTS SEEKING EMPLOYMENT**
4. **DO NOT DECREASE BENEFITS FOR OVERPAYMENT THAT FALL BELOW RESOURCE LIMITS**
5. **ALLOW SPECIAL NEEDS TRUSTS TO SUPPLEMENT SSI AS PAYMENTS ARE NOT ADEQUATE TO MEET ANY PERSONAS REAL NEEDS**
6. **REPEAL ALL SSI LAWS THAT PLACE RESTRICTIONS ON TRAVEL**

If the above changes were made, the need for an increased staff would be decreased and at least the oppression of having to be restricted to only SSI payments would be removed, allowing for the beneficence of individuals to assist those most in need and not adequately provided for by SSI

If a parent were to be poor and demand that her child starve rather than take help from someone else, we would probably indict her for child abuse. However SSI is surrogate parent to millions of disabled, aged and blind citizens who need compassionate help. They do not need to become unwitting hostages in the unending war on poverty. While it may not be possible to legislate compassion it certainly is possible to repeal cruel laws

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March 2, 1994

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Staff Director
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U.S. House of Representatives
1102 Longworth HOB
Washington, D.C. 20515

RE: SSI Modernization
Project-(Rel. #13)

Honorable Harold E. Ford, Chair
Subcommittee on Human Resources

The cost of implementing the top four priorities of the SSI Modernization Panel would break the bank.

Until Health Care and Welfare (again) Reform is addressed, SSI should be adjusted slightly legislatively and overhauled ("re-engineered") managerially.

You suggested six questions to address:

Q.1. Should staff levels be increased?

A.1. No. The quality of existing staff should be increased. The knowledgeable people are leaving and the few dedicated CR/SRs remaining are overworked and burdened with incompetent help. Recruitment of quality staff at the D/O is essential. Only <u>knowledgeable</u> people should answer phones at 1(800)772-1213. Busy offices should have discretionary funds for private contracting of typing/secretarial services-temps.

Q.2. Should benefit levels increase?

A.2. Not unless capped by a two year time limit. This time

PRACTICE LIMITED TO MATTERS INVOLVING DISABILITY CLAIMS

should be used for medical care and treatment (i.e., substance abuse disorders); job skills, training for real jobs; child care and support service, etc. The person eligible for SSI should be given the election of less money but no time cap; or more money but an absolute, no-exception time cap on extra benefits. This would coincide with Welfare Reform.

Q.3. Should in-kind support and maintenance be counted as income?

A.3. No. As a "smart lawyer" these rules can be circumvented anyway. It is very difficult to respect a system that requires me to tell parents that they can't help a sick, adult 25 year old son with food, rent and/or allowance to help survive along with the $434.00/month and Medical card that gets 2nd rate care. "Rich" parents will get around it with "SSI Trusts" and other devices. The "poor" are the ones hurt.

Q.4. Should "resource" limits be changed?

A.4. If you condition SSI as a disability program for "poor" people, then you must have some type of "means testing." Some type of resource limits must be part of the program.

Q.5. What is the cost of reform?

A.5. A better question is: "What is the cost if you don't reform?" You pay out $21 billion a year now (9/93) in actual cash benefits. Yet Medicaid is accessed through SSI. What is that cost? If estimated reform is $39 billion by 1997 annually, then the cost is too great.

Q.6. Do work incentives work?

A.6. Based on my prior experiences with CETA clients, no. Very few SSI clients ever returned to work for a sustained period in a competitive position. Same was true for WIN candidates. If a work incentive was included in the Two Years and Out, it might work (see A.2)

Q.7. How has Zebley impacted SSI?

A.7. Of my 400 pending cases, about 20 to 30 are Zebley type cases. The new standard for payment inability to do "age appropriate activities" is fairly loose in concept but applied well at the ALJ level. The State (DDS) of Illinois is denying in "close call" situations. Based on original Darmen budget estimates, I believe that the $300,000,000 was over actual annual costs. In terms of numbers of claimants/applicants, I expect that an increase will occur in 1994-96 as schools and social service agencies become more aware of this "source" of funding for "special ed" and "neglected/abused" children. In short, the impact is not yet major based on my experiences.

Q.8. Should kids get rehab?

A.8. No. Kids should get an education. Maybe a condition of entitlement should be certification that the child is in some type of school or medical facility. Maybe such institution should be a partial (1/2) rep payee.

Until SSI deals with Senator Cohen and resolves the scandal of SSI payments going to non-recalcitrant substance abusers, you will not get support for program changes.

Arguably, you could abolish 12.09 as a medical impairment since the Supreme Court seemed to defer to the VA's decision that alcoholism is not an illness. This is one extreme. Or, you could fully fund the substance abuse program centers that accept SSI recipients. This is the present law, but neither funded nor enforced. Since money is short and drug users not very popular, Congress will do whatever is cheap and easy and popular.

Thank you for the opportunity to comment on the current status of SSI.

My background in this area is available upon request.

Very truly yours,

David R. Bryant

DRB:paz
cc: Nancy Katz, CBA/SSLC
cc: Jeff Rabin, Esquire
cc: Nancy Shor, NOSSCR
cc: ALJ O'Byrne, AALJ
cc: Eileen Fulz, Staff, HW&M
cc: Rudolph Patterson, Esquire, ABA

# CALIFORNIA STATE DEPARTMENT OF SOCIAL SERVICES TESTIMONY FOR HEARING ON THE SUPPLEMENTAL SECURITY INCOME MODERNIZATION PROJECT

My name is Eloise Anderson and I am the Director of the California State Department of Social Services (CDSS). The CDSS wishes to express its appreciation to the members of the Subcommittee on Human Resources for its continued interest in the modernization of the Supplemental Security Income (SSI) Program and for this opportunity to submit our concerns. In addition to our specific comments regarding the Subcommittee's questions, I wish to stress that any amendments made to the SSI program as a result of this hearing will have a substantial impact upon the states which participate in the State Supplementary Payment (SSP) Program. California in particular will be affected by these decisions since approximately one out of every five or twenty percent of the entire population of SSI recipients in the nation live in California. Given the serious economic difficulties being experienced by California and other states, we are very concerned about the potential fiscal impact of certain proposals on states. The following provides California's comments and responses to the Subcommittee's questions regarding the SSI Modernization Project.

## INCREASE IN FEDERAL BENEFIT STANDARD

As noted in the Final Report of the Experts, the Legislative intent of the federal SSI Program was to protect the nation's most needy citizens by guaranteeing this population a benefit standard at least equal to the National Poverty Level (NPL). This would ensure that these citizens would not suffer as a result of a state's inability or refusal to offer a subsidy sufficient to lift this population from poverty and to preserve human dignity. In reality, the SSI grant has never come close to the NPL and the states have been responsible for bringing the SSI population to or above that level. Currently the NPL for an individual is an annual income of $7,360 or $613.33 per month. By contrast, the SSI maximum benefit level for an aged or disabled individual living independently is only $446 per month.

The CDSS supports the experts' proposal to increase the SSI benefit standard to 100 percent of the NPL. Additionally, the CDSS proposes that, concurrent with the SSI increase, the federal "pass-along" law be amended to allow states that have not only passed along federal SSI increases, but have also provided state cost-of-living adjustments (COLAs), to reduce their SSP benefits by the amount of the state COLAs. The pass-along law was originally enacted to ensure that states would pass along federal SSI COLAs to recipients rather than reducing the SSP payment standards by the amount of the federal COLAs. The original law required states to maintain at least the same aggregate SSP expenditures from one year to the next or to maintain at least those SSP grant levels that were in effect in December 1976. The law was subsequently amended to require maintenance-of-expenditures or maintenance of the SSP grant levels that were in effect in March 1983. This amendment not only penalized certain states, like California, for their generosity in providing significant state COLAs between 1976 and 1983, but also eliminated states' much-needed flexibility to set SSP grants at levels they could afford in times of economic difficulty.

It is time to at least partially rectify this injustice, and to restore the legitimate intent of the pass-along concept, by allowing these states the option of lowering their SSP payment standards to the levels that would apply if they had merely passed along all federal SSI increases since the program's inception in 1974. In California, this would allow a $62.40 reduction in the current SSP payment standard for aged or disabled individuals living independently. Done in the context of an SSI payment that meets the NPL, this action would still result in a net increase in recipients' combined SSI/SSP benefit.

Such an amendment to the pass-along law would help satisfy another of the original intents of the SSI program as well. That intent was to "provide states with the opportunity to reduce their fiscal commitment to public aid for those covered, or at least guarantee that this fiscal burden on the states would not increase." 1/

The combined effect of an SSI increase and the suggested amendment to the pass-along law would also allow states to simplify their SSP programs by combining certain payment categories. Indirectly, the federal pass-along law restricts states from simplifying their SSP Programs. Simplification of federally administered SSP programs would, in turn, result in workload and cost reductions for the Social Security Administration.

The above proposals are seen by the CDSS as necessary steps to bring SSI into conformity with its legislative intent and its original commitments to states; to benefit SSI/SSP recipients; and to allow states to simplify their SSP programs, thus regaining some control of their expenditures. Ironically, these four end results are virtually identical to some of the arguments provided in the early 1970s by SSI proponents during their efforts to convince Congress to support the enactment of the SSI/SSP Program.

## IN-KIND SUPPORT AND MAINTENANCE

While the CDSS agrees with the Panel of Experts that the determination of in-kind support and maintenance results in substantial administrative costs for SSA staff and that its elimination as countable income would certainly be cost effective administratively, we do have a serious concern regarding this proposal. Specifically, we are concerned that with approximately 20 percent of the nation's SSI recipients in California, any reduction in countable income will have a multimillion dollar SSP cost to this state. Consequently, we would support the elimination of in-kind support and maintenance as countable income only if this action is concurrent with: 1) the increase of the federal benefit standard to 100 percent of the NPL, 2) the amendment of the federal pass-along law, as discussed above, and 3) the enactment of a 50/50 sharing ratio of countable income between the states and the federal government.

The income sharing proposal is an essential element of program administration now that federally administered states are paying SSA to operate their programs, and federal regulations have eliminated federal fiscal liability payments to states for excessive administrative errors by SSA. Prior to implementation of the SSI/SSP program in 1974, the former federal/state/county funded programs for the aged, blind, and disabled shared recipient income equally between the federal and nonfederal governments for grant calculation purposes. It is time that requirement be restored.

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1/ "First Year Impact of SSI on Economic Status of 1973 Adult Assistance Populations." Reprinted in the Social Security Bulletin, September, 1988/Vol. 51, No. 9, Page 20.

We believe the administrative savings resulting from elimination of in-kind support determinations and from SSP program simplifications would substantially offset the SSI cost increases.

## RESOURCE LIMITS AND EXCLUSIONS

The CDSS agrees in concept with many of the points made by the Panel of Experts regarding increasing resource limits and streamlining the exclusions. However, again, we have serious concerns regarding the fiscal impact of a resource limit increase. Such an increase would result in more people being eligible for benefits which, in turn, would result in increased costs to states. As previously noted, California's disproportionate number of SSI/SSP recipients results in substantial cost increases when grants or recipient populations are increased by even the smallest amounts. In light of this fact, the CDSS would support this proposal only if the proposals to increase the SSI standard, amend the pass-along law, and allow 50/50 sharing of recipient income in grant calculation were enacted.

## SOCIAL SECURITY ADMINISTRATION STAFFING LEVELS

The CDSS works closely with Social Security Administration (SSA) Region IX staff and has frequent contact with SSA District Offices and administers the federally funded Disability Determination Service (DDS) which evaluates SSI disability claims. As a result of our first-hand knowledge of these offices' workloads and program responsibilities, we know they are truly in need of additional employees and we strongly support a staffing increase. Further, we believe that the taxpayer savings resulting from reduced personnel may actually be outweighed by SSI/SSP and Medicaid overpayments.

One of the prime sources of these hidden costs is the moratorium on continuing disability reviews (CDRs) that has been imposed for the last three years. CDRs are supposed to be done periodically on all disability cases to determine if the recipients remain disabled. The CDR moratorium was imposed by SSA due to the workload pressures on the DDS's to process new claims. Mr. Louis D. Enoff, SSA Acting Commissioner, is quoted in the May 16, 1993 edition of the Orange County Register newspaper as saying the "agency is swamped handling new claims and that there is little time and not enough staff to review people already collecting benefits." This inability to perform CDRs due to inadequate resources means that recipients who are no longer disabled continue to receive SSI/SSP benefits indefinitely.

Increased program fraud is also a hidden cost of the staffing shortage. SSA contracts with the Office of Inspector General (OIG) to fulfill its contractual obligation to the states to pursue, investigate, and prosecute incidences of SSI/SSP fraud. However, due to staffing shortages, the OIG has only 28 special agents in its Region IX field offices to cover all Department of Health and Human Services' programs in California and four other western states. These programs include not only SSI/SSP, but Title XIX Medicaid, Title IV-E Foster Care, Title II Social Security Retirement and Disability, etc. The current Commissioner of SSA's Region IX has stated that although federal instructions require that SSI/SSP fraud cases be investigated by the OIG, "we have had little success in persuading OIG to pursue investigation of these cases." In response to this problem, the CDSS has proposed a fraud investigation pilot project, to be administered by the state and funded by SSA. We have received an initial favorable response from SSA and we are working with them to implement the project.

States like California that are experiencing difficult economic times cannot afford to bear the unnecessary costs associated with program fraud and not doing CDRs, and neither should the federal government. While the Disability Determination Service has achieved remarkable progress in increasing case processing efficiency, funding remains inadequate for that function as well as for SSA's areas of direct responsibility. We recommend that Congress fund SSA and the DDS at a level commensurate with the workload.

## SUMMARY

California urges the Committee to support the proposals detailed in this statement of testimony. In summary, we are proposing to:

- Increase the federal benefit levels to 100% of the National Poverty Level concurrent with the amendment of the federal pass-along law.
- Eliminate in-kind support and maintenance as countable income concurrent with amendment of federal pass-along laws and enactment of 50/50 income sharing between SSA and the states.
- Increase resource limits and streamline resource exclusions concurrent with amendment of federal pass-along laws and enactment of 50/50 income sharing between SSA and the states.
- Increase SSA and Disability Determination Service staffing to levels that are commensurate with the workload.

The CDSS is very concerned about the current federal laws and regulations which govern the SSI/SSP program. It appears that the original intent of the SSI/SSP program has not been fulfilled by the federal government, while states' costs have grown beyond their control and states' contractual protections have been eliminated by legislation and regulations over which they have had no effective voice. In brief, the good faith under which states agreed to participate in the SSP program has been largely disregarded. It is imperative that states regain control over their own program costs and that the SSI/SSP be administered in a manner which will ensure that its original legislative intent is met. We ask that the Committee support the proposals outlined above and wish to express our appreciation for the opportunity to be heard on these matters.

## STATEMENT OF SERGEANT MAJOR MICHAEL F. OUELLETTE, USA, (RET)
## DIRECTOR OF LEGISLATIVE AFFAIRS
## NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA

Mr. Chairman. The Non Commissioned Officers Association of the USA (NCOA) is grateful for the opportunity to present testimony to the subcommittee concerning Supplemental Security Income modernization. NCOA is a federally-chartered organization with a membership in excess of 160,000 noncommissioned and petty officers serving in every component of the five Armed Forces of the United States; active, national guard, reserve, retired and veterans.

### *BACKGROUND*

Disabled children of low income military families stationed overseas became eligible of Supplemental Security Income (SSI) benefits as part of the Omnibus Budget Reconciliation Act of 1990. Prior to then, these families and their qualifying children lost their eligibility simply because they were overseas on the orders of the U. S. Government.

Representative Jim Slattery (KS) responded to the plight of a young soldier on orders to Germany who was to be accompanied by a disabled daughter who qualified for SSI benefits prior to receiving orders. Rep. Slattery's legislation permitted the military member with a qualifying disabled dependent to continue to receive SSI benefits while stationed overseas and was adopted as part of OBRA 1990.

P.L. 103-66 further addressed specific problems facing military families when it extended the overseas provision to military families stationed in Puerto Rico or territories or possessions of the United States. The law also clarified another provision in the SSI code that had unfairly penalized military families. Although military families certainly considered the military member to still be a part of the family when he or she was absent on an unaccompanied tour or on orders for duty at a distance from the family residence, SSI regulations did not. P.L. 103-66 has corrected this inequity.

### *CONCERNS*

More recently, a number of other problems have become apparent with the administration of the SSI program for military families. One is the inability to determine initial eligibility for SSI when stationed outside of the United States. Correction of this problem is addressed in legislation (H.R. 480) introduced by Representative Slattery. When a child is born overseas with a disability or when a disability is first diagnosed while the family is overseas, the child and the family cannot apply for SSI eligibility. The military member must request a humanitarian short tour and return to the United States or return his family to the United States simply to establish a home and have SSI eligibility determined. The only other alternative for the family is to attempt to complete their overseas tour of duty without the needed economic relief of SSI benefits. Since social workers employed by the military and military physicians are available at duty stations outside the United States, it would seem reasonable to allow these professionals to make a temporary determination of SSI eligibility using criteria and forms required by the Social Security Administration.

The second problem concerns adult military family members who are eligible for SSI benefits within the United States but not when stationed with their military sponsor in an overseas area. These adult family members can be the spouse of the military member or, very occasionally, the dependent parent of a military member. Each military service has an Exceptional Family Member Program (EFMP). All servicemembers with a disabled family member are required to register their family with the EFMP. Registered families are screened before they are sent to duty stations to ascertain that needed medical and other services are available for the disabled family member. This is particularly true for duty stations outside the United States where services from the private sector may be limited or non-existent. If the required services are not available, either the military member is assigned to another duty station were the needed services exist or is assigned outside the United States in an unaccompanied tour status. It is obvious that the number of servicemembers with a disabled adult family member; have a family income low enough to qualify for SSI benefits, and who would be stationed outside the United States accompanied by the disabled adult family member would be minuscule. However, the importance of SSI benefits to the economic well being of the family is no less for these military members than those with disabled children.

## *DISCUSSION*

NCOA is grateful that this subcommittee would consider, as part of its SSI modernization deliberations, rectifying many of the inequities military families have had to endure. Nonetheless, this Association continues to be amazed that our government would ever penalize military families simply because they were following orders! As the military services are drawn down in numbers, the abilities and skills of each military member becomes even more vitally important. This Country cannot afford to lose for a day or a week or a month a member who is critical to the mission of his/her unit. We also do not believe the citizens of this Country expect military families to be excluded from the benefits of such programs as SSI simply because the services of the military member are needed at a duty station outside the United States.

## *RECOMMENDATION*

NCOA respectfully recommends that as the SSI Program is modernized by this subcommittee that the current inequities in law be changed to allow military families with a family member who is born or becomes disabled while in the overseas area and adult disabled dependent family members to qualify for SSI benefits when stationed outside the United States with their military sponsor.

Thank You.

# STATEMENT OF
# THE HONORABLE JIM SLATTERY
# TO THE
# SUBCOMMITTEE ON HUMAN RESOURCES
# OF THE
# COMMITTEE ON WAYS AND MEANS
# U.S. HOUSE OF REPRESENTATIVES

Thank you, Mr. Chairman, for allowing me this opportunity to participate in this discussion on the Supplemental Security Income (SSI) Modernization Project. I am pleased to share with you information regarding my legislation, H.R. 480, which would extend eligibility for SSI benefits to all eligible children of military personnel stationed overseas.

Currently, military families can continue to receive SSI benefits for children if they were eligible for benefits for the month prior to the parent's assignment to duty outside the United States, Puerto Rico, or the U.S. territories or possessions. Unfortunately, current law does not include SSI benefit eligibility for those families already stationed overseas when they find that their newborn or newly diagnosed daughter or son may be eligible. My legislation would correct this situation by ensuring eligibility for these families.

U.S. Health and Human Services Secretary Donna Shalala has informed me that it would be possible to make determinations regarding SSI eligibility for military personnel stationed overseas as long as the Social Security Administration is given sufficient time to prepare for the implementation. As this legislation targets a small number of military families, the cost is minimal. The Congressional Budget Office initial cost estimate for H.R. 480 indicates an increase in direct spending of approximately $300,000 in each fiscal year from 1994 through 1998. I believe that Congress can find a revenue source to cover this expense and I am willing to work with your Committee to do so.

The National Military Family Association, the Non Commissioned Officers Association, and other military organizations have endorsed H.R. 480. They, as I, want to ensure that all active military personnel receive the benefits to which they and their families are entitled.

Again, thank you for your consideration of H.R. 480. I am pleased that your Committee has actively been reviewing the SSI program, and look forward to working with you on this issue.

# TESTIMONY OF
# THE HONORABLE PETE STARK
# BEFORE THE
# COMMITTEE ON WAYS AND MEANS
# SUBCOMMITTEE ON HUMAN RESOURCES
# MARCH 1, 1994

Mr. Chairman and Members of the Subcommittee: I regret that I will be unable to be present at this hearing. The Supplemental Security Income (SSI) Modernization Project report is one of the most practical, helpful and comprehensive studies of the SSI program ever conducted. We are indebted to the Honorable Arthur Fleming, Chairperson, and to the panel of experts who conducted the study.

It is the Modernization Project report and the real life stories that have come to my attention that prompted me to introduce H.R. 3264, the Work Incentives Amendments of 1993.

For people with disabilities receiving Social Security Disability Insurance (SSDI) and/or SSI, the greatest disincentive to working is the potential loss of their medical and related services, such as personal assistance services. If we can assure people that their health needs will be taken care of, most people who are capable of engaging in work for pay will do so.

There are other obstacles that face people with disabilities - enough to discourage all but the most stalwart. HR 3264 proposes removing some of these roadblocks so people can live productive lives.

I am going to focus on two of the provisions of HR 3264 and show how they would help particular people.

Section 101 of the Work Incentives Amendments would make it possible for someone who has been receiving SSDI only to gain access to the SSI Section 1619 work incentives without having been eligible for regular SSI benefits. The people who would benefit are people who lose SSDI because they begin to make too much money.

When persons lose SSDI benefits, they may have more resources than are allowed under the SSI eligibility rules. Because it would be helpful for these people to have access to the SSI Section 1619 work incentives, this provision provides a time period for people to spend down certain excess resources while they begin to work under the Section 1619 work incentives provisions. Individuals would have 12 months to spend down, beginning 3 months after the end of their trial work period. For example, if a person has $2500 in resources when they begin to work under the Section 1619 work incentives provisions, they would have 12 months to spend the $500 which is the amount over the SSI resource limit.

The following stories illustrate the need for Section 101 of the Work Incentives Amendments. The individuals' names have been changed for confidentiality purposes. All stories, however, are true and were told to Mary Ridgely, the Project Coordinator of the Dane County Employment Initiatives Project in Wisconsin.

"Pete" sustained a spinal cord injury at age forty-three. He currently relies on his SSDI payment and his wife's income as a waitress for financial support. Pete has a valid real estate license but he does not use it. He gets a portion of his attendant care funded through the Home and Community-Based Waiver program, and if his income goes above a certain level, he will lose this funding. He know that he cannot earn enough money to afford the attendant care, which averages about $7,000 per year. His wife provides the remainder of his attendant care, however, Pete worries about her physical stamina since she is in her fifties. He would like to earn a living but he cannot afford to lose the attendant care funding.

"Mary" was diagnosed with Multiple Sclerosis when she graduated from nursing school. She worked as an R.N. for thirteen years before being forced to quit due to the M.S. She began receiving SSDI in the late 1970's. Eventually, she decided to attempt working, and took a part-time job: dispensing medications at a nursing home on the weekends. This job allowed her to sit while working, and though working two days a week, she did not get too exhausted. When she reported this job to the Social Security Administration, her SSDI was immediately discontinued. She had to increase her work hours in order to support herself, and this exacerbated the M.S. to the point where she couldn't work at all. It took one and one-half years for her SSDI benefits to be restarted. In that time, she turned her house back to the mortgage company and moved in with her parents so that she could get the personal assistance she needed. She was able eventually to get into subsidized housing, and received assistance for attendant services through the Home and Community-Based Waiver program.

"Mary" vowed that she would never work again. She began to volunteer her services to the local Easter Seal Society, which afforded her the flexibility to keep her hours low to avoid the stress which could intensify her medical condition. But volunteering does not give her the sense of accomplishment and the self-esteem that she felt when she was working and earning a wage.

"Brian" is a personable young man who sustained a spinal cord injury in an accident when he was twenty years old. Raised with a strong work ethic, Brian started working at age thirteen, working part-time as a teenager and going full-time as a janitor for a local company when he graduated from high school. Brian's SSDI benefit is high enough that he does not qualify for SSI.

"Brian" has not worked in the four years since his injury. He qualifies for the Medicaid Home and Community-Based Waiver services through the medically needy program. He must "spend down" $600 in medical expenses every six months - out of pocket - before he is eligible for Medicaid. Medicaid then pays for his attendant services. Any income "Brian" earned would increase his "spend down". Therefore, in his opinion, it is not worth it to work.

Section 101 of the Work Incentives Amendments would allow all of these individuals the opportunity to work without fear of losing the support for necessary attendant care/personal assistance services. Employer-provided health insurance potentially would cover basic medical costs, leaving Medicaid eligibility under 1619(b) to pay only for personal assistance services and other specialized health care needs required by people with disabilities.

"Pete", "Mary" and "Brian" are already on Medicaid through the Home and Community-Based Waiver Program. In fact, there would be a lower Medicaid cost if they had employer-provided health insurance paying for a basic health care benefit package.

There are people who do not have access already to Medicaid that would benefit from Section 101. For these people, their Medicaid coverage would be a new cost but they would also discontinue their SSDI payments and would become taxpayers.

To save money above the SSI resource limit in order to achieve a specific career goal, an SSI recipient can submit a Plan for Achieving Self Support (PASS). Under current regulations, a PASS can be for up to four years in length. Section 304 of the Work Incentives Amendments Act would require the Secretary of Health and Human Services to "establish a time limit by which activities under a plan for achieving self-support must be completed, using criteria that take into account the difficulty of achieving self support based on the needs of the individual and the goals of the plan."

> Ken Adell (his real name) was twenty-four years old when a diving accident in 1986 resulted in a spinal cord injury. He spent nine months in the hospital - six of them on a respirator. Ken is unable to move anything below his neck. He operates his wheelchair by using "sip and puff" technology. By holding a pointer in his mouth, he can type on a computer.
>
> When he left the hospital in 1987, Ken moved into an apartment and began the task of organizing a support system. His previous work history entitled him to a substantial SSDI payment, above the maximum level for SSI, even with a special state supplement. Medicare did not adequately cover his home health care needs - he requires eleven hours per day, seven days per week. He applied for Medicaid. Every six months he had to be re-certified, and was required to incur medical expenses before he was again considered eligible.
>
> "The bills were piling up - I couldn't pay them. Eventually, the home health agency refused to come in...so I checked myself into the hospital. Without the supports, I couldn't survive."
>
> Ken was allowed to stay in the hospital only for three months on a respite basis. He began a letter-writing campaign, hoping to find someone who could help him. He wanted to return to the University to complete his degree in Rehabilitation Psychology. His campaign continued even after he was transferred from the hospital to a nursing home. He wrote to legislators and social service agencies; they responded with sympathy, but did not have answers.
>
> Finally, Ken was put in touch with a Social Security District Office and he learned about Title II and Title XVI Work Incentives Provisions. A "Plan to Achieve Self Support" (PASS) was conceptualized, and Ken's outlook began to change.
>
> With his career goal to complete a degree in May 1996, Ken began to set aside all of his SSDI check into a PASS account. His plan was to save enough money to make a down payment on a new van which would be modified to accommodate his wheelchair. At the same time as he submitted the PASS plan, he applied for SSI benefits. By setting aside all of his SSDI check, his countable income became $0, making him eligible for the maximum SSI benefit, including the state supplement for people needing more than 40 hours of in-home services. Along with SSI, he qualified for Medicaid.

Ken was able to move from the nursing home back into his own apartment, with attendant services funded by Medicaid.

He re-entered the University to continue his studies. For transportation, he utilized a used van which he had purchased previously. When he had $8,000 in his PASS account, he approached the banks about a loan to buy a new van. However, he was told he was a poor credit risk because of the collection action regarding his unpaid medical bills. Soon after, his old van broke down and was beyond repair. He contacted the SSA office and was told he could "amend" his PASS plan to purchase another used van with the $8,000 he had saved. Once that was accomplished, he returned to his original plan to save the money for a down-payment on a new van. In the meantime, he is working hard to get his old medical bills paid off.

Ken had to amend his PASS plan another time - to pay for repairs on his old wheelchair. Medicaid will pay only for one wheelchair every five years. When a wheelchair breaks down, Medicaid will not pay for a replacement chair. Ken has to keep his old wheelchair in good repair to have as a backup when the new chair has to go in for repairs. The maintenance costs on his old chair are up to him; with approval from the SSA, he was able to use the money in his PASS account to have his old wheelchair repaired.

"If it weren't for the PASS plan, I wouldn't be able to continue school. The PASS program saved my life."

Ken worries that the maximum time allowed for a PASS plan (four years for someone with an education goal) will be over before he finishes his degree. "I have this overwhelming fear that if I don't have my degree by May 1996, I will lose everything. But twice I have had to drop out of school for health reasons." The first time it was a pressure sore, which takes weeks, sometimes even months to heal. The second time it was a bladder infection. " I was at home for two months on I.V. antibiotics. I didn't plan for that to happen, but it did."

If Section 304 of the SSI Work Incentives Amendments were passed and implemented, Ken could stop worrying about May 1996. The intent of Section 304 is to have Social Security regulations provide sufficient time for people like Ken to complete their Plan for Achieving Self Support. With enough time, Ken can achieve his career goal to become a Vocational Rehabilitation Counselor.

These stories attest to the incredible courage of people like "Pete", "Mary", "Brian" and Ken. My hope in crafting HR 3264 was to make it easier for people with disabilities to surmount the incredible obstacles the SSDI and SSI programs often place before people who can and want to return to the work force. Earning a salary and having enough money to make choices help people to become independent and feel good about themselves. All people deserve this opportunity. The Americans with Disabilities Act opened many doors; this bill opens a few more.

WRITTEN STATEMENT FOR CONSIDERATION BY THE

COMMITTEE ON WAYS AND MEANS
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

Supplemental Security Income Modernization Project

March 11, 1994

1. The undersigned attorney, George H. Thomason, has practiced law in South Carolina since 1971 and limited his practice to Social Security disability claims. All comments are based on 22 years of experience in working with Social Security on a daily basis.

2. Stop taking SSI disability applications concurrently with Title II applications for claimants who exceed the economic resource limits for SSI and who will receive Title II payments that clearly put them beyond the limit for SSI payment. Payment delays are expended because of the paperwork involved in concurrent claims. Input of payment data from local Social Security offices will also delay payment of retroactive Title II benefits. The paperwork and delay could be eliminated through revision of concurrent application policy. Delays also occur because district offices have inadequate staff levels.

3. The existing system is too slow for making redeterminations of economic eligibility for SSI. Unpredictable results occur for people economically dependent on SSI because of this lag time in making redeterminations of how much money they should have received. The money is already spent. The incessant overpayment/underpayment redetermination process benefits no one.

4. Work incentives should not be a factor in determining benefit levels for people who are approved for SSI disability benefits. Creating work incentives for people who are disabled is a waste of energy, resources, and time. What is the value of a work incentive for a person who is severely impaired and cannot work in the first place?

5. State-sponsored vocational rehabilitation agencies should be required to accept any applicant for Title II or SSI benefits. Rehabilitation agencies will deny services to individuals seeking Social Security disability benefits. Citizens should not be required to <u>elect</u> between rehabilitation services and Medicaid/SSI. We see many individuals who offer themselves for rehabilitation services who are rejected by Vocational Rehabilitation due to the existence of a pending SSI claim.

6. Disabled children should receive a mandatory screening by Vocational Rehabilitation to determine the likelihood of successful rehabilitation. Disabled children should be offered rehabilitation services <u>and</u> cash assistance/Medicaid. Rehabilitation screening could be part of the application process itself. It could include a 1-week vocational rehabilitation workshop; a psychological interview and testing; and physical examination. Social Security, regrettably, may not want to know the results of this evaluation. In many instances it would generate convincing proof of eligibility for SSI/Title II benefits. These evaluations could help numerous individuals qualify for benefits rather than preventing payment of benefits.

7. Change Medicaid assistance available to underweight babies born in hospitals. Any baby that weighs less than 1200 grams is automatically eligible for Medicaid assistance regardless of resources of the baby's parents. Individuals who have private health coverage and unlimited resources get their babies qualified too. This change would create a savings in paperwork at local SSI offices and would eliminate payment of benefits to individuals who don't require benefits.

8. Severely disabled children under 18 frequently cannot receive SSI cash assistance because of the resources of working parents. Working parents, however, have no health insurance. Private insurance companies exclude the child from coverage because of severe pre-existing conditions. This child should receive Medicaid assistance and rehabilitation assistance even if disqualified from a monetary standpoint because of parental earnings.

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VISIONS

Services for the Blind
and Visually Impaired

VISIONS/Services for the Blind & Visually Impaired
Vacation Camp for the Blind
"The Association Center"
120 Wall Street, 16th floor
New York, NY 10005

September 9, 1991

**SSI Modernization Project Staff**
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Comments on the SSI Modernization Project Issue Paper

Submitted by : Nancy D. Weber, Executive Director
VISIONS/ Services for the Blind and Visually Impaired

1. Services Provided by SSA

Staffing Levels and Training
**Increased funding for staff positions is essential but must be accompanied by training.** Staff must be specifically trained to be more sensitive to the needs of persons with disabilities, as well as the specific approaches needed to best assist a person who is blind.

For example, staff must be aware of, and feel comfortable utilizing, alternative means of communication as simple as writing in large print with a black magic marker for legally blind persons with partial vision; using cassette tapes rather than printed material; and realizing that many blind people have usable vision for which they may have learned specific accomodative techniques. These can include adjusting lighting by using a movable high intensity, low glare lamp or providing a writing table with high contrast, not white paper on a white desk.

The issues regarding income floors, resources, work incentives, income exclusions, etc. are extremely complex and require sensitivity on the part of SSA staff to be sure that applicants who are eligible understand what is needed to qualify and are assisted in ways that enable them to access the SSI program.

2. Adequacy of the Income Floor in the SSI Program

SSI Benefit Level
**The benefit level should be increased to 120% of poverty.** SSI reaches the most deserving poor, most of whom are older women.

Incorporating Vacation Camp for the Blind

Aged, blind and disabled persons deserve to live above the poverty level. Many taxpayers, including myself, would be willing to increase taxes to support this level benefit, or would support reallocation of tax dollars to fund this essential domestic program.

3. State Supplementation

**States should be required to continue current levels of supplementation.** If a state has had the resources to supplement SSI, why should the individual lose this support because the Federal government has increased its share.

4. Assets/Resources

I recommend Option C- **Increase the resource limits to $12,000 for one person and $15,000 for a couple.** The Medicaid spousal impoverishment rules already permit the spouse in the community to retain up to $12,000. This would also allow blind and/or disabled people to retain resources that may be used in the future as their disability-related needs change, i.e. purchse new technology that enables a blind or disabled individual to remain living in the community independently rather than entering a more expensive institution.

5. Couples

**I recommend changing the concept of a couple and eliminate the concept of "holding out.** If 2 people are not legally married they should not be treated as if they are. If the concept of couple is to remain, increase the income exclusions for couples which would, in particular, be a work incentive for disabled couples. Treat couples as 2 individuals giving people 200% benefits, not 150% of the individual's benefit.

6. Work Incentives

I recommend Option 2- **The panel sould recommend to Congress that changes in the SSI program be made now.** A demonstration is not necessary. These changes are exactly what people with disabilities have been asking for. These changes in SSI, along with the passage of ADA, would create an environment opening up tremendous employment opportunities for people with disabilities.

**All work related expenses should be excluded, as is currently the case for blind people.**

7. Funding for Outreach Activities

**SSA and Congress should establish a requirement that a percentage (5%) of SSA's budget be used for outreach.** This is essential for reaching the large numbers of eligible minority, limited-English speaking, isolated elderly, and blind individuals.

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ISBN 0-16-044856-5

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