

11-6-2013

**Statement of the Association of Administrative Law Judges:  
Committee on Ways and Means, Subcommittee on Social Security**

D. Randall Frye

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/naalj>



Part of the [Administrative Law Commons](#), [Disability Law Commons](#), and the [Judges Commons](#)

---

**Recommended Citation**

D. Randall Frye, *Statement of the Association of Administrative Law Judges: Committee on Ways and Means, Subcommittee on Social Security*, 33 J. Nat'l Ass'n Admin. L. Judiciary Iss. 1 (2013)

Available at: <https://digitalcommons.pepperdine.edu/naalj/vol33/iss1/2>

This Special is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized editor of Pepperdine Digital Commons. For more information, please contact [bailey.berry@pepperdine.edu](mailto:bailey.berry@pepperdine.edu).

**Statement of the Association of Administrative Law Judges**

**Committee on Ways and Means, Subcommittee on Social  
Security**

**June 27, 2012**

**Administrative Law Judges  
Protecting Justice and Due Process for the American  
People**

**Statement of the Honorable D. Randall Frye, President,  
Association of Administrative Law Judges  
Protecting Due Process for the American People**

Chairmen Johnson, Ranking Member Xavier Becerra and members of the Subcommittee:

Thank you for providing the Association of Administrative Law Judges (AALJ) the opportunity to submit this statement. My name is D. Randall Frye. I am a United States Administrative Law Judge (ALJ or Judge) assigned to the Social Security Administration (SSA). I have been hearing Social Security Disability cases in Charlotte, North Carolina for about 15 years. I have also served as Administrative Law Judge for the National Labor Relations Board for one and one-half years. I am currently President of the AALJ, which represents the approximately 1400 Administrative Law Judges employed at the SSA. One of the stated purposes of the AALJ is to promote and preserve due process hearings in compliance with the Administrative Procedure Act (APA) and the Social Security Act for those individuals who seek adjudication of program entitlement disputes within the SSA. It is the longstanding position of the AALJ that ensuring full and fair due process *de novo* hearings brings justice to the American people. The AALJ represents most of the approximately 1600 administrative law judges in the entire Federal government.

Some criticism has been recently levied against the world's largest adjudicatory system. However, the concerns raised do not present issues that are insurmountable. In this statement, the AALJ proposes changes we believe are necessary to make the federal disability administrative judiciary more efficient and effective as well as addresses some of the issues raised during the past year. In addition, the AALJ believes the proposed changes, most of which are not new, would be cost effective and would well serve the American people. For example, the AALJ has advocated for over a decade that our government be represented in cases before Administrative Law Judges with the full right to appeal. We are extremely pleased that such a program is now supported by Senator Coburn.<sup>1</sup>

---

<sup>1</sup> *Back in Black—Preserving Social Security for Future Generations*, U.S. Senator Tom Coburn, M.D. (R-OK), July 18, 2011.

## THE NEED FOR AN INDEPENDENT ADMINISTRATIVE JUDICIARY

In 1946, the Congress enacted the Administrative Procedure Act (APA) to reform the administrative hearing process and procedures in the Federal government and to protect, *inter alia*, the American public by giving ALJs decisional independence. "Congress intended to make hearing examiners (now ALJs) 'a special class of semi-independent subordinate hearing officers' by vesting control of their compensation, promotion and tenure in the Civil Service Commission (now the Office of Personnel Management) to a much greater extent than in the case of other Federal employees." [*Ramspeck v. Federal Trial Examiners Conference*, 345 US 931 (1953)]. The agencies employing them do not have the authority to withhold the powers vested in Federal ALJs by the APA

Prior to the enactment of the APA, the tenure and status of these hearing examiners were governed by the Classification Act of 1923, as amended. Under that Act, the classification of the hearing examiners was determined by ratings given to them by the Agency and their compensation and promotion depended upon their classification. This placed the hearing examiners in a dependent status with the Agency employing them. Many complaints were voiced against this system alleging that hearing examiners were "mere tools of the Agency" and thus subservient to Agency heads when they decided and issued decisions on issues involving Agency determinations appealed to them. With the adoption of the APA, Congress intended to correct these problems. As earlier noted, this rather significant reform was undertaken to protect the American public by giving ALJs decisional independence. Indeed, the Act's legislative history makes abundantly plain that the APA was intended to be broad sweeping legislation designed to restore to American government fundamental freedoms for the American people, freedoms which had become clouded in the murky waters of unregulated administrative organizations that were not contemplated by the nations' founders, and whose conduct in the realms of investigation, prosecution and adjudication had become so burdensome as to all but undo what was thought preserved in the Constitution. The widespread concern regarding the absence of an independent federal administrative judiciary to hear and decide

complex administrative issues was underscored by the President's Committee on Administrative Management in 1937.<sup>2</sup>

While the APA codified, *inter alia*, decisional independence of ALJs, it is not inconsistent with the Social Security Act. Thus in *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420 (1971) the Court found that the Social Security Act conforms with and is consistent with the APA. Specifically, the Court found that the APA provisions do not differ from nor supersede the authority given "the Secretary . . . by section 205(a) and (b) to establish procedures." The broad sweep of the APA must not be minimized. The APA extends its reach to agency rulemaking and adjudications. No court has found that the Social Security Act stands apart from the APA. To the contrary, many courts have found that the two statutes stand *in pari material*—to be considered together.

The APA was enacted to ensure that the American people were protected from arbitrary decision making by government bureaucrats. The grant of decisional independence to federal administrative law judges is fundamental to the ability of the ALJ to bring justice to the American people. When federal agencies overreach and encroach on our decisional independence, the promise of Constitutional due process to the American people is broken. In our view, there is absolutely no tension between the Social Security Act and the APA. The tension that does exist at SSA has arisen ONLY when unenlightened bureaucrats unlawfully interfere with the duties and responsibilities of the ALJ. The fact that the APA provides some degree of protection to members of the federal administrative judiciary should not be viewed as a negative. Indeed, the minimal employment protection offered by the APA is absolutely essential to due process and the ability of the judge to correctly adjudicate cases filed pursuant to the Social Security Act.

---

<sup>2</sup> The Committee observes of the so-called 'fourth branch' of government, the administrative agencies: "They are vested with duties of administration . . . and at the same time they are given important judicial work . . . The evils resulting from this confusion of principles are insidious and far-reaching Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness."

## HIGH VOLUME ADJUDICATIONS

Federal ALJs at SSA work in a stressful, high volume adjudicatory environment. In recent years, the Agency has placed far too much emphasis on numerical performance rather than on correct judicial decision making. According to Agency officials, Judges should spend no more than 2 ½ hours on each case. At the same time, hearing office staff attorneys are allotted 8 hours to prepare a draft denial decision for the judge's review.

To be sure, federal ALJs with conditional lifetime appointments and decisional independence are essential to ensure that the American people, who file approximately 700,000 to 800,000 cases each year, will be provided full and fair due process hearings. In this context, due process and justice can only be accomplished if the judge has sufficient time to develop and review each case, provide a thorough hearing, deliberate and decide the case and issue a well-reasoned decision which is fully consistent with the facts of the case and the relevant law. While numerical goals are useful tools, these goals must not be used as quotas, as to do so would likely deny due process to the claimant and impair the judge's ability to bring justice to the American people. The current production line mentality robs the judge of one of the most important elements of due process...time. Time is necessary for ALJs to develop and review the evidence, conduct a full and fair hearing, deliberate, and prepare and issue a correct decision. Again, goals are important; quotas run contrary to the Social Security Act, the Administrative Procedure Act and the U.S. Constitution. In addition, and most detrimental to the American people, is the Agency's application of constant pressure on judges to continue to increase the number of cases they adjudicate. The pressure of quotas is forcing judges to hear cases before they are prepared to do so. This impairs the judge's ability to adequately and thoroughly adjudicate cases. While some judges may be forced to hear and decide a higher volume of cases, higher producing judges tend to pay a higher percentage of claims.

As one Hearing Office Chief Judge pointed out, *"If goals are too high the corners get cut and the easiest*

*thing to do is to grant a case.*"<sup>3</sup>

While it may be true that over 75 percent of judges are meeting the goal-quota of 500-700 decisions annually, what is not present in the data is the fact that most of those judges would appear before you and tell you that in order to meet this level of production, they simply cannot adequately review all of the evidence in the cases they decide. In our view, the current misplaced emphasis on numbers has perverted our system of justice. At an estimated value of \$300,000 per case, the AALJ believes the American people are entitled to have a judge who is given adequate time to develop and review all of the evidence in each case, conduct a thorough hearing and issue a correct decision.

As you know, SSA ALJs have adjudicated cases at record levels in each of the past ten years. However, the AALJ believes the SSA adjudicatory system could be made more efficient, effective and economical with changes and modifications that will improve the process. On many prior occasions, the AALJ has urged consideration by the Agency of significant changes to the disability adjudication system.

#### GOVERNMENT REPRESENTATION

When sued, insurance companies proceed to trial represented by the best law firms in the nation. When a claim is filed for disability benefits, the government (SSA) proceeds to trial without legal representation. When an ALJ rules against a claimant in a disability case, the claimant can (and usually does) file an appeal with the Appeals Council. When an ALJ rules against the government in a disability case creating a \$300,000 liability, the government does not have a right of appeal. There is clearly something wrong with this picture. In the context of disability adjudication, the government is the trustee of billions of taxpayer dollars. In our view, it is irresponsible to place these funds at risk at hearing without legal representation.

The AALJ has advocated for well over a decade that the SSA be

---

<sup>3</sup> See statement of the Hon. Patrick O'Carroll, Inspector General, SSA, before the Subcommittee on Social Security of the House Committee on Ways and Means, September 16, 2008, p. 5.

represented at administrative hearings by attorneys. This representation should be provided by attorneys from the Office of General Counsel, with authority to advocate the American people's interest and with the authority to compromise, settle, and appeal cases which the government believes were erroneously decided. The cost of such representation could easily be funded by resources saved by eliminating or restructuring the Regional Offices of the Office of Disability Adjudication and Review (ODAR).

The Social Security Advisory Board (SSAB) has called for the government to be represented as well. In its 2001 report, the SSAB made the following statement:

[T]he fact that most claimants are now represented by an attorney reinforces the proposition, which has been made several times in the past, that the agency should be represented as well. Unlike a traditional court setting, only one side is now represented at Social Security's ALJ hearings. We think that having an individual present at the hearing to defend the agency's position would help to clarify the issues and introduce greater consistency and accountability into the adjudicative system. It would also help to carry out an effective cross-examination of the claimant. Many ALJs have told us that they are sometimes reluctant to conduct the kind of cross-examination they believe should be made because, upon appeal, the record may make them appear to have been biased against the claimant. Consideration should also be given to allowing the individual who represents the agency at the hearing to file an appeal of the ALJ decision.

This issue has not escaped the analysis of academic commentators. Two professors made the following caustic observation in the *Journal of Economic Perspectives* (Volume 20, Number 3, Summer 2006, pages 71-96 at page 93):

A second promising step would be for the Social Security Administration to consider attorney representation at Administrative Law Judge hearings,

as the independent Social Security Advisory Board (2001) has *repeatedly recommended* [emphasis added]. At present, claimants are typically represented at appeal by legal and medical advocates who have a financial stake in the claimant's success. The Social Security Administration, by contrast, is entirely dependent on the Administrative Law Judge to protect the claimant's and the public's interests simultaneously (U.S. GAO, 1997). Permitting the Social Security Administration to provide a representative or attorney to the hearings would ameliorate this almost *comically lopsided setting* [emphasis added] in which the Social Security Administration currently loses nearly three-quarters of all appeals.

The overriding purpose of the hearing is "fact-finding." The AALJ believes that the model used by SSA to conduct hearings is a relatively poor fact-finding model as compared to the adversarial model. We believe that the center of any change at SSA should include, at a minimum, conversion from the inquisitorial model to the adversarial model. The adversarial system of adjudication is fundamental to our American judicial system. The AALJ knows of no state or Federal court that uses the inquisitorial model to adjudicate issues. SSA uses a model unheard of throughout our land to find facts in a judicial-type setting.

#### THE BURDEN OF WEARING 3 HATS

Federal ALJs who hear and decide cases at SSA have an unusually complex job. As a fact-finding system, it is difficult for one person to perform all three functions imposed on ALJs: to represent the interest of the claimant; to represent the interest of the Trust Fund; and to serve as an impartial decision maker ("three hats"). To function and appear as an unbiased fact-finder and at the same time to examine a claimant vigorously and thoroughly, as one would expect a lawyer defending the trust fund to do, is not possible. In fact, having the judge defend the Trust Fund as well as the claimant's interest, places the judge in an untenable situation. Oftentimes vigorous examination of the claimant by the judge leads

to allegations against the judge of bias and prejudice. Some judges have even been subjected to discipline by the Agency because of aggressive examination of the claimant, done in pursuit of truth and justice.

The benefit of having a lawyer representing the government with the authority to settle cases should not be minimized. In fact, this benefit may be even greater to the administration of justice than the government's role as an advocate. One of the factors contributing to SSA's high volume jurisdiction is the fact that the vast majority of cases are tried. However, nowhere else in our judicial system is a judge required to take to hearing such a high percentage of cases compared to the total docket. Were the state and Federal courts required to actually conduct trials in the same proportion as disability judges are forced to do with their dockets, those courts would abruptly crash under the weight of trying virtually all of their dockets. Having a lawyer with authority to negotiate and settle cases has the potential to drastically reduce the number of cases that are tried, and conceivably reduce the number of judges and support staff.

Having government representation would also ensure that the evidentiary file is complete and that all necessary development has been conducted prior to the hearing. This would permit the judge to become fully informed about the nature and extent of the claimant's alleged impairments prior to the hearing. This type of prehearing preparation is necessary for the judge to understand complex medical evidence and to evaluate the facts, as found at hearing, in the context of relevant law and agency regulations.

The AALJ believes an adversarial model would far better serve the claimants' and the public's interests by being a better fact-finding system and by more efficiently disposing of cases through compromise and settlement. With a lawyer representing the government, the government can then decide which cases to defend. Instead of hearing 90% of the cases (assuming 10% are awarded on the record without a hearing), far fewer cases would go to hearing because of the ability to settle the case without a hearing. This process would also serve to drive down the backlog quickly.

Another efficiency, which should accrue to having government representation, lies in the shepherding of cases through the appeals process. Identifying those claims that are likely to prevail before the judge and agreeing with the claimant's position to enter a favorable award, means one fewer case that has to be scheduled and tried. The

government lawyer can then focus resources on defending those cases which ought to be defended, rather than spend time on perfunctory hearings.

As above noted, the pressure on judges to produce an ever increasing number of cases has reached intolerable levels. In evaluating our concerns, it is essential that members of the Subcommittee understand the role of staff in the disability claims process. When case files arrive in a hearing office, they must be "worked up" or "pulled," that is, electronically organized for use in the hearing. This is a significant task, which if done properly, requires skill and one to three hours of time, as the contents of a given file arrive in the hearing office in random sequence, unidentified, without pagination, with duplications and without any numbered exhibits or table of contents to locate the exhibits. A staff member must identify and eliminate duplicate exhibits from the same source, label the remaining exhibits, arrange the exhibits in chronological order, number and paginate the exhibits and prepare the list of exhibits. After a case is worked up, it is ready for the assigned judge to review.

In this process, the AALJ believes it important for members of the subcommittees to consider how much time ALJs should be spending on each disability case. At an estimated value of \$300,000 per case, we respectfully suggest that this is not a rhetorical question. A judge must invest sufficient time to understand all of the facts in each case as well as applicable law and regulations. It is imperative for the judge to review all evidence in the file, averaging 600 pages, and then direct staff to obtain any missing evidence including consultative medical examinations. When the record is fully developed, the judge determines if a hearing is needed or whether a favorable decision can be made on the evidence of record, without a hearing. In most cases, a hearing is required and the judge then determines which expert witnesses will be required for the hearing and if additional courtroom security is necessary. After this review, the staff secures the expert witnesses and schedules the case for hearing. Once the hearing is scheduled, the judge continues to be involved with the case reviewing newly submitted evidence and considering and resolving pre-hearing motions and issues. Typically, a day or two before the hearing, the judge will conduct another review of the file to evaluate additional evidence and to insure familiarity with the facts and issues for the hearing. Many times, last

minute evidence is submitted at the hearing which unnecessarily delays or otherwise impedes the adjudication of the case. When the hearing is concluded, the judge must deliberate, prepare thorough decisional instructions for the writing staff and later review and edit the draft decision before signing it. Sometimes, additional evidence is submitted after the hearing, or even after the decision has been drafted but not yet signed by the judge, causing the expenditure of additional judge time. As can be gleaned from this brief overview, the disability adjudicatory process is complex and time consuming.

As earlier noted, in courts and other agencies, trials and adjudications are conducted under the adversarial process in which the case is developed during trial by evidence introduced by opposing counsel. The judge studies and reviews the evidence as the trial progresses. However, in Social Security disability hearings, ALJs preside over an inquisitorial process, in which the judge develops the facts and the arguments both for and against granting benefits. In large part, this is required because the SSA is not represented at the hearing and the courts are sympathetic to unrepresented claimants. Therefore, ALJs are required to wear the so-called three hats as referenced above. After reviewing the record evidence, the judge often determines that additional evidence must be obtained. This inquisitorial system places more responsibility on the judge. Hearings based on this model are more time consuming and labor intensive for the judge.

Certainly, there is variance in the number of decisions issued by each judge. Such a distribution is normal in all human activities, and is usually graphed as a "bell curve." However, the number of decisions issued by a judge is dependent on numerous factors such as adequate and well trained staffing, the complexity of the cases, the number of unrepresented claimants and the sophistication of the bar. These are factors clearly beyond the control of the judges.

Quite compelling is data from SSA's last study on the issue of numerical goals for ALJs, *Plan for a New Disability Claim Process*. This study was conducted in 1994 and projected a time line for a disability claim at all levels of the process. The study, based on an average month, concluded that a reasonable disposition rate for an ALJ should be in the range of 25 to 55 cases per month. The study also revealed that a judge would spend a range of 3 to 7 hours adjudicating each case. Consistent with this study is the following testimony of former SSA Chief ALJ Frank Cristaudo before the

House Ways and Means Committee, Subcommittee on Social Security, on September 6, 2008, in response to questions from Congressman Xavier Becerra:

Mr. Becerra. Do me a favor. I am going to run out of 5 minutes real quickly. I am just asking, do you believe that they [ALJs] can get to upwards of 600 to 700 dispositions on an annual basis?

Judge Cristaudo. Well, what we are asking the judges to try to do—we haven't mandated, we are asking—is to get to 500. The 700 was more of an indication to this other group that are doing thousands of cases that at some point there may be a limit as to how many cases a Judge can actually do and still do quality work. That is what the 700 was about.

There have been changes in the process since 1994, but most of those serve to slow down, not speed up, the process. The average file size grows every year. Reviewing electronic files (eFiles) takes more time than reviewing paper files. Even electronic signing (eSigning) of decisions takes longer than using a pen. While technology may have reduced the Agency's overall processing time for claims, it has not reduced the amount of time most judges must spend in adjudicating a case.

In considering numerical performance, it is important to understand that a judge must carefully review the voluminous documentary evidence in the claimant's file to effectively prepare and conduct the hearing and to issue a correct decision. With an average estimated cost to the trust fund of \$300,000 per case, a judge hearing 40 cases per month is entrusted to correctly decide cases valued at \$10,000,000 per month, or \$120,000,000 annually. Nonetheless, judges are being subjected to various pressures to meet ever-increasing production "goals" which in many cases become *de facto* quotas in violation of the APA and infringes on the constitutional requirement for ALJs to provide a full and fair due process hearing.

As a result of SSA's pressure to meet or exceed goals-quotas, many judges are forced to give cases less thorough reviews; adequate evidentiary development may not be undertaken; facts may go unseen; and incorrect assessments may be reached. In some offices,

judges are being pressured to accept un-worked cases that have not been organized by staff which is inconsistent with the APA requirement that hearings be held with an identifiable record. The judge must waste substantial time in reviewing un-worked files that may have many duplicate records, records out of sequence and exhibits which are neither identified nor paginated. This lost time should be, instead, spent on reviewing, hearing and deciding more cases.

Reviewing a 600 page case file is not unlike reading a 600-page novel. In both instances, one must read carefully in order to understand the story being presented. Skipping pages in either distorts one's understanding of the whole story. If a judge skips evidentiary pages in a case file, the judge could make incorrect decisions in that case, harming either the claimant or costing the American taxpayers \$300,000 for the incorrect decision. Selectively reviewing evidence is a short cut that must cease; otherwise fairness and justice disappear from our adjudicatory system.

#### PEER REVIEW

The AALJ has advocated for an ALJ Peer Review Program at SSA for approximately twenty years. The AALJ believes that such a system would efficiently and effectively address ALJ performance and conduct issues in a manner that would be beneficial to the Agency, the Judge and the American people. Instead, the Agency continues to address these issues in a manner that always leads to costly and time consuming litigation. The Agency has not only consistently opposed the establishment of a Peer Review Program but also any similar program. This past year, the AALJ proposed a joint workgroup to study and evaluate establishing an ALJ Peer Review Program. The Agency strongly opposed the creation of such a work group.

#### ADJUDICATORY TRANSPARENCY

In our democratic form of government, the need for transparency in federal administrative hearings is essential. Conducting hearings in secret fosters suspicion and creates misunderstandings about our system of justice. To build and maintain trust in our adjudicatory system by the American people, we must conduct our hearings in the

light of day. The AALJ has long advocated that hearings be open to the public. We believe there is a substantial public interest in how disability adjudication is conducted. We believe that the public's interest is generally paramount to a claimant's interest in keeping the hearing closed to the public. Open hearings would lend transparency to our administrative adjudication system and instill confidence regarding our disability system of justice. Moreover, should the case be appealed to the Federal courts, the entire record is open to the public. Also, we believe the Notice of Hearing should include all relevant information, not only the issues to be heard, but also other information such as the time, date and place of the hearing and the name of the assigned judge.

#### ARE THE MEDICAL VOCATIONAL GUIDELINES RELEVANT TODAY

For many reasons, Americans are living longer and healthier lives. The nature and scope of work performed by the American people is significantly different than 40 years ago. There are far fewer unskilled jobs in the market place and few jobs that require significant physical activity. As a result, application of the Agency's Medical Vocational Guidelines (grid rules) oftentimes forces the ALJ to award benefits when jobs are available that claimants could perform. In our view, this approach to evaluating disability is out of date and should be eliminated. Rather than using these outdated guidelines, judges should rely on vocational testimony. At a minimum, the grid rules should be revised to reflect the increased life span of Americans.

#### RULES OF PROCEDURE AND CLOSING THE RECORD

The AALJ has advocated for the adoption of procedural rules, however, the Agency has consistently refused to do so. No other judicial system functions without rules of procedure. Further, no other judicial system operates by permitting the record to remain open continuously throughout the adjudicatory and appellate process. For example, medical evidence could be withheld from the ALJ and later submitted to the Appeals Council in order to secure a remand of the case and another hearing. There is no incentive under the current system to submit evidence in a timely fashion.

Procedural rules would ensure an efficient, effective and orderly judicial system. Like a road map, procedural rules would aid litigants by giving specific guidance on how to navigate the adjudicatory process. At SSA such rules could cover, *inter alia*, submission of evidence, dismissals, prehearing conferences, subpoenas, oral argument, representatives' responsibilities, ex parte communications, continuances and prehearing development.

Perhaps one of the most important areas ripe for procedural rules is closing the record. The AALJ has long advocated that the record should be closed at the conclusion of the hearing unless the ALJ directs otherwise. Any post hearing evidence submitted to the ALJ prior to the issuance of a decision would be admitted into the record upon a showing that such evidence is material and could not have been submitted prior to the close of hearing. If a party waives a hearing, the record would be closed on the date the decision is issued.

#### THE VALUE OF MEDICAL EXPERT WITNESSES

Medical expert witnesses serve an important role in the adjudicatory process in that their testimony assists the ALJ in reaching the correct decision in a given case. Presently, the Agency has a dearth of medical expert witnesses because their pay has not increased in more than a decade. Pay rates need to rise, and the SSA needs to develop a national pool of medical specialists who can appear at hearings by way of video. In most cases, courts are more likely to uphold a decision if a knowledgeable medical expert witness testifies at a disability hearing. The cost for using a medical expert witness is less than the cost of holding another hearing if the case is remanded as a result of the lack of medical expert testimony.

#### REDIRECTED RESOURCES TO REDUCE THE BACKLOG

The SSA expends a great deal of money on maintaining ten Regional Offices within ODAR. Since ODAR Regional Offices do not directly contribute to the processing and adjudication of cases, as they handle few, if any, cases, Regional Offices are merely another layer of bureaucratic administration that deprives ODAR hearing offices of personnel. Over the last fifteen years, the Regional Offices have added substantial staff, which could have been better deployed in the hearing offices. The AALJ advocates the elimination of the

ODAR Regional Offices and the reassignment of Regional Office staff to hearing offices to handle the backlog, with the savings from office rental costs being redirected to the hearing offices. The overall responsibility for the disability adjudication system, including current Regional functions, should be consolidated in the Office of the Chief Administrative Law Judge and under the management of the Chief Administrative Law Judge.

#### VIDEO HEARINGS

Face to face hearings provide the best method of delivering due process to the American people. While there may be some instances where video hearings are advisable (such as handling cases in remote areas that would require excessive travel), widespread use of the National Hearing Centers (NHCs) reduces the ability of the SSA to provide due process to the American people. Video hearings should be kept to a minimum in order to preserve the right of every American to have the opportunity to make their case in person to the Judge. No claimant should be induced into submitting to a video hearing by the Agency's promise of a much earlier hearing date. No video hearing can provide the same experience and the same contact between a claimant and Judge as an in-person hearing. Moreover, video hearings require the use of a second courtroom; one for the judge and one for the claimant who appears at the hearing by video. This requirement for additional space imposes significant additional costs for the American taxpayer.

#### INDEPENDENT CORPS NEEDED

Critically important to any successful democracy is an independent judicial system. At the SSA, ALJs do not have the independence envisioned by the APA, the Social Security Act, or the United States Constitution. Agency officials are now imposing daily, weekly, monthly and yearly production quotas. The imposition of these quotas, often euphemistically referred to as goals, has had a deleterious impact on case adjudication. Placing disability judges in an organization separate from SSA would better ensure justice for the American people.

For two decades, the disability adjudication at SSA has suffered from numerous failed management initiatives. With the exception of changes undertaken by former Commissioner Joanne Barnhart, all other initiatives were established and implemented by the Agency without the involvement of the AALJ, whose members are the most knowledgeable about disability adjudication. It is no surprise that those initiatives failed, with great cost to the American people.

The establishment of an independent corps of disability judges would better serve the public than the current system which has a long history of failures.

#### CONCLUSION

The Social Security Program is absolutely vital to the American people. Our judges are working extremely hard to address the backlog of cases under very adverse circumstances. We are most hopeful that you will further pursue the issues we raise to ensure that claimants receive a full and fair due process hearing by administrative law judges and, at the same time, that the American public receives justice.

Thank you for the opportunity to submit this statement and to present our views on these important issues.

Respectfully submitted,

D. Randall Frye  
President, AALJ