

SOCIAL SECURITY ADMINISTRATION
OCCUPATIONAL INFORMATION DEVELOPMENT
ADVISORY PANEL INAUGURAL MEETING

FEBRUARY 23, 2009
SHERATON - CRYSTAL CITY HOTEL
ARLINGTON, VIRGINIA

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14 C O N T E N T S

15 ITEM:	PAGE
16 -----	
17 Welcome, Swearing In of Panel	4
18 Welcome Comments - Commissioner Astrue	6
19 Overview, Occupational Information 20 Development Project- Richard Balkus	22
21 Statutory Significance of Use 22 of Occupational Information in SSA's Disability Programs - Jeffrey Blair	29

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1 P R O C E E D I N G S

2 MS. TIDWELL-PETERS: Good morning, ladies
3 and gentlemen. Good morning. If you could please
4 take your seats. We are about to begin.

5 We would ask that if you have a cell phone,
6 Blackberry, or any other type of electronic toy, that
7 you put it on vibrate for the duration of the
8 meeting.

9 My name is Debra Tidwell-Peters. I am the
10 Designated Federal Officer for the Occupational
11 Information Development Advisory Panel. Today is the
12 inaugural meeting of the Panel; and we will begin by
13 recognizing Social Security's Deputy Commissioner of
14 the Office of Retirement and Disability Policy, David
15 Rust.

16 MR. RUST: Good morning. I would like to
17 welcome you all here today. Thank you for coming for
18 the panel meetings. Thank you very much for your
19 willingness to serve. We have worked -- the Social
20 Security Administration has worked with the
21 Department of Labor for many years on the DOT, the
22 Dictionary of Occupational Titles. It has not, as

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1 you all know, been updated recently. It is an
2 integral part of our disability program, something we
3 rely on at every stage of adjudication; both at the
4 beginning, the initial stage with the DDSs, and all
5 through the adjudication process at the Office of
6 Disability and Adjudication Review. It is an
7 intricate part. It has gotten outdated. The longer
8 it becomes outdated, the more of a problem it becomes
9 for us.

10 So the panel members are taking on truly a
11 major, major challenge. And you have in your hands
12 the ability to make a major contribution to the
13 future of this program, and to the smooth running of
14 this program.

15 It is my pleasure this morning to introduce
16 Commissioner Astrue. Commissioner Astrue has a long
17 and distinguished career, for such a young man, in
18 both government and business. This is his second
19 tour of duty with the Social Security Administration.
20 He served as counselor to the Commissioner in the
21 mid-'80's; and now since February of 2007 is
22 Commissioner of Social Security.

1 He has also been an executive in the
2 biotech industry. He has also been general counsel
3 for the Department of Health and Human Services when
4 Social Security was part of the Department. So he
5 has a long history, a long interest in the Social
6 Security program. I am delighted to introduce him
7 this morning. Commissioner Astrue.

8 COMMISSIONER ASTRUE: Thank you, David.

9 I am going to be talking substantively in a
10 few minutes. I think my responsibilities now are
11 purely ceremonial. So welcome. Thank you all for
12 coming. I think this is very important new
13 adventure, and I am excited that you are here.

14 We are going to start with the oath of
15 office, and the presentation of the certificates. I
16 don't know, are there any former English majors in
17 the room? Okay. Good.

18 In English, a fellow named Harold Bloom
19 created something called the anxiety of influence,
20 which I have thought about recently. Because I have
21 sworn people in dozen of times and never had any
22 problem. And since my friend, John Roberts had his

1 difficulty a month ago, I have messed it up a least
2 once. So you know, I am now feeling the pressure a
3 little bit here.

4 So what we are going to do is ask people to
5 come here?

6 MS. TIDWELL-PETERS: Stand in your place.

7 COMMISSIONER ASTRUE: Stand at your place.

8 And I will ask you to raise your right hand. The
9 only really tricky part is in the beginning there is
10 a point where I will say "I," and then I will pause
11 dramatically; then you can all say your names
12 together; then, we will move on. So with that note,
13 would all the members please stand. Raise your right
14 hands and repeat after me.

15 (Whereupon, the panel members were sworn
16 in.)

17 COMMISSIONER ASTRUE: Thank you.

18 Congratulations. So why don't you take your name
19 tags off for the picture.

20 MS. TIDWELL-PETERS: You can be seated. I
21 will call you up individually. Robert T. Fraser.

22 Shanana Gwaltney Gibson.

1 Thomas A. Hardy.
2 Sylvia E. Karman.
3 Deborah E. Lechner.
4 Lynnae M. Ruttledge.
5 David J. Schretlen.
6 Nancy G. Shor.
7 Mark A. Wilson.
8 And James F. Woods.
9 Thank you.

10 There are two additional members of the
11 panel, Dr. Gunnar B.J. Andersson, and Dr. Mary
12 Barros-Bailey. Dr. Andersson and Barros-Bailey were
13 unavailable to be with us for today's meeting.
14 Biographical information for all the panel members is
15 available at the hand out table out front.

16 Ladies and gentlemen, now that we have
17 sworn in our Panel, I can officially open our
18 inaugural meeting of the Occupational Information
19 Development Advisory Panel. Normally, at this point
20 in our proceedings, I would turn the meeting over to
21 the Panel Chair. Dr. Barros-Bailey has been
22 appointed to serve a one year term as interim Chair

1 of the Panel. And since she will be unable to be
2 here today, I will facilitate the meeting.
3 Dr. Barros-Bailey will join the meeting on Wednesday
4 morning.

5 Once again, I would like to welcome
6 Commissioner Astrue for his opening comments. Thank
7 you, sir.

8 COMMISSIONER ASTRUE: Thank you. First of
9 all, let me reiterate my welcome and my gratitude to
10 all of you for taking on this very important
11 challenge.

12 When I started in 2007, we set out fairly
13 quickly to come up with a strategic plan for the
14 Agency going forward. And one of our four strategic
15 goals is to significantly improve the speed and
16 quality of the disability process over the next five
17 years. Let me talk about that for just a moment a
18 little bit more broadly. Because it might help you
19 frame some of the issues that you are going to be
20 considering in your work here.

21 This is an enormous system. We are we
22 budgeted this year for about a little over 2.6

1 million cases; and we're anticipating with the
2 economic downturn that we will probably get another
3 quarter million cases over budget. About 3 million
4 Americans almost will go through this process the
5 coming year. This is one of mind bending complexity.
6 And keeping up has been difficult for the Agency.

7 Over 20 years ago a Commissioner vowed that
8 everything would be -- all the paper would be
9 eliminated in the agency by the end of her tenure.
10 Here we are in 2009, we're still struggling with that
11 goal. Although we have made big progress in
12 disability processings where we have now moved to a
13 substantially electronic system, but we still have
14 challenges and complexities.

15 We're still trying to come up with a more
16 flexible platform so that we can adapt more quickly
17 with technological changes. Right now we're still
18 far too based on silo Cobalt based systems that are
19 rigid, that take up an increasing amount of time,
20 money, and effort simply to maintain. We're trying
21 to move to more flexible foundations so that we can
22 adapt more quickly and put in systems that allow us

1 to process cases more quickly and more accurately
2 than before. Even within the old framework, we have
3 been able to do some of that.

4 For instance, in the last two years we have
5 put in systems where we now electronically triage
6 cases in a way that wasn't possible in the old paper
7 systems. About 4 percent of our cases now are
8 flagged as either presumptively allowable or very
9 close to presumptively allowable. They all are still
10 reviewed by examiners and medical personnel. But
11 about 4 percent of the cases now are flagged in that
12 way, and those are people that are now getting
13 decisions an average of about ten days.

14 Those are cases that probably would take at
15 least 100 days in the old system. When we looked
16 retrospectively at these cases, an awful lot of these
17 cases were going off track, because they tended to be
18 the more secure cases. So we have been on a push to
19 both improve the quality of the medical listings by
20 making them more up to date, and to take them down
21 several more layers of details than we have before.
22 Because that's where a lot of the errors and delay

1 were occurring.

2 When two years ago we had medical
3 regulations that had not been updated since the
4 1970's, some of the major ones, like digestive, had
5 not been updated since 1985. So what my -- what
6 those listings, I think, assumed was the same thing
7 my mother told me when I was going up, and I was
8 certain to get ulcers because I stressed too much and
9 I loved Mexican food. We learned that that wasn't
10 real, because they are actually caused by bacteria
11 that can be cured by antibiotics in almost all cases.
12 We have known that since the early 1990's. And until
13 just over a year ago, our listings didn't keep up
14 with that kind of medical change.

15 So we're now on a schedule where all the
16 listings will be updated every five years. We have
17 done eight of them in the last two. We would be
18 further ahead, but OMB is taking about a six month
19 break with the new administration, as is traditional,
20 to try to catch up and make sure that they're
21 implementing the priorities of the new
22 administration.

1 We want to get to every three years as the
2 standards for updates on the medical side. We are
3 also going much more into rare diseases and
4 conditions than we have ever done before.
5 Historically has been a little bit of an attitude
6 that, you know, below a certain fairly high
7 threshold, we didn't need to give specific guidance,
8 because we didn't see that many of those cases. But
9 those cases that we didn't see very much of add up in
10 the aggregate to a lot of cases where we are not
11 giving our examiners, who typically have less than
12 three years of experience, the specific guidance to
13 make an accurate decision.

14 So we're both updating those regs. We're
15 making them more detailed. And we're also working on
16 systems now, particularly, one called E-Cat, which
17 will automatically cue examiners as they go through
18 the process.

19 We're also hoping that we will have a
20 paradigm shift with electronic medical records, as we
21 move very rapidly toward a system where every
22 American has a complete electronic medical record.

1 And the stimulus, I think, puts about \$20 billion
2 into expediting that process. That can be huge for
3 us because an enormous amount of our time, money, and
4 effort, and enormous percentage of our errors comes
5 from the fact that we're tracing down paper medical
6 records. And then we make decisions at various
7 points and times, or decide not to make decisions,
8 because medical records are incomplete.

9 So we do have a pilot that's been very
10 successful with Beth Israel Deaconess Hospital in
11 Boston, which has probably been the most forward
12 thinking in terms of electronic medical records of
13 any hospital in the country. It has worked
14 extraordinarily well. Then we have moved into taking
15 that pilot into Virginia. We're hoping to expand
16 that fairly aggressively in the next few years in
17 other parts of the country.

18 So on the medical side, we have got a lot
19 of change. A lot of change that's moving in a timely
20 and appropriate direction. I wish I could be as
21 happy about where we are on the vocational side.
22 Because we have an instrument in the dictionary of

1 occupational titles that the Department of Labor
2 hasn't updated since, I believe, 1991. And it had
3 been a little sluggish in some of the years before
4 that. And it was never a tool that was designed for
5 us. It was designed for other institutional purposes
6 of the Department of Labor.

7 And there were types of things, which we
8 ideally would have in that tool that were never built
9 into it by the Department of Labor. And we have
10 spent a very long period of time not addressing the
11 need to replace the DOT, both because it was not a
12 perfect instrument, but because it wasn't being
13 updated; and the economy has changed quite a bit
14 since the Department of Labor did a lot of its basic
15 work for the book. And there are reasons why things
16 don't happen.

17 This is going to be a long, difficult and
18 expensive project. And it's one where I expect to
19 get relatively little benefit on my watch. So this
20 is really one of the investments that you make when
21 you say you want to leave the Agency in the long run
22 in better shape when you leave it than when you

1 started. So this is really one of those projects.

2 The goal, from my vantage point, is to try
3 to do significantly better within the basic framework
4 of the disability rules as they are defined today.
5 And in some ways -- perhaps, I shouldn't need to say
6 this -- but we have had experience with some advisory
7 committees in the past that got frustrated with the
8 world the way it is, and decided that they wanted to
9 go out and redefine disability and think outside the
10 box, and things that were outside the mission.

11 And I'm not suppose to say things like
12 this, but I will. You know, we had a statutory
13 Ticket to Work Advisory group that went off mission.
14 And instead of providing the Agency with the guidance
15 that it needed to improve the Ticket to Work program,
16 spent most of its time, money, and effort trying to
17 come up with ways to tell Congress to do things
18 radically different from the way we do things today.

19 And I'm not interested in pursuing that. I
20 don't think there is much interest right now in
21 either the executive branch or the Congress in
22 radically redefining the disability program, the

1 definition of disability, those types of things.
2 That's not what I view as my charge either from the
3 Congress or from the executive branch, at least not
4 right now. World can change and I will adapt too.
5 Right now there is a real resistance to doing that.

6 And I think the mission, as I have been
7 given it; therefore, the mission that I have asked
8 all of you to take on, is to take on what is still an
9 enormous task that is going to take expertise,
10 persistence, and creativity, which is to help us
11 replace this important part of our process. And to
12 do it in a way that is more thoughtful, will help us
13 make more accurate decisions, faster decisions, and
14 hopefully be as user friendly for our employees and
15 for the public to use as possible. And I think that
16 that's a big task, you know, as it stands.

17 I think that, you know, for all the -- for
18 the beginning plea is, to some extent, to stay within
19 the box. There is a smaller box that you shouldn't
20 stay within, because I think we're thinking about
21 something different than just sort of a replication
22 of what the Department of Labor did. The world has

1 changed enormously.

2 I will be honest with you, I don't think I
3 looked at the DOT since -- for about a quarter of a
4 century when I was actually drafting opinions as a
5 federal court clerk in Social Security cases. I did
6 read it in '83, '84. I may have looked at it since
7 then. I don't remember that much about it.

8 It did strike me, as a starky 25 year old,
9 that it was pretty antiquated even in '83, '84. And
10 some of the metaphysics behind it were driven, I
11 think, by needs of the Department of Labor that don't
12 relate to our program. I don't take it as a given
13 that we necessarily have to laboriously go through
14 all 12,000 or so occupations, if I remember
15 correctly, that are listed in the last DOT and update
16 all of them exhaustively. We are in a very different
17 economy than the more blue collar economy that drove
18 a lot of the original DOT.

19 I do think that we may be able to, for
20 instance, categorize large groups of jobs in a way
21 that will make this faster and more efficient. For
22 instance, although, there is difference in

1 compensation and requirements in pressure between my
2 job and Debra's job, in terms of the functionality
3 for the DOT, it should be fairly similar. We both
4 sit at our desks a lot. We both have to operate a
5 computer, do e-mail, probably travel more than we
6 would like, and things like that. But I'm not sure
7 from a functionality point of view that there is very
8 much difference between my job, Debra's job, and
9 probably three quarters of the jobs in the Agency.

10 There are other jobs, particularly in some
11 of the processing of cases, and things like that that
12 are different, that, you know, require people to
13 lift, bend, and do other things that are more
14 traditional features of a lot of the DOT
15 descriptions; but I think that we do have to say --
16 step back and say, as we create a new instrument, how
17 should we think about this? What can we do
18 differently? Particularly, the ways to do it so that
19 it will be more efficient, so it will be easier to
20 update, so that we can get on with this as quickly as
21 possible.

22 I know that some of the original time lines

1 my staff have a very long time line for this project.
2 I am desperately hoping they're wrong on that. I am
3 also hoping you will ask the question as you go
4 along, if there are pieces of this that are severable
5 that we can use sooner rather than later.

6 There is a tendency whenever you are taking
7 on a big project like this to just sort of hold
8 everything off until you can have the grand unveiling
9 way down the road. It may be that we're stuck with
10 that. I also don't take that for granted. I think
11 that there may be an opportunity to take some of the
12 initiatives that we do here, bring them to completion
13 fairly quickly, and build them into the process while
14 we continue getting to where we need to be
15 ultimately.

16 So I think this is incredibly important. I
17 think that the nation expects and deserves an
18 up-to-date disability determination system where
19 we're using the best technology, where we're using
20 up-to-date medical information, and we're using
21 up-to-date vocational administration. So it's really
22 the traditional three leg stool. We're probably --

1 we are more behind on this leg of the stool than on
2 the other two. So we're playing some catch up.

3 So I do want to approach this with some
4 urgency, but also it's more important to do it right
5 than to do it quickly. That's why we've tried to get
6 the very best minds and ask for your help.

7 Again, thank you very much. If there is --
8 I'm happy to answer any questions anybody may have in
9 terms of what we think we would like you to do, or
10 questions about the programs, or anything else before
11 I slip back and let you get on with what you need to
12 do. Any questions?

13 Okay. Seeing none, thank you very much.

14 MS. TIDWELL-PETERS: Thank you,
15 Commissioner Astrue.

16 We are actually scheduled to take a break
17 now, but why don't we move into our first
18 presentation to be by Associate Commissioner Richard
19 Balkus.

20 Richard is the Associate Commissioner of
21 the Office of Program Development and Research in the
22 Office of Retirement and Disability Policy.

1 Associate Commissioner Balkus is going to give us an
2 overview of the Occupational Informational
3 Development project.

4 Good morning, Richard.

5 MR. BALKUS: Good morning, Debra.

6 Welcome. Thank you for your willingness to
7 participate in this Panel. We look forward to our
8 collaborative efforts in the months to come as we
9 move this project forward.

10 I think the Commissioner shared with you
11 some of the needs of our disability program, and
12 certainly updating our occupational data, is a long
13 recognized need for our Social Security Disability
14 Insurance Program and our Supplemental Security
15 Income Program. Many of our stakeholders out there,
16 Congress, the Government Accountability Office, and
17 the Social Security Advisory Board have long
18 recognized the need to update our occupational
19 information.

20 I wanted to basically indicate to you what
21 our expectations are for you, at least in the coming
22 months here, and talk to you a little bit about some

1 of the other activities that we have underway to
2 support this project.

3 First of all, we're hoping for two things
4 by the end of this fiscal year. For you to basically
5 develop the parameters for the -- what we refer to as
6 the content model for the Occupational Information
7 System. This is basically the data elements that
8 will be included to collect -- the data elements we
9 will be collecting for each occupation.

10 I think it's important, as you approach
11 this task in the coming months, to remember that we
12 have to try to develop and work with a common
13 language here. The adjudicator needs to be able to
14 interpret that medical evidence, move that medical
15 evidence in terms of developing what you will learn
16 more about; but coming up with what we call the
17 residual functioning capacity of that individual.
18 That's basically indicating what are the abilities
19 that this person still has, despite their impairment.
20 Then translating that assessment and matching that to
21 what we come up here with in regard to the demands of
22 work. The demands of work in terms of what that

1 person may have done, or the demands of work in terms
2 of what other jobs that person might be able to do
3 with their abilities.

4 The other thing that we're looking for by
5 the end of September is further direction in terms of
6 how far we approach the classification system for our
7 new Occupational Information System; and that's
8 working off of the -- the selected occupational
9 classification system and drilling that down further
10 in terms of meeting our needs as far as individual
11 jobs. By the end of September we were hoping to have
12 blueprints from you on both of those issues.

13 We have -- the Commissioner last June
14 agreed to our overall plan to move forward with the
15 long term project here. In doing that, we assembled
16 a team within my office. And those people are in the
17 room here to support this effort. I think we're off
18 to a good start. Most of the materials that are
19 produced in your binder that we asked you to go
20 through were produced by the staff.

21 But we also have within the Social Security
22 Administration -- have assembled a workgroup to help

1 guide the development of the Occupational Information
2 System, and these include representatives from a
3 number of our components. Our operational components
4 included. So we work with them in terms of
5 collaborative effort here; and we're hoping that we
6 will facilitate the sharing of information between
7 that workgroup and your efforts here as panel
8 members.

9 I wanted to indicate that there are several
10 things that we have underway currently to improve
11 upon the Occupational Information System. Getting
12 back to, I think, the Commissioner's point here, in
13 terms of trying to step -- start to step some things
14 out here to have some deliverables as we move forward
15 with this project. And one is a short-term effort.
16 That involves evaluating existing occupational
17 information that has updated the Dictionary of
18 Occupational Titles.

19 We have underway right now an evaluation of
20 one of those products by an independent contractor;
21 and we hope to have a report by May. Again, this
22 particular update, if everything goes well with the

1 evaluation, will be basically a plug in type of
2 effort here, building on what we have already in
3 terms of the Dictionary of Occupational Titles with
4 an update on a number of occupations; and also, an
5 occupational analysis for some additional occupations
6 that are not included in the current Dictionary of
7 Occupational Titles. That is one thing that we're
8 doing in the short-term here to try to address our
9 need for updated occupational information.

10 The second thing is that we have a number
11 of research activities underway. Some of that
12 involves research within the Agency, but also some of
13 it will involve contracting out for some additional
14 resources. Getting back to the Commissioner's point
15 here in terms of how we maybe can approach this
16 larger project here in terms of developing a new
17 Occupational Information System; but can we chunk
18 this out over time once we begin the actual
19 collecting of the data elements for each occupation
20 here.

21 One of the things that we have underway is
22 to begin to look at the vocational profiles of people

1 who apply for disability benefits before that. We
2 really have not done any research in a systematic way
3 to identify what jobs do people come to our door
4 with. This would help us in terms of prioritizing
5 our effort here as we begin to build the system and
6 hopefully deliver a product early on that will, at
7 least, speak to a number of jobs that people come to
8 us with.

9 So in closing, I welcome you. I look
10 forward to the months to come working with you on
11 this project. And please, contact us at any point if
12 you have any additional questions as we move forward
13 with this project. Thank you.

14 MS. TIDWELL-PETERS: Thank you, Richard.

15 Two bits of information. The Panel will
16 have lunch tomorrow with the workgroup. That will be
17 an opportunity for you to have a conversation and
18 touch base with the workgroup.

19 Also, Richard, will it be possible for us
20 to get sketches of the projects that are starting up
21 and beginning now, so that we can give those to the
22 panel members?

1 MR. BALKUS: Yes.

2 MS. TIDWELL-PETERS: Thank you so much.

3 We are going to take our break now. We are
4 five minutes early. We will be back at 9:55. Thank
5 you.

6 (Whereupon, a recess was taken.)

7 MS. TIDWELL-PETERS: Ladies and gentlemen,
8 if you could please take your seats. We are going to
9 begin. Thank you.

10 We wanted to thank Commissioner Astrue for
11 being with us this morning, and also Deputy
12 Commissioner David Rust. We also wanted to
13 acknowledge our Acting Deputy Commissioner, Dr. Jason
14 Fichtner is here with us this morning. He is also
15 the Associate Commissioner of the Office of
16 Retirement Policy. Thank you, Jason, for joining us
17 today.

18 Our next presenter is Jeffrey Blair.
19 Jeffrey is the Acting Deputy Associate Counsel for
20 Program Law in the Office of General Counsel. And he
21 is going to talk to us about the statutory
22 significance of how the Agency uses the occupational

1 information in our disability program.

2 Good morning, Jeffrey.

3 MR. BLAIR: Good morning. I guess I will
4 be the first one to run the Power Point. I guess I
5 will try not to get it too far out of whack. The
6 instructions are to press hard, so I will try to do
7 that.

8 What I would like to do is go over the
9 history of how the statute got to be how it is now,
10 and just talk a little bit about things like how the
11 Agency takes administrative notice of vocational
12 information, and some things like that.

13 Well, the Social Security Act originally
14 did not have a disability program. It was just a
15 retirement program. It wasn't even a survivors
16 program at the beginning. But pretty early on
17 Congress and the policy makers in the Agency realized
18 that they needed to do something for people who
19 couldn't work before they reached the age of
20 retirement. So Congress gave consideration to
21 providing benefits to those who were totally and
22 permanently disabled as early as 1938. The problem

1 at that point, of course, you know the depression.
2 And the -- some uncertainty of how much that type of
3 problem was going to cost. Of course, shortly after
4 that, you know, World War II intervened, so
5 everything kind of got put on hold for the duration
6 of the war.

7 During the 40's and the 50's the Agency and
8 Congress kind of developed what do we want a
9 disability program to look like? You know, what
10 principals do we want to apply? What did Congress
11 want to do when it created the program? So there
12 were some advisory committee reports and things like
13 that. And the principles they came up with were a
14 requirement that workers have a recent substantial
15 attachment to the labor market. That's why you
16 have -- you have to have affordable coverage and
17 be -- have insured status and all that.

18 They didn't want to award disability
19 benefits based on temporary, short-term conditions.
20 So you had a waiting period before you could be
21 eligible to receive benefits. There was also a
22 strong feeling that people who are disabled needed to

1 have vocational rehabilitation. So there was a
2 strong component of vocational rehabilitation in the
3 principles that Congress developed in the 40's. And
4 there was also going to be a very strict definition
5 of disability.

6 So with that background in mind, you know,
7 in 1954 Congress enacted the 1954 disability
8 amendments. They didn't call for payment of
9 disability benefits like we have now, but a
10 disability freeze, which was basically, you wouldn't
11 count the period of disability in when you are
12 figuring out the money for your retirement benefits.
13 But there was a definition of disability, and it
14 looks fairly similar to what we have now.

15 The key points, that is inability to engage
16 in any substantial gainful activity -- same thing we
17 have now -- by reason of any medically determinable
18 impairment -- again, that's the same thing we have
19 now -- and the impairment had to be of long,
20 continued, and indefinite duration. So rather
21 than -- that subsequently was changed to a 12 month
22 duration period. Originally, the impairment had to

1 be one continued and indefinite duration.

2 And Congress also felt strongly that they
3 wanted the administration of the disability program,
4 the federal administrators, to work closely with the
5 state agencies. So they provided that disability
6 determination could be made by state agencies
7 pursuant to agreements with Social Security.

8 The reason for that -- there was really a
9 couple reasons. They wanted to, again, encourage
10 vocational rehabilitation. And they also wanted to
11 take advantage of existing state level contacts with
12 medical professional and vocational rehabilitation
13 specialist. That lasted for a couple of years, and
14 then in 1956, the 1956 Disability Amendment first
15 authorized payment of disability benefits.

16 It was a little more of a limited program
17 than we have now. The payments were only authorized
18 to workers who were between ages 50 and 65; but it
19 retained the essential features of the program that
20 were in the disability freeze, had the insurance
21 status requirement, same definition of disability,
22 and the same requirement that determinations would be

1 made by the state agencies. There was a six month
2 waiting period; and again, some strong provisions for
3 vocational rehabilitation.

4 So what did Congress want to do when it
5 created the program? Legislative history says they
6 wanted the physical and mental impairment to be
7 sufficiently severe that it would be considered the
8 cause of the inability to work. So Congress didn't
9 want to pay people disability benefits because the
10 person couldn't find work, or if he or she was
11 unemployed for reasons other than the impairment.

12 The individual who -- had to be disabled
13 from his usual work and any other type of substantial
14 gainful activity. So from the beginning you would be
15 looking at vocational factors. You know, can the
16 person do their usual work, the type of work they
17 have done in the past? And if they can't do that,
18 can they do any other kind of work?

19 Now that -- vocational factors, and the
20 fact that you had to be disabled from doing your
21 usual work wasn't specifically spelled out in the
22 statute. That, again, is in the legislative history.

1 Again, Congress wanted a strong federal state
2 partnership in the disability program. So the
3 legislative history said the standards for evaluating
4 the severity of impairments would be developed in
5 consultation with the states.

6 So, you know, the Agency -- after the '54
7 amendments, the Agency, commissioner, appointed a
8 Medical Advisory Committee to provide technical
9 assistance in formulating disability policy. The
10 committee looked at things, recommended the issuance
11 of evaluation guides and standards that set forth
12 medical criteria for the evaluation of specific
13 impairments. So that's really the genesis of the
14 listing of impairments that we have now. You will
15 hear a lot more about the listing this afternoon;
16 but, again, it emphasizes, again, the expectation
17 that Congress expected medical criteria would be
18 paramount when you're evaluating disability.

19 The panel also suggested that factors such
20 as age, education, training, and the individual's
21 work experience could be important in evaluating
22 disability. That's really the first mention of the

1 vocational factors, age, education, and work
2 experience that later found their way into the
3 statute.

4 Now, this -- I thought this was
5 interesting, because I do a lot of regulatory work.
6 I spend a lot of time reviewing regulations, and you
7 know, the Agency first published a regulation in
8 1957. The primary consideration was given to the
9 severity of the impairment. The regulation also
10 stated that consideration is also given to such other
11 factors as the individual's education, training, and
12 work experience.

13 You can see the first regulations repeated
14 the advice that the Agency got from the advisory
15 committee about using age, education, and work
16 experience in evaluating disability. Again, the
17 regulation provided that the medical evidence had to
18 establish that the impairment results in such a lack
19 of ability to perform significant functions that the
20 applicant can't, with his training, education, and
21 work experience, engage in any kind of substantial
22 gainful activity.

1 Again, the regulations, again from the
2 beginning, focused on the claimant's functional
3 limitations, and then in combination with the
4 vocational factors, age, education, and work
5 experience would go into the determination of whether
6 or not the person was disabled.

7 Point said, you know, I spent a lot of time
8 reviewing regulations, and these regulations were
9 pretty interesting, not even two pages. About a
10 column and a half in the Federal Register. That was
11 only one regulation that didn't take up much space.

12 The current subpart B regulations, on the
13 other hand, take up about 250 or so pages in the
14 Federal Register. Even if you take out the listings
15 and Grid Regs, it's still over 100 pages in the CFR.
16 So life really was a lot simpler back in the '50's.
17 I looked at regulations that have been, you know, 400
18 double spaced pages. When I looked at this I said,
19 oh, that would have been nice; but can't do that
20 anymore.

21 But you can see that the first regulations
22 repeated the key concepts that were in the

1 legislative history of the '54 and '56 amendments.
2 You know the emphasis on medical factors, but also
3 considering a person's ability to do their usual
4 work, and the vocational factors of age, education,
5 and work experience. But the regulations didn't have
6 a lot of detail. So that kind of left them open to
7 judicial interpretations.

8 Courts had to look at things like, what
9 does it mean to be -- to have an inability to engage
10 in any substantial gainful activity. The courts read
11 that phrase to mean what was reasonably possible, not
12 what is conceivable. The quote from an Eighth
13 Circuit case from 1959, I think, is pretty difficult.
14 It wasn't the intention of Congress to impose a test
15 so severe that it -- as that required by the
16 secretary; and to exact as a condition precedent to
17 the maintenance of a claim the elimination of every
18 possibility of gainful employment.

19 The interesting things about -- when I was
20 looking at some of these cases from the '50's, which
21 I don't have a lot of opportunity to do, there was
22 still quite a bit of delay in the process. People

1 were filing the benefits in 1955 and getting recorded
2 in 1960. The courts also looked at things like, what
3 did it mean to be unable to do any substantial
4 gainful activity?

5 The courts tended to use an employability
6 standard. Could the individual obtain work with his
7 background, education and training. Now, you can see
8 from a prior discussion of the legislative history,
9 that really wasn't what Congress and the Agency
10 intended in developing the disability program; but
11 the way the courts looked at it, if the person wasn't
12 employable, he or she could be found disabled.

13 And I think that's typified by a case I
14 looked at from New York from 1957. It said the
15 claimant could be found disabled because the
16 performance of a clerical job might be unrealistic
17 and irreconcilable with his training and experience.
18 Furthermore, his ability to obtain such employment in
19 view of his selling background, might be doubtful.
20 In any event, these are matters that should be
21 considered by the referee -- now the administrative
22 law judge.

1 The court was looking at things like, can
2 he actually get a job? And was it reasonable to
3 expect someone -- I guess this guy was some kind of
4 salesman. Was it reasonable to say a guy who has
5 worked all his life as a salesman was now suppose to
6 go and do some kind of office work? Even if he was
7 physically capable of it, was that something that was
8 realistic? And if it wasn't, the person should be
9 found disabled.

10 So in response to decisions like this,
11 yeah, the Agency amended its regulations in 1960.
12 And they clarified that a person wouldn't be
13 considered disabled if he was unable to work because
14 of hiring practices or because of technological
15 changes in the industry.

16 Courts, however, didn't always follow what
17 the regulations say. Kind of like now. There was
18 also a significant case in 1960 that had a lot of --
19 led a lot of impetus to change with the program --
20 the direction of the program. A case called Kerner
21 from the Second Circuit. It is really a landmark
22 case early in the disability program. Part of the

1 decision focused on employability. They said, the
2 mere theoretical ability of a person to engage in
3 substantial gainful activity is not enough if no
4 reasonable opportunity for this is available. Kerner
5 also formulated what the lawyers called, the shifting
6 burden of proof.

7 It is probably the most important concept
8 from a case, and it is still a concept you will see
9 utilized by the courts here. They said, "it
10 shouldn't be hard to provide better medical evidence
11 as to what the plaintiff can and can't do, and a
12 Secretary's expertise should enable him readily to
13 furnish information as to the employment
14 opportunities, or lack of them, for persons of
15 plaintiff's skills and limitations.

16 So that's kind of setting it up as much
17 more judicial model, than the model that the Agency
18 was working under. If you go back and read the real
19 early history of the program -- the original
20 provisions for like a hearing process talk about an
21 attitude of sympathetic conversation, where a person
22 just comes in and tells her story, and it is real

1 informal. Cases like Kerner and some of the other
2 cases, you start to see the court's imposing a more
3 judicial type model on the administrative process.

4 Then, they also recognize -- they said "we
5 recognize that the department must process many
6 thousands of disability applications annually and
7 that it is impracticable to treat even the relatively
8 small proportion that go to hearing with the
9 elaboration of the trial of a personal injury case.
10 We don't insist on anything approaching that. Thank
11 God for that. It would be hard to do a half a
12 million personal injury trials every year.

13 So the Agency attempted to respond to
14 Kerner by using a doctrine called administrative
15 notice. They cited selected government and
16 industrial studies that showed the results of
17 surveys; and the surveys reflected how individuals
18 with certain impairments could or could not do
19 certain jobs.

20 Some parts, you know, said that was a
21 perfectly fine thing to do. Some parts rejected the
22 Agency's approach of being -- one court said was too

1 far in the realm of conjecture and theory to support
2 the denial of benefits.

3 So along about 1965, '66, the Agency then
4 decided, well, you know, how do we prove that there
5 are jobs in the economy that someone can do? And
6 they started to employ vocational experts at hearings
7 to address the individual's situation; and they also
8 developed a task force to study vocational issues.
9 That led to the development of offices within the
10 Agency that kind of focused on vocational issues and
11 how they were evaluated.

12 But then right after the Agency started
13 using vocational experts, the Congress took a look at
14 the issues. In the '60's, you know, there was a big
15 spike in, I guess, the actuarial costs of the
16 program. So Congress was -- reacted to that, and to
17 the trends of the types of decisions I have just
18 discussed. So Congress was concerned about the way
19 the definition of disability had been interpreted,
20 and really had been eroded over time.

21 Congress found that there had been an
22 increased tendency of the courts to place the burden

1 on the Agency to identify jobs for which a claimant
2 could be hired.

3 There was also a narrowing of the
4 geographic area in which jobs must exist to a
5 specific distance from the claimant's home. That's
6 something that I actually ran across when I was a
7 young lawyer. I was arguing a case in the Ninth
8 Circuit. I was up against a lawyer who had read some
9 of these old cases, but hadn't read the statute.

10 So I worked in Denver and -- in the Ninth
11 Circuit this guy argued that his claimant was
12 disabled, because the government hadn't shown that
13 there were a substantial number of jobs within
14 50 miles of Yak, Montana.

15 Yak, Montana, if you look at it, it is way
16 up in the northwest corner of Montana. There is
17 probably nothing within 50 miles of it, except for a
18 significant number of moose and elk. It is way out
19 in the middle of no where. But you know, he
20 hadn't -- the attorney hadn't read the statute, but
21 he had read all these old cases. Those were the type
22 of cases that Congress specifically wanted to

1 overrule.

2 And there was also another case, a Fourth
3 Circuit case that found a claimant could be found
4 disabled even though he was doing substantial gainful
5 activity. That is not an idea we like either.

6 Congress in '67 made several key changes to
7 the definition of disability. First, required
8 explicit consideration of vocational factors; age,
9 education, and work experience. Said -- responded to
10 all the cases on employability. Saying, your ability
11 to be hired, it is irrelevant under the statute.

12 It defined work which exist in the national
13 economy to either exist in several regions of the
14 country or your local economy. And it clarified that
15 the Agency gets to determine what constitutes
16 substantial gainful activity; and that a person who
17 engages in substantial gainful activity is not going
18 to be found disabled.

19 So things went along through the '70's.
20 The Agency used vocational experts at the hearing.
21 But the -- there was a lot of criticism of how the
22 Agency used vocational experts to identify that issue

1 of jobs in the national economy.

2 The testimony was based on standardized
3 guides, including the DOT, and the Occupational
4 Outlook Handbook, but VEs were frequently criticized
5 for being inconsistent in the treatment of similarly
6 situated claimants. One VE might say someone with a
7 given set of characteristics couldn't do a
8 significant number of jobs. Others could say, yes;
9 they could.

10 So the Agency tried to impose some
11 uniformity on the process; and in 1978 they published
12 the Medical Vocational Guidelines. Guidelines are a
13 matrix of age, education, work experience, and
14 various combinations of exertional limitations. And
15 they direct the conclusion of disabled or not
16 disabled in cases in which they apply without the
17 need for vocational expert testimony.

18 That -- the promulgation of the guidelines
19 led to a lot of further litigation that ultimately,
20 in 1983, the Supreme Court upheld the Agency's
21 authority to use the guidelines. And it was kind of
22 based on the concept of administrative notice. So

1 administrative notice is kind of the administrative
2 equivalent of judicial notice. It says that the
3 Agency can take notice of matters of common
4 knowledge, as well as matters of technical or
5 scientific facts that are within the Agency's area of
6 expertise.

7 Court's really have long recognized SSA's
8 ability to administratively recognize facts. Some of
9 the cases from the '60's where the Agency was relying
10 on those vocational studies upheld that. We also had
11 cases in the '60's where the Agency was taking
12 administrative notice of the contents of different
13 medical texts, and medical treatises.

14 So a lot of time there was a fairly long
15 history of courts approving the use of administrative
16 notice. And the Agency uses it in a couple of
17 different ways. First, you know, the grid
18 Regulations are based on the concept that the Agency
19 can do rule making to determine facts that aren't
20 unique to each claimant. First of all, legislative
21 facts. The existence of jobs that exist in the
22 national economy for claimants with a given

1 characteristic.

2 The Agency also uses it when --
3 administrative notice when it determines the
4 requirements of a person's past work as it's
5 generally performed in the economy. Usually, the
6 Agency doesn't have a vocational expert come in and
7 say when somebody says, you know, I was a security
8 guard, but I have to lift 100 pounds.

9 Well, that's not how a security guard job
10 is usually performed. They can look at things like
11 the DOT to determine the requirements about a job
12 performed in the national economy. And courts have
13 said, you know, that's a perfectly fine thing to do.

14 So like I said -- screwed up; backwards.
15 Forward would be good.

16 So currently the Agency still uses
17 vocational experts in a lot of cases and it relies on
18 occupational information. Again, the grid Regs don't
19 apply in every case. They don't direct a conclusion
20 in every case. We still have a need to use
21 vocational experts in a number of cases.

22 The Agency has also seen a lot of

1 litigation over Social Security Ruling 00-04p and the
2 Dictionary of Occupational Titles. That ruling, you
3 will hear about later, is formulated in response to a
4 Tenth Circuit case called Haddock a few years ago
5 where the administrative law judge had to ask the
6 vocational expert about any conflicts between his or
7 her testimony; and the Dictionary of Occupation
8 Titles.

9 The Agency kind of codified that in a
10 ruling and said, you know, the administrative law
11 judge has to specifically ask if there is any
12 conflict between what you are testifying to about the
13 requirements of jobs, and what's in the DOT? And if
14 there is, then, you are suppose to obtain some kind
15 of reasonable explanation. It is not that the DOT
16 trumps the VE or the VE trumps the DOT, just has to
17 have an explanation from the discrepancy.

18 It could be that the VE has gone in and
19 done a lot of job analysis, or has other information
20 that is not in the DOT. That's led to a lot of
21 litigation, because ALJs don't always ask that
22 question. And you know, is that something that

1 necessarily the court has to reign in for if there
2 really is no conflict. That probably is our current
3 vocational issue that we see the most litigation on.

4 We have also seen plaintiffs try to develop
5 challenges to the testimony based upon the failure to
6 update the DOT. We were talking about that on the
7 break. You know, that's something that's hasn't gone
8 forward; but maybe something we will see in the
9 future, maybe not.

10 But if you guys have any questions or
11 anything, I would be happy to answer them.

12 MS. TIDWELL-PETERS: Thank you. Do any of
13 our members have any questions?

14 MS. KARMAN: Jeffrey, would you just
15 briefly tell us a little bit about what might we --
16 what might the Panel need to consider in terms of
17 Social Security developing its own information with
18 regard to administrative notice? Is that an issue
19 that we need to -- what would we need to keep in
20 mind?

21 MR. BLAIR: Well, I mean, the -- as a
22 general matter of administrative law, you know, an

1 Agency can take what the administrative procedure act
2 Agency calls official notice of something of a fact,
3 then generally have to give the person the
4 opportunity to rebut that fact. The reason that
5 doesn't happen necessarily with respect to the
6 guidelines in most cases is because the ruling making
7 process with the person who has the opportunity in
8 public. So I don't think there is any problem there.

9 Certainly, the current Regulations allow
10 the Agency to take administrative notice of reliable
11 job information like that in the DOT and the various
12 other sources that are listed in the regulations.
13 Presumably, you know, you want to keep within the
14 current statute. Otherwise, that will be something
15 that's outside the Agency's hand if you have to go to
16 Congress and say, you know, we would really like to
17 change the definition of disability.

18 Probably not something that Congress would
19 find -- not something that you would probably find
20 Congress willing to do if you are significantly
21 changing the definition of disability. You need to
22 work within the existing definition of disability and

1 the existing statutory structure. But certainly in
2 terms of what you come up with, you know, there is --
3 at the end of the day, there will be a regulatory
4 process that the Agency will go through; and that
5 will give the public and anyone else, you know, any
6 interested persons the chance to say, hey, it was a
7 great idea. No, it is a bad idea. Here is why. The
8 Agency will go through that reasoned process that it
9 goes through in rule making to come up with whatever
10 final rules it decides to come up with.

11 You can keep it within the framework of the
12 statute, and the concept of administrative notice is
13 pretty -- and the ability of the Agency to develop
14 legislative facts through rule making is pretty well
15 established.

16 MS. TIDWELL-PETERS: Okay. Thank you,
17 Jeffrey .

18 MR. BLAIR: Thanks. Good luck.

19 MS. TIDWELL-PETERS: Our next presenter is
20 Sylvia Karman. Sylvia is a member of the advisory
21 Panel and also the Director of the Occupational
22 Information Development Project. She is going to

1 outline some of the challenges faced by SSA by its
2 use of the DOT.

3 MS. KARMAN: Good morning, everyone.

4 MS. TIDWELL-PETERS: And Sylvia's
5 presentation is found in your binder behind her bio.

6 MS. KARMAN: Okay. You know, this
7 presentation this morning is really just to give you
8 all -- just to introduce some of you to the
9 Dictionary of Occupational Titles. Certainly not
10 every member of the Panel has a daily use of this
11 particular classification system. So we felt that
12 what we would do is sort of segue what Jeffrey Blair
13 has presented to us with just a little introduction
14 to the Dictionary of Occupational Titles. What does
15 it mean to us, and also explain how the Dictionary of
16 Occupational Titles is so integrated into our policy
17 and programs.

18 Oh, I'm suppose to run this thing. Okay.
19 Here, we go.

20 So by way of transitioning from Jeff
21 Blair's presentation on the legal significance of
22 occupational information in our disability programs,

1 I would like to talk briefly about the connection
2 between the law occupational information resources
3 and our adjudication process known as the sequential
4 evaluation process that Tom Johns is going to cover
5 this afternoon.

6 And you do -- all the panel members have a
7 copy of the definition of disability in your
8 packages. I think it's near the back. I think it is
9 probably behind number four.

10 Basically, Jeff did mention changes that
11 came about as a result of the Social Security Act in
12 1967. And this portion of the definition of
13 disability is the portion that is going to be of most
14 interest to us. And basically, as Jeff pointed out,
15 this definition is still in effect today.

16 As noted earlier, SSA found that there were
17 many cases that it could not -- that could not be
18 decided upon in the late '50's and early 60's on
19 medical facts alone; and we moved eventually to put
20 the consideration of vocational factors into our law.
21 And they're -- of course, we must assess that, you
22 know, an individual, if their impairment is, in fact,

1 severe -- a physical or mental impairment is severe
2 that it would prevent them from being unable to do
3 not only their past relevant work, but any other
4 work.

5 So in other words, their incapacity to work
6 has to stem from a medical impairment. That's
7 certainly something that's going to become of
8 importance to us as we look at, for example, what
9 kinds of information SSA wants to gather to include
10 in a content model. There are elements of
11 information that are entirely useful and appropriate
12 to put in other classification systems; but when, in
13 fact, we are looking at things that are involved with
14 assessing disability, it narrows our range a bit --
15 or at least in some areas. In some areas, it may
16 broaden it.

17 In any case, these concepts, of course, as
18 I mentioned earlier, are reflected in our five step
19 process. And I think one of the three -- the main
20 three reasons that we are actually looking at what
21 compels us to use the Dictionary of Occupational
22 Titles -- and you're going to hear this several

1 times, I think, throughout our presentation.
2 Certainly, right now, and again, tomorrow. I know
3 that this has also been part of the material that you
4 have in your package.

5 But our -- you know, vocational assessment
6 process and really any occupational information
7 resource that we use must enable us to compare work
8 requirements with worker trades. And the person's --
9 so that we can determine the person's function based
10 on the medical and other evidence in file.

11 And then, determine to a degree, you know,
12 how -- to what degree a personal's impairment
13 actually prevents them from doing, you know, other
14 work. In other words, how does it affect their
15 physical and mental limitations. And it must also
16 reflect work, you know, the national existence of
17 work in significant numbers. And basically, what
18 we're saying here is that the work is -- actually
19 exist, and that it is not obscure.

20 Finally, it must, of course, meet a burden
21 or enable the Social Security Administration to meet
22 its burden at step five. And again, Jeff mentioned

1 that we take administrative notice of that.

2 The DOT is, you know, not the only
3 classification that is out there. For many, many
4 years there have been other types of occupational
5 information that have been available, but Social
6 Security has come to find over many years it has been
7 working with the disability programs that the DOT
8 came closest to meeting all of our requirements.

9 So I just wanted to just show you all the
10 sequential evaluation process, which will be covered
11 in a little more detail this afternoon. But largely,
12 our focus will be on, you know, those points in the
13 process after step three.

14 So, you know, it's worth noting, though,
15 that the first three steps as well do take work into
16 consideration. Every step in our program in the
17 essential evaluation process does cover work.
18 Certainly, the first one, are you currently working?
19 You know, the current SGA amount, the substantial
20 gainful activity amount is \$980 a month. It's \$1,640
21 for blindness.

22 The second step involves looking at whether

1 or not the person's impairment would result -- would
2 be severe for the duration of time that's
3 appropriate. And whether it's severe enough to
4 prevent doing basic work activity, such as walking,
5 standing, you know, understanding and carrying out
6 simple instructions. This is really a de minimis
7 standard that the Agency makes a decision about.

8 Then we move on to step three, does your
9 impairment actually prevent you from doing any
10 gainful activity; and that's a more stringent
11 standard than that at steps four and five.

12 But basically, after you get past step
13 three, we are looking at -- you know, in our initial
14 adult claims, you know, well over 50 percent of our
15 claims fall into the step four and five realm. So a
16 substantial number of our cases need to, you know,
17 involve occupational information in some way; either
18 from the look of, you know, how we assess residual
19 functional capacity; then, move on to step four; and
20 if we make a decision there. If we don't; then, we
21 move on to five. And again, we are using
22 occupational information.

1 So basically -- and we did put some copies
2 of the Dictionary of Occupational Titles, the big
3 tons that are on either side of the table here for
4 those of you who have never seen them, just to give
5 you an idea of what they actually look like. And
6 actually, a number of our adjudicators do use
7 software programs that are on line. They don't tend
8 to use the books, but that's basically just to give
9 you an idea of what this actually looks like.

10 The Social Security Administration does
11 used DOT as its primary source of national
12 occupational information. And a lot of people don't
13 realize that the selected characteristics of
14 occupations are a part of that, because they're so
15 use to using the -- the software programs that are
16 all sort of together. So people don't recognize
17 which is which.

18 But in any case, the Social Security
19 Administration worked with the Department of Labor
20 back in 1966 to develop an inter-agency agreement.
21 Department of Labor went out and collected a lot of
22 information that Social Security uses, having to do

1 with reaching, and climbing, and stooping, and
2 crouching; vision, hearing, communication, and
3 environmental demands. So those things that were not
4 part of the original Dictionary of Occupational
5 Titles in the two white binders. There are two white
6 volumes. That was added on later and done really for
7 our purposes; although, a lot of other people do use
8 that.

9 In any case, one thing that's worth noting
10 is that, you know -- and I believe the Commissioner
11 mentioned this, and probably Richard mentioned this
12 as well, the Dictionary of Occupational Titles was
13 not designed originally by the Department of Labor
14 for use with disability programs. In fact, it was
15 designed in 1939 to match job seekers to jobs. And
16 it did a good job of that for many, many years.

17 The Department of Labor published revisions
18 for the Dictionary of Occupational Titles. I think
19 the last substantial one was in 1977, and there were
20 lesser revisions in the 1990's. But truly Social
21 Security just sort of began to bring this into its
22 process, because it seemed to meet our needs very

1 well. But that was sort of, you know, an accidental
2 surprise, was not something that the Department of
3 Labor had originally intended.

4 So as we move forward, I just want to point
5 out really that our policy in the meantime -- Social
6 Security spent a number of years using the Dictionary
7 of Occupational Titles. Then In 1978 we did publish
8 what we called our Grid Rules, the Medical Vocational
9 Guidelines; and you all have that information in your
10 packages as well.

11 And they are, you will note, based largely
12 on DOT definitions. Of course, we took
13 administrative notice of reliable information and
14 that. In this case, specifically, we took
15 administrative notice of the dictionary of
16 Occupational Titles. It is, in fact, that which is
17 the structure under which our -- on which our grids
18 are based. And as well, our physical RFC is based on
19 the DOT measures for physical job demand.

20 So when we actually talk about what the DOT
21 does for the Agency's disability program, it really
22 does function as a bridge between the residual

1 functional capacity or the demands for work, or at
2 least what we tend to call the demands for work.

3 One of the things you may have accessible
4 to you, just so you know, behind the materials for
5 this particular presentation you have a copy of the
6 RFC, the residual functional capacity assessment, and
7 the mental residual functional capacity assessment.

8 Well, if you take a look at the residual
9 functional capacity assessment, and you know, you go
10 to page two, and you will see there are some
11 exertional limitations there for lifting and
12 carrying, and standing, and walking. I guess the
13 important part of this is that if you were to compare
14 that with what is generally reported for a job for a
15 DOT title, you will find that the DOT title
16 themselves also record this kind of information.

17 So in essence, Social Security really just
18 took the material, the measures from the DOT and
19 implanted them in our residual functional capacity
20 assessment.

21 We also had printed out for the Panel
22 copies of a DOT title printed off from one of our

1 electronic software programs that the Agency uses. I
2 believe this one was OccuBrowse. We also use
3 SkillTRAN; there is Law Desk; there is OASYS. So we
4 have several other software programs. But this one
5 is about a construction worker.

6 If you were to go to the second or third
7 page, depending on whether you have a front or back
8 copy -- and that probably was a separate piece of
9 paper that I must have laid next to your materials
10 this morning -- you will notice, again, there the
11 physical demands of climbing and balancing, and all
12 of these different things. It will indicate the
13 extent to which these things are required; you know,
14 whether they are frequently or occasionally. Again,
15 this is just to let you see how, in fact, the two are
16 interrelated.

17 One of the things we like to talk about
18 with regard to, you know, the DOT being a bridge
19 between the residual functional capacity assessment
20 and the demands of work is that, basically, we
21 have -- if we think of it as one equation, okay, in
22 which -- in order for the equation to be balanced,

1 you know, in order to show that the individual can,
2 in fact, do, you know, any other work in the economy
3 or do their past relevant work, those -- both sides
4 of the equation would balance, and the one side would
5 be the person's -- the human function, the residual
6 function. And then the other side, of course, is
7 the -- what is required in the world of work?

8 And so the DOT was enabling us to make that
9 bridge with medical evidence. And our way of
10 interpreting it, then, would be our residual
11 functional capacity assessment, which is the people
12 side of the instrument. The person instrument.
13 Then, the other side of the world of work would, of
14 course, be the Dictionary of Occupational Titles.

15 So in any case, the point really is, is
16 that the DOT enabled us to bridge this gap between
17 what is available in terms of, you know, medical
18 evidence, functional evidence, and our way of
19 interpreting what that might mean in terms of a
20 person's human function that stems from a medical --
21 a severe medical impairment. So let's see. Last
22 one.

1 So really, one of the big reasons that
2 we're here today is, of course -- you know, the
3 Agency is now asking that we redouble our efforts to
4 work on an updated National Occupational Information
5 System that is tailored for Social Security. And
6 we're going to be sharing our background and our, you
7 know, expertise on the Panel with, you know, our
8 actual project team and our -- we have an internal
9 workgroup that Richard Balkus had mentioned that
10 we're going to talk a little bit more about when we
11 get to our plans, which, I believe, is tomorrow.

12 And we're also going to be covering, you
13 know, just stepping us through a lot of the material
14 that was in your package, except trying to, perhaps,
15 present it in a bit more detail and to give you,
16 hopefully, a better sense of what our Agency does.

17 So, you know, that we're here today. We're
18 going to this afternoon talk about how it is we
19 actually assess disability; and then tomorrow we
20 would like to cover, you know, what are the roles of
21 the various users of occupational information, or
22 users within the disability system who adjudicate

1 claims both at the initial level and the disability
2 determination services, and in ODAR at the ALJ level;
3 and then also the reviewers. Who are the reviewers?
4 And then other individuals -- other individual
5 offices that are part of this. And all those
6 individuals have -- are stakeholders on our internal
7 workgroup.

8 And we will also cover what work has Social
9 Security done in the past? I mean, this has been --
10 this issue has been with us for a long time. What
11 kinds of things have we done before that might inform
12 us as we move forward; and as well, what would an
13 ideal Occupational Information System look like to
14 us? At least maybe not from a 30,000-foot level, but
15 maybe from a 100-foot level, what are our
16 requirements that might help give us some structure
17 around which we know we need to work?

18 And then, finally, we will just cover our
19 plans tomorrow afternoon to give you an idea of the
20 plans for the entire project of which the Advisory
21 Panel will be focused on the research and development
22 portion. So you know, that will kind of help orient

1 you, kind of give you a map. And we do, in fact,
2 have a map. There is a road map in your materials
3 that's iterative; and we will talk a little bit about
4 that as well. That's kind of to help you all
5 associate the materials that we have given you at
6 this point.

7 We realize that we were sending you an
8 enormous amount of documents; and that, quite
9 frankly, it may not be apparent to everybody what
10 those documents signify. And why are we sending you
11 all of this? And where does that fit in with the
12 bigger picture? And gee, have we not, in fact,
13 considered some other things to do? So that's what
14 that road man tries to get at, to show you where you
15 are; like a map, you are here; this is where we need
16 to head.

17 So anyway, I don't know if any of you have
18 any questions. I will be glad to answer them.

19 No. Okay. Thank you very much.

20 DR. SCHRETLEN: Actually, I do have a
21 question. It might actually be more for Debra. That
22 is, we're hearing these terrific presentations, but

1 I'm not quite sure how the discussion at the end of
2 the day will proceed, and whether or not we will have
3 access -- I know that we will have access to Sylvia,
4 because she is on the Panel; but some of the other
5 presenters.

6 MS. TIDWELL-PETERS: During the course of
7 the Panel's discussion and deliberation at the end of
8 the day, we will review and develop action items
9 where the staff will go back to the Agency and gather
10 information that you need. So if we don't have
11 access to the Panel -- to the presenters
12 immediately -- and some of them will have the
13 opportunity to join us for lunch today -- then, we
14 will have the opportunity to get any information that
15 you will want from them and bring that back to you.
16 And if you need to have them revisit, we will make
17 that happen also.

18 Thank you, Sylvia.

19 Over the course of the morning we have had
20 the opportunity, basically, to introduce you into
21 what we do here at Social Security. Some of the
22 issues and the challenges that we face as we move

1 forward with this project. But the one thing we have
2 not had the opportunity to do yet is to hear about
3 what your areas of expertise and specialty are.

4 So if we could take some time before we
5 break for lunch and have each of the members tell us
6 a bit about what your work is, your interest in this
7 project, and how you think it would be helpful --
8 what your role could be moving the Agency forward.

9 Lynnae, we start with you, please.

10 MS. RUTTLEDGE: Sure. Thanks, Debra.

11 My name is Lynnae Ruttledge. I am from the
12 state of Washington. I am the Director for the
13 Division of Vocational Rehabilitation. So it is our
14 organization that has a significant amount of
15 expertise on the vocational side. In our
16 organization more than 40 percent of the people we
17 serve are individuals who were presumed eligible for
18 vocational rehabilitation because they receive SSI or
19 SSDI.

20 So we know a lot about the Social Security
21 system, and we're also, by reason of the law, a part
22 of the Work Force Investment Act program. So we work

1 very closely with the Department of Labor.

2 So we're kind of at that apex where Social
3 Security, and Department of Labor, and Vocational
4 Rehabilitation can and should be real partners in
5 this process of figuring out how to be able to help
6 assess whether or not an individual should be allowed
7 for Social Security, and whether or not they can go
8 to work. And if they can, what could they do?

9 I started in this field because I am a
10 person with a disability, and have a tremendous
11 amount of passion around the employment of people
12 with disabilities, regardless of the severity of
13 their disability.

14 I am probably one of the people that
15 Commissioner Astrue is talking about this morning who
16 would like to challenge the definition of disability
17 that Social Security uses. I understand that I need
18 to comply and be compliant in this process. And I am
19 going to be a good Panel member, and I won't raise
20 that too often.

21 But I do have expertise and background in
22 determination of disability. When I was in the state

1 of Oregon, our division of vocational rehabilitation
2 also administered the DDS program, so I have a great
3 deal of knowledge about how disability is determined
4 as well as the outcome of that process. So -- and
5 I'm just delighted to be here. Thank you.

6 MS. TIDWELL-PETERS: Thank you, Lynnae.

7 DR. FRASER: Hi, my name is Bob Fraser. I
8 am a rehabilitation psychologist. My Master's degree
9 is in vocational rehabilitation counseling. I direct
10 neurology vocational services at the University of
11 Washington. We deal with folks with diverse
12 neurological disabilities. About a third have
13 epilepsy, about 25 percent or so have MS, multiple
14 sclerosis; and another 25 percent have traumatic
15 brain injuries, and other neurological conditions.
16 Our outcomes are vocational. We are responsible for
17 between 90, 130, 40 people going to work each year.

18 I do research in terms of vocational
19 outcome and predictional vocational outcome across
20 those disabilities has been my major focus. I have
21 been involved in the Epilepsy Foundation for a number
22 of years on their board, and also on different

1 committees relating to Social Security concerns, in
2 responding to Social Security -- kind of the
3 derogatories about impairment and epilepsy.

4 My dissertation was in the area of task
5 analysis and use of rehabilitation personnel; and I
6 know a fair amount about different types of job
7 analysis that might be helpful to the group. I have
8 also served as a vocational expert for Social
9 Security and have been, frankly, quite frustrated
10 with the system for a number of decades due to the
11 DOT basis for, you know, our testimony.

12 So hopefully, we can work somewhere within
13 that -- somewhere between O*Net and DOT, and come up
14 with some type of template that can be useful. Or
15 perhaps, as was mentioned earlier today, some way of
16 working off the existing DOT, not reinventing the
17 wheel, and still come up with something that can be
18 useful for all the parties involved.

19 MS. SHOR: My name is Nancy Shor. I am
20 Director of the National Organization of Social
21 Security Claimants' Representatives, which is
22 unwieldy now called NOSSCR. It is about 4,000

1 members, primarily attorneys across the country whose
2 common denominator is representing Social Security
3 and SSI disability claimants.

4 I was a claimants' attorney for a few years
5 prior to taking this job. And I think sometimes I
6 find myself in the minds of each of our 4,000 members
7 who experience on a daily basis, coming from
8 administrative law judge hearings, their
9 frustrations, which may be similar to the kinds of
10 ones that Bob has identified in his service as
11 vocational expert. And those are frustrations with
12 the DOT and its limitations in -- at matching up at
13 step four and step five that Sylvia talked about.

14 So I think -- I'm delighted to be here. I
15 think there certainly is consensus that the grid
16 structure is somewhat perilously constructed on top
17 of the DOT right now. I am delighted to be part of
18 an effort to come up with a firmer foundation.

19 MR. WOODS: Jim Woods. I am, I guess,
20 currently a private consultant. I am happy now to be
21 a special government employee. I thought for 34
22 years working with the U.S. Department of Labor that

1 I was always special; but none of my staff ever
2 thought that. They convinced me that, indeed, I
3 wasn't.

4 My interest -- first of all, I really
5 appreciate the opportunity to participate on this
6 Panel. My experience is coming, not from the
7 disability program side, but rather from the rather
8 mundane economic and statistical analysis side. But
9 much of my career was spent in work with labor market
10 and occupational information.

11 And in particular, for a four year period
12 from 2000 to 2004, I directed the -- I guess, in some
13 circles, infamous O*Net Program; and am interested in
14 looking at -- first, emphasizing that, as with the
15 DOT, none of the existent occupational programs will
16 meet the needs -- the entire needs of the disability
17 program; but hoping that some of the experience by
18 the Bureau of Labor Statistics and the Standard
19 Occupational Classification -- some of the experience
20 we gained in the O*Net project can hopefully inform
21 the process of this Panel and the workgroup itself.

22 So that where there, perhaps, is

1 information that is useful, great; but I think more
2 importantly, I think we have learned a lot about
3 different ways of gathering information, analyzing
4 information, and using information that may assist
5 the Social Security Administration.

6 I think what's most significant that came
7 out in the presentations this morning, that what is
8 really most important is that those needs of Social
9 Security be very clearly defined up front. And that
10 whatever is developed is responsive directly to those
11 needs. And then on top of that we can look at how
12 that kind of information can be coordinated and
13 organized with other systems, such as the Standard
14 Occupational Classification System.

15 DR. GIBSON: Good morning. I am Shanan
16 Gibson, and I am here as an academic largely, trained
17 at the graduate level. My Master's and Doctorate
18 were industrial and organizational psychology. My
19 background and research was largely quantitative
20 validation of job analysis and occupational
21 information, in particular, the O*Net.

22 I now teach graduate level courses in Human

1 Resources Management with still a strong emphasis on
2 the importance of well-validated and useful
3 occupational information as it relates to making all
4 sorts of personnel decisions.

5 So I hope that that type of framework or
6 mind set can be useful to this group as we look at
7 what might be available and helpful to, I guess,
8 essentially delineate the needs of those who are
9 disabled and helping them reenter the work force.

10 I personally am looking forward to what
11 Sylvia mentioned a moment ago -- I'm going to save my
12 question for later. But I want to know what is ideal
13 that at this point the Social Security Administration
14 has for this image of what could move forward in
15 terms of an occupational information framework?

16 Like James, I think knowing their needs in
17 advance and what they're looking for will help all of
18 us. In addition to that, I think I am going to be
19 the self-appointed devil's advocate to this group.
20 That's what I bring as well.

21 MR. HARDY: Good morning. I am Thomas
22 Hardy. I think I'm -- I think I'm -- of the members

1 of the Panel here, I am probably the one who has used
2 the DOT the most in certain circumstances. I began
3 my career as vocational rehab counselor, which meant
4 lugging that book around for years and years and
5 years.

6 Throughout the years, I have worked in
7 private disability insurance. Eventually, I worked
8 for an insurance carrier, running the vocational
9 rehabilitation department, which included
10 determination of occupation, ability to perform own
11 occupation, any occupation; which mostly mirrors what
12 happens within the Social Security system.

13 I have also supervised a medical
14 department, so I think in some ways, while I am not a
15 doctor, I play one at work sometimes. I can see how
16 the two pieces fit together as Sylvia was trying to
17 show.

18 Currently, I'm working now as a claimant
19 advocate within the Social Security Administration.
20 So I have got a nice overview of a vocational rehab
21 counselor, private disability insurance, and now with
22 the Social Security Administration. I'm very excited

1 about the opportunity.

2 MS. KARMAN: Hi, again. I'm still Sylvia
3 Karman. And I'm the one stinking fed on the Panel.
4 So -- as they like to say. But I'm really thrilled
5 that we can be here together and do this. I have
6 actually -- right now I am the lead for the project
7 at Social Security. And I have been in the
8 disability programs policy area for about oh, gosh,
9 15 years. And during that time I had an opportunity
10 to take this project up a few years ago; and we, you
11 know, worked very hard with James Woods and some of
12 his folks; and a number of other people who were
13 also -- some of whom were members on this Panel and
14 throughout the nation were, you know, people in the
15 professional fields of vocational rehabilitation
16 assessment and vocational expert testimony, and
17 people who had background in disability -- private
18 sector disability insurance.

19 Basically, just trying to get out there and
20 investigate what kinds of things can we be doing to
21 help, you know, get at our need for more current
22 occupational information; and you know, what would

1 work best for us?

2 So we have been thinking about this for a
3 really long time. And so I'm really thrilled to be
4 able to have a chance to work with you all. And
5 we're really looking forward to it. Thank you.

6 MS. LECHNER: Hi. I'm Debra Lechner. I am
7 the President and owner of a company by the name of
8 ErgoScience. What ErgoScience does is that we train
9 physical therapists and occupational therapists in
10 performing functional capacity evaluation job
11 analysis. And the tools that we use to train
12 therapists are tools that I developed when I was on
13 faculty of the University of Alabama, Birmingham. I
14 was on faculty there for about ten years and
15 developed these tools through some research that I
16 had the opportunity to do.

17 I think what -- and we also do -- our
18 company does functional capacity evaluation for large
19 disability carriers, post-opt for screening, job
20 analysis for large national and international
21 employers.

22 I think what I bring to the table is about

1 20 years of experience matching worker abilities to
2 job demands using the Dictionary of Occupational
3 Titles as our classification system, and being pretty
4 familiar with the strengths of that system and the
5 things that could probably use a little improving.
6 So I feel very honored and privileged to be sitting
7 on this Panel and have the opportunity to provide
8 information as we move forward in making those
9 changes.

10 DR. WILSON: Hello, everyone. My name is
11 Mark Wilson. I am a professor in the Department of
12 Psychology at NC State University. My training is in
13 Industrial Psychology. We have doctoral programs in
14 Industrial Psychology at NC State, which I train
15 industrial psychologists.

16 My research has a couple different facets
17 that touch on things that I think are of interest to
18 this Panel. I have spent a lot of time being very
19 concerned about the sort of psychometric
20 characteristics of work analysis, as opposed to other
21 aspects of psychology. There are a lot of unique
22 things about work analysis and work measurement that

1 present a lot of problems. I have spent quite a bit
2 of time looking at those. Completed, not too long
3 ago, a history of analysis.

4 Industrial psychology is about 100 years
5 old, so we had a big history book published a year or
6 so ago. I wrote the history chapter for work
7 analysis. So it -- I'm sort of at the stage now of
8 thinking about what we have accomplished and haven't
9 accomplished. And even though I think it's very
10 important that we do the task that's assigned to us,
11 I don't think we should -- we should also be sort of
12 mindful of the bigger contribution that we can play
13 here in terms of work analysis. And I think we can
14 do both in terms of fulfilling the task requirements,
15 but at the same time providing a more detailed and
16 more defensible, valid occupational description
17 system that could have all kinds of applications for
18 the government organizations and also for the private
19 sector.

20 I have spent -- biopsychology in general,
21 and our program, in particular, very much embraces
22 what's referred to as the scientist practitioner

1 model. So I have spent extensive amounts of time
2 doing job analysis of all different kinds of jobs at
3 all different levels of detail. And in particular,
4 job analysis that gets examined by various legal
5 entities. Lots of concern about being able to defend
6 the work.

7 And the other activities that I have going
8 on now that I think will be useful for this Panel
9 is -- I'm coordinating the development of a new
10 handbook of work analysis. It's been quite a while
11 since the last one came out. And it's a fairly
12 massive task, but the idea is that over -- well,
13 we're at the stage now where we have had reviews of
14 the prospectus; and the authors have all been
15 identified. They're working on their chapters.
16 We're pretty far along. I think that will be useful
17 information to have.

18 Then, I also added an on line journal that
19 is devoted to work measurement. It is not -- we
20 don't get extensive amounts of manuscripts at this
21 time, but we have noticed over the last two years
22 that my particular field is beginning to pay

1 attention to some of these issues, again, in a way
2 that they haven't in the past. To be honest, we
3 haven't paid enough attention. There are a few of us
4 who are sort of voices in the wilderness expressing
5 concern about work measurement issues, especially the
6 psychometric characteristics, what was defensible,
7 and what wasn't.

8 My guess is, is that we will see more of
9 that kind of research. And that will also, I think,
10 be of real value to the Panel. I'm very excited to
11 be here. Like I say, I think both in doing the task
12 that we are assigned, but also being mindful of the
13 sort of larger role we can play here is something
14 that I am extremely excited about. So --

15 DR. SCHRETLEN: Good morning. I am Dave
16 Schretlen. I am a clinical neuro psychologist in the
17 Department of Psychiatry at John Hopkins University.

18 As I listened to all the other
19 presenters -- panelists describe their background,
20 it's clear that there is just an enormous background
21 of expertise in the area of understanding work
22 demands. I think that as I listened to the other

1 panelist, I am probably the least well versed in the
2 Dictionary of Occupational Titles and sort of
3 psychometric characteristics of work demands.

4 As a neuropsychologist, I am particularly
5 interested -- and my area of expertise is in sort of
6 identification and measurement of different kinds of
7 abilities in mental abilities. That means both
8 cognitive abilities, but also emotional and sort of
9 behavioral aspects of the person. I think that this
10 shapes my clinical work, which is primarily in the
11 area of assessment and consultation, but also my
12 research. I have been very interested in doing
13 research and sort of modeling, not at the individual
14 level of patients getting back to the work force, but
15 in community samples and in psychiatric patient
16 samples, and in other neurologic groups, what are the
17 determinants of, not just work disability, but
18 functional competence in general?

19 For me, I think that maybe what I can bring
20 to the deliberations of this group is some focus on
21 the -- the side -- the end of the bridge that Sylvia
22 talked about in terms of understanding and measuring

1 residual functional capacity. And I am delighted to
2 be part of this Panel.

3 MS. TIDWELL-PETERS: Thank you all. We are
4 scheduled now for our -- we're going to take our
5 lunch break early. You will all have an opportunity
6 to check your e-mail.

7 Panel, we will meet you for lunch at 11:30;
8 and we will be back and convene the meeting at
9 1:00 o'clock. Thank you.

10 (Whereupon, a lunch recess was taken and
11 the proceedings subsequently reconvened.)

12 MS. TIDWELL-PETERS: Hi, ladies and
13 gentlemen. If you can, please, take your seats.
14 We're back in session.

15 Our presenter for this afternoon is Tom
16 Johns who is the Disability Quality Branch Chief with
17 the Office of Quality Performance of Dallas, Texas.
18 He is going to take on the daunting task of reviewing
19 SSA's sequential evaluation process for assessing
20 disability.

21 Tom, welcome.

22 MR. JOHNS: Thank you, Debra.

1 I am one of three branch chiefs. We are a
2 tribe out there in Dallas.

3 So what I'm going to talk about this
4 afternoon is the sequential evaluation process. And
5 as I am sure you have already seen, many of these
6 slides are very, very dense. I'm not going to be
7 reading them to you, I promise; but I will be hitting
8 the key points; and then, we will -- before the
9 break, we will stop and see if there are any
10 questions.

11 The sequential evaluation process, or what
12 we call the sequential evaluation process is the
13 entire structure that is the basis for our
14 determination of whether a claimant is disabled or
15 not. So it's actually a series of five steps. It is
16 a five part sequence with one of the steps having two
17 parts, blah, blah, blah; but basically, it's a five
18 step process that we follow in a set order.

19 And you basically can break it down into a
20 series of five questions that we ask the claimant.
21 And at each step you can either -- at several of the
22 steps you can find the claimant disabled or not

1 disabled, but you usually can't do both. It's only
2 at the fifth step that we have to finally make a
3 decision. We either determine that the claimant is
4 disabled or not disabled.

5 I'm sorry, I am going to use decision and
6 determination interchangeably here. But technically,
7 DDS examiners, the state agencies that do disability,
8 they make determinations. ALJ's make decisions. And
9 if you wish to get an ALJ excited, tell him that a
10 DDS examiner makes a decision.

11 So anyway, sequential evaluation, five
12 steps. It's actually a series of questions that we
13 have.

14 Now, the structure goes back, of course, to
15 the Social Security Act. And the Social Security
16 Act, the Code of Federal Regulations, and the Social
17 Security Rulings are the three cornerstones of our
18 policy. The Act, of course, is an act; so it's law.
19 The regulations, once they're published in final in
20 the Code of Federal Regulations, have the authority
21 of law. So they're binding on not only SSA, but also
22 the federal courts. And then the Social Security

1 Rulings are not binding outside of SSA; but generally
2 the district courts are well aware of our rulings and
3 they try to follow the intent of the rulings as much
4 as possible. The rulings being an expansion of the
5 regulations. An explanation of what we intended in
6 the regulations.

7 Now, the definition of disability was
8 touched on this morning by Jeff, so I'm not going to
9 spend any great amount of time there. And there it
10 is from the Act. You know, we did get sued on this a
11 few years ago with the argument that -- went all the
12 way to the Supreme Court -- attorney arguing that
13 when we get down to lasting 12 months that the
14 prevention of work and the lasting 12 months were
15 separate issues. And he argued that -- he had a
16 claimant who had a severe impairment, which everyone
17 agreed. The trouble was that it had lasted 12
18 months, but it didn't prevent work. It was our
19 determination that it didn't prevent work.

20 So the attorney argued that the prevention
21 of work, and the lasting of 12 months were separate
22 issues. His argument was that since his claimant's

1 disability had lasted 12 months that that was enough
2 under the Social Security Act to grant him
3 disability.

4 Now, if that had happened -- virtually,
5 probably everybody in this room has a disability of
6 some kind that has lasted 12 months -- we would have
7 been in very serious trouble. The Supreme Court
8 unanimously determined that no, you had to meet all
9 of these factors. It had to prevent work. It had to
10 have lasted for 12 months, or be expected to result
11 in death.

12 Now, going off of that, something that is
13 really the key to our entire sequential evaluation
14 process, and the reason we're here, is that
15 disability under Social Security is based on the
16 inability to work. So really our definition -- even
17 in the definition of disability it all comes down to,
18 can this individual work? And if we determine or
19 decide during this process that the claimant can,
20 indeed, work, the individual client can work, they're
21 not disabled no matter the severity of their
22 impairment.

1 If we determine they cannot work, then we
2 will find disability for them if they meet all the
3 other criteria, duration and all of those. So they
4 can either meet or equal one of our medical listings
5 at step three. And you know, our listings are a set
6 criteria that we have decided are so significant that
7 if you meet these criteria, we're going to decide
8 that you cannot work.

9 Now, we certainly recognize that people who
10 meet these criteria, that there are some people who
11 do, indeed, work. For example, one of our listings
12 involves being blind, or being legally blind. And we
13 certainly know that there are many people who are
14 blind or legally blind who do work.

15 Another listing involves being deaf. We
16 certainly know that there are individuals who are
17 deaf that do work, and work at a very high level. It
18 is just what -- the listings are an average. We say
19 these criteria are an average that most people who
20 would meet or equal these criteria are significantly
21 enough impaired that they would find it very
22 difficult to work.

1 Then, we get down to where we have to
2 determine whether the claimant can perform any of his
3 or her work that was done before or cannot make an
4 adjustment to other work. Those are the three ways
5 we determine you can't work. You meet or equal one
6 of our listings. You cannot perform any of the work
7 you performed in the past. And you cannot do any
8 other work that's available in the national economy.

9 Now, another key factor to remember is
10 there is no such thing as temporary disability within
11 our program. So if you have an impairment that is
12 going to last six months, seven months, anything
13 under 12 months, you are not going to be eligible for
14 disability. It has to last 12 months or longer or be
15 expected to result in death. Social Security program
16 presumes that there are other resources for people
17 who have short-term disabilities.

18 Now, we have toyed with different ideas
19 over the past under Commissioner Barnhart, under
20 Deputy Commissioner Martin Gerry. He wanted to look
21 at a lot of these issues about temporary disability.
22 That was one of the areas he was interested in. But

1 as our program stands now, temporary disability or
2 for a short-term is not something that we look at.

3 Now, here is the sequential evaluation
4 process for adults. There is a separate one for
5 children under our SSI program. But that -- since
6 that does not involve the ability to work, it's not
7 something that impacts on your deliberations. So
8 this is the process for adults. As I said, five
9 steps.

10 And our first step is SGA. Is the claimant
11 engaging in substantial gainful activity? If the
12 answer is no, we go on to step two. If the answer is
13 yes, we stop right there at step one and find the
14 claimant not disabled.

15 Because one of the basic precepts of the
16 Act, definition of disability, is that you are not
17 able to perform substantial gainful activity. If you
18 are, then, by the definition of the Act, you cannot
19 be disabled.

20 At step two we ask whether or not the
21 claimant's condition is severe. If it is severe we
22 go on to step three. If the claimant's condition is

1 not severe, we stop there at step two and find the
2 claimant not disabled.

3 At step three, that's when we look at our
4 medical listings. We ask whether the claimant meets
5 or equals the listing. If yes, they meet one of the
6 listing or they equal the severity of the listings --
7 and we will talk about that in an a little more
8 detail in a minute -- but if they do meet or equal a
9 listing, we stop there, find the claimant disabled.
10 Step three is the first step you can be found
11 disabled.

12 Now, up through this step, step three, your
13 past work does not matter. Say that you were legally
14 blind or stat blind or totally blind, and you had
15 worked for 40 years. And then one day you decide
16 that you are going to apply for disability. So you
17 quit your job. You apply for disability. We look at
18 your condition. We say well, this person is blind;
19 they meet a listing.

20 We allow -- their past work has no
21 relevance to our program, because work does not
22 come -- become an issue for our program until step

1 four, sequential evaluation.

2 So if you meet or equal a listing, it does
3 not matter whether you have worked in the past or
4 not. It will not impact our finding that you are
5 disabled or not. So step three, if you meet or equal
6 a listing, you are disabled. We stop there. If you
7 don't meet or equal our listing, we perform a
8 residual performance capacity assessment. And that
9 can be physical and/or mental assessment, depending
10 upon your impairments. Then we go to step four.

11 At step four we ask, can the claimant --
12 can the individual perform their past relevant work.
13 That term "past relevant work" has very strict
14 meaning in our program. Of course -- and we will go
15 into that in agonizing detail here momentarily.

16 If the question is "yes," the claimant can
17 perform their past work -- and we will make a big
18 distinction between returning to their past work or
19 actually being employed in that past work and just
20 being able to do it, having the physical and mental
21 capacity to do it.

22 But if the answer is yes, they can do their

1 past work; then, we find the claimant not disabled
2 and we stop there. If the claimant does not have any
3 past work or they cannot perform it, then we go on to
4 step five.

5 And at step five the question is, is there
6 other work for this claimant in our national economy
7 that they can do? Yes; they're not disabled. No;
8 they are disabled. So those are the five steps in a
9 nutshell. I guess we could just stop there and go
10 home. But no, we will go into great detail.

11 But at several -- at -- through step four
12 you will notice that there can be a decision that we
13 can stop, but -- and it's different, disabled or not
14 disabled at each step. Step three is the first place
15 that we can find a claimant disabled and stop the
16 process. The only other process -- if they don't
17 meet or equal, then we have to go all the way to step
18 five to allow. We can't allow anybody at step four,
19 or step one, or step two.

20 All right. So step one, the question we're
21 asking is, is the individual working above SGA level?
22 And so we consider the claimant's -- the individual's

1 work activity. Now, SGA stands for Substantial
2 Gainful Activity. In SSA speak what we say is that
3 work has to be both substantial and gainful. That's
4 why we call it substantial gainful activity. So what
5 do we mean?

6 Number one, it has to be substantial. It
7 has to be significant. It has to be some form of
8 work activity that involves significant activities.
9 So it couldn't be that you are just paid money to not
10 show up at work. You stay at home. You just get a
11 check. You don't do anything. You don't consult.
12 That wouldn't be substantial work activity. There
13 are no duties assigned to that work.

14 And gainful, it has to be for pay. So you
15 could have a claimant, for example, that -- graduated
16 and got his CPA, his accounting degree, but won the
17 lottery the same day. So he was set for life. But
18 he decided after a couple years that he was bored, so
19 he went to Red Cross and started doing their books,
20 all their accounting for them. So he spends 20 years
21 working for the Red Cross, 40 hours a week doing Red
22 Cross's accounting. But he never takes a dime for

1 this work. It's all volunteer, because he won the
2 lottery. He doesn't need any money.

3 If that person applied for disability, we
4 would not count that work he had done for Red Cross
5 as SGA. It was certainly substantial. He did a lot
6 of work for them. It was very important work. It
7 was very significant; but it wasn't gainful. It
8 didn't involve -- no money changed hands. So it
9 wouldn't be SGA.

10 For 2009, that level is \$980 for non-blind
11 individuals. And for blind individuals, legally
12 blind, stat blind, it's \$1,640. What that means is
13 if I earned \$980 a month, I am earning SGA, but it
14 has to be over that amount for us to be concerned
15 with it. So if I earn \$980 and a penny, I am not
16 eligible for disability. If I earn \$980 flat, I am
17 eligible for disability, because I am not earning
18 over SGA.

19 So we look at the average earnings per
20 month; and if the claimant is not working, or his
21 earnings are at SGA or below, we would then go on to
22 step two of the process.

1 If the claimants earnings are above SGA, we
2 stop and we deny the claimant for the ability to
3 work. The proof that he can work or she can work is
4 the fact that she is earning above SGA. So that's
5 the answer there for step one. The proof that they
6 are not disabled is that they are earning above SGA
7 level.

8 Step two. So then we ask, is the
9 individual's physical and/or mental condition severe?
10 And we have, of course, a very strict definition for
11 what we mean by "severe."

12 They must have a medically determinable
13 impairment, physical or mental. And this can be one
14 impairment or a combination of impairments that is
15 severe and has lasted or expected to last 12 months.
16 Again, that 12 months duration comes in here. To be
17 severe their impairment must interfere with basic
18 work activities, and basic work-related activities.

19 So it can be someone that has never worked
20 in their life, but -- so do they have -- they have
21 never worked, so how do we determine whether it's
22 severe or not? Well, we look at their activities at

1 home. And activities that they have done at home
2 that are similar to activities that you would have to
3 do in a work environment. And if it impinges on
4 those things, basic work activities -- and we get
5 those out of the DOT; you know, lifting, carrying,
6 standing, walking, pushing, pulling, climbing, basic
7 activities like that. If it interferes with basic
8 activities, they are severe.

9 Now, if the impairment is not severe or it
10 is severe, but it is not going to last 12 months; it
11 is not going to meet our duration requirements, the
12 claimant is found not disabled and we stop there at
13 step two.

14 Now, let me say that step two is a very,
15 very low threshold. If you have a medically
16 determinable impairment, a medical diagnosis with
17 findings and symptoms and all to go with it, it is
18 not very, very difficult at all to get past step two.

19 In fact, it is the rare case that does not
20 get pass step two, at least satisfies -- if you have
21 a determinable impairment. Most often if a case
22 doesn't get past step two, it's on the basis of

1 duration. For example, we get quite -- DDSs get
2 quite a few cases where women who are pregnant will
3 apply for disability. Some are just pregnant. We
4 say, well, it's a severe condition that will not last
5 nine months.

6 Some of them, though, will have certain
7 conditions that are related to pregnancy like
8 gestational diabetes, or toxoplasmosis. There is all
9 sorts of other things. Again, in most situations,
10 those are not going to last beyond the pregnancy; and
11 so on that basis, since very few human babies go to
12 12 months term, then very few women who are pregnant
13 are going to meet, on the basis of that, the duration
14 requirement. So again, severe interferes with work
15 activities; but doesn't meet our duration.

16 So if you are not severe -- or if you are
17 severe and you meet our duration, then, we go on to
18 step three. Again, that's a very low threshold.
19 Now, basic work activities, as I said, under
20 physical, right out of the DOT, right out of the SCO,
21 the Selected Characteristics of Occupations; lifting,
22 carrying, standing, walking, all of those things from

1 the SCO.

2 Now, this is one of the problems that we
3 have with the DOT, is that it does not rate mental
4 capabilities. It does not rate mental functioning,
5 you know, mental activities. So we fall back on our
6 own definitions that we have created over the years.
7 These come out of the regulations normally.

8 There are four mental areas that we
9 determine to be basic work activity. You can see
10 them there. The ability to understand, carry out,
11 and remember simple instructions; make simple
12 work-related judgments and decisions; respond
13 appropriately to supervision, co-workers and work
14 situations; deal with changes in a routine work
15 setting. Again, these are right out of the
16 regulations.

17 Everything else that we do on the MRFC is
18 based on these four concepts. These four basic
19 mental work activities. That's one of the things we
20 hope you will fix. In whatever you come up with that
21 we will have a mental basis, you know, to -- in work
22 definitions, work descriptions that we can use.

1 So if the claimant is severe we get to step
2 three. And the question is, does the individual's
3 medical condition meet or equal the severity of our
4 listing? Our listings are in the form of what's
5 commonly called the bluebook; and it is a book that
6 has all our listings in it. They are also in the
7 Code of Federal Regulations as well.

8 And we break it down into 14 body systems.
9 For example, body system one is musculoskeletal.
10 Cardiovascular is special senses, which includes, you
11 know, vision and hearing; all the way up to body
12 system 14, which is essentially other.

13 But things like HIV or impairments that
14 cover several body systems would be under body system
15 14. Body system number 12 is mental. But anyway,
16 these 14 body systems. And under each one there is a
17 series of medical criteria that we consider to be so
18 severe that we find you automatically disabled if you
19 satisfy those criteria.

20 Now, if we compare your impairments
21 directly to the listings and you match -- everything
22 about your condition matches our criteria, you meet

1 the listing and we stop, you are through. But there
2 are some people who -- who don't meet the criteria,
3 we can find you equal. That seems to have a -- cause
4 people a lot of consternation. An easy explanation
5 of equal is if we were to go to the listing for
6 musculoskeletal, and it said, if you had an above the
7 knee amputation of your left leg, you meet the
8 listing.

9 Well, I am applying with above the knee
10 amputation of my right leg. I don't meet the
11 listing, because the listing says it has to be my
12 left leg. Certainly someone who has above the knee
13 amputation of their right leg, that would be just as
14 severe as if I had met the listing if it was my left
15 leg. So to equal a listing we are just finding that
16 your set of conditions are -- have the same disabling
17 effect as the criteria that are listed there. So you
18 don't meet those criteria, but you are equal in
19 severity, equal in significant.

20 So if you meet or equal, we stop there.
21 You are disabled. You are through. You get a check.
22 If you do not meet or equal the severity of one of

1 our listings, we then proceed to step four. But in
2 between there, before we get to step four, we have a
3 physician or -- in ten of our states, examiners can
4 complete assessments; but we will complete a physical
5 or mental or both residual functioning capacity
6 assessment of your ability to perform basic work
7 related functions. And that assessment of your
8 residual functioning capacity is what we use at steps
9 four and five to determine whether or not you can
10 work or not.

11 Once we get past step three, that's all
12 we're asking is, can you work? Can we expect this
13 individual to work? So up to step three we don't use
14 the DOT, except as a tangential thing. You know, it
15 does define what our basic work-related activities
16 are on the physical side. But other than that, we
17 don't use the DOT up through step three. But it is
18 an example where the concepts, the definitions, the
19 terminology of the DOT are all through the structure
20 of our disability program. It really is a skeleton
21 on which it is based.

22 If we were just to yank the DOT out, we

1 wouldn't have much of a struggle -- we wouldn't have
2 much of a program left to determine disability.
3 Because the definitions and everything in the DOT we
4 use in the determination of disability.

5 So step four, what is residual functioning
6 capacity? Now, ordinarily, it is a function by
7 function assessment of an individual's maximum
8 ability to do sustained work-related physical -- I
9 could go on and on. It is a one long run-on sentence
10 there.

11 The two first things that are very key is
12 it's function by function. So we're looking at the
13 person. And if you have seen the physical RFC form
14 we're first asking the maximum amount that they can
15 lift. Then, the -- occasionally, you know, how much
16 can they lift once or twice, or up to a third of the
17 day? Then, what can they lift frequently during the
18 day.

19 Again, those two terms "occasionally" and
20 "frequently" come right out of the DOT.
21 "Occasionally," the DOT defines as up to a third of
22 the day. "Frequently," up to two-thirds of the day;

1 right out of the DOT.

2 Then, the next key concept is maximum
3 ability. The RFC we're trying to decide what is the
4 absolute most that the claimant can do for each one
5 of these activities on the form.

6 Then the next key is, what can they
7 sustain? It doesn't -- we have to balance the
8 maximum with the sustainability. You know, I might
9 be able to lift a cow for about a second maybe. You
10 wouldn't rate me on the RFC for the ability to lift
11 that much weight, because I can't sustain it.

12 What we have to determine is, what is the
13 most, for example, a claimant can lift; but then over
14 a 40 hour work week, what can we expect them to do
15 day in and day out. You can see how this becomes
16 very critical, for example, for a claimant with MS or
17 muscular dystrophy where on Monday morning at
18 8:00 o'clock, they may be to do a lot of the
19 activities. By Friday afternoon at 5:00 o'clock, in
20 relation to their symptoms and fatigue that they
21 develop during the work week, they may not be able to
22 do very much at all in the way of lifting or standing

1 and walking.

2 So we have to balance a degree like that,
3 what can they do most during that week. What can
4 they sustain? When we are talking about
5 sustainability, we're looking at eight hours a day
6 five days a week. So a 40 hour work week, but day
7 in, day out, week after week.

8 So if I give you an RFC for what we would
9 define as light work, I would expect to come back
10 five years from now, and if your condition hasn't
11 worsened, for you to still be able to sustain light
12 work. So it's always a balancing act of trying to
13 decide if they -- if they stay stable, if they don't
14 change, this is what we think that they can do.

15 So in other words, in a short -- shorthand
16 we're asking -- it's an accounting of an individual's
17 capacity for full-time work. What is their capacity?
18 That's what the forms rate.

19 Now, real quick. I don't want to go into
20 great detail here. We rate both limitations and
21 restrictions on the RFC, both mental and physical.
22 By limitation, you know, if the person has had

1 bilateral above the knee amputation, well, without a
2 prosthesis, that person is not going to be able to
3 stand and walk. If that's a limitation, they just
4 can't do it. They just don't physically have that
5 capacity now.

6 A restriction would be, for example, a
7 person has osteoporosis of the spine so significant
8 that any amount of heavy lifting might cause
9 compression fractures of the vertebrae. So they
10 physically might be able to lift 50 pounds, but we
11 would say that they shouldn't because that amount of
12 activity would result -- could result in damage. So
13 we would place a restriction on them. They could do
14 it. They shouldn't, based on best medical advice.
15 So limitations and restrictions, that's what
16 determines what capacity we're going to find on the
17 RFC, physical and mental for the individual.

18 Now, for the physical RFC, if you had any
19 chance at all to look at the physical form, you will
20 see that it comes right out of the DOT. On page two
21 of the RFC form we rate lifting, carrying, standing,
22 walking, sitting, pushing, pulling. Those seven

1 factors are the strength factors of what the DOT
2 defines as strength factors. Those seven strength
3 factors determine whether a claimant can do
4 sedentary, light, medium, heavy, or very heavy work.

5 Then the rest of the physical RFC comes
6 right out of the selected occupations and
7 characteristics, the SCO; right out of there. We
8 rate the postural, climbing, stooping, crouching; we
9 rate the postural, reaching, handling, fingering,
10 feeling. We rate communication. We rate vision.
11 And we rate environmental; their exposure to heat,
12 cold, weather, humidity, noise, vibration. And all
13 of those come right out of the SCO.

14 So if we didn't have the SCO, then we
15 wouldn't have an RFC; and then we wouldn't be able to
16 decide whether the claimant can work or not. So if
17 you all can fix that real quick, we will be real
18 happy.

19 Now, the mental RFC is evaluating in terms
20 of the mental demands of work. Since the DOT is
21 silent on the mental demands of work, we have
22 developed those ourselves over the years, and have

1 outlined those in the CFR, the Code of Federal
2 Regulations. So mental activities are all based on
3 the CFR. Physical, directly right out of the SCO and
4 DOT.

5 Now, the sole purpose of completing an RFC
6 is to determine the claimant's ability to work at
7 steps four and five. Can the individual perform work
8 at four and five?

9 Now, our RFCs are fairly limited in scope.
10 We only look at medically determinable impairments.
11 The RFC does not take into account a claimant's sex,
12 a claimant's age, a claimant's body habitus, their
13 conditioning. Whether they were a couch potato or
14 whether they were a marathon runner, that does not
15 impact on our determination.

16 Now, in some ways an example may be a poor
17 example that I use; I always compare The Rock, you
18 know, Dwayne Johnson that use to be the wrestler; I
19 compare him with Granny from the Beverly Hill
20 Billies. Well, Grany may be 5 feet tall, and she may
21 weigh 95 pounds soaking wet. The Rock, way over
22 6 feet, bulky, was a football player, wrestler, very

1 muscular. If the Rock and Granny have the same
2 medical condition -- say they both have a herniated
3 disk at L4, L5, and they both had a lumbar
4 laminectomy at that level, they are going to get
5 identical RFCs. If they had the identical impairment
6 and identical symptoms remaining from whatever
7 medical intervention they had, they get the same RFC.

8 The fact that Granny is a lot older than
9 The Rock doesn't matter. The fact that she is a lot
10 shorter, that she is a lot older, that she is a lot
11 muscularly smaller than The Rock has no -- and the
12 fact that she is a different sex has no implication
13 at all when we're assessing RFC. We're only asking,
14 what does the claimant's impairment do to their
15 ability to work? That's the key question. What does
16 their impairment do to their ability to work?

17 That's all we're rating on the RFC forms,
18 physical and mental. What does their impairment do?
19 And we don't look at any of these side factors at
20 step four.

21 Now, I'm not going to spend any time at all
22 on this one, but this is the basis for steps four and

1 five right out of the Social Security Act. Jeff
2 Blair mentioned this morning the 1967 amendments to
3 the Act. This paragraph here was added in 1967. And
4 this was -- this one page, this one paragraph defined
5 how we're going to look at the person who doesn't
6 meet or equal a listing.

7 So it says, if we go back -- oh, a little
8 bit down it says, not only unable to do his previous
9 work, but cannot, considering age, education, and
10 work experience, engage in any other work. This is
11 the reason at step four we don't look at what the
12 claimant's age is, or their sex, or their education,
13 because it tells us not to when we're looking at
14 their past work. We only consider those factors --
15 or some of those factors when we're looking at other
16 work that they might be able to do.

17 So might take a look at this in detail
18 later, but this is out of the Act and defines the
19 difference between, for us, steps four and five. It
20 doesn't say steps four and five here. It doesn't use
21 the term "past relevant work," we do that all in our
22 regulations. This is the Act basically at steps four

1 and five.

2 Now, step four. So we have already
3 determined the claimant is not earning SGA. They are
4 severe, but they don't meet or equal our listings.
5 So the next question we ask is, can the individual do
6 any of his or her past relevant work?

7 So at step four, function-by-function we
8 compare their limitations and abilities to the
9 demands of their work. And we get those demands, to
10 some degree, out of the DOT. I will go there in just
11 a second.

12 Now, if the claimant retains the physical
13 and mental capacity to do any of this past relevant
14 work if they have it, they're not disabled.

15 Now, we just won a case a few years back on
16 the basis of an elevator operator. The DDS
17 determined that this claimant could at step four
18 perform her past work as an elevator operator. She
19 has the physical and mental ability to do that work.
20 We don't ask whether that work exist at step four or
21 whether even she would be employed as an elevator
22 operator at step four. We are just asking, can she

1 do it? Can she do it?

2 And the answer was, the way she described
3 it, yes; she had the RFC, the residual functional
4 capacity, to still do that work. So she was denied.

5 Well, her attorney took it all the way to
6 the Supreme Court on the basis of arguing that they
7 just don't exist anymore in the national economy.
8 You just can't find elevator operators.

9 A side note, in the Federal District Court
10 where we lost the case there were elevator operators
11 in that building. That's just a little side note.

12 But his argument was, it didn't even matter
13 that they were available in that building. It is
14 just that that's an oddity in this day and age.
15 There just aren't any. Well, the Supreme Court
16 decided unanimously in our favor that step four is
17 not about employability. It is not about whether
18 that work exist or not in our national economy. It
19 is just a severity test.

20 Is their condition severe enough to prevent
21 them or allow them to do any of the work that they
22 have done in the past? And if we find at step four

1 that you are physically and mentally able to do any
2 of your work that you have done, you are a denial.
3 We will say that you can perform that work. Now,
4 we're very careful -- or we are suppose to be very
5 careful about saying -- not saying you can return to
6 that work, because we don't know whether you can
7 return to it or not. That's an employability
8 question.

9 Actually, we were sued once -- it got
10 thrown out very quickly -- but a person that punched
11 their boss at a warehouse applied for disability.
12 The letter from the DDS was written poorly and said,
13 you can return to your work as warehouse worker. So
14 he showed back up at the factory with the letter from
15 Social Security saying, they say I can return back
16 here and have my job back. He was very distraught
17 when they wouldn't give him his job back. So he sued
18 on the basis that we said he could return; and why
19 wouldn't they let him.

20 Well, as I said, that got thrown out fairly
21 quickly; but we don't make that determination.
22 Returning to your work, employability, existence of

1 work, not what we're doing. It is just at step four,
2 do you have the ability to do it?

3 Now, at this step, as I said, we don't look
4 at age, education, bodily habitus, employability or
5 whether the work exist in the national economy. We
6 don't care at step four. It doesn't impact our
7 determination.

8 Now, step four has two parts. The first
9 part we ask, does the individual retain the capacity
10 to perform the work as he or she actually performed
11 it?

12 So the claimant says, I was a secretary. I
13 filed; I answered the phone; I did filing; I took
14 dictation -- do people take dictation anymore? I
15 don't know -- I took dictation. I worked a word
16 processing program. I went down to the loading dock,
17 unloaded copy paper boxes every afternoon. And
18 that's how she described her work.

19 Well, we don't care how it's done in the
20 national economy first. We are just looking at can
21 the claimant do it as she said. Well, she is limited
22 to only sedentary work. She can only do 10 pounds;

1 she can sit, can't stand and walk. Oops, she said
2 she went down everyday and unloaded boxes of copy
3 paper off the back of the truck. She can't do that
4 anymore. So we're going to find at 4-A she is not
5 able to do her work as she described it.

6 But we're not giving her a check yet. We
7 then go on to the second part of step four and ask,
8 can she do it as it's usually done in the national
9 economy? Well, for that, we depend on the DOT. And
10 if we look up secretary in the DOT, we don't find any
11 mention of unloading copy paper off the back of a
12 truck. So probably -- now there is all sorts of
13 permutations on that. Probably we're going to say,
14 well, she can still do her job as secretary as it is
15 usually done. So even though she can't do it as she
16 did it for 20 years, we may still find her not
17 disabled, because she can do it as most people who
18 are secretaries performed that work.

19 So can you do it as you did it. Can you do
20 it as most people do it. This is where the DOT is
21 going to -- at step 4-B is where it's an essential
22 part of our process. Because how we describe the

1 work and everything is going to come right out of the
2 DOT. So if you are a key card punch operator, we are
3 all set for you right now. If you are a web
4 designer, we are probably not really that set.

5 Okay. Oops. I went backwards.

6 So what is past relevant work? The whole
7 key to the question at step four is, can you do your
8 past relevant work, or what do we mean by past
9 relevant work? Well, there are three parts to that.
10 It's a three part test.

11 Number one, it has to have been over SGA.
12 It has to have been at least a penny over SGA. And
13 if it is, meets the first test.

14 Secondly, it must have been performed in
15 the fifteen year period we're looking at. And for
16 most people that's fifteen years back from the day
17 we're deciding the case. So if I were in a state
18 agency deciding your case today, writing the case, it
19 would be fifteen years back from today.

20 Then, if I found you not disabled and you
21 were to apply, you know, and it eventually gets to an
22 ALJ, and say it's six months, a year, two years

1 later; the fifteen year period for the ALJ is fifteen
2 years back from the day he is deciding the case. So
3 it's a change -- it's a moving target forward as your
4 case goes forward. But as long as it's in that
5 fifteen year period that we're looking at, it's
6 relevant.

7 Then number three, it has to have been
8 performed long enough for you to learn it, to reach
9 average performance. You don't have to be the best
10 at your job, but you certainly could not be the worse
11 at your job. You would of had to reach average
12 performance.

13 So to be relevant for Social Security, it
14 has to have been above SGA. It has to have been in
15 the fifteen year period we're looking at; and has to
16 have lasted long enough for you to learn it.

17 So how do we determine whether or not it
18 lasted long enough to learn it? Well, we go back to
19 the DOT. Then we look at the specific vocational
20 preparation, the SVP. And we use that as a basis to
21 determine whether it lasted long enough. I mean,
22 it's not written in stone, but that's the first

1 factor we look at is again, the DOT.

2 So here we are, we have the RFC that we
3 prepared after step three. We know what work the
4 claimant has that was relevant. Now, if you don't
5 have any relevant work -- if we looked at all of your
6 work and none of it was SGA, or all of it was longer
7 than fifteen years ago, or it was all very short-term
8 and none of it lasted long enough to learn it, then,
9 we're going to go on to step five. Or you never
10 performed any work. You were a housewife, which
11 certainly you were performing lots of work, but not
12 public work, then we're going to go on to step 35.

13 If you have relevant work, you now have
14 your RFC, we're probably going to compare those two.
15 The ability to perform past relevant work always
16 overcomes anything that's on your RFC. No matter how
17 limited your RFC is, if it would permit you to do
18 your past work, you are a denial.

19 Now, the burden of proof -- actually, we
20 may stop there -- we have been going what, about 45
21 minutes, Debra?

22 MS. TIDWELL-PETERS: Yes.

1 MR. JOHNS: Why don't we stop there. This
2 is about the halfway point. I will be glad to answer
3 any questions you might have on anything we covered
4 up to this point about steps one through three, or
5 RFC, MRFC.

6 Again, one of the major issues we have with
7 the DOT is that it doesn't define the mental demands
8 of work. And so we don't have any accepted standard,
9 however accepted the DOT is, to define what we mean
10 by -- you know, what we look at as mental work; so we
11 define that ourselves in the Regulations. Yes, sir.

12 MR. HARDY: That's actually the question I
13 had. Just for my own education, when you guys -- you
14 guys -- when you all came up with the mental four
15 areas, can you tell me how that was developed, where
16 that came from?

17 MR. JOHNS: Certainly, I think it was a
18 five guys and a keg of beer over a weekend. No. It
19 actually developed -- I can't just say well, on this
20 day, because it was over a series of years. But part
21 of it was talking to people in the field,
22 psychologist and psychiatrist who were dealing with

1 patients. What are things that they think are
2 critical for a person to be able to carry on, you
3 know, gainful activity. We used doctors that work
4 for us. It was developed over a series of years.

5 Now, the MRFC itself, the 18 factors that
6 are on there that grew out of those four factors,
7 some of it goes back to the work of an SSA
8 psychologist, who was on staff at SSA who sat down,
9 and over the course of a year or longer, developed
10 what he thought were the most important factors that
11 related to a person's mental health to -- in their
12 ability to work.

13 I think his list was -- gosh, it was many,
14 many pages. There may have been as many as 50 to 100
15 factors that he came up with that he thought were
16 critical to the performance of work. That was deemed
17 just way beyond what, you know, was feasible in this
18 type of program.

19 So they over -- I don't know what -- how
20 long the process was, but they did call in
21 psychologists and psychiatrists from state agencies,
22 from SSA. I believe some from outside. And they

1 actually conferenced. It wasn't as formal as an
2 advisory panel. It was more of an informal detail
3 within SSA; but worked through this list that
4 psychologists had developed and thought out what they
5 thought were the most important factors. And out of
6 that process they developed these four basic demands
7 of mental work. And out of these four basic mental
8 demands, they came up with the 18 that are on the
9 MRFC form.

10 But have they necessarily been validated?
11 Have they been studied in great depth? No.

12 And are these even the four most important
13 factors that relate to someone's ability to work if
14 they have a mental impairment? We don't know.

15 Are these 18 factors that we developed -- I
16 mean, we developed them in the dark; but then, again,
17 they didn't come out of a formal study, or formal
18 evaluation process. So we don't know.

19 And that's, again, part of why you are
20 here. What are the factors that we should be looking
21 at in assessing whether somebody can be expected to
22 work? Are these 18 even valid? Are these 18 even

1 important? What are the ones we should be asking?
2 Hopefully out of this we get questions we can ask
3 claimants about their work that then will relate to
4 their ability to do mental things -- mental --
5 perform mental activities.

6 Yes, sir.

7 DR. FRASER: Are the sensory
8 characteristics well covered? You know, the vision
9 and hearing. You use physical there. I just don't
10 know if that's an umbrella.

11 MR. JOHNS: We have -- there has been a lot
12 of work, especially through the development of the
13 listings with vision and hearing. And there are
14 standards, but it's not something that is in great
15 detail in the DOT if you are familiar at all how it
16 rates it.

17 DR. FRASER: Yes.

18 MR. JOHNS: I mean, for example, it's going
19 to rate near acuity as whether you need it
20 occasionally, frequently, or constantly during the
21 day. And so that causes, of course, confusion. If
22 you get a job that says I only need near acuity -- I

1 only need acuity occasionally during that day, does
2 that mean that frequently I can be blind during the
3 day?

4 DR. FRASER: Right; right.

5 MR. JOHNS: How we define that or explain
6 that is, for example, somebody who works in a
7 warehouse pulling orders. Well, for a good part of
8 the day, they are moving around boxes, they are
9 driving a fork lift. They don't need good near
10 acuity. They only need that when they're reading the
11 order form that says, pull this number of boxes, this
12 serial number. Then, they might get rated
13 occasionally for near acuity.

14 The DOT does not define those factors real
15 well. So it is somewhat problematic in assessing
16 RFC. What we basically say with vision, for example,
17 is to do unskilled work you need to retain the
18 capacity to work with relatively large objects, and
19 you need the -- the visual fields to be able to avoid
20 ordinary hazards in the work place. We define
21 ordinary hazards like -- okay, if I was working
22 across here, can I avoid tripping over this cable

1 that they taped down here? Would I be able to avoid
2 a box or something in the floor? If you can avoid
3 ordinary hazards and work with large objects, we
4 determine that you would be able to do unskilled
5 work.

6 DR. FRASER: Does the VAE have to consider
7 accommodation or minimal accommodation?

8 MR. JOHNS: That's a good question,
9 accommodations in the workplace. Yes and no. It
10 gets complex.

11 If, for example, you were working on a
12 loading dock, and there were three of you on the
13 loading dock, but you have a back injury. So your
14 employer makes an accommodation that gives you a
15 helper that helps you lift the heaviest weights. The
16 other people don't have that on the dock, but you do.

17 Then a new employer -- then, you get bought
18 out. The new employer comes in says, no; we're not
19 going to provide that helper anymore. So you quit
20 work, because you can't do the lifting.

21 Well, what we would evaluate is we would
22 probably still deny you at step four, because as you

1 did the job with your helper, with your
2 accommodation, you could still do the job. You
3 couldn't do it as it's done in the national economy,
4 because there are no helpers. But you could do it as
5 you described it, because you had a helper and that
6 accommodation was present. So we would look at the
7 accommodations as they were available in your past
8 work. And if they were available and you could still
9 perform that work with that accommodation, you would
10 be a denial at step four.

11 DR. FRASER: Then, you would have to have
12 that available in the economy?

13 MR. JOHNS: Right. If we said that you
14 couldn't -- at step four at first we're just asking,
15 can you do it as you did it? If you couldn't do it
16 for some reason, then, we're not going to consider
17 those accommodations, because we couldn't guarantee
18 that they would be available.

19 If there were some other factor that would
20 prevent you from doing that job as you described it,
21 then, the likelihood of that accommodation -- then
22 that accommodation is out the window then. And it's

1 unlikely, then, that you are going to be able to do
2 it in the national economy, because now you don't
3 even have the accommodation.

4 DR. FRASER: Right.

5 MR. JOHNS: Yes, ma'am.

6 DR. GIBSON: My question goes back to the
7 content model for mental functioning that you were
8 just talking about. And the development of the four
9 primary categories of mental functioning. And you,
10 essentially, said you are not sure they are the
11 correct ones at all, but you told us how they were
12 developed. I would like just a gut feeling from your
13 office and other educators the degree to which this
14 has been adequate for your purposes in the past.

15 MR. JOHNS: That's a good question. Those
16 four basic mental demands are what we consider you
17 have to be able to do unskilled work. At step
18 five -- we will get to that after the break -- that's
19 our test at step five, is the ability to do unskilled
20 work. If you can do those four mental demands, we
21 determine that you are able to do unskilled work.

22 They have been fairly -- fairly usable

1 within our program. And -- but part of it is -- to a
2 degree is that we all understand the rules under
3 which we're playing. You know, these are the rules
4 we're using to evaluate. So attorneys that are
5 representing claimants for Social Security know that
6 those are the rules we're using, so they play -- so
7 we are all playing within those rules. Just like we
8 are using the DOT. We are playing within the rules
9 of the DOT; but you know, we all recognize it is
10 becoming more and more dated.

11 So I guess if they had been successful for
12 our assessment of work -- we have been using those
13 since the early 1980's. I'm not an attorney. I'm
14 not Jeff Blair, so I can't quite quote the cases for
15 you. It was a Minnesota case that challenged our
16 assessment of MRFC, and how we evaluate mental at
17 step five, because we didn't do an MRFC. That
18 Minnesota case in the early '80's -- '82, '83, I
19 believe was the one that -- sort of was the ump that
20 got us to develop those four criteria and the MRFC.

21 Within the court system since '82, last 27
22 years, they have served our needs. I guess what I am

1 saying -- I don't want to misspeak. I guess what I
2 am saying is what we're asking within the confines of
3 this, are those the best, though? Are there a
4 different four set of questions that would even
5 answer it better for the individual and more
6 accurately for us and the individual -- more accurate
7 assessment of whether they can work mentally or not?

8 DR. GIBSON: Does the question need to be,
9 therefore, appropriate, to not only unskilled labor,
10 but to the knowledge worker, the service worker, and
11 those other types of workers, which are more
12 consistently found within our economy at this time?

13 MR. JOHNS: Well, certainly. What we're
14 hopeful is that magically you will come up with a set
15 of criteria -- because in the DOT if I go to CPA, or
16 whatever; and I pull up, I can read the physical
17 demands of that -- of the CPA. And reading through
18 the job tasks in the DOT, I can get an idea of what
19 kind of mental abilities are going to be needed
20 tangentially.

21 Certainly, if a person is dealing with high
22 level math or keeping books, they have got to have a

1 certain amount of education; but I don't have any
2 questions that are in the DOT or any criteria that
3 describe that.

4 So certainly, part of the criteria will be,
5 what are the mental demands for unskilled work? What
6 are the very, very basic demands, abilities that you
7 would have to have to do unskilled work?

8 Then, again, we need to go beyond that as
9 well and be able to ask questions about highly
10 skilled work in a way that will pull out what are the
11 most important mental functions for someone who is a
12 bank CEO, or a physicist, or an accountant? And what
13 are the types of questions we want to ask them when
14 we're doing job analyses that will give us a good
15 picture of what they need to be able to do to be able
16 to complete that work as well?

17 DR. GIBSON: One last question, I promise.

18 MR. JOHNS: Sure.

19 DR. GIBSON: Looking at the scale that you
20 utilized -- in this case I am looking at the MRFC
21 form still. Do you have an operational definition of
22 the -- each of the different levels here that is used

1 for training educators? How do I know that
2 moderately limited for me is the same -- not the same
3 as middle or significantly limited for somebody else?

4 MR. JOHNS: Right. That's a very
5 significant question in our evaluation of MRFC. The
6 definition of moderate, for example -- the official
7 definition of moderate for adult claims. Now, keep
8 in mind the evaluation of children is totally
9 different. With children, there is a definite
10 definition that goes with marked -- with extreme,
11 marked, moderate, deviations from the standards --
12 testing standards. That doesn't apply in adults.

13 The definition of moderate, for example, is
14 more than slight, less than marked. That one is not
15 a joke. That one is our definition.

16 But the concept is -- for example, that
17 form you have there, the actual RFC assessment, is
18 actually the narrative that the psychologists or
19 psychiatrists will complete. Those check boxes are
20 intended that whoever is doing the assessment, those
21 are to make sure that the psychologist or
22 psychiatrist addresses all 18 of those factors. Once

1 he or she has addressed those 18 factors, they then
2 summarize everything that they have marked as
3 moderate or marked in a narrative on that form. It's
4 actually the narrative that we use to determine
5 disability or not disability, not the check box.

6 The second part of that, how do you know
7 that moderate for you means that? It doesn't. What
8 it really means, it's an individualized assessment.
9 So what we're saying is for you, on item number
10 seven -- for the life of me, I don't know what seven
11 is right off the top of my head. For item seven we
12 mark it as "marked." What that would mean is when
13 I'm looking at all your abilities and all your
14 functioning, this number seven is really bad. You
15 are not doing number seven very well at all. So I
16 give you a mark.

17 If I was assessing yours, or yours, or
18 yours, you might only get a moderate. What does that
19 mean? It means the rest of yours are not -- this one
20 is just an outlier for this person; but for the next
21 person it doesn't necessarily mean it would still get
22 a mark.

1 So those blocks -- I'm not sure I am making
2 any sense; but that's very -- the meaning -- there is
3 no meaning. They're very individualized. So it's
4 just intended to be relative for you when I am
5 assessing your mental ability. So how I check those
6 blocks is just how I'm rating those 18 factors in
7 relationship to the others for you.

8 It is not intended to have any meaning
9 comparing your MRFC to, say, Sylvia's MRFC. That, I
10 can't do. Number one, we don't have the blocks.
11 They aren't even statistically valid. We would need
12 like a not -- like an extra number in there. So we
13 have been very careful not to make them where they do
14 mean anymore than what they are, which is just make
15 sure that the psychologist or psychiatrist has
16 assessed all those factors and how they relate to
17 each other for that individual.

18 Is that halfway clear, not mush, mush?

19 DR. GIBSON: It's clear, except that now I
20 don't understand how we get to the next step, which
21 is to compare your ability to do any work in the
22 economy if this is not standardized? How can we then

1 use that to decide if the person can't do any work in
2 the economy -- if there is no standardized meaning?

3 MR. JOHNS: I got you. We don't use the
4 blocks. We don't use the blocks when I am assessing
5 your ability to do any other work. What I'm going to
6 use is the narrative. For example, a psychologist
7 may write in the narrative, this claimant retains the
8 ability to do simple one and two step instructions,
9 can adjust to routine changes in the workplace; could
10 get along superficially with co-workers and
11 supervisors, couldn't deal with the general public in
12 any meaningful way. That type of thing. That type
13 of narrative. I'm going to take those -- the
14 narrative, and then I'm going to use DOT descriptions
15 and make a determination whether I think that they
16 can do -- whether they can work. But I'm not going
17 to use the blocks. I'm going to use the narrative
18 explanation.

19 And the narrative is an individualized
20 assessment of what that claimant can and cannot do,
21 what we expect them to do. Could concentrate for up
22 to an hour at a time without a break over an eight

1 hour day. We might be able to expect them to
2 concentrate, participate for four to five hours total
3 out of eight, that type of thing. We will make a
4 judgment as to whether we think they can do skilled
5 work, semi-skilled work, unskilled.

6 Now, we're going to use that narrative and
7 compare it to how they describe their past work. For
8 example, if I say the claimant can do simple one and
9 two step tasks, adjust to routine changes; and I am
10 looking and they were an accountant, certainly, I
11 know from the DOT description that an accountant is
12 much more than simple one and two steps. So I would
13 determine just on that narrative basis that the
14 claimant wouldn't be able to do their past relevant
15 work as an accountant, because they can't do more
16 than one and two step activities.

17 Now, when I got to step five and decide
18 whether they can do other work, well I am -- in our
19 explanations we would say, simple one and two step
20 types of work, routine changes; but allow someone to
21 do unskilled work would be within those four basic
22 demands of mental for unskilled work. So I would

1 say, well, this person at step five -- at four they
2 can't be a CPA. At step five, they could do
3 unskilled work.

4 As Jeff Blair touched on this morning, do I
5 really expect a rocket scientist who has such severe
6 depression that they can only do unskilled work -- do
7 I really expect them to go and wash dishes now?
8 Well, I don't expect anything; but I do know that
9 that rocket scientist has the capability to do
10 dishes. Therefore, he would be a denial if there
11 were enough of those unskilled jobs out there that he
12 still could do.

13 Would I expect the rocket scientist to do
14 that type of work? Well, that's beyond our program.
15 Our program ask, do they have the ability to do that
16 other work? If the answer is "yes," they have the
17 ability to do, then they don't mean the definition of
18 disability, because unskilled work would allow them
19 to do substantial gainful activity. Therefore,
20 they're not disabled.

21 Yes, sir.

22 DR. WILSON: How frequently right now in

1 terms of making these decisions and determinations do
2 you run into work that people are doing that's not
3 covered in the DOT?

4 MR. JOHNS: Fairly frequently. I
5 frivolously was talking about key card punch
6 operator; but if you are familiar with the DOT, key
7 card punch operator is, indeed, described in great
8 detail.

9 DR. WILSON: Bull whacker, all kinds of
10 things.

11 MR. JOHNS: Dopper, weeder, creeder, if you
12 are in the textile industry. One of my favorites
13 currently is a pneumatic tube operator. Sure, there
14 are pneumatic tube operators. Everytime you go
15 through a drive-in bank that teller is operating a
16 pneumatic tool; but he or she is not a pneumatic tube
17 operator. They are a bank teller who just happens to
18 be working the drive through.

19 DR. WILSON: Right; but 50 percent,
20 25 percent?

21 MR. JOHNS: That's harder to say, because
22 there are still quite a -- I mean, of the 12,000

1 occupations that are under there, there are still
2 quite a few of them that are very common in our
3 economy.

4 DR. WILSON: Right.

5 MR. JOHNS: How often? More often we run
6 into jobs -- probably more often than not, being able
7 to find it at all, we find jobs that we identify that
8 we commonly call composite jobs that are the
9 components of more than one where they have combined
10 occupations, so they're going to be doing components
11 of several occupations.

12 Where we just absolutely cannot find it --
13 I really couldn't give you percentage, maybe
14 20 percent; but that's just really right off the top
15 of my head. There hasn't been a formal study to
16 evaluate the number of times that we find work that's
17 not available. And remember, all we have to find at
18 step four is one relevant occupation.

19 DR. WILSON: Right.

20 MR. JOHNS: So if the person has done, say,
21 15 jobs in the last 15 years, and I know that number
22 seven is one that they can do, that's all -- that all

1 they're going to develop at step four is that one
2 job. They're not going to do the others.

3 DR. WILSON: That's correct.

4 MR. JOHNS: Now, to allow someone at step
5 five, I do have to go back and do all 15 and prove
6 that they can't do any of those 15. But to deny at
7 step four, I just have to find one occupation that
8 they can still perform.

9 DR. WILSON: The other question I had was,
10 in talking to the people who make these kind of
11 decisions -- we, obviously, have our own views as to
12 how a model might be developed, and how detailed it
13 should be. And psychologist, in general, have a
14 tendency to kind of err on the side of specificity.
15 It is likely -- tend to be more than what the end
16 user might want if it's left up to the scientists.

17 I am just curious, do these people who are
18 having to make these decisions, either physical or
19 mental, muse about, boy, I wish I had a little more
20 detail in, you know, this area or that area that
21 would really make their job easier? Boy, if we could
22 just have, you know, these two criteria in area "X."

1 Do you hear any of that?

2 MR. JOHNS: Certainly; and it does come up
3 quite a bit. For example, physical, for example, the
4 DOT just rate reach.

5 DR. WILSON: Right.

6 MR. JOHNS: If I reach to the floor that's
7 overhead reaching; that's reaching at chest level;
8 that's reaching at the shoulder. It's all reaching.

9 DR. WILSON: Right.

10 MR. JOHNS: One-handed reaching, two-handed
11 reaching. It is all just reaching. The same with
12 all the manipulatives. Reaching, handling,
13 fingering. It's all -- that's it. Occasional,
14 frequent, and constant reaching, handling, fingering.
15 So going back, does the job require one-handed
16 reaching, one-handed fingering, one-handed handling?

17 Certainly, we -- vision and hearing that
18 was brought up, certainly, it would be helpful to
19 have a little bit more information in that area.

20 Looking at step four and five, as I said,
21 and probably would say time and time again in the
22 mental area is very difficult, because the DOT

1 doesn't rate what are the minimal requirements. You
2 can kind of piece together things from the
3 description; but again, it is just piecing together
4 things and you are making your own judgment and how
5 good a determination or decision that is, is
6 dependent on how thorough the adjudicator was in
7 explaining their judgment in looking at the DOT and
8 comparing it to the claimant's abilities or
9 limitations. So certainly, yes.

10 Probably you could name any area on the
11 physical or mental RFC. Someone has asked for, gee,
12 wouldn't it be nice if we had a little bit more
13 detail there. Especially when we are trying to
14 compare past work to functional ability. That -- you
15 know, probably -- it usually runs around 60 percent.
16 Sometimes as much as 65 percent of the cases are
17 decided at steps four and five.

18 So you can see that the DOT is essential in
19 60 to 65 percent of the determinations or decisions
20 that we're making. And it's only as good as we can
21 compare the claimant's abilities to the job demands
22 out there. And the more detailed that is, the more

1 we're able to make a more valid determination whether
2 we can expect them to do that type of work or not.

3 DR. WILSON: The more detail, the better up
4 to a point, right?

5 MR. JOHNS: Certainly. Certainly. There
6 is always a balancing. Like with O*Net. There is
7 lots of good things; for our purposes, there is good
8 things and bad things with O*Net. For example, O*Net
9 added a lot more factors.

10 You know, like with strength, there is
11 explosive strength. There is all these others.
12 There is always a balancing. You are always
13 deciding, okay, do I need -- do I need four types of
14 strength to evaluate the claimant? Or would one type
15 of strength with tie -- be enough in if I tied it
16 with something else?

17 You are absolutely right. You certainly
18 can go so far that the evaluation form would be so
19 detailed, so complex that nobody would ever be able
20 to get enough information from the claimant to
21 complete it, or from the medical records to complete
22 it. So indeed it's a balancing act.

1 As the Commissioner eluded to this morning,
2 is 1200 occupations too many? O*Net has 900 some;
3 920. DOT has 12,000 some. Maybe 12,000 is too many.
4 900 probably is way too few for our purposes; but
5 where is the proper balance? Gee, if you could have
6 that answer maybe by next week.

7 DR. WILSON: I have got it, but I'm going
8 to hold on to that a little longer.

9 MR. JOHNS: Okay.

10 MS. LECHNER: Has anyone tried to -- or in
11 the past done a cross walk between the aptitude --
12 the one to five aptitude rating scale for the
13 different aptitudes with the mental pieces?

14 MR. JOHNS: That is a good question.

15 Normally, by definition, our program has to
16 be impairment based. So the DOT did collect -- the
17 Department of Labor collected information on
18 temperaments and aptitudes; and that material is
19 available like through OccuBrowse, or OASYS, or any
20 of the -- virtually any of the online data systems
21 that use the DOT.

22 We don't use temperaments, and we don't use

1 aptitudes, because by definition it has to be
2 impairment related. So it has been determined,
3 judged -- decided, determined, dots throw -- I am
4 being frivolous -- but decided that we --
5 temperaments and aptitudes are inherent. So we
6 wouldn't use -- we can't use those in determining
7 their mental ability or their mental functioning,
8 because we're just looking at what the impairment
9 does to their ability to work. So up this point, no,
10 we have not. Now, that doesn't mean that -- that
11 doesn't mean that that could not be proposed, that
12 aptitudes and temperaments are a good measure
13 mentally of what someone is capable of.

14 But for example, something the DOT does --
15 the general educational development ratings,
16 language, math. We don't use those because they're
17 somewhat problematic, because they're on a one to
18 nine scale. There is no zero scale.

19 So for example, the lowest GED rating is a
20 one. And for language that defines -- I believe,
21 it's 250 words a minute that someone has to be able
22 to read. So technically you can argue -- and it has

1 been argued -- that there are no occupations in the
2 DOT for someone who is illiterate or unable to read,
3 because the lowest rating is a one. That's 250 words
4 a minute. That's, obviously, above literacy. We
5 have argued that well, we know what that rating is,
6 but we don't use that rating and we don't accept that
7 unskilled work requires literacy.

8 And the courts have generally agreed with
9 us that they agree that that rating is ours. So
10 there is another factor if you would -- there are
11 factors in the DOT that we don't use, or that we -- I
12 won't say ignore. We're well aware of them, but they
13 don't fit our regulations the way we assess. So we
14 don't use them.

15 So gee, wouldn't it be great to have tools
16 that only had things that we could use or that were
17 geared towards a zero scale for the GED would
18 probably -- you know, would work under certain
19 circumstances? But right now that doesn't exist, so
20 we can't use those things.

21 MS. LECHNER: So if someone is rated as
22 markedly limited in understanding and memory, then

1 how do you cross walk that limitation to the job
2 demand?

3 MR. JOHNS: Okay. So the marked ability to
4 remember. Okay. So in the narrative the
5 psychologist might say that this person -- the
6 underlying MDI may, say, be a stroke, a cerebral
7 vascular incident. So they have some difficulty with
8 their memory as a result.

9 So the psychologist in the narrative might
10 say, this person would only be able to -- remember,
11 one of the basic demands is understand, remember, and
12 carry out. He might say this person can carry out
13 complex instructions, but would not retain the
14 ability to remember complex instructions; therefore,
15 as a result, could only perform simple one and two
16 step instructions because of his inability to
17 remember anything above that level.

18 MS. LECHNER: All right. Then, how do I
19 know what jobs cross walk?

20 MR. JOHNS: Okay. Sorry. Then when we
21 get -- we have used in SSA through regulation, you
22 know, SVP, that's simple vocational preparation. It

1 is simply a measurement -- Department of Labor -- was
2 a measurement of how long it takes to learn a job.
3 For example, an SVP-7 is rated two to four. That
4 means it takes about two to four years to learn the
5 job.

6 You are also credited with -- for every two
7 years of undergraduate work you did, you get one year
8 of SVP. It gets complex. But bottom line, what we
9 did is we took SVP and cross walked that to skill
10 level. So we say an SVP one -- of one and two is
11 unskilled work. An SVP of three and four are
12 semi-skilled; and an SVP of five to nine is skilled
13 work.

14 That's probably one of the reasons that the
15 Department of Labor isn't real happy with us at all
16 times, because SVP was never intended -- wasn't
17 necessarily intended to define skill level. We just
18 took it and within the parameters of our program have
19 used SVP to define skill.

20 So your question there, depending on how
21 they wrote it, if they were talking about one and two
22 step instructions, simple instructions, routine, that

1 would normally be interpreted to mean someone who
2 could only do unskilled work. Maybe some
3 semi-skilled. So we would be looking at occupations
4 with an SVP rating of 1, 2, or 3 within our program.

5 If you told me this person would have the
6 ability to concentrate -- understand, remember, and
7 carry out very detailed instructions, very complex
8 instructions, could make independent judgments, that
9 type of thing; then, within our program I would agree
10 that that's someone who could do skilled work. Could
11 do work somewhere in the range of five to nine level
12 work. And depending on exactly everything that was
13 said in the narrative, I would then be tying it down
14 to the types of tasks that I know are required of
15 someone who can do a 6, or a 7 or an 8 SVP, and
16 again, in the DOT. I will get you both.

17 MR. WOODS: Tom, you said something that
18 while it may be very obvious, I think it really bears
19 repetition. And that's the issue of really trying to
20 look at what is kind of an appropriate level of unit
21 of analysis that we are going to look at? You know,
22 it's definitely or very likely to be somewhere

1 between 900 and 12,000, but that may be, I think, as
2 significant -- almost as significant as ultimately
3 the actual factors that we come up with from a few
4 respects.

5 One is having a workable framework to do
6 any sort of use of the information down the road.
7 But the second is to have a manageable collection
8 vehicle. That's an area where possibly some early
9 work could be undertaken by reviewing some of the
10 work that has gone on in the past through the
11 Standard Occupational Classification through O*Net.

12 There is a fair amount of research there
13 that may, at least, inform. Not necessarily say,
14 well, this is the -- you know, these are the 700 DOTs
15 that have really disappeared, and you can get rid of,
16 or the 2,000. But may inform the process enough that
17 there can be a huge time savings by looking at and
18 analyzing some of that work.

19 Secondly, I was hardened to hear this
20 morning one of the points that you made in this
21 presentation. Unfortunately, I guess we won't see
22 the results. It would be nice if there were any data

1 already existent that looked at the occupational
2 distribution of claimants. And I was wondering do we
3 have any idea when that study -- it is probably going
4 to be well beyond anything we are doing -- or whether
5 there is any chance that there is even some informal
6 work that's been done that looks at past history of
7 claimants by occupation.

8 Again, only as a piece of information that
9 may in this case help look at what typically, based
10 on coding people to the DOT, were the kinds of people
11 we're looking at, and then taking that information
12 and seeing how many of those really lend themselves
13 to greater aggregation, or how many of those need to
14 stay at the level that they're at.

15 MR. JOHNS: I don't know of any formal
16 studies. It used to be one of the items that you
17 completed on the clearance of the case -- we have a
18 form called the 831, which is a clearance form; which
19 summarizes the claimant's impairments, and all that.

20 One of the things on there many years ago
21 was an identification of their primary occupation.
22 But it became very difficult for adjudicators to code

1 it. It wasn't ever used for anything specifically.
2 So that type of coding was stopped prior to going
3 with the electronic folder.

4 So I don't -- Sylvia would probably be more
5 aware if there is something that exist along those
6 lines.

7 MS. KARMAN: Yes, actually, I think Richard
8 Balkus, our Associate Commissioner had mentioned that
9 this morning, that we are interested in doing a study
10 like that. We had done a smaller version of that
11 study a few years ago. The sample size is not large
12 enough for this type of work that we're undertaking.
13 We initiated that to give us a sense of, is there
14 something here to look at before we went into a large
15 study?

16 It certainly seems like that would be
17 something we would want to do. And we're looking to
18 get that study going very, very soon. So I don't
19 know when it will be completed; but we're looking at
20 getting something underway this fiscal year. It
21 would be in time, hopefully, to inform our Panel
22 about what -- what we're going to find with regard to

1 distribution of jobs among claimants.

2 MR. WOODS: I think we will find -- again,
3 not necessarily related to disability -- but based on
4 a fair amount of work that's been done over the last
5 few years, that we may have at least a good head
6 start for helping us out to look at maybe some more
7 aggregated categories that might make sense for
8 Social Security or for disability. Or at least
9 starting with that as to how they might be revised to
10 meeting that need. That may be an earlier type thing
11 where we could have some success.

12 MR. JOHNS: Certainly, the degree of
13 aggregation you want with the number of occupations
14 you are looking at, as well as the number of factors
15 that you are going to use to reach that aggregation
16 would certainly be two of the key things.

17 I would -- for example, there are 38
18 different sewing machine operators in the DOT. It is
19 like they had a strong lobby at that update. Well,
20 did we ever need it broken out down to the level of
21 38? I don't think so. But -- so there were those
22 factors as well.

1 Certainly, we don't need that level of
2 aggregation, which probably would have translated to
3 something like 100,000 different occupations in the
4 DOT if we had detailed -- if every occupation had
5 been as detailed as sewing machine operator, there
6 would probably be 100,000 occupations; and that would
7 be maddening. Again, enough said.

8 Yes, sir.

9 MS. TIDWELL-PETERS: Just one moment,
10 please.

11 David, did you have -- one last comment.
12 Okay. We'll take this last comment or question;
13 then, we will take a break. Tom.

14 DR. SCHRETLEN: So my question is about
15 step three, the medically determinable impairment
16 listings. Does Social Security have an underlying
17 assumption about what proportion of individuals who
18 meet a listing are unable to work? In other words,
19 it's sort of epidemiologic question.

20 MR. JOHNS: Right.

21 DR. SCHRETLEN: Not everyone who meets any
22 listing is completely unable to work, obviously. So

1 is it the idea that the average person who meets the
2 listing, or most people who meet the listing?

3 MR. JOHNS: That's an excellent question.
4 And, you know -- and again, we don't do this in a
5 vacuum. As the Commissioner said, we update the
6 listings approximately every five years. At that
7 point we are not only reviewing the literature that
8 has gone on between those five years of development
9 and practice, we are consulting with experts in the
10 field in those specialties to determine, you know --
11 you know, we may have a listing that's five years old
12 that people that were -- you know, at that point they
13 were terminable, are now having a very good success
14 rating, very long lives. So that's a good question.

15 It's -- I don't know that there is a
16 specific standard of most or average, but it's
17 considered to be usually talked about in terms of
18 what would disable most people with that type of
19 impairment. Certainly, we know that there are
20 people, even quadriplegics, who manage to work and
21 earn quite a good living.

22 I mean, Steven Hawking -- no, he is not a

1 quadriplegic -- but he is still with his disease
2 process, is very limited. But he has managed to make
3 major contributions to the area of physics. So he
4 would be an exception.

5 But if Steven Hawking were to apply for
6 disability tomorrow -- quit his job at the university
7 and apply for disability, we would find him disabled
8 very, very quickly. He would be under one of the --
9 the ones that the Commissioner was talking about that
10 we skim off very quickly under the disease process.
11 He would be allowed in a very short-term. We
12 wouldn't even consider the fact that he has worked
13 for very many years very successfully.

14 So there is a standard that we're looking
15 at. What experts in the field would generally agree
16 would disable most people that had met those
17 criteria. That had -- for example, end stage renal
18 disease requiring dialysis. We're going to -- you
19 know, that's a listing that's going to allow -- if
20 you had end stage renal disease, due to whatever
21 cause, but if you have a stint in place and you are
22 on dialysis, we're going to find you disabled. Most

1 people that have that significant a disease are not
2 going to be able to work. Sure, there are
3 exceptions, but it's an average for what's going to
4 disable most people.

5 But I don't believe there is, you know, a
6 number of threshold or a, you know, a percentage
7 threshold that people -- I don't think they look at
8 it and say this will be a listing because 85 percent
9 of the people who have it, you know, would be
10 disabled. I don't think they look at it in terms of
11 numbers or percentages.

12 MS. TIDWELL-PETERS: If you could, please,
13 just take some notes and write down your questions,
14 that will be great. It is now 2:30. We're going to
15 take a break for 15 minutes. We will be back at 2:45
16 to continue with your grid process.

17 (Whereupon, a recess was taken.)

18 MS. TIDWELL-PETERS: Ladies and gentlemen,
19 if you could please take your seats.

20 David had asked a question earlier about
21 sort of what the process would be as the Panel works
22 through its deliberation and discussion. And as

1 we're having our presentation, we are -- staff is
2 taking down action items or possible action items for
3 us to take back whenever you need any additional
4 sorts of information or types of information. So we
5 will continue to encourage you to put those on the
6 table so that we can keep track of them, and keep
7 track of your requests.

8 MR. JOHNS: I will go ahead and real
9 quickly -- Debra said that I might just real quick
10 kind of walk through -- it just happens to be the
11 physical RFC that I have here. But it kind of goes
12 back to Shanan's question about how do I know -- once
13 I have got these blocks, what do I do with them? How
14 do I know what level of work -- what that leads to?

15 I wish I could say it was kind of a magic
16 thing that, you know, you check a block; you feed it
17 into the great Unimax computer, and it pops out here
18 are the jobs they could do. The process is the state
19 agencies, the DDSs, the Disability Determination
20 Services -- Jeffrey Blair mentioned this morning,
21 Congress back in the 50's decided it would be the
22 state agencies that would make the determination of

1 disability.

2 Well, those DDSs, they write off for
3 medical records. And what they get is they just
4 get -- you know, they don't get anything extra. I
5 mean, they may purchase an examination, they may
6 purchase x-rays; but the first part is they just
7 write off to the claimant's physician, mental and
8 physical physicians, for their records. And they get
9 their treatment notes, the summary notes, just
10 anything that's in the record.

11 If that information is detailed enough that
12 they can complete the physical and mental assessment,
13 in addition to that, they also gather activities,
14 what we call ADLs, activities of daily living, where
15 we're asking the claimant about their physical and
16 daily activity. What is it that they can physically
17 and mentally do everyday? They take the reports from
18 the claimant, they take the medical records. If it's
19 in sufficient detail, they then take those records
20 and answer the questions of the physical and on the
21 mental form.

22 It's not like completing a functional

1 capacity evaluation. In here I have got, I know that
2 they can lift 25 pounds, because the FCE says they
3 can lift 25 pounds. It may not be that way in the
4 record. What they may -- they're going, okay, this
5 person had a lumbar laminectomy at L4, L5. They
6 still report radiculopathy down their left leg. They
7 still report some muscle spasm.

8 Then under activities of daily living, they
9 say that they can maybe walk a block, two blocks;
10 then they have to stop and rest because of the pain.
11 Or at the end of day they have to soak in a tub. Or
12 they are using a TENS unit.

13 The doctor will take all that information
14 and say, rate the claimant on abilities to lift. It
15 won't be on the basis of actually putting them out in
16 a room and having them lift weights until they say,
17 well, I can't lift anymore. They're going to make
18 the assessment that 25 pounds is the most that they
19 can lift, based on their report of pain, their
20 functional report, and what the medical records show.
21 That's how they're going to complete this form.

22 Then, this form goes to -- at the ALJ level

1 a VE is going to see this. A VE is going to -- or
2 may not see this. The judge is going to tell the VE
3 these questions. Presume a man who is 50 years old,
4 who has a bad back with a lumbar disc, who can only
5 lift this much. That's what the ALJ is doing in his
6 hypotheticals to the VE.

7 In the DDS, in a former life, I was a
8 vocational specialist in the DDS. So what I would
9 have done is looked at this RFC. I would have looked
10 at the claimant's past relevant work, how they
11 described it. Or I would have looked at the mental
12 RFC, the narrative; how the psychologist that worked
13 on our staff assessed the narrative, how he wrote the
14 narrative. Then I would have taken that narrative
15 description and compared it to the claimant's
16 description of what he did; and I would have made a
17 vocational judgment as to whether these -- this
18 narrative on the MRFC would allow this claimant who
19 is a truck driver to do the activities that he said
20 he did day in and day out.

21 If I felt or made the judgment he could do
22 them, he would have been denied. If I decided he

1 couldn't, I, then, would have looked at the national
2 economy, the DOT's description. Taking that same
3 narrative, I am now comparing it to the DOT's
4 description of what was required in making the
5 judgment.

6 Do I think someone with those limitations
7 in the narrative or with these limitations here --
8 and, again, the physical doctor is also suppose to
9 complete the narrative as well. We use the blocks a
10 lot more in the physical RFC. The narrative is not
11 as important, but it is still important. In the
12 mental, the narrative rules completely.

13 But so, we take the medical records. We
14 use those medical records and the claimant's ADLs to
15 complete these assessment forms. X-rays, MRIs, IQ
16 testing, Bender test, Rorschach, whatever mental test
17 we have. We may buy some testing on our own. We may
18 buy a couple of tests aimed at memory or whatever to
19 determine if there is an impairment memory where we
20 don't have good information about their memory
21 ability. Then we fill out these forms.

22 Then a vocational specialist or an

1 examiner, who is experienced, will then take these
2 forms and compare them to the work information that
3 we have and bridge the two. Fit the two together to
4 make that judgment as to whether the claimant can
5 work or not.

6 Now, that is just a really quick dirty,
7 nasty description. And I believe there may have been
8 some discussion among the group talking in more
9 detail about RFC, MRFC at a future meeting; but at
10 least that gives you a quick idea of what we do with
11 the medical and these forms.

12 Now, somebody mentioned at the break, gee,
13 wouldn't it be great if we can collect information
14 from the physicians in this format. Well, there is a
15 workgroup at SSA proposing that very thing, sending
16 out a form at the DDS level, at the state level to
17 the physicians who have treated the claimant, and
18 ask -- the individual, and ask the physician specific
19 questions.

20 The problem with that, of course, is that
21 if you are a physician treating people full time, do
22 you have the time to sit down and complete a

1 questionnaire. If I am an orthopedist, do I really
2 know -- do I know all these questions? Because I'm
3 not asking these questions of the claimant. My focus
4 is treating the claimant -- diagnosing and treating
5 the claimant. It may not be on deciding whether or
6 not how much they can walk or stand. Maybe that's an
7 action item to decide what kind of questions do we
8 want to ask of the doctors.

9 All right. Back to our presentation.

10 MS. TIDWELL-PETERS: Yes.

11 Deborah, do you want to ask your question?

12 MS. LECHNER: Yes. I just wanted to kind
13 of go back to what Mark had said earlier about, do we
14 know the wish list from the DDSs?

15 I guess sort of a secondary follow-up
16 question would be, have there been formal studies as
17 to the DDSs as to the additional specificity they
18 would like to see in any kind of classification
19 system? Do we have informal data that's been
20 collected from the DDSs?

21 MS. KARMAN: I guess -- I don't know to
22 what extent it would be considered formal. We

1 have -- a few years ago we went out and did a survey
2 of all our regional offices in all our ten regions
3 and spoke with users, doctors, and also some of the
4 adjudicators, and program specialists and solicited
5 that kind of information.

6 Then, we just recently -- our internal
7 workgroup had gone out again to do an informal survey
8 of some users to get that process started, so that
9 that might inform future focus groups or user surveys
10 where we might go out and talk with users. Give them
11 something that we have developed as a prototype, so
12 they have something to actually test drive or look
13 at. But that's certainly something, I think, we can
14 take up in the Panel and discuss; and then, you know,
15 also if we need to ask Social Security to go back and
16 propose something for us to then consider.

17 MR. JOHNS: One of the work groups that's
18 working in Social Security has proposed, for example,
19 that we reduce the relevant period that we look at
20 from 15 years down to 10. Right now in the DQBs -- I
21 think it started today actually. Another reason for
22 me to be glad to be here and not back home in Dallas,

1 is the DQBs -- the DQBs, we review the work of the
2 DDSs. Once they make determinations, before they
3 become final, we review a certain percentage for
4 policy compliance, that kind of thing.

5 Anyway, it is also a bully place to do
6 research. We're asking questions on cases that go to
7 step four and five about the impact of a 15 year
8 period versus a 10 year period. That's a study, for
9 example, that's being conducted right now. Not
10 necessarily, you know, directly related to what you
11 all are doing; but just illustrative of -- you know,
12 if you came up with an action item for a study, it is
13 possible this is something that could be done to have
14 people look at cases as they're reviewing them or
15 adjudicating them to answer a specific question.

16 Like someone asked, what kind of
17 occupations are we seeing most often? That type of
18 thing can be done if you developed an action item for
19 that type of thing. Something possible that could at
20 least be considered.

21 All right. Jeffrey Blair this morning
22 mentioned burden of proof. That is a big catch

1 phrase within Social Security. Bottom line, through
2 step four, sequential evaluation, it is the
3 claimant's burden to prove his or her disability. So
4 the individual is responsible for providing Social
5 Security with all the information that we need to
6 make our decision.

7 So if we need information at step one, if
8 we -- if we get a doctor's note that says claimant
9 was late to his exam today because his boss wouldn't
10 let him off work; and so I call the claimant and say,
11 are you working? And what are you earning? Well,
12 that's a step one question. It is the claimant's
13 burden to provide us that information. To tell us
14 factually whether they're working or not and how much
15 they're earning, so that I can make that
16 determination. I may decide right then based on that
17 information that they're exceeding SGA, in which case
18 the DDS in the state agency will deny the claim at
19 step one.

20 Step two, they are responsible to give
21 enough information about their symptoms, about their
22 daily functioning, about where they're getting

1 treatment so that we can decide whether or not they
2 are severe or not.

3 They are required to provide enough
4 information at step three, first, to determine if
5 they meet or equal a listing. If they don't have
6 that information, we will purchase a CE. It is
7 their -- consultative examination, sorry. It is
8 their responsibility to show up for that exam and
9 participate in that exam. And for example, if we buy
10 a pulmonary function study, it is their
11 responsibility to breath as hard as they can into
12 that machine so we can get a fair determination of
13 what their breathing capacity is.

14 At step four, it is their responsibility to
15 provide us with all the information that we need
16 about their past work, so that we can determine
17 whether it's relevant or not, and to determine
18 whether they're able to perform it or not. So for
19 example, at step four if a claimant refuses to give
20 us his work history, he just refuses to complete our
21 forms and answer our questions, we will deny that
22 individual at step four for insufficient information,

1 because they didn't provide us the information we
2 needed.

3 Just as at step three if they refused to
4 tell us what doctor they were seeing, or failed to go
5 to an examination that we needed, we would deny them
6 for failure to cooperate or insufficient information
7 at that step, because they have the burden to provide
8 us with that evidence.

9 Well, at step five, the burden -- they have
10 through step four to prove that they are so disabled
11 that they can't perform their past relevant work. At
12 step -- if they show this through step four, if we
13 got all the evidence that we need and we can show
14 that they cannot do their past work as they performed
15 it, or as it's in the national economy, they are
16 relieved of their burden at that point; then, we go
17 on to step five.

18 At step five the burden of proof shifts to
19 SSA, and we have to prove that there are occupations
20 out there in sufficient numbers in the national
21 economy that they can perform, considering their
22 impairment; and now we look -- and now we do look at

1 Granny's age, and education, and work experience.
2 And we look at those factors as well and decide, are
3 there other jobs that claimant can do? And it's our
4 burden to prove that they are out there and they
5 exist in significant numbers.

6 Now, for your purposes it may not really be
7 that big a deal, but it is a major -- you know, a
8 major point to understand. Up through step four it
9 is the claimant's burden. At step five we have the
10 information we need or should have, and now we have
11 to use that information to prove the claimant can
12 work. If we can't prove it, then, the claimant is
13 disabled. Or we prove that they cannot do work. We
14 may find -- now, as an old vocational specialists, I
15 can find an occupation in DOT for virtually anybody.
16 You give me their impairment and I can find an
17 occupation.

18 But one occupation won't do it. I have to
19 find enough occupational base -- there has to be
20 enough occupations out there that they can do. Now
21 that's a bit of a different focus between the DDSs
22 and ALJ sometimes. It always comes down to

1 occupational base and how many occupations or how
2 many jobs are out there for the claimant? One won't
3 do it. One won't do it. I have to have enough.

4 If I can show that there are enough, then
5 it's a denial. If I can't show that there is enough,
6 then the claimant is allowed.

7 Step five is our final step, so we have to
8 make the decision. We can't punt. We have to decide
9 disabled or not disabled at that step. Now -- so
10 what we're doing there is we're looking -- we're
11 taking the claimant's RFC -- the individual's RFC,
12 we're looking at their age; we're looking at their
13 education; and we're looking at their work
14 experience. When we say "work experience" first off
15 what we're looking at is the skill level. We're
16 determining the highest skill level of their past
17 relevant work. And we're deciding if they can make
18 an adjustment to other work. They can; they are not
19 disabled. They can't; they are disabled.

20 Now, before we go to the grids, we look at
21 the special medical vocational profiles. And these
22 are basically three sets of criteria that in the

1 shortest way possible there are exceptions to the
2 grids. If a claimant met the criteria of one of
3 these profiles, and I didn't look at the profiles and
4 went to the grids, I might very well deny the
5 claimant. I might say, you are a denial if I didn't
6 apply these three exceptions. So we apply these
7 three exceptions prior to the grids in our process,
8 and they're combinations of severity, age, education,
9 and work experience.

10 And if you don't meet a profile we go to
11 the grids or the medical vocational guidelines. If
12 you -- the medical vocational guidelines is how
13 they're referred to in the regulations. They're
14 called popularly, the Grids. It comes out in the
15 chart of cross reference grid format. But if you do
16 meet a profile, we stop.

17 Here are the three profiles. I am not
18 going to spend a lot of time here. I wanted to, at
19 least, show them to you. One is 35 years of heavy or
20 very heavy work. A severe impairment that won't let
21 you do this work, and a sixth grade or less
22 education.

1 Where do we come up with sixth grade?
2 Again, that's out of the DOT. This is a marginal
3 education in the DOT. What the DOT rates as marginal
4 as six grade or less.

5 No work profile. You have a severe
6 impairment. No past relevant work. You may have
7 worked everyday in the last 15 years, but you just
8 didn't work enough to get SGA, then, it doesn't
9 count. Age 55 or older, a limited education is an
10 11th grade education. Limited or less is an 11th
11 grade or less education.

12 This is -- this was actually -- they don't
13 call it this, but this is kind of referred to as the
14 housewife rule. What they had was women who were
15 approaching advanced age who had never worked outside
16 the home, but who were not -- but who were disabled
17 now, or who had an impairment. And the concept is
18 even though it may not be a very bad impairment, it
19 is just severe, just enough to get over the threshold
20 of step two.

21 The idea is because they're 55 and they
22 only went to the 11th grade, well, they can't be

1 expected to work now. That would be just too hard
2 for them. That's the concept behind this profile.
3 Fifty-five, no work outside the home, no work for
4 pay, 11th grade or less, and a severe impairment.
5 Remember, the severity test is very, very low, and
6 you would meet -- you would allow. Whereas, if I
7 went to the grid with this profile, you would likely
8 be a denial.

9 The newest profile is 30 years in a
10 particular field. It doesn't have to be a specific
11 job. Let's say I was a watch maker, and I worked as
12 a watch maker for four different companies, well over
13 30 years. It is the watch making that's important,
14 not the job. A severe impairment prevents me. I
15 have got bad vision now. I can't do the fine work
16 required of building a watch.

17 I am 60, 11th grade or less, and I can't
18 use those skills -- it was highly skilled work
19 building a watch; but I can't use those skills
20 because every job I can use them with involved very
21 good vision. So I can't use those skills, then, I
22 would meet this profile. The lifetime commitment to

1 a field of work profile.

2 Again, I meet a profile, I am an allowance
3 at step five. I don't meet a profile, you go on to
4 the grids.

5 Now, several things to keep in mind about
6 the grids, they're based only on exertional
7 limitations. Once more, the exertional limitations
8 are right out of the DOT. They are the seven
9 strength factors of lifting, carrying, standing,
10 walking, sitting, pushing, and pulling. Why, you
11 ask, is sitting an exertional factor? Well, you
12 would have to ask the Department of Labor about that.
13 Sitting is considered an exertional or strength
14 factor in the DOT. It is one of the seven.

15 What we do is we take the RFC -- those
16 seven strength factors add up to determine what
17 exertional level the claimant can do. We cross
18 reference that level. Where do we get it? We get it
19 from the RFC. We look at everything on page two, the
20 lifting, carrying, standing, walking, all that; and
21 decide what the exertional level is. And we cross
22 reference that with the claimant's age, their

1 education, and their work experience; and that
2 provides an outcome.

3 It tells us magically disabled, not
4 disabled. And that's based -- if it says "not
5 disabled" what the grids are saying is that there are
6 so many occupations available to a claimant who meets
7 that age, education, and work experience that they
8 can make an adjustment to them.

9 If it says disabled, it is saying the
10 occupations represented by this rule are not enough;
11 and the older you are, the more occupations you have
12 to have to have available to make an adjustment. So
13 for -- real quickly, a 40 year old, 200 occupations
14 may be a sufficient number. For a 55 year old, it's
15 going to take 1600 or, you know, somewhere in those
16 range.

17 Now, the grid or the Voc rules give us
18 administrative notice of the number of unskilled
19 sedentary, light, and medium occupations available in
20 the national economy. These are considered to be
21 significant numbers.

22 Now -- so each numbered rule it gives us

1 the answer. We will talk about that in more detail
2 here; but it gives us the answer. It resolves the
3 question of disabled, not disabled. Make adjustment
4 to other work; can't make adjustments to other work.
5 They are based on -- remember, only exertional. Only
6 the exertional factor, only unskilled work.

7 So where do we get those 200 sedentary;
8 1400 light? The DOT. Because there is 200 sedentary
9 unskilled occupations in the DOT; 1400 light; 900
10 medium. Now, actually if you count the sedentary
11 unskilled occupations in the current DOT, '91
12 edition, you will come up with 137. What we argue is
13 that the same occupations are still there from the
14 prior edition, the '77 edition; but that they
15 compressed a few.

16 Now, the '77 edition was the last major
17 revision. The '91 -- that was the fourth edition.
18 The current edition of the DOT, published in '91, is
19 the fourth edition revised. It is the same basic
20 information from 1977 just they revised a few
21 occupations and a few other pieces of information.

22 Now, here is a picture of a page out -- I

1 understand you may actually have the grid -- they may
2 have the grid in their materials. This is a very
3 short section of the grids. You can tell it is from
4 the -- there is three tables, tables 1, 2, and 3; the
5 sedentary, light, and medium table. You can tell
6 this is the sedentary table, because it is the 201
7 rules. 01 is sedentary; 202 is light; 203 is medium.

8 There has been a lot of argument over the
9 years, what does that "Do" mean? "Do" is even a
10 shorthand for ditto. It just meant ditto. When you
11 get to the top one says, advanced age. All the next
12 three categories are also advanced age. Instead of
13 writing out ditto, they wrote D-O. Some people
14 argued for years, what does that "do" mean? Do what?
15 It is just ditto.

16 MR. WOODS: Tom, I just want to let you
17 know it did send me scurrying to Google. I always
18 thought it might be ditto, the quotation mark on
19 there. Yeah, you will find it if you do a search of
20 Google that DO does stand for "ditto." It threw me
21 for a loop. Do what?

22 MR. JOHNS: You know. The first time

1 people look at it, they can't figure out what we're
2 talking about when we say "do." I'm not sure why we
3 just didn't say do, do -- ditto.

4 As you see here across the top, first, we
5 are taking the claimant's age. The category there
6 is, again, from DOT. It breaks down younger worker
7 is up to age 49. It -- closely approaching advanced
8 age is 50 to 54. Advanced age is 55 and older.
9 Closely approach -- and then you get -- you get the
10 age categories again right out of the DOT, how they
11 define age.

12 So advanced age, then, with the education.
13 Remember we're talking in groups here right out of
14 the DOT. Marginal or less is six or less. Our
15 bottom education level is illiterate or unable to
16 communicate in English or both.

17 We had a big flurry of court cases over
18 that, whether somebody who is illiterate and unable
19 to communicate in English, is that worse than someone
20 who is just illiterate and unable to communicate in
21 English? In the end, it doesn't matter. One, or the
22 other, or both; it is all the same. Illiterate in

1 English. Unable to communicate in English or both.

2 In the next category it is marginal, one
3 through sixth grade. Then, limited, which is 11th
4 grade. Limited or less -- and if it says "or less,"
5 like this top one does, that takes you from limited
6 all the way through illiterate or unable to
7 communicate in English.

8 Then, previous work experience. Again,
9 this is us. Unskilled, semi-skill, or skilled;
10 determined in part by SVP; then, you see magically we
11 get an opinion, disabled or not disabled.

12 Now, I'm going to go through the different
13 categories real quickly here for you. The RFC
14 exertional levels that are found in the rules, like
15 on this prior page; this is the sedentary chart. I
16 prefer to call them -- we won't go into that matter;
17 but I prefer to use them by their numbers, 1, 2 and
18 3. This is commonly called the sedentary chart.

19 Oops, I am going to backwards.

20 Okay. Here are the exertional levels.
21 Sedentary, which is lifting and carrying less than
22 10 pounds occasionally, which is a third of the day

1 or less. Negligible amount frequently; standing and
2 walking at least two hours.

3 Now, this two hours is our definition. In
4 the DOT sedentary work is defined, standing and
5 walking, as brief periods. It then goes on to say,
6 all sedentary work involves constant sitting. So if
7 you are constantly sitting, that means you can't be
8 standing and walking very much at all.

9 In the SSRs and in the Regs we have defined
10 sedentary standing and walking as two hours or less.
11 Light is lifting and carrying up to 20 pounds
12 occasionally -- I'm not going to read through this.
13 You can see it. Light, 20 pounds. Medium is up to
14 50 pounds. Heavy and very heavy.

15 We don't have a separate chart for heavy
16 and very heavy; but we do have a rule called 204 --
17 204.00, which essentially says, if you are capable of
18 doing very heavy work, then you are capable; you are
19 not disabled. That's a wild paraphrase, but
20 essentially that's the bottom line. If you can do
21 heavy or very heavy work, you are not disabled.

22 Okay. So what do we mean by age? Age

1 means chronological age. That should be a "duh."
2 But actually, we have got into some court cases about
3 this, because some very bright attorneys argue, my
4 claimant is only 40; but they have done very, very
5 hard work all their lives. And they were a drug
6 addict for a while, so that they had the
7 physiological age of a 50 year old. And -- but of
8 course, on the other hand you can argue the opposite,
9 my claimant took care of themselves and even though
10 they are technically 40, they have the body of a 30
11 year old.

12 We decided we sure as heck didn't want to
13 get into that, and went into the Regs after that
14 court case and changed it to say quite clearly, age
15 means birth age. What if you are premature -- don't
16 even go there. Chronological age.

17 By definition we say age is an increasing
18 limiting factor in your ability to adjust to other
19 work. So the older you are, the less likely you are
20 going to be to make -- to be able to make an
21 adjustment.

22 Here are the age categories. Younger 18 to

1 49. Closely approaching advance age, 50 to 54.

2 Advanced age, 55 and older.

3 Now, on the sedentary table or table one,
4 they break it out into a subcategory 18 to 44; 45 to
5 49. And on the medium chart, they break it out to
6 another category called closely approaching
7 retirement age, which is 60 and older.

8 Now, education -- oops. Probably just as
9 well.

10 In general, we accept the claimant's
11 report, and we're generally going to use their
12 reported educational level. If they say I have a two
13 year technical college degree, we're going to accept
14 that. If they say that I can't read or write, we're
15 going to accept that; but if we have evidence that
16 occurs in the development of their case that
17 questions that, we will question it.

18 I had a claimant that had a high school
19 diploma. They got it when they were 22 years old.
20 They were in a rural town with no sort of special
21 development classes. They just kept on passing him
22 socially. He kept on going to school, because he

1 wanted his diploma. At age 22 they gave him his
2 diploma, so he would stop coming to school.

3 Turns out he was border line MR, couldn't
4 read or write. We ended up allowing him, but he had
5 a high school diploma. But when I got to step five,
6 I didn't call him high school or more; I called him
7 illiterate, because the medical records clearly
8 indicated that he was illiterate. So we will look at
9 that.

10 But for example, if you were in Paris, you
11 went to Suva; you have three Ph.D's, and you move
12 over here and you can't speak English; you are
13 illiterate, because we -- it has to be in English.
14 Because you may speak very good French, but that
15 doesn't help you get a job here in our economy, which
16 is based primarily on English. Don't even ask about
17 Puerto Rico.

18 Okay. The education categories from the
19 DOT. Illiteracy in English or inability to
20 communicate. Marginal, limited, and high school or
21 above. Once you hit high school, it doesn't matter
22 on the grids how much more education you have after

1 that point. That is a factor that, perhaps, one day
2 we would like to revisit, because there is arguments
3 that your educational level does have some indicative
4 ability of your ability to adjust to other work.

5 If I was able to get through a Ph.D.
6 program, certainly that shows some adaptive skills
7 that may be -- you know, that I should be able to use
8 versus someone who didn't get to that level. Who
9 knows? Arguable, but not in our grids right now.

10 Okay. Now, work experience at step five.
11 Again, it is based on SVP. As I mentioned before
12 break, SVP one and two is unskilled. SVP three and
13 four is semi; and SVP five through nine.

14 Now, how do we use all that information?
15 If you are the -- if you meet everything for a rule;
16 you are the exact age -- I mean, you are the age it
17 covers. You are the education it covers; you are the
18 skill level, and you only have an exertional
19 impairment. Meaning, I will only have limitations in
20 standing, walking, lifting -- those seven things;
21 then, I meet a rule.

22 If I meet a rule, it's the same as meeting

1 a listing. I do what that rule says. So an ALJ --
2 if an ALJ determines that a claimant only has
3 exertional limitations, then, they should go to the
4 grids and do what the grids say, and a VE should
5 never be called.

6 It would be like saying, okay, the claimant
7 is on dialysis; they have end stage renal disease.
8 Well, I am going to go ahead and call the doctor in
9 and ask him if he thinks this guy is disabled or not.
10 You don't do that. The doctor says no, I think this
11 guy can work. You don't do that, because they meet a
12 listing. Our program says, you meet a listing, you
13 are disabled.

14 Same thing here. If you meet the criteria
15 for a rule, we do what the rule says. Disabled, not
16 disabled. The rule is binding; but it's very seldom
17 that we would have a claimant that only has
18 exertional limitations. For example, a mental -- any
19 sort of mental limitation is nonexertional, and are
20 not covered by the grids, by the rules.

21 So rule is met, it directs our decision or
22 determination. And if the rule is met -- and yes, I

1 will mention, we don't have to cite any occupation,
2 because the rule takes administrative notice of a
3 significant number of occupations out there in the
4 national economy. And where do we get those
5 significant numbers -- excuse me -- again, from the
6 DOT. Yes, sir.

7 DR. FRASER: Just a side bar. On the SVP
8 ratings.

9 MR. JOHNS: Yes, sir.

10 DR. FRASER: You know, I mean -- although,
11 obviously, a lot of these jobs still exist -- say, a
12 receptionist as an example. That might have a SVP
13 rating of two, okay. Whereas, it's hard to find a
14 receptionist today who doesn't do the word
15 processing, use various software programs, et cetera.

16 MR. JOHNS: Right.

17 DR. FRASER: Really, like for all of us,
18 our work is more complex. And it is really more of a
19 four. That's kind of a problem, even though, a core
20 group of jobs still exist, their complexity ratings
21 could be pretty --

22 MR. JOHNS: Yes, much higher.

1 That's where -- as far as talking about
2 composite occupations before the break. So for that
3 person -- if that receptionist, whatever skill level
4 she actually was performing at, if she could perform
5 that job, she did it, there is no problem. She is a
6 denial. But if she can't, that's where we would have
7 to be very careful in the assessment in identifying
8 her occupation in the DOT.

9 She may very well satisfy the criteria of a
10 receptionist; but then we might see there is also
11 four or five additional tasks that she does that are
12 not in the DOT, like word processing, or whatever.
13 We would have to very carefully evaluate those
14 additional duties. If we can judge they're
15 incidental -- like I talked about the secretary.

16 Say I had that secretary and she said once
17 a month she went down to the loading dock and took
18 that loading paper off for about 15 minutes. I'm
19 probably going to call her a secretary if everything
20 else about her job fits the DOT secretary. But if
21 she told me, instead, that every afternoon she was
22 down on the loading dock for two hours unloading

1 paper, I'm going to say well, she is not a secretary.
2 She is a secretary "slash" dock worker.

3 At that point, I can't find her occupation
4 in the national economy. It doesn't exist in the DOT
5 that way. So I can't hold that against her. I'm not
6 going to say she can do part of her occupation.

7 So with the receptionist who does really a
8 four, really, rather than a two, I'm going to say
9 those extra duties are so significant and advanced
10 beyond what's in the DOT, I can't use the DOT at step
11 4B to decide whether she is an allowance or not. I'm
12 going to go on to step five and see if there is other
13 work that she can do.

14 DR. FRASER: Kind of brings up kind of
15 another issue, is that the DOT has never specified
16 essential functions, which is really problematic,
17 because it spews out task after task. There is no
18 sequencing as to priority, et cetera.

19 MR. JOHNS: Right.

20 DR. FRASER: That could be a consideration
21 for us, because it's in -- you know, conduit with the
22 ADA and existing legislation.

1 MR. JOHNS: Very well that could be an
2 action item, Debra.

3 You are very right -- the only type of
4 rating at all in the DOT is when you get into the
5 "may" items. All that meant is when they were
6 interviewing, some of the people they interviewed did
7 those extra task, some didn't. But a significant
8 number of the people they interviewed did them, and
9 they added them as may have to do this, may have to
10 do that. That's what the "may" means in the DOT.
11 But that's the only rating.

12 So yes, maybe that's something you want to
13 look at as well. Maybe you want to prioritize and
14 say these are essential. These are not as essential,
15 but important. Maybe these are important. Maybe
16 that is something you would want to look at.

17 How was that, Debra. Was that okay?

18 MS. TIDWELL-PETERS: Perfect.

19 MR. JOHNS: Okay. So that's meeting a
20 rule. You satisfy all the criteria. But I just
21 said, you know, the guy that had the high school
22 diploma, but I lowered his education level because he

1 was really illiterate. He doesn't meet a rule. Why?
2 Because his educational level is high school, but
3 that's not really.

4 And I can raise someone's age a bit if
5 they're close. If they are 54 and a half, and 54
6 would deny and 55 would allow, I can call them 55
7 under certain circumstances. Once I call them 55
8 when they're really only 54, they don't meet a rule
9 anymore, because that rule is written -- the real
10 rule is for 54. I am using a rule for 55. So if you
11 don't meet, you use the rule as a framework.

12 Now, our position -- and before I went to
13 the Office of Quality Performance, I worked in the
14 same shop with Sylvia Karman as a senior vocational
15 policy analyst. So I will put that hat back on just
16 momentarily. So when I say what we say, I don't mean
17 what OQP and DQB SSA says. I guess I am speaking for
18 SSA, and I shouldn't do that.

19 What SSA says is that every person who gets
20 to step five who doesn't meet one of the medical
21 vocational profiles is within the grids. You either
22 meet a rule, or you are within the framework of a

1 rule. So once you get to step five, the rules apply
2 to either very, very strongly if you meet, or with
3 varying degrees of weakness as your individual
4 condition spreads out.

5 If I have -- if, for example, every
6 nonexertional limitation on the physical RFC is
7 checked, I'm getting farther and farther away from
8 those rules, because of the impact of those
9 nonexertionals. So I'm still within the rules, but
10 more tenuously tied to the rules, if you get what I'm
11 saying. You never escape the rules. That's a key
12 point for us. To some degree we're always applying
13 the rules to your condition.

14 Now, where any one of our findings of fact
15 don't coincide with the rule, you are within the
16 framework. Then we use the framework to guide our
17 decision, but it's no longer binding. If we meet a
18 rule, it is direct; it's binding. If we're under a
19 framework, we are making adjudicated judgment.

20 So if we deny a claim within the framework,
21 because it doesn't meet a rule, we have to cite three
22 occupations that we think the claimant can make an

1 adjustment to. We get those three occupations, of
2 course, from the DOT; but three is not enough. Three
3 is representative of a wide occupational base.

4 And what we mean by remaining occupational
5 base is the range of work to which an individual can
6 adjust given their RFC, their age, their education,
7 and work experience. At that point we are looking at
8 both exertional and nonexertional limitations. We
9 are taking all of that into account and deciding how
10 many occupations are there out there for that
11 individual. Not jobs. For every occupation in the
12 DOT, there are thousands of jobs. So when we're
13 talking occupation, we're talking up here.

14 Now, we narrow that base by looking at the
15 claimant's specific limitations and restrictions.
16 For example, nonexertional limitations all can reduce
17 it. Handling, fingering, stooping, crouching, all of
18 those can reduce a medium base. For example, we say
19 to do medium work, you have to be able to frequently
20 stoop and/or crouch.

21 So if on this form I say, you can only
22 occasionally stoop -- you can lift 50 pounds, which

1 is medium work, but you can only occasionally stoop;
2 then when I go to the grids, I look at the medium
3 table first. If that says disabled, fine. I will
4 allow the claimant. If it says not disabled, I can't
5 use that rule, because the claimant can only
6 occasionally stoop, which means I knocked out all the
7 medium jobs that requires frequent stooping. Once I
8 have done that, I am left with the light table.

9 So I use a light rule then to give me an
10 idea. The light rule says, all of a sudden the same
11 claimant with the same education and work experience
12 now says disabled. I am allowing that claimant
13 within the framework of the light rules, even though
14 his exertional level is medium; but because of the
15 nonexertional, I wrote it as base, down from medium,
16 down to light.

17 Now, when I say you can do medium work,
18 that means you can also do all the light work and all
19 the sedentary work as well. If I cut out that
20 medium, then you are limited to light and sedentary
21 work. It gets real tricky.

22 I can have someone who can do light

1 lifting, and standing, and walking, but maybe they
2 have a hand problem. They have only one arm. Well,
3 they can do light work, but they can't do any of the
4 sedentary. Now I'm at light, but I can't do the
5 sedentary, because sedentary requires two hands by
6 definition. So it can get as unbelievably messy as
7 you can imagine.

8 Essentially we're using the nonexertional
9 limitations and restrictions to knock out chunks of
10 the occupational base, limiting down to the amount of
11 work that the claimant can adjust to. Once we get
12 that base too small, we allow the claimant. It
13 doesn't have to be real small. We may still have
14 1,000 occupations that claimant can do, which may
15 represent 100,000 different jobs or 200,000 jobs; but
16 because of their age, it's too small for them to be
17 able to make an adjustment too. We are always
18 balancing age, education, and work experience with
19 their RFC in deciding.

20 So identical impairment for a 20 year old
21 and a 50 year old is certainly on the grid, likely
22 going to give you a different outcome.

1 So in this case the Granny and The Rock, if
2 we can get them pass step four, they have got the
3 identical RFC; but because Granny is so much older,
4 and so much poorer educated, she is much more likely
5 to be allowed than The Rock, even though they have
6 the same impairment.

7 Okay. We can also expand the occupational
8 base. If you have skills -- remember, the grids are
9 about unskilled work. Unskilled work only. If your
10 work is skilled or semi-skilled, that gives you extra
11 jobs, extra occupations that you might be able to do.
12 And certain circumstances two people the exact same
13 age, the exact same education, the exact same RFC,
14 one person only did unskilled work. They're an
15 allowance. The other person did skilled work and
16 they can use those skills to do some other
17 occupation, they will be a denial.

18 For transferability of your skills we only
19 need three occupations, and only three; just three.
20 And for some instances, if you have recent education,
21 we will find you a denial. Say you went to -- could
22 be something like, I went to Joe's Truck Driving

1 School, a six week course. At the end of which I got
2 my commercial driver's license to drive an
3 over-the-road truck. On that day celebrating, I went
4 to a bar, got hit by a car. I am now disabled. I
5 can't work.

6 But then I get -- after getting out of my
7 body cast, I have gotten better. We can deny you
8 saying, you have the ability to use that truck
9 driving certificate that you got, even though you
10 never drove a truck, to do certain work. But that's
11 called direct entry into skilled or semi-skilled
12 work. It is about as rare as hen's teeth. In 22
13 years of working in disability, I have never seen a
14 case where we were able -- where we denied someone
15 for recent education.

16 Transferability of skills, heck yes.
17 Recent education -- if they got the recent education
18 they tend to use it, and they go to work and use it.

19 Okay. Transferability of skills, real
20 quick. You can only derive these skills from past
21 relevant work. Remember, the CPA I said worked for
22 Red Cross for 40 years. He has no skills. Why?

1 Because he never earned SGA.

2 I can be -- I can be -- oh, gosh, the
3 names -- Norm Abrams. Anybody know Norm Abrams? He
4 is the guy that used to work on this old house. He
5 did all the carpentry work. He has got this show
6 where he says, anybody can build this. He has got
7 this like antique wardrobe that he has built from
8 scratch with his planar and stuff. You know, I got a
9 circular saw and a hammer, I'm never going to build
10 that wardrobe. He has got these amazing skills.

11 So say on the weekends he builds all this
12 beautiful furniture that wins international prizes,
13 but he gives it away. He never sells it. Can I use
14 those skills as a woodworker, as a cabinet maker to
15 deny him at step five? No. Because he never earned
16 SGA. And because he never earned SGA, those skills
17 he has got as a cabinet worker do not count. So you
18 only gain skills if you -- if it was relevant work.
19 And remember, it has to be SGA to be relevant.

20 Now, the past work has to be semi-skilled,
21 so SVP 3 and above. You never can transfer -- if you
22 did only unskilled work, SVP 1 or 2, we call it

1 unskilled. That means there are no skills. Now, our
2 friends at the Department of Labor -- we argue this
3 back and forth -- are there really -- are there
4 really -- is there really a job that exist that has
5 no skills? I don't know. That's maybe something you
6 want to look at.

7 But for our programmatic definitions now,
8 yes. Any work that is SVP1 or 2 is unskilled.
9 Therefore, by our definition it has no skills.
10 Therefore, you can't transfer skills from it, because
11 you don't have any skills. You can't transfer to it,
12 because -- the argument here is, say I am a rocket
13 scientist, and I have all the skills of a research
14 scientist. I'm going to get an unskilled job because
15 I have depression.

16 So I am up against a young guy in his 20's,
17 and we are both up for the dish washing job. He has
18 never worked. He has no skills. I have got all
19 these great skills. Who is still most likely to get
20 the job? Probably the 20 year old if he is half way
21 reliable, because he is younger, more vibrant,
22 whatever. The skills don't matter. So your skills

1 don't matter if the only work you can do is unskilled
2 work.

3 So a transferability of skills analysis is
4 only done, though, when it makes a difference. And
5 we determine when it makes a difference by looking at
6 the grid. There are seven instances in the grids
7 where it says, skills don't transfer disabled.
8 Skills do transfer not disabled. In those seven
9 instances we have to make -- when your age, education
10 matches those criteria, we have to decide if your
11 skills transfer or not.

12 Your skills transfer when you can take the
13 skills you have developed in your work and you can
14 use them in the performance of another job. It's in
15 the DOT. And where do we get the skills? Where do
16 we get all that? We get your skills from your
17 description; but we transfer your skills to jobs out
18 of the DOT.

19 And transferable skills is an advantage in
20 the work -- it's suppose to be an advantage. What it
21 is, it's saying that if you don't have any skills,
22 we're going to allow, because you don't have any

1 skills. But you have skills. Those skills have to
2 be so important that we could find jobs that you
3 could do that other people couldn't, because they
4 didn't have those skills. So on that basis, we're
5 going to deny you on that basis. So it's an -- it's
6 because you did that work.

7 Now, as your age increases, again, the
8 likelihood you are going to transfer your skills
9 becomes less and less.

10 This has to be an important job. It can't
11 be, you know, a minimum job. We like to say -- if it
12 is a union job, it has to be on the level of at least
13 a journeyman. The concept is, I have to be able to
14 walk from my old job into my new job without any
15 problem.

16 So I worked at the Chrysler dealership up
17 the road. I was Mr. Goodwrench -- well, that's GM;
18 sorry. I worked at the GM dealership up the road,
19 Mr. Goodwrench. I was a full fledged mechanic, but I
20 can't do medium work anymore. I could transfer my
21 skills across the street to Mr. Transmission where I
22 would only be working on transmissions maybe, or to

1 the oil changing place down the road. Because I
2 changed oil as Mr. Goodwrench. I worked on brakes as
3 Mr. Goodwrench. Now, I'm only doing one little part
4 of my occupation, that would be transferable skills.
5 I could take my skills as a mechanic and go and
6 transfer them to a lesser exertional job.

7 Now, the steps and analysis. What we do is
8 we identify claimant's past work. We use the DOT to
9 provide guidance on a skill level and exertional
10 level. We use their own description to identify the
11 work task processes, that type of thing. And then we
12 search for other occupations in the DOT, once again,
13 at or below their SVP of their past work; at or
14 within their RFC. And we try to find occupations
15 that use the same sort of skills.

16 As I said, a mechanic, who is a full
17 fledged mechanic, for oil changing, carburetor
18 rebuilding, brake worker, transmission, you know, we
19 have to make judgments there. For example, if you go
20 to transmissions -- rebuilding a transmission hasn't
21 really changed all that much in the last, say, 30
22 years.

1 If you go to the DOT it says uses a vacuum
2 tube -- a machinery with vacuum tubes to decide
3 whether the transmission is viable or not. I doubt
4 they use vacuum tubes anymore. Does that matter?
5 Probably not. Because the basic duties -- the most
6 important duties are not the use of the vacuum tube,
7 it is the rebuilding of the transmission. The basic
8 activities are still close enough that we argue that
9 we can still use that as a determination of
10 transferability of skills.

11 Or for example, a person was a carpenter; a
12 full fledged carpenter. We might transfer his job to
13 like a sander in a factory, or a gluer, or someone
14 who is doing still carpentry type work, but was not
15 as heavy or skilled, perhaps, as the work he was
16 doing as a cabinet maker. So we're looking for other
17 occupations that are available to that claimant that
18 they can do.

19 Now, once we list out these possible
20 occupations we match the task, the tools, the skills.
21 We match all of that. And the older the person is,
22 the closer they have to match. The older, the

1 closer. So I might take a 50 year old nurse who kept
2 patient records and say she could be a clerk, a data
3 entry clerk. At 50, I might say she could be a data
4 entry clerk. At 60, I'm not going to say that nurse
5 can be a data entry clerk. That is not close enough
6 to what she did in the past to be transferable.
7 Fifty, maybe so. Sixty, no. Because at 60, I don't
8 expect that she is as flexible as she use to be, as
9 able to make an adjustment.

10 And we cite generally three occupations.
11 We can cite fewer. We can cite more. Generally, for
12 example, say, if I had -- if I found someone could
13 transfer to be an auto mechanic, I might only cite
14 one occupation, because there are so many auto
15 mechanics. If you told me that they could be --
16 someone tried this once. One of the jobs they cited
17 for a clerk was paddle reader.

18 Anybody know what a paddle reader is? It
19 is someone who sits at an auction house and you raise
20 your paddle to bid, they write the number down.
21 Well, yes, I believe there are paddle readers today;
22 but I really don't believe, as you were saying, that

1 that is probably not their only job at that auction
2 house.

3 So would I cite paddle reader? Probably
4 not. Or if I did, I might want to cite five or six
5 such occupations, instead of just three. So it's all
6 a matter of being fair to the claimant, and really
7 getting -- transferable skills really has to be an
8 advantage to them. And if it's not, we're not going
9 to give them that. We're going to say they have no
10 transferable skills. Since we're doing it, there
11 would be an allowance if they didn't. So it really
12 has to be an advantage to that claimant.

13 Now, if you do have transferable skills,
14 however, no matter how old you are -- now, keep that
15 in mind that once you reach retirement age, you are
16 not eligible for disability. So we're not saying no
17 matter how old you are, that is up to full retirement
18 age. If you are 70 years old we are not doing
19 transferability of skills analysis, because you are
20 not eligible for disability. Unless you are age 80;
21 but we won't go there either. There is always an
22 exception in this program.

1 But no matter how poorly educated you are,
2 formal education; no matter how old you are in our
3 program, if you had transferable skills, you would be
4 denied. Transferable skills trumps all the other
5 negative vocational factors at step five. But it's
6 not that common, because we do have to show what
7 those skills are and to establish that those skills
8 really do give you an advantage over someone who does
9 not have those skills. That's the concept behind
10 transferability of skills.

11 Now, a lot of VEs at the ALJ level use
12 computer programs to assist. They do that as well at
13 the DDS, but you still have to compare occupation to
14 occupation. You can't rely on any transferability of
15 skills program that exist at this moment. They will
16 identify possibilities for you. So you can use those
17 programs like OASYS as a screening tool; but then
18 when the pedal hits the metal, you still have to pull
19 that through DOT or your computer version of the DOT
20 to compare description to description to past
21 relevant work. That's transferability of skills in a
22 nutshell.

1 Now, our last slide here, our summary. At
2 step one, we can deny a claim; but we cannot allow
3 it. We can deny it saying they're earning SGA -- or
4 earning above SGA; but if they're not, we can't allow
5 and we have to go on.

6 At step two we can deny a claim saying they
7 don't have a severe impairment; but we can't allow
8 them; we have to go on.

9 At step three the reverse here is true. We
10 can allow you for meeting or equal a listing, but we
11 cannot deny you. We have to go on.

12 At step four, we can deny you saying you
13 can do your past relevant work, you can perform it.
14 You have the ability to perform it. Not that you can
15 go get a job doing it, or that it even exist anymore.
16 We are just saying you have the ability -- the
17 physical and mental ability to do it. We can deny
18 you, but we can't allow you.

19 At step five, all bets are off there. We
20 have to allow you or deny you. We allow you if we
21 can't find enough work that you can do. Or we deny
22 you if we do find enough work that you think you can

1 do.

2 At steps four and five, the DOT and its
3 information is absolutely critical. Without the DOT
4 or something similar, we don't have that process. We
5 have a structure for it, a concept for it, but we
6 don't have any ability to assess that information.

7 And as I said, everything that we use,
8 definition of stooping, if I went out here on the
9 street, for example, and asked ten people what is
10 stooping, they would probably do something like this.
11 I am all stooped over; but in the DOT, this is
12 crouching. Stooping is just bending at the waist
13 without bending my knees. So DOT stooping, SSA
14 stopping is this. This becomes crouching
15 (illustrating).

16 As I said, if I went out -- you have to be
17 careful. If I went out and maybe even asked the
18 physicians what stooping was, there is always that
19 disconnect. So our program, especially at steps four
20 and five, the definitions we use, the criteria -- the
21 questions we ask, how we assess a claimant's severity
22 all comes in some manner of degree out of what's in

1 the DOT. So if you can fix it.

2 All right. I think I'm finished. I will
3 gladly answer any questions that you might have.
4 Yes, sir.

5 MR. WOODS: Tom, first of all, thanks.
6 After reading the materials, and a lot of these
7 summaries were very well done, and very readable.
8 You guys going through this, at least to me, has been
9 extremely helpful. It made me think about a couple
10 of issues a little bit differently.

11 I want to real quickly revisit this notion
12 of the magic number of occupations. Ultimately, the
13 elements and factors that are going to be measured
14 are going to be key to the system. But in looking
15 at -- at least from my understanding now, of how the
16 grid is developed and what is underlying when it
17 comes to occupation.

18 So for sedentary if it is 137, if it's 200,
19 you know, whatever it is. There is a lot being
20 driven by the old DOT. I think it's absolutely
21 crucial, and I think it's -- I may be naive here --
22 very doable that one of the first steps that can be

1 concurrent with other things is taking a hard look,
2 in a sense getting off our asses, and really looking
3 at what seems to be -- what's the meaningful set of
4 occupations that we're going to look at?

5 It's not a stagnant list. It can be an
6 initial cut. I don't think it's going to be anything
7 close to 12,000. I think we're going to be making a
8 big mistake if we keep thinking of DOT or anything of
9 that magnitude. I don't think it reflects the world
10 of work. I think it is going to be a detail way
11 beyond what could be collected.

12 And that some of the underlying ways in
13 which the grid is set up, and the grid has worked for
14 Social Security. I think it also raises some
15 question as to whether sheer counts of number of DOTs
16 is really a meaningful piece of information.

17 Now, pragmatically, it may work; because if
18 we have enough DOTs, then probably the occupation
19 exist. However, hypothetically, you have a large
20 number of DOTs, yet, it could be almost insignificant
21 in terms of really being meaningful in the economy in
22 terms of any sort of numbers. I realize it's not

1 numbers; but in a sense that's what we're really
2 trying to get at, does this really exist.

3 Again, I am just forward that I think it is
4 a very doable project. If nothing else, we do a
5 first cut that maybe gave Social Security an initial
6 sense of, you know, what is the magnitude that we
7 might be looking at? That might change over the next
8 couple of years, you know. Maybe it starts at 4,000,
9 or 5,000, or 983 and changes. I think that's very
10 necessary, because it underlies now so many things.

11 The notion of looking at three occupations,
12 you know; what does that mean? Looking at three
13 DOTs. Again, you explained it very well. If you are
14 looking at an auto mechanic, that may suffice. In
15 the materials you noted things like the Occupational
16 Outlook Handbook. Well, that's clearly at a much
17 broader level. That's at the stock level. One of
18 the advantages is, there are numbers associated with
19 that. Not that numbers are being used in the
20 process, but to give us a sense of, yes, that is a
21 meaningful occupation.

22 Again, my only point is, one, I feel very

1 positive that I think there is something that could
2 be done; and that many of us, including us formerly
3 at the Department of Labor is something that we could
4 have done several years ago. And I think now is the
5 time to do it. I really think this is something that
6 can be done in a couple months as a working draft,
7 working paper. Here is an initial kind of
8 occupation.

9 MR. JOHNS: I will address that real
10 quickly. I agree. I think that's probably an action
11 item. Where do we -- I didn't specifically address
12 where do we get the numbers. Where do we determine
13 whether there is a significant number of jobs
14 associated with any single occupation? What we use
15 is, we use things like OccuBrowse, which is --
16 provides that information. The only -- it all comes
17 to census. It all is based on soft codes.

18 So I gave the example this morning of the
19 pneumatic tube operator. Well, if I did a DOT search
20 right now -- say I was looking at the work of
21 somebody else, a vocational specialist; and it said
22 this person can do the work of a pneumatic tube

1 operator. I am going, good grief, there aren't any.

2 If I did an OccuBrowse search to tell me
3 how many pneumatic tool operators there were in the
4 United States, the number is 127,000. Why? Because
5 it is based on soft codes, which are based on a 900
6 aggregation. And pneumatic tube operator falls under
7 a category with things like delivery driver.

8 MR. WOODS: Other occupations --

9 MR. JOHNS: So it falls in a category with
10 people like -- I think it falls -- if I am thinking
11 right off the top of my head, it falls like with a
12 UPS truck driver. So you get consensus -- the
13 consensus lumps them together. So -- and then all --
14 OccuBrowse, all these programs are divided equally by
15 the number of DOT codes that fall under a soft
16 category. Some soft categories have very few DOT
17 codes. Some have many. But the only way -- it's
18 hard to come up with accurate numbers.

19 MR. WOODS: Right.

20 MR. JOHNS: So that's part of the issue as
21 well. What does it even mean?

22 MR. WOODS: To me, all the more reason that

1 I am agreeing with you, I think, to really try to
2 take a hard look now at breaking down what might be a
3 preliminary working set of occupations. Recognizing
4 it could change very dramatically over the life of
5 the project. I think it is something that can be
6 done based on a lot of existing research and
7 information that's already there, and is a very
8 doable task.

9 Then, looking at how it relates to things,
10 not just consensus; but if you are going to be
11 looking at some things at a broader level, you may
12 have several occupations that need to be broken out
13 for the purposes of Social Security, and we define
14 those -- the data, whether it is OccuBrowse or
15 anything else. Not that we are reflecting that
16 level, of course. It is going to be reflecting a
17 more aggregate level. We could also look at more
18 current information that gives us even more
19 confidence. Because those data are updated every two
20 years, not by the Census Bureau, but by the Bureau of
21 Labor and Statistics.

22 We have got employment estimates. We have

1 employment projections. That all can provide, I
2 think, an underlying substructure that will give us
3 more confidence in the system; but that's all
4 dependent on trying to do this cut of occupations.
5 We have spoken for years. We have somewhere between
6 800 and 12,000. Let's go see whether it is 5,000, or
7 4,000, or 6,000.

8 MR. JOHNS: I will throw this out --
9 something you just said reminded me too -- part of
10 it -- if you develop a structure, if you develop, you
11 know, a DOT, or a DOT "A," or DOT "B"; one of the
12 issues is, how often do you update it? I mean, do
13 you update it every two years when the Department
14 of -- Bureau of Labor Statistics say? Do you update
15 it every five years? Certainly, that has to be a
16 part of it as well. We certainly don't want to do
17 all of this work and then never update it, and then
18 be stuck in this same boat 25 years, 16 years from
19 now having to develop a DOT "C."

20 MS. KARMAN: I just wanted to piggy back on
21 this question that Jim raised, or a point that Jim
22 made. And also, just two points. That's, one, that

1 we were asked -- the Commissioner did ask us to look
2 at, you know, making a recommendation with regard to
3 classification as well. So our team and the
4 Occupational Information System Development Workgroup
5 will be preparing a proposal to give to the Panel.
6 And we will be in a position, then, to take a look at
7 that proposal for how we would look at developing an
8 initial classification along the lines that I think
9 what I'm hearing you say, Jim; so that we have
10 something to start with.

11 That's something else that we will be
12 wanting to accomplish this year, in addition to
13 recommendations for a content model. Because I think
14 you are right if -- you know, we need to talk further
15 about that. But I mean, we certainly have it in mind
16 to be doing something like that real quickly.

17 Then, secondly I wanted to point out in
18 case I wasn't clear that, you know, our policies are
19 that we don't set a significant number of jobs in the
20 economy. In other words, we don't -- there is no set
21 number for that. It's really based on what we take
22 administrative notice of, as Tom has explained, with

1 regard to the grid structure. What was available in
2 terms of all unskilled work that's sedentary, all
3 unskilled work that's light, medium, et cetera. And
4 what the occupational base judgment is based on the
5 person's residual functioning capacity or other
6 elements in their vocational profile.

7 So it is really an adjudicated judgment if,
8 in fact, the person's circumstances do not meet a
9 rule directly. I just want to throw that out there.
10 We don't have an exact number, but absolutely we
11 will -- we need to look at getting to a
12 classification system that we can begin with.

13 MR. WOODS: What I was suggesting was not
14 an exact number, but that the mere fact that -- and
15 it has worked, so this is not a criticism -- but that
16 using account -- whether it be DOTs or whatever
17 little critters we have is -- pragmatically, it may
18 have worked, simply because they are large enough
19 numbers that underlie the grid in terms of 137 of
20 these, and we have got 400 of these at this level, so
21 it's worked; but there is not a solid foundation
22 behind that as to why.

1 MS. KARMAN: We understand. I was just
2 making that statement so that that's something
3 everyone in the room can understand. I wasn't
4 suggesting that you were implying that.

5 MR. JOHNS: Something kind of comes out in
6 some of the conversation we had earlier, and
7 something that Sylvia just said. Our program is
8 based very much on judgment, you know, and individual
9 assessment. So that, you know, when we do RFC we're
10 doing an individual assessment. Our judgment -- our
11 best judgment, based on the information we have.
12 Now, that doesn't mean that every single person -- if
13 we had 200 people look at the file that they would
14 get the exact same judgment, but they would all be
15 within the parameters of our policy and our
16 guidelines. Just like here, deciding whether a
17 claimant can work, it is not a magic we punch in
18 these numbers and we're always going to get the same
19 result. It requires judgment. What is enough
20 numbers? What is enough of their skills? What are
21 those things? You make a judgment, and you explain
22 it.

1 Now, what we constantly strive for is that
2 once we give those to 200 people, that the judgments
3 are all going to be very, very consistent or within a
4 certain time; but they're not exact. And we don't --
5 any point that we try to make it too exact, you are
6 getting to like a cookbook where we just enter these,
7 magic, stir it all together, and get an answer. The
8 problem with that is there is always something with
9 this individual that is right before me that's
10 different. Something that gives him a little
11 advantage, or something that really should be taken
12 in account.

13 I say, well, gosh, he really doesn't have
14 transferable skills, because of this little thing
15 that is a little bit different. So judgment remains
16 a very important part of our program. Yes, sir.

17 DR. FRASER: In terms of setting the target
18 for the occupational groupings we are looking for,
19 what Jim just said, do we have the list -- you know,
20 DOT numbers for our claimants? Is there some? You
21 know, as they're making application to the last job
22 they have, do we have that DOT number?

1 MR. JOHNS: Oh, could we say what DOT
2 numbers are the most -- ones we see most often?

3 DR. FRASER: Yes.

4 MR. JOHNS: No. That type of information
5 hasn't been collected.

6 DR. FRASER: Okay. If they actually go to
7 adjudication, the VE has to give the DOT numbers.

8 MR. JOHNS: It does. But it's not -- it's
9 not captured -- it's not something, for example,
10 that -- even though we have gone electronic, it's not
11 something that they would enter in an electronic
12 fashion so that you can capture that data, and say
13 okay, we can look at 200 ALJ decisions in the Sixth
14 District, and say, here is DOT numbers we saw come up
15 in those cases. The data is not collected in that
16 manner?

17 DR. FRASER: It could be doable.

18 MR. JOHNS: It could be; it is possible.

19 MS. KARMAN: In fact, they are doing it
20 with E-Cat. That's in prototype right now. It's in
21 pilot. So we have a process now that Social Security
22 is testing that enables the adjudicators, at least at

1 the DDS, the State Disability Determination Services,
2 to capture information just like that, as they are
3 documenting their analysis of the claim.

4 So I mean, that is something that we
5 will -- that Social Security is working on; and as we
6 have mentioned earlier, we already know that we need
7 to do a study to get at just that information.
8 Because up until the time that that sort of program
9 is available across the country, should it become
10 available across the country, should the Agency
11 decide that the pilots have worked out and make it
12 available; then, you know, up until that time we're
13 going to need to actually look at our cases and pull
14 that information from the cases, so -- but you are
15 right. I mean, that's something.

16 MR. JOHNS: If that was an action item, if
17 that was something you decided just really -- that
18 you just really had to have, it's possible that a
19 study could be done, you know. I'm not sure whether
20 the AC's would jump on it; but I mean, it would be --
21 it would be something you could propose, you know, in
22 the meantime to do some sort of short something to

1 capture DOT numbers.

2 MS. KARMAN: It is my understanding it is
3 one we're getting ready to do. So anyway.

4 MR. BALKUS: I just want to indicate, this
5 is something that we are planning on doing. We're
6 planning on getting underway before the end of the
7 fiscal year. It is a research activity that we do
8 have funding for, and we're going to be moving
9 forward with it.

10 MR. JOHNS: All right. Is there anything
11 else?

12 MS. TIDWELL-PETERS: Tom, thank you very
13 much.

14 MR. JOHNS: Thank you.

15 MS. TIDWELL-PETERS: Now, we're shown to
16 have Panel deliberation until we end our day. Are
17 there any thoughts, questions, concerns, or comments
18 that any member would like to put on the record?

19 DR. SCHRETLEN: Yes. I would just like to
20 ask Jim for clarification. Is what you are
21 suggesting, Jim, do you think it would be helpful to
22 identify sort of the most parsimonious or the

1 shortest possible list of occupations that would
2 account for some percentage of all occupations? Like
3 maybe, what is the smallest number of distinct
4 nonredundant occupations that would capture
5 95 percent of persons employed in the country?

6 MR. WOODS: That would be part of it, but
7 it's probably even more general than that. The
8 12,000 DOTs, we know from work that we have done
9 within O*Net, and other work that's been done for a
10 number of years -- I was on the Standard Occupational
11 Classification Policy Committee -- a lot of work has
12 been done to identify DOTs that really were so
13 overlapping that it didn't make sense for a number of
14 purposes to separate them out any longer.

15 All I'm suggesting is that based on some of
16 that work it might be useful to look at that to see
17 if we can come up with an initial cut. It would not
18 in any way be a final list for Social Security. It
19 might just give us all a better sense of categories
20 that might fit what we ultimately would be collecting
21 information -- or Social Security would collect
22 information from.

1 I guess I just feel very confident that so
2 much has been done already to identify that. Again,
3 what I am pushing now is not O*Net, but we know from
4 our research in O*Net that we have identified a lot
5 of just redundant kind of things. We have a system
6 that has literally hundreds and thousands of titles
7 in there. You can relate those titles to categories.

8 With the DOTs I am hopeful that we could
9 just simply get that down to a starting list, and get
10 a list that say, here are 900 DOTs that actually
11 group together and really are not distinguishable
12 enough from being categorized as one item. That
13 sounds pretty extreme, but we have actually found
14 what we think are a couple of those.

15 In addition, it does allow you, then, to
16 relate a lot of that information to existing labor
17 market information. Not on a one on one case.
18 That's on a much more aggregate level than will ever
19 serve beneath the Social Security.

20 Just some quick background. At the
21 national, state, and major metropolitan level, there
22 are occupational employment estimates and projections

1 developed and updated every two years by Bureau of
2 Labor Statistics and by state employment security
3 agencies. Those projections are actually only done
4 for 800 -- approximately 800 occupational categories.
5 And they're not going to be done for more than that.
6 It's a very costly program.

7 We know that those 800 categories are not
8 going to suffice for Social Security. I will just
9 throw out a number; 400 of those might, in fact,
10 actually work very well as they are. They might
11 almost be one on one relationships. I am just making
12 these numbers up. The other 400, though, might break
13 out to maybe 3,000 -- Social Security might need
14 3,000 occupations.

15 So we will never be able to match those
16 exactly with labor market information, but it would
17 help us organize and pair down that list much more
18 significantly. I am just concerned that the longer
19 we talk about 12,000, 15,000, and 800, we're delaying
20 something that we could get a much better grasp on
21 right now.

22 I also say a second reason, even as we

1 examine other systems, whether they're public or
2 whether they're proprietary systems, is not to tie
3 ourselves right up front inadvertently to an old
4 model that, again, 12,000, that may not make any
5 sense. May end up being 15,000; I don't know. But
6 I'm just a little bit concerned that we could move
7 off in that direction, thinking that we're so tied to
8 the DOT and the title, that that becomes a driver
9 rather than something that we now kind of really
10 modify to reflect what I would think is -- reflects
11 the current world of work.

12 The only other thing I will say on that, it
13 may also provide a little bit -- one of the things
14 we're very weak on -- and whether it is Bureau of
15 Labor Statistics or what we did in the Employment and
16 Training Administration is very slow for a number of
17 reasons to be able to adapt to changing occupations.

18 And the only other thing I will say about
19 O*Net -- again, not O*Net as something that meets
20 Social Security needs; but in O*Net, while we have
21 occupational categories, it is very much driven --
22 even though there may be questions on how we measure

1 it -- it is very much driven by skills, knowledge,
2 ability, task statements. I think that becomes more
3 powerful really for Social Security if you are going
4 to do any sort of a matching and providing better
5 information for the judgment or determination -- not
6 the decision -- or ultimately the decision.

7 Long winded, but it will take some work. I
8 am making it sound easier than it is, but it may be
9 the most doable thing we can do, quickly.

10 MS. KARMAN: We actually do have some ideas
11 about how we might want to do that. Of course, what
12 our team will want to do -- I will take my panel
13 member hat off for a second and put the -- you know,
14 the Occupational Information Development team member
15 hat on, and I will just say that we're anticipating
16 developing a short proposal that will come to the
17 Advisory Panel. Then, we, as a Panel, can talk about
18 that; and then think about how we want to move
19 forward with that.

20 Maybe, you know, put that into play and see
21 if our proposal works. Then, see how those groupings
22 turn out. Are those groupings useful for what we

1 think we need to be doing? Let's try some other
2 factors. Let's group it this way, that way,
3 whatever.

4 I think I agree. I think you are right.
5 We shouldn't get tied to that.

6 MR. WOODS: Great.

7 MS. TIDWELL-PETERS: David, did you have
8 any follow-up on that question? No. Mark.

9 DR. WILSON: I agree too. I think that's
10 an important issue; but one of the things that we
11 have to consider when we look at the various methods
12 of occupational classification is that they tend to
13 break down into the sort of the empirical approaches
14 and classification than rational approaches.
15 Oftentimes what you find is the rational approaches
16 are the ones that tend to get you in trouble in terms
17 of how those decisions are made; but oftentimes, they
18 will have some highly functional rationale behind
19 them. But when you try and validate that or use that
20 in any kind of consistent manner, our research has
21 shown over and over again that rational systems and
22 empirical systems don't sync up with each other very

1 well.

2 So in terms of the proposals that come
3 before us, I think that's going to be one of the big
4 issues is how we deal with that. And I don't think
5 it's that -- you couldn't use some sort of hybrid or
6 mixed approach. In fact, I suspect that's what we're
7 going to end up with anyway.

8 I think particularly on what the rational
9 factors are, and how those factors are used, that has
10 to all be very carefully thought out in advance, and,
11 you know, set of rules and some sort of validation
12 procedure in place. How those decisions get made, I
13 think, are going to be real important. Because, you
14 know, without that, there is just lots of problems.

15 MS. KARMAN: Actually, just as an aside --
16 and I don't want to take up too much of the space
17 here. Allow other people to speak. I will just
18 interject this real quickly.

19 What we were considering -- I'm not going
20 to get into what our proposal is, because we haven't
21 written it yet; but the idea was to provide something
22 that is an initial basis. And we had discussed

1 empirical versus rational. And also because we know
2 that it's an initial classification, it would be
3 informed by the data collection that would go about
4 presumably, hopefully later; and that would, of
5 course, be empirical.

6 So you know, it would need to link up, so
7 that, you know, whatever it was that we came up with
8 initially could, in fact, benefit by the empirical
9 information that you gathered later on down the road.
10 So anyway, we're open to it.

11 DR. GIBSON: What this discussions brings
12 me back to, though, is our first and primary
13 charge -- at least as I interpreted it -- which was
14 the development of the content model.

15 MS. KARMAN: Right.

16 DR. GIBSON: Because the classification of
17 the job system is really secondary until we have
18 determined what types of physical characteristics,
19 mental characteristics, and other characteristics
20 needs to be collected in terms of each job data. I
21 see that as the most daunting task facing us early
22 on.

1 MS. KARMAN: Yes.

2 DR. GIBSON: Statement of fact.

3 MR. WOODS: I agree. Except that as -- in
4 doing that -- I'm actually hardened to hear that this
5 is something -- I think they could go on parallel.
6 That some of the classification issues, at least
7 initially, we can view that simply because you can
8 get a start on that, even as we look at some of the
9 content issues. So I am actually encouraged that
10 there is some plan to do some of that work.

11 DR. FRASER: Sylvia, just had a question.
12 In terms of tomorrow's presentations, are we going to
13 get some information in terms of what has been going,
14 perhaps, in the private sector, updating of DOT or
15 other job analysis?

16 MS. KARMAN: Debra, would you like me to
17 answer that?

18 MS. TIDWELL-PETERS: Yes, go ahead.

19 MS. KARMAN: Yes. In fact, one of the
20 presentations that is coming tomorrow -- and the one
21 that I think what you are referring to is what our
22 long-term and short-term plans are. We have got some

1 information to talk to you guys about with regard to
2 what are we doing now that might be able to tide the
3 Agency over in terms of what's going on in the
4 private sector that we are evaluating. So yes, we're
5 going to talk a little bit about that.

6 MS. TIDWELL-PETERS: Well, hearing no more
7 questions, comments or thoughts, do I hear motion to
8 adjourn?

9 DR. GIBSON: So moved.

10 DR. SCHRETLEN: Actually, you know, just as
11 you were saying that, I thought of another question I
12 wanted to ask, so if I may.

13 It goes back to sort of Dr. Fraser's
14 question, and the question we had about the SSA
15 initiative to begin recording jobs that applicants
16 are coming in with. If those jobs are coded in DOT
17 format, does that limit us? Does that make it
18 difficult to figure out what they're doing?

19 Is the risk that people will get squeezed
20 into titles -- you know, occupational titles that
21 don't really fit, and that don't really advance our
22 understanding of -- of the range of occupations that

1 are represented in a way that could actually be
2 misleading?

3 MR. BALKUS: I didn't mean to imply that
4 that's the only information we're planning to capture
5 in the study. We also would be capturing how the
6 individual identified how that job is being
7 performed. And I think that's important to do that
8 for that particular purpose.

9 I think as we get closer to identifying the
10 requirements for this particular study that we would
11 be sharing it with the Panel to see if there is
12 anything else that you would like us to capture as we
13 do this. We are looking at a rather large study
14 here, a national sample using our electronic folders
15 to look at not only cases that were decided at the
16 initial determination level; but also cases that were
17 decided at the hearings level.

18 But we are -- we are interested to capture,
19 again, not only the DOT job title and identify that,
20 but also to record more in terms of the way that job
21 was identified by the applicant in completing the
22 application form. And also, I think we're going to

1 be looking at, you know, recording what the residual
2 functional capacity that's been identified by the
3 adjudicator.

4 DR. FRASER: Just a quick comment on that,
5 David. A study we're doing recently on traumatic
6 brain injury. I had to do the DOT code in 120
7 sequential order, moderate to severe and traumatic
8 brain injury. Basically, DOT worked pretty well.
9 You know, a couple of IT jobs didn't pick up. But
10 most of these people were in semi-skilled
11 occupations, done it mainstream, and it worked quite
12 well. So it may not be a problem. It may not be,
13 you know, very exclusive using the DOT in coding high
14 frequency occupations.

15 DR. SCHRETLEN: Well, I really appreciate
16 your comment about that, because I wonder, as Jim was
17 talking, you mentioned Bureau of Labor Statistics has
18 been monitoring, I think, 800 or so occupations; that
19 they -- that they evaluate and update. And I'm just
20 wondering, do we have even a ball-park sense of what
21 proportion of the work force fall into those 800
22 categories.

1 MR. WOODS: Actually, the 800 -- the
2 classifications actually cover the entire work force.
3 One of the things that can be done, though, is you
4 can analyze; you can take the old DOT -- and the old
5 DOT, for example, we can look at for any of those 800
6 occupational categories, what DOTs are included in
7 that category? So in that sense, you could say, you
8 know, these ten DOTs make up this particular
9 occupation, and it covers three percent of the
10 employment in the country. But there may be another
11 category that might actually group 800 -- you know,
12 800 DOTs. And you know, it might cover one percent
13 of the employment.

14 So that kind of information is available in
15 automated formats, and Sylvia is aware of some of
16 those. Those can be tools, that, you know, the
17 workgroup would have access to the BLS and the O*Net
18 system has. Just as tools to actually manipulate the
19 information.

20 And the reason why it's limited to 800,
21 again, is very much along the lines of what -- from
22 both budgetary standpoints, from a practical

1 standpoint what could be done in terms of employment
2 projections and things. It probably works reasonably
3 well for many of the application; but would not at
4 the occupational detail suffice for Social Security.

5 DR. WILSON: I think that's one of the
6 interesting things to me is people in this area use
7 these terms of job and occupation, and we think that
8 we're using the same terminology; but oftentimes
9 we're not. One of the things that struck me is, is
10 there really any intermediate level of analysis? I
11 think that's one issue we're going to have to deal
12 with.

13 If you look at the legal system, they
14 constantly think about work in terms of the tasks
15 that are performed; but the task level of analysis
16 would be overwhelming for the -- you know, unless the
17 number were relatively small. But we get into these
18 more molar descriptors, you know, how many, and what
19 they are.

20 Anyway, it is just -- I have been thinking
21 about that; is that, is there this sort of
22 intermediate level of analysis that we could use that

1 would allow things to be more manageable. And you
2 know, what would that look like, and what level of
3 detail?

4 A former colleague of mine, I think, came
5 closest, in terms of some of his work, in terms of
6 his -- it's still descriptors that a layperson could
7 look at and recognize that as work. It is not highly
8 specialized language that only other professionals
9 would understand. These were generalized work
10 behavior statements. You know, that might be part of
11 the answer there.

12 MS. RUTTLEDGE: As I was thinking about
13 this, one of the things that continues to come back
14 to me as a vocational rehabilitation professional is,
15 so what is the connection back to the person who has
16 applied for Social Security? And what's the future
17 of employment as we know it?

18 Because, again, DOT was developed for the
19 industrial age. And we when we want to help Social
20 Security think beyond where we are now, but where we
21 want to go, we have to be thinking about what do we
22 think that workplace is going to be like, and what

1 are the demands in those workplaces? That really is
2 part of what is going to helpfully drive us as we
3 move forward, so.

4 DR. WILSON: Not only that, the
5 disaggregation of work, sort of work on demand. What
6 we think of as, quote, the job, you know, might be
7 around that much longer.

8 MS. RUTTLEDGE: Exactly.

9 DR. WILSON: You may be performing
10 activities that would go under, you know, 15
11 different DOT codes in the current one, and that
12 could be the norm.

13 MS. RUTTLEDGE: And what we know about
14 people with the most significant disabilities is that
15 with reasonable accommodation they can work.

16 DR. WILSON: Exactly.

17 MS. RUTTLEDGE: Again, that's the overlay
18 that I will always bring to this is, fundamentally,
19 what is it we're trying to assess? And who is it
20 we're trying to assess? And where is it that we want
21 to get them?

22 DR. FRASER: VEs, in general, aren't asked

1 to consider reasonable accommodations. So that's one
2 thing. The second thing is -- Mark may know more
3 about this -- is that in examining these tasks, you
4 know, I was just thinking back Flanigan's Critical
5 Incident Technique back in the '50's; and I have seen
6 this used periodically. A test done well results in
7 optimal job functioning. A test done poorly can
8 result in some type of disastrous performance on the
9 job. It is a way to get at kind of the essential
10 tasks. It might be a possible screening.

11 DR. WILSON: Right.

12 DR. FRASER: You use that to train E52
13 bomber pilots, I think, in a short amount of time.

14 DR. WILSON: It is better when the outcome
15 is a plane crash, then you know things --

16 DR. FRASER: Yes, you know, looking back.

17 DR. WILSON: Yes, I -- well, there are a
18 number of different ways to get at essential
19 function. And one of them would look at the
20 performance. The other is sort of, is it a piece of
21 what you would call the central core work or whatever
22 the business of the organization is? But even that

1 can get problematic now in terms of virtual
2 organizations that, you know, even what you would
3 think of as the core technology of whatever the
4 organizations is doing. Big parts can be farmed out.

5 DR. GIBSON: I think Mark's point early on,
6 though, is very well taken. We are going to have to
7 find some middle ground. And that if we are too
8 micro in our task orientation, this will become
9 completely unwielding. However, if we go in a much
10 more holistic direction like the kind that O*Net
11 went, it becomes impossible for people to make valid
12 determinations that are legally defensible.

13 So whether or not we decide that the level
14 of analysis is a worker behavior level, or an
15 essential function level, either way there has got to
16 be a middle ground that is both observable and
17 legally defensible if this is going to be carried
18 out.

19 MS. KARMAN: I was just going to agree and
20 say that, to me, what I am hearing you say, Shanan,
21 is that that is really, you know, where the
22 intersection between the classification and the

1 content model come together. Because you have to
2 look at how detailed are we going to get? And then
3 what's necessary -- what data are necessary for us,
4 given that we are concerned with evaluating the
5 extent to which a person has the physical and mental
6 capabilities to do work. So -- and some other
7 aspects, like literacy and other things.

8 DR. GIBSON: You said it better than I did.

9 MS. TIDWELL-PETERS: I also just want to
10 draw your attention. You probably have already
11 realized this, but in your prep packages that we sent
12 out to you, we had place holders for two documents
13 that are now in section four of your book. One is
14 entitled, "What is a Content Model?" And the other
15 is the definition of disability, and also SSA's
16 concern regarding O*Net. So we had originally
17 included those as place holders in your background
18 material. Now those documents are there for you to
19 take a look at.

20 DR. SCHRETLEN: And it's the case that
21 everything that we were sent is in this document here
22 as well?

1 MS. TIDWELL-PETERS: There were two sets of
2 materials that we sent, and one was -- it was a prep
3 package, right. And the prep package contained most
4 of the material that you have in this binder; and
5 there were some additional background documents that
6 we sent, one of which was the charter, the
7 establishment notice, documents that could be used as
8 reference. We had place holders for these papers.
9 Now, we are replacing them. They're also in the
10 handout folder. So everyone should have a copy of
11 those.

12 Sylvia.

13 MS. KARMAN: I just want to mention that --
14 and I will talk a little more about this road map
15 thing that is in your -- I think it's in the
16 section -- the third section. So probably would
17 be --

18 MS. TIDWELL-PETERS: For day three.

19 MS. KARMAN: -- back there.

20 Let me just check, before I begin talking
21 about it.

22 No. It's right before section three. It

1 is the last document before you get to number three.

2 What you might notice on there is that we
3 have a number of documents that we're planning. And
4 the reason I mention it is because we have place
5 holders in your background materials indicating that
6 you would be getting certain documents. We're still
7 working, for example, on the proposed plans -- Social
8 Security plans for the content model.

9 What you have, instead -- we thought,
10 perhaps, initially it would be good for the Panel to
11 take a look at what is a content model? And just
12 some preliminary questions for the Panel to begin to
13 think about. So you all will be getting that
14 material as well.

15 Also, you will notice from looking at the
16 road map -- and this is an iterative document. It is
17 not -- you know, it isn't like it's going to stay
18 this way forever. But we have it in mind to also
19 give you other analyses.

20 So, for example, we should really take a
21 look at what are our concerns with DOT? What things
22 might we want to pull from DOT and/or O*Net, and

1 anything else as we move forward. What kinds of
2 things are going on in Canada and internationally,
3 you know, elsewhere? Obviously, Canada is also
4 international, but we had specific things in mind
5 with regard to talking with some folks in Canada.

6 Just to give you a sense of where -- you
7 know, what kind of things we have in mind, so that
8 you did not think that everything you have gotten,
9 that that sort of is the end of it. Okay.

10 MS. TIDWELL-PETERS: Thank you, David, for
11 starting that round of questions.

12 Now, do I hear a motion to adjourn?

13 DR. GIBSON: So moved.

14 MS. TIDWELL-PETERS: Second.

15 MS. LECHNER: Yes.

16 MS. TIDWELL-PETERS: Okay. We are
17 adjourned until tomorrow morning. We will reconvene
18 at 8:30.

19 (Whereupon, at 4:31 p.m., the meeting was
20 adjourned.)

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CERTIFICATE OF REPORTER

I, Stella R. Christian, A Certified Shorthand Reporter, do hereby certify that I was authorized to and did report in stenotype notes the foregoing proceedings, and that thereafter my stenotype notes were reduced to typewriting under my supervision.

I further certify that the transcript of proceedings contains a true and correct transcript of my stenotype notes taken therein to the best of my ability and knowledge.

SIGNED this 16th day of March, 2009.

STELLA R. CHRISTIAN