

**SSA'S REPRESENTATIVE PAYEE PROGRAM:
SAFEGUARDING BENEFICIARIES FROM ABUSE**

HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
ONE HUNDRED FIRST CONGRESS
FIRST SESSION

—
WASHINGTON, DC
—

JUNE 6, 1989
—

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SSA'S REPRESENTATIVE PAYEE PROGRAM: SAFEGUARDING BENEFICIARIES FROM ABUSE

TUESDAY, JUNE 6, 1989

**U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.**

The committee met, pursuant to notice, at 10:22 a.m., in room 628, Dirksen Senate Office Building, Hon. David Pryor (chairman of the committee) presiding.

Present: Senators Pryor, Shelby, Heinz, Wilson, Grassley, and Simpson.

Staff present: Portia P. Mittelman, staff director; Christopher C. Jennings, deputy staff director; Jennifer McCarthy, professional staff; Jonathan Adelstein, professional staff; Dr. Joseph Lieberman, acting minority staff director; Louisa Harmon, legislative assistant; Dan Tuite, printer.

OPENING STATEMENT OF SENATOR DAVID PRYOR

The CHAIRMAN. Ladies and gentlemen, the Senate Special Committee on Aging will come to order.

First, from the Chairman, an apology. There have been several meetings this morning relative to issues that have at one time or another actually come before this committee, and I had to be in those meetings, and I do apologize to my distinguished colleagues for the delay.

I just met Senator Wilson in the hall. He has left a statement for us. I'm going to make a very brief opening statement to set the parameters of our hearing this morning, and then I will call on our distinguished friend from Pennsylvania, Senator Heinz.

We are today looking at a very, very complex issue. It is a complex problem which calls for solutions based on common sense. I'm talking about the need for safeguards in the Social Security Administration's representative payee program to protect beneficiaries from abuse.

Under SSA's representative payee program, an individual other than the beneficiary is appointed to handle checks for Social Security and Supplemental Security Income beneficiaries, when those beneficiaries are too disabled, or otherwise unable to manage their own finances. By definition, such beneficiaries are very, very vulnerable. At present, benefits totaling billions of dollars are handled today by representative payees.

All too often a life-threatening or life-ending tragedy has to occur before dangerous problems are fully exposed. Earlier this year, for

example, the Aging Committee heard and saw evidence of such problems that have arisen within many of our Nation's board and care homes.

So too a tragedy last September caused Congress to take a hard look at SSA's representative payee program. At that time, police in Sacramento, CA, discovered eight bodies in the backyard of a Mrs. Dorothy Puente, a boarding home operator who had previously been convicted of 30 counts of Social Security fraud. Under current law, individuals with such convictions are prohibited from serving as payees. Despite this, SSA had appointed her as the payee for one of the victims whose murder she was charged with.

Now, how could someone with an extensive criminal record, someone who had a documented history of committing Social Security fraud, become authorized to receive and manage the Social Security checks for a beneficiary? Well, unfortunately, it was all too easy. This lady could probably walk into almost any Social Security office in America today and sign up to be a representative payee and begin receiving checks on behalf of a beneficiary.

Despite the vulnerability of individuals who cannot handle their own benefits, SSA does very little to screen or monitor representative payees. Until a Federal district court ruled in 1984 that monitoring was required, SSA had suspended all monitoring. Although every Social Security office has access to the records of virtually every American citizen, only recently has SSA begun to verify the identification submitted by the payee applicant. By way of background checks, SSA has now begun asking if the payee applicant has a criminal record. I have trouble believing that Mrs. Puente would have answered this question honestly.

In terms of monitoring, all payees are sent a form once a year asking for an "estimate" of expenditures in broad categories. No documentation is required. Only if a third party complains, or the total amount of expenditures does not add up to the amount of the beneficiary's payments, are any further questions asked. Typically, the payee is asked over the phone to explain omissions or inconsistencies—again, it is the honor system approach.

Consider for a moment how ripe the system is for abuse. An average monthly Social Security check runs about \$560. Over a year's time, this equates to about \$6,700. Now, for those serving multiple beneficiaries, the amount increases proportionately. Those with 10 beneficiaries, for example, would receive \$67,000 each year. Twenty beneficiaries, \$134,000, and so on, depending on the number of beneficiaries.

Payees serving multiple beneficiaries who are unrelated are not uncommon, particularly among board and care operators. In fact, today, there are a half a million of these unrelated payees in the United States.

When back benefits are due, thousands of dollars may be at stake. An individual walks in, gets appointed as the representative payee and receives an enormous check, possibly a check larger than he or she has ever seen. The temptation can be very, very great.

How many beneficiaries are being victimized by their payees? We have seen only a limited study by SSA in 1983, excluding the SSI program, that found problems in approximately 20 percent of

the time. That's 1 in 5. These problems ranged from the inability of the payee to document expenditures, to a notable disinterest on the part of the payee, to cases of outright misuse of benefits.

I have a longer statement that I will submit for the record. Having been delayed for so long, I'm not going to take any more time, nor my colleague's time. I would like for that statement to be placed in the record.

Also, I would like to submit a summary of legislation I will be introducing later today to address problems in this area.

I will at this point call on Senator Heinz of Pennsylvania.

[The prepared statement of Senator Pryor follows:]

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United States Senate

SPECIAL COMMITTEE ON AGING
 WASHINGTON, DC 20510-8400

OPENING STATEMENT

SENATOR DAVID PRYOR

Chairman

Senate Special Committee on Aging

June 6, 1989

"SSA'S REPRESENTATIVE PAYEE PROGRAM: SAFEGUARDING BENEFICIARIES FROM ABUSE"

Good morning. On behalf of myself and the other members of the Special Committee on Aging, I want to welcome everyone to this hearing. Today, we will be examining how to build safeguards into the Social Security Administration's (SSA's) representative payee program to protect beneficiaries from abuse.

Under SSA's representative payee program, an individual other than the beneficiary is appointed to handle checks from Social Security and the Supplemental Security Income program (SSI) when the beneficiary is too disabled, or otherwise unable to manage their own finances. By definition, beneficiaries in need of a payee are vulnerable. At present, benefits totalling billions of dollars are handled by representative payees.

All too often a life-threatening or life-ending tragedy has to occur before dangerous problems related to representative payees are fully exposed. Earlier this year, for example, the Aging Committee heard and saw evidence of such problems that have arisen within many of our nation's board and care homes.

A tragedy caused Congress to take a hard look at SSA's representative payee program last September. At that time, police in Sacramento, California, discovered eight bodies in the backyard of a Mrs. Dorothy Puente, a board and care operator who had previously been convicted of 30 counts of Social Security fraud. Under current law, individuals with such convictions are prohibited from serving as payees. Despite this, SSA had appointed her as the payee for one of the victims whose murder she was charged with.

How could someone with an extensive criminal record, someone who had a documented history of committing Social Security fraud, become authorized to receive and manage the Social Security checks for a beneficiary? Unfortunately, it was all too easy. Mrs. Puente could probably walk into most any Social Security office today and sign up to be a rep payee.

Despite the vulnerability of individuals who cannot handle their own benefits, SSA does little to screen or monitor rep payees. Until a federal district court ruled in 1984 that monitoring was required, SSA had suspended all monitoring. Although every Social Security office has access to the records of virtually every American, only recently has SSA begun to verify the identification submitted by a payee applicant. By way of background checks, SSA has begun asking if the payee applicant has a criminal record. I have trouble believing Mrs. Puente would have answered this question honestly.

In terms of monitoring, all payees are sent a form once a year asking for an estimate of expenditures in broad categories. No documentation is required. Only if a third party complains or the total amount of expenditures does not add up to the amount of the beneficiary's payment are any further inquiries made. Typically, a payee is asked over the phone to explain any omissions or inconsistencies -- again, the honor system approach.

Consider for a moment how ripe the system is for abuse: an average monthly Social Security check runs about \$560. Over a year's time, this equates to about \$6,700. Now, for those serving multiple payees, the amount increases proportionately. Ten payees equals \$67,000, 20 payees equals \$134,000, and so on, depending on the number of beneficiaries. Payees serving multiple beneficiaries who are unrelated are not uncommon, particularly among board and care operators. In fact, there are about half a million of these unrelated payees.

In particular, when back benefits are due, a check for thousands of dollars may be at stake. Often in those cases, the beneficiary has been deprived of a means of support for an extended period of time, and is in desperate circumstances. When told that they must have a payee in order to receive benefits, in the absence of family contacts, they may turn to an acquaintance, a bartender, or even a stranger. Unfortunately, even when an old friend is chosen, the temptation to misuse the beneficiary's lump sum benefits can be too great to resist.

How many beneficiaries are being victimized by their payees? At a March hearing of the House Social Security Subcommittee, numerous witnesses testified about the broad potential and prevalence of financial abuse within the rep payee program. Even a very limited study conducted by SSA in 1983, excluding the SSI program, found problems in approximately 20 percent of the cases. These problems ranged from an inability of the payee to document expenditures, to a notable disinterest on the part of the payee, to cases of outright misuse of benefits.

We know that current screening and monitoring practices are ineffective. On paper, SSA has pages and pages devoted to this and related issues. However, in practice, SSA doesn't provide the resources necessary to properly carry out these responsibilities. This fact, combined with the deep cutbacks in staff in Social Security offices, have let too many beneficiaries fall prey to unscrupulous payees.

To address these problems, I am introducing the Representative Payee Abuse Prevention Act of 1989. Joining me as cosponsors are a number of Aging Committee members, including Senators Burdick and Simpson, as well as Senators Moynihan, Riegle, and Levin. I have worked with SSA, legal service attorneys, and others on this legislation to reform the rep. payee program. The bill would ensure proper screening and investigations of payee applicants.

The bill also would establish safeguards to protect the rights of beneficiaries to be informed of an appealable decision to appoint a payee, to receive benefits to which they are entitled, and to recover misused funds. Unlicensed board and care operators and other individuals whose interests may conflict with the beneficiary would be barred from serving as payees. Finally, the bill would require SSA to set up stronger monitoring and accounting procedures for high-risk rep payees, and encourage SSA to help people find a suitable payee. I also plan to join Senator Riegle in introducing legislation to promote the growth in representative payee services among non-profit social service agencies.

I believe we can enact the bill during this Congress, and I intend to work toward this end. I also will vigorously oppose further staff reductions at SSA, so that these reforms can be carried out properly.

Almost a year ago to the day, the late Senator Claude Pepper spoke these words: "...when you go home tonight and you close your eyes and you sleep and you ask 'What have I done today to lighten the burden of those who suffer?' as least you could say, I helped a little bit today;" I hope soon that we in Congress can say this about the representative payee program.

BILL SUMMARY: REPRESENTATIVE PAYEE ABUSE PREVENTION ACT OF 1989
 Senator David Pryor, Chairman, Special Committee on Aging

Applies to beneficiaries of Social Security and SSI.

SCREENING AND INVESTIGATION OF REPRESENTATIVE PAYEES

- * Requires SSA to conduct criminal background checks of most rep payee applicants (excluding parents and spouses), and requires SSA to verify their identification.
- * Requires SSA to take special measures to protect large lump-sum payments of retroactive benefits, which are often a target of unscrupulous rep payees.
- * Improves tracking of people who may abuse beneficiaries, by setting up a list of those convicted of Social Security fraud, a centralized listing of all representative payees, and a list of those who have misused benefits in the past.
- * Bolsters SSA's efforts to help beneficiaries locate suitable rep payees.

SAFEGUARDS TO PROTECT BENEFICIARIES

- * Beneficiaries must be given advance notice that a rep payee will be appointed, including an explanation of his or her right to challenge and appeal that decision.
- * Prohibits SSA from withholding benefits from a person who cannot secure a rep payee. Exceptions are made to protect severely disabled beneficiaries, alcoholics and drug addicts.
- * SSA repays beneficiaries whose benefits were lost because SSA was negligent in not following its own guidelines while appointing or monitoring a rep payee.
- * SSA required to assist beneficiaries to recover misused benefits. SSA given authority to assess fines and and withhold future benefits to recover misused funds.
- * Creditors will generally not be allowed to serve as rep payees. Exceptions include relatives living in the same household, licensed care facilities, or individuals who pose no risk of direct harm to the beneficiary, if no other rep payee can be established.

IMPROVED MONITORING, ACCOUNTING AND RECORDKEEPING

- * SSA required to establish procedures for stricter accounting to monitor certain classes of high-risk rep payees. Those categories will be determined in studies undertaken by SSA.
- * The Veterans Administration would be made rep payee for those receiving benefits from both SSA and VA.

STATEMENT OF SENATOR JOHN HEINZ

Senator HEINZ. Mr. Chairman, let me commend you for calling this hearing. As you pointed out, the Social Security Administration did create the representative payee program to help the elderly and the handicapped, who are no longer capable of managing their own affairs. And while the concept of the representative payee program is sound, we have evidence that its implementation needs some significant reform.

I would suggest there are actually two problems. The first is one that you've identified, which is that we have instances of too many cases where those who are in need of help, and who are supposedly receiving it, are actually being harmed. But there's another set of cases of those who also need help, but who are overlooked, and are not therefore helped. And in effect, they're being abandoned by the system without receiving needed assistance.

On the overall situation there are disturbing signs that SSA has an inadequate system to check and screen those who apply to be representative payees. Presently, the SSA does not do a background check, as you pointed out, it is a paper-based system. Nor does the SSA monitor the program other than through an annual paper process to ensure that the beneficiaries actually receive the benefits that their money is intended to confer, and therefore, that they're being properly taken care of.

The result of this lax selection, oversight, and enforcement process is that while many representative payees carry out their obligations in a responsible and ethical manner, I do think that needs to be pointed out that it appears the vast majority of them do so, nevertheless, there are others, and the Chairman has referred to a number of cases, who use their position of trust as an opportunity for deceit, who in effect, turn a fast buck at the expense of those they represent.

The second problem I mentioned, though, the one of people who are overlooked, is illustrated by the case of a constituent of mine from Philadelphia. This is a mentally handicapped constituent. She is without friends or family to advise her. Her name is Mary M., and she fell victim to an unscrupulous landlord who forced her to sign over the \$1,000 monthly check she received from Social Security. In exchange, what he did is to give her \$2 a day to buy food and cigarettes, and a place to sleep on the basement floor. And she lived that way for several months until, almost by accident, a social worker discovered her. Mary M., of course, would be a prime candidate for a representative payee, but the system that we have, such as it is, failed to identify her need.

Program abuses ranging from illegal appropriations of dollars by representative payees, to intimidation and mistreatment are not new news, unfortunately. Six years ago, in response to reports from the State ombudsman, Senator Bentsen and I co-sponsored legislation to improve the system, including clearer guidelines for selecting and monitoring the representative payee. That legislation was, indeed, enacted into law in 1983. But for a variety of reasons, the SSA has not been able to adequately protect individuals who need payees.

Some States have taken upon themselves to create better safeguards for the representative payee program. In Pennsylvania, the Victims Compensation Fund devotes a large percentage of their time to counseling and assisting the mentally ill, handicapped, and elderly with their finances, including finding a representative payee.

Today, I'm pleased to join you, Mr. Chairman, in sponsoring legislation to strengthen SSA's ability to protect the beneficiary. As Congress looks toward reinforcing existing safeguards, we also need, in my judgment, to develop incentives to encourage social workers and nonprofit organizations, whether it's the Victims Compensation Fund or advocacy organizations, such as AARP, to participate. It's my judgment that most of the problems that we have encountered here with payees could be avoided if we spent more time and effort on selecting good payees in the first place, because it is only a responsible payee, and a group of payees, that can restore the lost trust of the elderly and mentally ill whom this system has mistreated.

So I look forward to hearing our witnesses today.

The CHAIRMAN. Senator Heinz, I want to thank you for your eloquent statement, and also for mentioning the legislation that I will be introducing this afternoon. That is the Representative Payee Abuse Prevention Act of 1989. I'm proud to announce, not only that you, Senator Heinz, are a co-sponsor, but also so are Senators Burdick, Shelby, Simpson, Riegle, Moynihan, Levin, Glenn, and Bradley. We hope to get all the other members of this committee to support this bill. We will be keeping all of you updated on the progress of that legislation.

I don't know whether Senator Grassley arrived first, or Senator Shelby. I think it was Senator Grassley.

Senator Grassley.

STATEMENT OF SENATOR CHARLES GRASSLEY

Senator GRASSLEY. Mr. Chairman, first of all, I would like to, for Senator Wilson, who was here and had to go, have a statement on this legislation inserted in the record.

The CHAIRMAN. It will be placed in the record at this point.

[The prepared statement of Senator Wilson along with the statement of Senator Burdick follows:]

INTRODUCTORY STATEMENT OF THE HONORABLE PETE WILSON

Senate Special Committee on Aging Hearing:
Social Security Administration Representative Payee Program

MR. CHAIRMAN, I HAVE TO BE IN THREE PLACES AT ONCE THIS MORNING, BUT BEFORE GOING TO MY NEXT COMMITMENT, I DID WANT TO THANK YOU FOR HOLDING THIS IMPORTANT HEARING ON THE SOCIAL SECURITY ADMINISTRATION'S REPRESENTATIVE PAYEE PROGRAM.

IN ADDITION, I WANTED TO EXTEND A WELCOME TO THREE GUESTS FROM MY HOME STATE OF CALIFORNIA: ELIZABETH FREELAND, A PLAINTIFF IN A CASE PENDING IN THE COURTS CONCERNING THE PAYEE PROGRAM, KIM GAINES, A SSA CLAIMS REPRESENTATIVE FOR THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AND CURTIS CHILD, AN ATTORNEY ACTIVELY INVOLVED IN EFFORTS TO REFORM THE REPRESENTATIVE PAYEE PROGRAM.

I REGRET THAT I WILL BE UNABLE TO STAY TO HEAR THEIR RESPECTIVE TESTIMONY, BUT I AM CERTAIN THAT THEY WILL MAKE AN IMPORTANT CONTRIBUTION TO THIS COMMITTEE'S EXAMINATION OF THE PAYEE PROGRAM.

MR. CHAIRMAN, THERE ARE ROUGHLY FIVE MILLION SOCIAL SECURITY AND SOCIAL SECURITY INCOME (SSI) BENEFICIARIES WHO HAVE REPRESENTATIVE PAYEES. BECAUSE THESE BENEFICIARIES, FOR A NUMBER OF POSSIBLE REASONS, ARE CONSIDERED UNABLE TO MANAGE THEIR FINANCIAL AFFAIRS IN THEIR OWN BEST INTERESTS, THE SOCIAL SECURITY ADMINISTRATION APPOINTS A REPRESENTATIVE PAYEE TO MANAGE THEIR BENEFITS. AS YOU NOTED IN YOUR REMARKS, MR. CHAIRMAN, REPRESENTATIVE PAYEES HANDLE BENEFITS TOTALLING BILLIONS OF DOLLARS AT PRESENT.

THERE HAVE BEEN CONCERNS ABOUT PROBLEMS OF ABUSE WITHIN SSA'S REPRESENTATIVE PAYEE PROGRAM FOR A NUMBER OF YEARS. IN 1983, THE SSA RELEASED A STUDY OF PAYEES UNDER SOCIAL SECURITY AND DETERMINED THAT PROBLEMS INVOLVING PAYEES OCCUR AS MUCH AS 20 PERCENT OF THE TIME. I UNDERSTAND THAT RECENT HEARINGS HELD BY THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON SOCIAL SECURITY DETAILED NUMEROUS PROBLEMS ASSOCIATED WITH THE LACK OF ADEQUATE SCREENING AND MONITORING OF REPRESENTATIVE PAYEES. THE PRIMARY PROBLEM ENCOUNTERED BY BENEFICIARIES IS THE FINANCIAL MISUSE OF BENEFITS BY DISHONEST PAYEES. OTHER BENEFICIARIES, UNFORTUNATELY, HAVE ENCOUNTERED PROBLEMS OF FAR GREATER PROPORTIONS.

THE SSA REPRESENTATIVE PAYEE PROGRAM - PARTICULARLY ITS PAYEE SCREENING AND MONITORING PROVISIONS - HAS ATTRACTED RENEWED ATTENTION AS A RESULT OF TRAGIC EVENTS IN MY HOME STATE LAST FALL. AS CHAIRMAN PRYOR HAS RECOUNTED, THE BODIES OF EIGHT SOCIAL SECURITY BENEFICIARIES WERE FOUND IN THE SACRAMENTO, CALIFORNIA BACKYARD OF MRS. DOROTHEA MONTALVO PEUNTE, AN APPOINTED REPRESENTATIVE PAYEE FOR ONE OF THE MURDERED BENEFICIARIES. DESPITE AN EXTENSIVE CRIMINAL RECORD THAT INCLUDED 30 COUNTS OF SOCIAL SECURITY FRAUD AND DESPITE CURRENT LAW PROHIBITING INDIVIDUALS CONVICTED OF SUCH CRIMES FROM SERVING AS PAYEES, MRS. PEUNTE WAS NONETHELESS GIVEN RESPONSIBILITY FOR MANAGING THE SOCIAL SECURITY CHECKS OF VULNERABLE BENEFICIARIES.

WHILE MOST REPRESENTATIVE PAYEES ARE THE HONEST AND CARING RELATIVES AND FRIENDS OF BENEFICIARIES, PROBLEMS OF ABUSE WITHIN SSA'S REPRESENTATIVE PAYEE PROGRAM ARE ALL TOO PREVALENT. INDEED, WHILE THE PEUNTE CASE REPRESENTS A TRAGIC EXAMPLE OF THE CONSEQUENCES OF THE INADEQUACIES OF THE PAYEE PROGRAM, NUMEROUS BENEFICIARIES AROUND THE COUNTRY HAVE SUFFERED LESSER ABUSES OF A FINANCIAL NATURE. IN THE ABSENCE OF CLEARER AND STRICTER PAYEE SCREENING AND MONITORING GUIDELINES BY THE SSA, I AM CONCERNED THAT THE POTENTIAL FOR PERSONAL AND EVEN PHYSICAL HARM WILL GROW.

MR. CHAIRMAN, IT APPEARS CLEAR THAT REEVALUATION AND REFORM OF SOCIAL SECURITY ADMINISTRATION PROCEDURES USED TO SCREEN AND MONITOR REPRESENTATIVE PAYEES IS NEEDED. IT IS IMPERATIVE THAT CURRENT PROTECTIONS BE VIGOROUSLY ENFORCED AND, WHERE DETERMINED INADEQUATE, NEW SAFEGUARDS BE IMPLEMENTED.

SO I THANK YOU, MR. CHAIRMAN, FOR HAVING CONVENED THE HEARING AND PURSUING THIS ISSUE. I WILL READ THE RECORD WITH GREAT INTEREST AND LOOK FORWARD TO THE COMMITTEE'S DELIBERATIONS.

Special Committee on Aging
June 6, 1989
Hearing on SSA Representative Payee Program

Statement of Senator Quentin N. Burdick
to be made a part of the hearing record

Thank you, Mr. Chairman. I want to welcome the witnesses who have come here to discuss this critical problem.

I am proud to serve on a committee that brings to light problems that make the lives of our elderly more difficult. Unfortunately, today we are faced with discussing incomprehensible crimes against the elderly. Today we'll hear stories about people who will lie, steal and even murder in order to make a living off of social security beneficiaries.

Certainly the murders committed in Sacramento are the extreme example of what can happen to a system that goes unchecked. The sloppy practices displayed by SSA in screening Rep Payees is not simply a disservice, but a crime. The law directs SSA to screen applicants, but in reality, practically anyone who fills out a short form can expect to become a Rep Payee.

So, I agree with the Chairman that more direction is needed. The S*S*A has a responsibility to the beneficiaries. We cannot let this go unchecked. I am very pleased to join the distinguished Chairman in cosponsoring a bill to improve Rep Payee screening.

If the Social Security Administration requires more employees to carry out what ought to be the normal course of business, then I am sure that this committee will take a look at that.

I want to mention that in my state of North Dakota, the list of potential qualified Rep Payees is shrinking. In rural areas we are experiencing what is known as a "brain drain." The drain takes young people out of states like North Dakota to seek job and educational opportunities.

This migration of our young people is having a profound impact on the extended family. When it comes to finding a trustworthy Rep Payee, a beneficiary often turns to a family member. Unfortunately it is becoming more and more common for an elderly person's son or daughter or grandchild to live several states away. In these cases they must turn to an acquaintance or, as we are finding out, to a stranger, maybe even an enemy.

It could be that SSA designed the Rep Payee screening system on the basis of the extended family. Maybe that's why they don't ask too many questions. But I think that these tales of abuse we will all hear today are evidence that SSA must ask more questions.

I hope that this hearing and the introduction of legislation by Chairman Pryor will be the push needed to correct these abuses. I thank the Chairman for holding this very important hearing.

Senator GRASSLEY. And I also congratulate you, Mr. Chairman, for your leadership in this area, for holding this hearing focusing on the Administration's Social Security Administration representative payee program, and also the bill that I understand that you will be introducing. And I think you and your staff has chosen to look into a program with some very real potential for abuse.

We get some glimmer of this potential for abuse when sensational cases come to light. And you've already referred to the Puente case from Sacramento, CA. There, as we all know, police found eight Social Security beneficiaries buried in her backyard, and she was the operator of an unlicensed board and care home, and a representative payee for one of those found in her backyard. At the same time, there are many, many more, and much more ordinary, situations in which individuals are defrauded of their entitlement as a consequence, ultimately, of an inadequately monitored representative payee system. And as I understand it, we're talking about a very large amount of money controlled by representative payees.

According to the Social Security Administration, and this was in testimony before the House of Representatives by the National Senior Citizens Law Center, \$1.05 billion are paid out by the Social Security Administration to representative payees every month. Now, I do not mean to say, with this, that adequate monitoring of representative payees is as simple as one might think. It might be very difficult to monitor this. But one of the astonishing things about this program is the number of Social Security beneficiaries who have representative payees. It's my understanding there are about four and eight-tenths million of them.

Furthermore, given that the beneficiaries in question have been determined to be unable to manage their own financial affairs, that is to say, are vulnerable or incompetent, there is naturally potential for abuse. And it seems to me, that for these reasons, it is no small matter to run such a program so as to assure that there is no abuse of beneficiaries. Nevertheless, as far as I can tell, Mr. Chairman, and if previous congressional testimony of informed witnesses is to be believed, this program is, for all practical purposes, unmonitored, and in general very poorly overseen. We could be doing a much better job of managing this program than we're presently doing.

For this reason, I want the Chairman to know that I have been interested in the legislation that you've said you're introducing this afternoon. I have not seen the actual bill. I've had an outline of a bill run by me and my staff, and it looks to me like you're heading in the right direction, and just as soon as I've had a chance to review this bill, I will probably become a co-sponsor.

So, lastly, Mr. Chairman, I think you're doing a worthy service of oversight, and hopefully can come up with a workable solution, assuming that your hearing before this committee parallels that of other hearings that have been held. I'm sure that there will be adequate justification for the legislation.

The CHAIRMAN. Senator Grassley, thank you very much.
Senator Shelby.

STATEMENT OF SENATOR RICHARD SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Chairman, I would like, too, to commend you for holding this hearing today. Since taking over the reins of this committee, Mr. Chairman, you've directed hearings over issues of the most vital importance. This occasion today is no different.

Some of our society's most vulnerable citizens are being taken advantage of, not only by dishonest and scheming payees who all too often abscond with a beneficiary's only source of revenue, but also, I believe, Mr. Chairman, by a lack of monitoring and oversight system in the Social Security Administration.

What is of greatest concern to me, Mr. Chairman, is that many individuals who find themselves on the short end of the deal when a corrupt payee has stolen their benefits, are often the most vulnerable of all the beneficiaries. These persons may not have family members to serve as their representatives, and must often turn to outsiders, and sometimes even strangers, Mr. Chairman, in order to receive their benefits. I believe it's imperative that we have a system in place to determine, before any wrongdoing occurs, whether the prospective representative payee is suited to serve in this important capacity.

I am anxious, Mr. Chairman, to hear from our witnesses this morning, and to learn of the reforms which the Social Security Administration has recently implemented. I would also like to take this occasion to commend you, Mr. Chairman, for your legislation which will go a long way in strengthening the safeguards against abuse by representative payees. Mr. Chairman, I'm proud to co-sponsor this important bill, and I ask unanimous consent to enclose my whole statement in the record.

The CHAIRMAN. Without objection, so ordered.

Senator Shelby, thank you. And you are very quickly becoming an invaluable member of this committee, and we thank you.

[The prepared statement of Senator Shelby follows.]

RICHARD SHELBY
ALABAMA

COMMITTEE ON ARMED SERVICES
COMMITTEE ON BANKING, HOUSING
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UNITED STATES SENATE

SPECIAL COMMITTEE ON AGING

SSA'S REPRESENTATIVE PAYEE PROGRAM:

SAFEGUARDING BENEFICIARIES AGAINST ABUSE

JUNE 6, 1989

MR. CHAIRMAN, I WOULD LIKE TO COMMEND YOU FOR HOLDING THIS HEARING. SINCE TAKING OVER THE REINS OF THIS COMMITTEE, YOU HAVE DIRECTED HEARINGS OVER ISSUES OF THE MOST VITAL IMPORTANCE. THIS OCCASION IS NO DIFFERENT.

SOME OF OUR SOCIETY'S MOST VULNERABLE CITIZENS ARE BEING TAKEN ADVANTAGE OF -- NOT ONLY BY DISHONEST AND SCHEMING PAYEES WHO ALL TOO OFTEN ABSCOND WITH A BENEFICIARY'S ONLY SOURCE OF REVENUE, BUT ALSO BY A LACKADAISICAL MONITORING AND OVERSIGHT SYSTEM.

EARLIER THIS YEAR WE HEARD A WITNESS BEFORE THIS COMMITTEE TELL OF THE HORRORS WHICH OCCURRED IN AN UNLICENSED BOARD AND CARE HOME IN SACRAMENTO, CALIFORNIA, WHERE THE OPERATOR, A REPRESENTATIVE PAYEE, WAS CONVICTED OF MURDERING THE BENEFICIARY FOR WHOM SHE COLLECTED THE SOCIAL SECURITY BENEFITS. THE WITNESS STATED THAT ONE REASON HE FEELS HE IS ALIVE TODAY IS DUE TO HIS REFUSAL TO ALLOW THE OPERATOR TO BECOME HIS PAYEE, THEREBY REMOVING ANY MOTIVE ON HER PART TO ADD HIS BODY TO THE EIGHT OTHERS FOUND BURIED IN HER YARD.

MR. CHAIRMAN, I HOPE THIS IS AN EXTREME CASE. UNFORTUNATELY, AS SOME OF OUR WITNESSES HERE TODAY CAN SURELY ATTEST, ABUSES DO ABOUND. I DO NOT MEAN TO STATE THAT THE SYSTEM IS DEVOID OF MERIT, FOR REPRESENTATIVE PAYEES CAN PLAY A TRULY VITAL ROLE IN ASSISTING BENEFICIARIES WHO NEED SOMEONE TO ENSURE THAT THEY DO IN FACT RECEIVE THE BENEFITS TO WHICH THEY ARE ENTITLED UNDER LAW.

WHAT IS OF GREATEST CONCERN TO ME IS THAT MANY INDIVIDUALS, WHO FIND THEMSELVES ON THE SHORT END OF THE DEAL WHEN A CORRUPT PAYEE HAS STOLEN THEIR BENEFITS, ARE OFTEN THE MOST VULNERABLE OF ALL BENEFICIARIES. THESE PERSONS MAY NOT HAVE FAMILY MEMBERS TO SERVE AS THEIR REPRESENTATIVE, AND MUST OFTEN TURN TO OUTSIDERS AND SOMETIMES EVEN STRANGERS IN ORDER TO RECEIVE THEIR BENEFITS. IT IS IMPERATIVE THAT WE HAVE A SYSTEM IN PLACE TO DETERMINE, BEFORE ANY WRONGDOING OCCURS, WHETHER THE PROSPECTIVE REPRESENTATIVE PAYEE IS SUITED TO SERVE IN THIS IMPORTANT CAPACITY.

I AM ANXIOUS TO HEAR FROM OUR WITNESSES THIS MORNING, AND TO LEARN OF THE REFORMS WHICH THE SOCIAL SECURITY ADMINISTRATION HAS RECENTLY IMPLEMENTED. I WOULD ALSO LIKE TO COMMEND YOU, MR. CHAIRMAN, FOR YOUR LEGISLATION WHICH WILL GO A LONG WAY IN STRENGTHENING THE SAFEGUARDS AGAINST ABUSE BY REPRESENTATIVE PAYEES. I AM PROUD TO CO-SPONSOR THIS IMPORTANT BILL.

THANK YOU.

The CHAIRMAN. Well, now, let's hear from some people from the real world. We have three witnesses on our first panel this morning: Elizabeth Freeland, Mary Miller, and Audrey Madyun.

Elizabeth Freeland, you're from Sacramento?

Ms. FREELAND. Yes.

The Chairman. We want you to feel comfortable and to just tell your story. You were required by the Social Security Administration to find a payee, even though you had managed your own benefits for 9 years. We're going to hear your story in a moment.

Then Mary Miller, a distinguished citizen from Marvell, AR, who was taken advantage of by her payee, who she had previously believed to be a friend. We're going to hear from you too, Mary, in just a moment.

Audrey Madyun does a lot of work as a paralegal with the East Arkansas Legal Services office. You've assisted a number of beneficiaries in that part of the State when payees were misusing the payments for those beneficiaries.

We welcome all of the panel members today. We'll first call on Elizabeth Freeland. Elizabeth, would you tell us about your case, just in your own words?

STATEMENT OF ELIZABETH FREELAND, SACRAMENTO, CA

Ms. FREELAND. I went to the Social Security office to apply for Social Security, and they told me come in to fill out the applications. I went in with a lady that was staying with me, and the applications were filled out, and then they told me that I had to have a payee. I told them that I did not want a payee, because I did not need a payee. I've been handling my own AFDC checks for 9 years.

They told me if I did not have a payee, I would not get my checks, and I told them that I cannot find a payee, or anyone to be a payee. Then, once again the worker said if you do not get a payee then you cannot have your checks.

The check had come and the payee did not tell me. She went to the store and cashed the check, and I went back to the Social Security office and told them, and asked them if my check had come. And they said, yes, you have to talk to your payee. I went to the payee and I told her I would like to have my check. And she said that it's here. And I said, well, why didn't you tell me it came, and she said, because I didn't—she didn't say why. She'd given me \$1,700, what was left out of the check. The check was for \$2,200, and we went to a bank—we went to two banks to try to deposit the money in a checking account. Come to find out that she could not because she was in trouble for writing bad checks. So then we went back to my home the same day, and then the next day she asked her boyfriend to put the money in the bank.

Well, apparently, I guess he did, but come to find out later that he did not. He has spent the money to go on a trip to Ohio. I went back to the Social Security office and I reported it to them, and I told them that my payee is taking off with my money, and that she is no longer in my home. And they said that there was nothing that they could do about it. And I went back home and I just, you know, stayed there for a couple of days, and I thought to myself, well, this isn't right. So I went back to the Social Security office,

and I told them I would like to have something done. And they said that there was nothing that they could do.

And so, I had a check coming in January. It was in my name and my payee's name. I had to return that check back to the Social Security Administration, and then my benefits were suspended for 4 months. I lived off of an AFDC grant for one person, which was for my daughter and myself. It was very hard to live off of that much money. I had to let several bills go unpaid. I had to go without medication that I needed for myself, and it was just extremely hard.

And so I went back to the Social Security office and I told them that I want to be my own payee. I cannot find anybody to be my payee, and they said that there was nothing that they could do, to go find a lawyer. They also gave me some papers to fill out to return to my doctor that I could be my own payee. I took those papers to my doctor and within 1 week, the papers were back in the Social Security office. They had called me to come back in, and I have become my own payee, and I hope that the Congress and other people here will help us so that we don't get stuck like this, and for others in the world, too.

And I appreciate it very much for all of you inviting me here. Thank you.

[The prepared statement of Ms. Freeland follows:]

testimony of Elizabeth Freeland

My name is Elizabeth Freeland and I live in Sacramento, California. Thank you for inviting me to share with you my experiences I have had with the Social Security representative payee system.

I am 34 years old and the mother of two children. I applied for SSI disability benefits in April 1987. Prior to that I had received and managed my own AFDC benefits for nine years.

In July 1987 I was told by a Social Security worker that I was approved for disability benefits and that I needed to go to the office to complete my application. On July 29, 1987, I went to the Social Security office with a woman who had been staying with me. This woman and her five children had been staying with me after she had been evicted from her home. She had lived with me for only approximately six weeks at that time. I was letting her stay with me rent free because I felt sorry for her and she had nowhere else to go.

After completing my application I was told that I had to have a representative payee to manage my lump sum benefits and my ongoing benefits. I disagreed with that decision because, as I told her, I could handle my own benefits and had done so for seven years with my AFDC. The worker told me that if I did not have a payee I would get no benefits. I repeatedly stated I had no person who could act as payee. The woman who was with me volunteered to be my payee upon the suggestion of the Social Security worker. I told the worker I did not want her or any other person to be my payee. I was again told that if I had no payee I would not receive any benefits. Because I had no other person who could act as my payee I agreed against my better judgment to allow this woman to be my payee. I hoped that she would properly handle my benefits and I knew of nothing in her history at that time that would make her unsuitable to act as my payee.

I was not told by the Social Security Administration at the time I met with the worker that I could appeal the determination that a payee had to be appointed or that there was a way to give proof that I did not need a payee.

The Social Security worker only asked this woman her relationship to me and how long she had lived with me. She did not ask her any questions about her background. If I had known at that time the things I later found out about this woman I would not have consented to her being my payee. She was approved to be my payee on the same day of her application.

When my monthly SSI checks came to my payee she would cash them and give the cash to me. Sometimes she did not give me the full amount. I would use the money for me and my children's needs. I had no problem managing the money.

My payee did not give me the \$2,200 in retroactive benefits that were paid to her for me. Each time I asked about them I was told that she had not received them. I was never given a notice by Social Security that my benefits had been paid to my payee. Some time in November 1987 I went to the Social Security office to ask about my retroactive benefits. I was told by a Social Security worker that the benefits had been paid to my payee in September. I asked my payee about the check and she said she had cashed it and that she only had \$1,700 of it left. My payee agreed to put it in the bank for me. I went with her to two banks. Both refused to open an account for her because of her past history for bad checks. My payee gave the money to her boyfriend to put in his bank account. I was never given any of the money when I asked for it and was told it was in a "time" account.

In December 1987, my payee's boyfriend admitted to me that he spent the \$1,700 on a trip for himself. When I told him I was going to report him to Social Security he agreed to pay the money back at \$200 per month. He gave me a note stating that the money was a loan. I refused to sign the note.

After I discovered my benefits had been taken I ordered my payee out of my home and reported to Social Security that she had taken my benefits and was no longer in my home. I also told the worker I did not have anyone else to be my payee. I was told by a Social Security worker for the first time that if I could get a statement from my doctors that I could handle my own funds I could have my benefits paid to me directly. Within a week I had

obtained statements from my doctor and a social worker that I could handle my own funds. I was told to return my January check to Social Security which I did.

During the time my application was being processed, January 1988 through April 1988, I did not receive any SSI benefits. My daughter and I lived on a one-person AFDC grant of \$311.00. Social Security gave me a \$100 emergency payment in February 1988. I used that money to pay my utility bills so they would not be turned off. In the middle of May I received my May SSI check and my January through April benefits. It was extremely hard living without my benefits for those four months. I had to let my bills go unpaid and I had to go to my church to get food for myself and my daughter. I also had to go without medication that I needed that was not paid for by Medi-Cal. Luckily, my house is paid for, but I did not have the money to pay my taxes and was assessed late charges.

Social Security workers told me several times that there was nothing they could do to help me get my money back. Each time they told me that I should contact a lawyer for help. They never took a misuse report from me. I went back to the Social Security office after trying to find a lawyer and was again told that there was nothing they could do and was given a sheet with the names of lawyers who handle Social Security cases. I got the name of Legal Services of Northern California from that list and contacted them for assistance.

In July 1988, through Legal Services of Northern California, I reported the taking of my benefits to the Social Security Regional Commissioner, the Department of HHS's Office of Inspector General, the FBI, and several local law enforcement agencies. On December 9, 1988, through Legal Services of Northern California I received a decision stating that the district office has been unable to locate my past payee and therefore a determination of misuse could not be made and would be deferred until her whereabouts was known.

My experiences with the representative payee system were frightening. I lost \$2,200 of my benefits which I have little or no hope of ever seeing again, while my payee goes completely free. As far as I am aware, Social Security has made no attempts to find my payee. They have never contacted me for information.

I hope that Congress will be able to do something to prevent this from ever happening to me or anyone else again.

Thank you.

The CHAIRMAN. Thank you very much, Elizabeth.

Were you given any advance notice as to who your payee was going to be? Did you have a choice?

Ms. FREELAND. The payee was with me—the lady that was staying with me, according to what the Social Security office was urging me to accept her to be my payee, and I did not want her, and I told them that.

The CHAIRMAN. Were you aware that this person had written bad checks before?

Ms. FREELAND. No, I was not aware until after she had taken off with the money.

The CHAIRMAN. Do you know if the Social Security office had checked out this payee?

Ms. FREELAND. No, they only asked me who she was and how long she had lived with me. And I told her that she was just a friend.

The CHAIRMAN. And they did no background checks on her, to the best of your knowledge?

Ms. FREELAND. No.

The CHAIRMAN. Did they offer to pay you back for the stolen money?

Ms. FREELAND. No, they just told me to go find a lawyer, that there was nothing they could do.

The CHAIRMAN. And did you find a lawyer?

Ms. FREELAND. Yes, I did.

The CHAIRMAN. Did you appeal this issue?

Ms. FREELAND. No, I did not, unless Curt Child did.

The CHAIRMAN. I think we'll move to Mary Miller. Later, I may have another question or two, Elizabeth, if you don't mind. We're going to make this very informal.

Now, Mary, you, once again, are from Marvell, AR. It's in Phillips County—

Ms. MILLER. Yes, sir.

The CHAIRMAN [continuing]. And we're very glad to have you here. This is in the Delta Region of the State of Arkansas. And I think that you have a story to tell. Mary, would you pull the microphone a little closer and tell us your story.

STATEMENT OF MARY MILLER, MARVELL, AR

Ms. MILLER. I had my very best friend, who was very kind to us, and during the time that I was not receiving anything, I applied in 1985, but I was not receiving anything, and she would buy us everything. She was very, very nice to me—

The CHAIRMAN. She was your payee?

Ms. MILLER. Right. And she had known me as a nurse for many years before I ever got sick. And everybody in the community was so kind to me, because they felt that I had done something that they really appreciated.

The CHAIRMAN. Excuse me. Had you been a nurse, or had she been a nurse?

Ms. MILLER. I had been a nurse.

The CHAIRMAN. You had been a nurse.

Ms. MILLER. Yes, sir, before I got so sick, and unable to work. And she had bought things for us, and just been very, very kind to us, and I couldn't have thought of a better person to be my payee than her.

And then after we got our lump sum, she told us about it, and I also got a letter from the Social Security office, but the check went out to her. And just after she got that check, I had to go into the hospital—I think I had some surgery, I had to have surgery—and she bought us different things, because really and truly, we didn't have anything. We were using a hot plate to cook on. And she bought a stove, refrigerator, a bed, a washer and a dryer. But then the money that I really needed for things, I really didn't get it.

The CHAIRMAN. Like for food, or automobile repair, I believe?

Ms. MILLER. We needed lights more than anything.

The CHAIRMAN. Lights?

Ms. MILLER. Right.

The CHAIRMAN. You didn't have lights?

Ms. MILLER. We had maybe one or two in the whole house.

And she paid this man, though, to work on our house, but she gave him all the money at one time, and he did not do a good job. And I feel that she just kind of got excited, or something. I don't know what happened, because she had been too kind, and too good to us, for me to feel that she would really misuse us. And at the same time, when the money start coming, she didn't want to tell us anything about it. She didn't—when my check would come, I would go by and she would say well, it didn't come today, today is the third, but I don't know what's wrong, it didn't come. And then we would go back, and maybe she would bring it out to the house for us. And she would say, like, you're getting \$383 a month, and this is it.

I don't know, I'm sitting here, I feel so guilty talking about her, because when a person is so good to you before something comes up, then you feel bad after it comes up. But I really, truly don't want anybody else to have to live through, or go through what I had to go through.

The CHAIRMAN. How long was she your payee, Mary?

Ms. MILLER. For about 3 years.

The CHAIRMAN. Three years. And did you go to the Social Security office to object to this type of treatment?

Ms. MILLER. I did. But then when I got there I also changed my mind. I'm not going to tell the wrong thing. I changed my mind and felt that she had been so good, that if I give her another chance she would do better.

The CHAIRMAN. And did she do better?

Ms. MILLER. No, sir.

The CHAIRMAN. And is she still your payee, now?

Ms. MILLER. No, sir.

The CHAIRMAN. And it sounds like you've also lost a friend and the money was spent for the wrong items, is this correct?

Ms. MILLER. Well, I really thought I had, because I started being my own payee in January—receiving my own check in January 1989, and I didn't—I asked her about the money—her mama was the one that told me we didn't have any more. So I just kind of

toughened it out, no matter how hard it got, because she had been very, very kind to us.

And on Thursday, I was sent word that the money that she had for me, that she was paying on the air conditioner that she sent out to us. But during the time that she sent this air conditioner out, I felt we was much too poor to afford an air conditioner, so I was going to make it on a fan. I sent the air conditioner back to the store, and then she sent it back to us. And I went into the store to check on it, and I found that this was a very expensive air conditioner, and that she had also got it in her name.

The CHAIRMAN. It was in her name. When she received the money for your benefit from Social Security, did she put that money in a separate back account for you, Mary, or did she keep that in her bank account? Do you know? Did you have a bank account?

Ms. MILLER. No, sir. I didn't have one. She might have put it in a bank account for me. I really don't know.

The CHAIRMAN. Did you have any kind of an accounting each month about where the money had been expended?

Ms. MILLER. No, sir.

The CHAIRMAN. She never offered to give you that? Or you never—in other words, each month your check was X dollars, and did you know—did she tell you where all those dollars had been spent?

Ms. MILLER. She tried to show me where they had been spent. That was spent on the stove and stuff like that that were rather expensive. And I don't know, I just thank God so much for everything. I thank Him so much to be out of it. But I'm not going to just accept everything being over with, because I would like to have somebody else. And I just think that if you're going to have—if somebody has got to have a payee, than it should be monitored closer, and given an encounter so that they will not be able to just do what they want to.

[The prepared statement of Ms. Miller follows:]

REPRESENTATIVE PAYEE ISSUES OF THE SOCIAL SECURITY ADMINISTRATION

U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

TESTIMONY GIVEN BEFORE THE SENATE COMMISSION ON AGING
BY MARY MILLER
P. O. BOX 1434
MARVELL, ARKANSAS 72366

SSA DISABILITY RECIPIENT & FORMER SSI DISABILITY RECIPIENT

JUNE 6, 1989

My name is Mary Miller and I live in Marvell, Arkansas, in Phillips County. I began receiving disability benefits in May, 1987. I had applied for benefits in 1985. I had been a nurse before my disability began.

I was told that I needed a protective payee, and I did not disagree. The only person that I could think of was a very, very dear friend of mine who had helped me out for the many years while I had no income. I did not think in any way that this would cause any problems. She had been such a dear friend of mine for so many years.

When I got my first lump sum, it was for about \$6,000 or more. I don't remember the exact amount. I asked my payee to buy burial insurance because at that time I thought I was going to die and she refused to do so. She told me that if I died, somehow I would get buried and I didn't need to worry about that.

She refused to put in a telephone for me. This is even though I live about fifteen to twenty miles from her or the nearest hospital. I have three (3) children, and my son was often sick. I had a car that my brother had been paying on for me, but it was not running. My payee refused to have it repaired.

She did buy things for me. I can't say that. A lot of times though, she would buy the most expensive things. One time she ordered an air conditioner for me and had it delivered to my house even though I told her I would rather have fixed the lights and wiring. I later found out that she had had it charged to her

-2-

own account with the store. I sent the air conditioner back to the store, but she sent it back to me. I went to the store and learned that she could have gotten a cheaper air conditioner.

I also asked her to put whatever money was left over from my lump sum in a savings or checking account so that we could have it as needed since I didn't have any medical insurance on the children or myself. She refused to do so and later told me that she had put the money in her own safety deposit box.

She did well by the children but often didn't do well by me. She would buy the children clothes, but one time I asked for clothes and asked for a real nice dress to wear to church that was on sale for half price, she told me that she would buy some of the things but refused to buy the dress and told me I didn't need it and shouldn't ask her for anything else.

She often would not tell me how much money she would have of mine or what was going on. Without my consent, she paid a man \$2,000 up front to get repairs done to my house. I would never have agreed to pay the man all the money up front. He did only a little of the work, and it is still raining in my house.

I did talk with Legal Services and Social Security several times, but I kept thinking that we would be able to work something out. I simply could not believe that a friend would do this to me.

I finally got the check put in my name because I could not find anyone else as a payee. My payee says I still owe her for the air conditioner. There is still confusion about whether or not she was taking any money out of my check. She did at one time say she still had some money put back for me, but later her mother told her to tell me that she did not.

The CHAIRMAN. Mary, you have a big heart. Thank you. I may ask you a question or two in a moment, along with Elizabeth.

Audrey, you work in the paralegal area. And I think you've had a lot of these cases, and we would look forward to hearing your statement now.

**STATEMENT OF AUDREY MADYUN, PARALEGAL, EAST ARKANSAS
LEGAL SERVICES, HELENA, AR**

Ms. MADYUN. Thank you for inviting us to come today. As you mentioned, I am a paralegal with Legal Services in Arkansas. I've known Ms. Miller for a couple of years, and she is very kindhearted, much more so than I think I would be.

She failed to mention that her payee probably received at least \$9,000 in back benefits for herself and her children. Her payee also put some of the money in a safety deposit box, and not let her know things about it. She refused to get her her basic necessities, like burial insurance, health insurance. At times Ms. Miller would come by and tell her that she needed clothes, out of the money, and she refused to get those things for her. She also, perhaps, would even refuse to tell her when her checks had come in.

Arkansas is a very rural area, and Ms. Miller lives approximately 20 miles away from her payee. At times she would have to pay someone \$20 just to take her to her payee to see if she had any money at all. Ms. Miller also went without medicine, medicine that she dearly needed, because her payee would not forward the money to her. She has a very ill child, who also went without benefits. No transportation. Her payee, even though, had gotten \$9,000, refused to install a telephone in the house. Although she's a very kindhearted lady, the abuse went on, and on, and on. And \$9,000 to a person who previously had no income, who previously had been living off of about \$100 a month, is a lot of money that could have been used in a much different way.

In our area we hear a lot of abuses of the representative payee program system. Many people simply go out and find someone who is a representative payee for several others. I can tell you two cases in point.

One was highly publicized in our area, and it was a couple who had lived in a local boarding home. They got fed up with the boarding home, and they decided to live out on their own. They were told they had to have a payee, not knowing anyone in the community, they simply walked the streets for days trying to find payees, and knocked on everyone's house in the community. They finally found someone who was hanging around a local joint, and said, okay, I'll be your payee. They went and signed this person up, and never met the person before in their lives. The payee was living on welfare benefits herself, and used all of their money. I think it was both Social Security and SSI. These two people, again, started walking the streets, knocking on doors, begging for food. The woman was carrying a box of cereal and eating out of the box of cereal, just to get by during the day. They begged for food, clothing, shelter and everything.

They finally met a local newspaper reporter, who publicized the information. Through community support they did find an anony-

mous payee, who had the benefits transferred over. To the best of my knowledge nothing was done to the previous payee who abused them. No background check had ever been done of that person. We later found out that the woman was pregnant at the time—that the beneficiary was pregnant at the time, and had been forced to go onto the streets, begging for assistance.

Another case that I'm familiar with, which was really hard to deal with, was a case of an elderly lady. She was approximately 80 years old and lived in an adjoining State. She had been declared incompetent by that State, and a public administrator, a big official, was appointed her payee. The public administrator saw her, according to public court records, five times in a year. Not very often, only when she was begging to see him. Another year he reported he only saw her twice that year. Somehow this elderly lady strapped her purse to her walker—she was on a walker—got on a bus. I don't know how she made it, and got to Arkansas to live with relatives. The public administrator did not know where she was for several months. The lady was living in Arkansas, just on the kindness of her relatives. She did not have any access to her money, and in the meantime her Social Security and SSI checks were going to the public administrator office, piling up in a savings account, and she had no access whatsoever to it.

Eventually, after several months, she did get the payee changed over to a local relative. But in the meantime the moneys were still staying with the public administrator. He refused, absolutely refused, to work with the Social Security Administration in the adjoining State, and the client was possibly getting close to the SSI limit, which meant that she could have been ineligible for benefits. Her health deteriorated because she had no health benefits, and so on. So that was a horrifying case.

In Ms. Miller's case, as well as so many others, we see that a lot of people are so afraid to buck the system. Ms. Miller took two years from her last application to even be told that she was going to get her first check. A lot of people who meet me on the street, even casually, or walk into our office, don't want to push the system. They know that they have lived with less, and no matter how shabbily their payee system is, they want something at least to come in to them.

Many people, instead of pursuing an issue, going through the Administrative Appeals of the Social Security Administration, would much rather, if they have no other choice, deal with how shabbily they are being treated. They've heard the horror stories of being cutting off, of people who have died, and they say, well, if this is the best of a bad situation, I'll just make the best of it.

I have helped fill out the questionnaires that the Social Security Administration has sent to people. They are simply a one-sheet form, as well as I remember, a checkoff form, no documentation is required of the payees. The most horrifying stories we see are when the payees receive large lump sum benefits. I've seen cases of up to \$20,000 and more dollars, in which a payee has never had to report back to tell how that money was spent.

THE CHAIRMAN. Were those people receiving say a big lump sum like that, were they checked out or screened?

Ms. MADYUN. To the best of my knowledge, no.

The CHAIRMAN. Did the Social Security Administration ask them if they had a record?

Ms. MADYUN. To the best of my knowledge, no.

The CHAIRMAN. How many cases have you seen somewhat similar to the couple you just described where the beneficiaries of Social Security just could not get anyone to become their representative payee? Do you see a lot of that?

Ms. MADYUN. I see a growing number of it. As some of the regulations have changed, because people fit in certain categories, they're automatically told they have to have a payee. So, I'm seeing a growing number of it now.

The CHAIRMAN. Usually it's a relative, is that correct, Audrey?

Ms. MADYUN. Generally, it is a relative. However, we do see a lot of cases in which people would rather someone else other than a relative handle their benefits.

And just in finishing up, we work fairly well with the local Social Security office, but we've seen so much of a change lately, because there are a lot fewer staff members. It is extremely hard for them to deal with just what they have. Sometimes I even have to make my own copies when I go over there. It is hard for them to—

The CHAIRMAN. Which office do you use?

Ms. MADYUN. Helena, AR.

The CHAIRMAN. In Helena?

Ms. MADYUN. Yes.

The CHAIRMAN. All right.

Ms. MADYUN. And I cannot see any mass change happening of this sort, of a protective payee system, without there being an increased number of workers in the Social Security office. It is just extremely difficult for them to handle the day-to-day things that they have now.

[The prepared statement of Ms. Madyun follows:]

REPRESENTATIVE PAYEE ISSUES OF THE SOCIAL SECURITY ADMINISTRATION

U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

TESTIMONY GIVEN BEFORE THE SENATE COMMISSION ON AGING
BY AUDREY MADYUN, PARALEGAL
EAST ARKANSAS LEGAL SERVICES
402 FRANKLIN STREET
HELENA, ARKANSAS 72342

JUNE 6, 1989

INTRODUCTION

My name is Audrey Madyun. I am a Paralegal with East Arkansas Legal Services located at 402 Franklin Street, Helena, Arkansas, and I have worked in that capacity nearly nine (9) years.

Under the supervision of attorneys, one of my main functions is to represent claimants in administrative hearings before the Social Security Administration, primarily at the ALJ (Administrative Law Judge) level. Since 1980, I have represented over 150 persons in ALJ hearings directly, private attorneys in the area, and been indirectly involved with at least three to four times more cases than that.

I did not make the initial contact with Senator Pryor's office or any office, department or commission of the Senate. My testimony today will in no way breach any client confidentiality and consists of instances in which I am directly familiar, either through my work or community activities.

The most well-known case in our community is one that was published in the local newspaper. A couple characterized as having some mental disability and who were recipients of both Social Security and SSI benefits had felt sufficiently able to live on their own and moved out of a local boarding home. Not knowing anyone in the community, they walked the streets and asked everyone they met to be their payee. One person agreed to do so. Despite their pleas, this person abused their benefits

for at least two months. They began to go on the street again and ask for food and other basic necessities. They then met a newspaper reporter. Through his contacting local missions, attorneys and other community resource persons, an anonymous payee was found. It was later learned that the woman was pregnant at the time.

Another instance involves an elderly person who had been determined incompetent by a court in an adjoining state and a Public Administrator appointed as the recipient's guardian and representative payee. The Public Administrator made annual reports to the court. In one report, the guardian stated that he had seen the recipient only five times in the previous year and that while well over \$1,000 was currently on hand in an account for the recipient, no life insurance or burial plans had been made for this elderly person. This particular elderly person ended up catching a bus somehow and moving in with a relative in our state. The recipient did not have access to any funds, they were not being used to meet the recipient's needs, and while the monies were piling up in the account, the recipient was close to being cut off of SSI benefits because of the resource levels at that time.

The recipient's health slowly deteriorated, but because the guardian was reluctant to release information about resources, finances, or to even determine the recipient's whereabouts, the recipient's family was unable to apply for benefits locally. After several months, the payee was changed from the guardian in the other state to a local relative. Even so, the guardian threatened to appeal the change of payee and refused to release any of the amassed funds. The court records reflect that he had only seen his ward twice that year.

As in Ms. Mary Miller's case, who is testifying here today, many beneficiaries are simply so relieved to at least be receiving some income, they are afraid of "rocking the boat" to make a change in their payee status. I have talked with many people casually who don't wish to pursue any issues because of how long it took them to get benefits in the first place. Others who might ordinarily do so do not realize that their payees may actually be ripping them off.

Our area is a very rural one. We do not have a standard general relief program in the state. There are few free medical facilities in this state.

So many recipients are aware of how many people have been cut off of SSA/SSI in recent years and the horror stories of people having died before receiving benefits that it is not surprising that they don't wish to take any steps that might jeopardize their only source of income, however shabbily they might receive it.

Although most recipients and payees are notified that they would have to report how lump sum monies were spent after a period of six to nine months, I can't recall any instance in which this has been done. I have seen and have filled out the short computer-generated questionnaires asking payees how monies were used. However, no verification was ever required on those forms.

I have nothing but the highest of praise for the workers at our local Social Security District Office. Many that I have talked with agree that more standards should be used for the protective payee system. However, I cannot see how anything could be sufficiently implemented due to the overwhelming shortage of staff personnel. Setting up a system that is mainly computer-generated would not be the answer. Many of the persons in rural areas such as ours cannot read. Oftentimes the computer-generated notices are difficult for even the most learned person to understand.

Thank you for your time and patience in hearing my testimony. Please review and made revisions in the protective payee system of the Social Security Administration. However, more so, please make assurances that there will be staff in the Social Security offices to accommodate the changes that will be required by any such implementation.

The CHAIRMAN. I want to thank you for your statement. Audrey, is this your—have you been to Washington, DC, before?

Ms. MADYUN. No, I haven't. I'm usually off in Arkansas.

The CHAIRMAN. How about you, Mary, or Elizabeth, is this the first trip for all three of you?

[Witnesses nodding yes.]

The CHAIRMAN. Well, welcome to Washington. You've given some very good statements this morning. And I want to thank you for it.

Ms. MADYUN. Thank you.

The CHAIRMAN. Senator Shelby?

Senator SHELBY. Thank you, Mr. Chairman.

Audrey, you're a paralegal, and you've obviously, from your testimony, been working with these cases over a long period of time now.

Ms. MADYUN. Yes, sir.

Senator SHELBY. Under the law as I understand it, the current law, the Social Security Administrator has some type of accounting procedure, an auditing procedure. I know Alabama, where I'm from, is not too far from your State, but I would like to know from your own experience, what kind of accounting procedures have they had in your State of Arkansas, of your knowledge, and why haven't they worked? Obviously, they haven't worked.

Ms. MADYUN. I am not familiar of any accounting procedure at this point.

Senator SHELBY. In other words, they don't have anyone in the Social Security Administration to come up and say, each month or every quarter, and review these representative payees accounts, and see what they have done with the money?

Ms. MADYUN. None that I know of. That's not to say that there are none. I have not seen—

Senator SHELBY. You've never heard of any, have you?

Ms. MADYUN. No, sir, I have not.

Senator SHELBY. It's just a pay out and that's it?

Ms. MADYUN. Yes, sir.

Senator SHELBY. Have you ever heard of any accountable representative payee dealing with the Social Security Administration on a large lump sum pay out?

Ms. MADYUN. No, sir, I have not. And the one case that I recall of 20-odd thousand dollars, the payee received it in two separate checks. But I don't know of any time when that payee had to go back and make a report. The payee did have to fill out the little checkoff form, received a booklet on how to be a representative payee, and a little accounting booklet to keep entries in, but that's—to the best of my knowledge, that's all that payee received.

Senator SHELBY. You know, you're a paralegal—it's been a long time since I've practiced law, but if you were a guardian of someone, you know, you had a legal guardianship, I guess in any State in the Union, you would have to have an annual accounting of that.

Ms. MADYUN. Yes, sir.

Senator SHELBY. And that would be subject to auditing and everything else, and you'd file it, in my State with the probate court. And show all their expenditures, what they were expended for, the

balance in the checking account, or whatever. But you don't have it in this situation of your knowledge?

Ms. MADYUN. Not to my knowledge. The only accounting that I have ever seen was when that person, the payee, was also a guardian, and the accounting of the money—

Senator SHELBY. Such as maybe a veteran or something?

Ms. MADYUN. It was the case I mentioned where the public administrator was the guardian of the recipient.

Senator SHELBY. Do you know of your own knowledge, if the Social Security Administration in the State of Arkansas, or any State, has an office that would deal with accountability of the representative payees?

Ms. MADYUN. Not to my knowledge.

Senator SHELBY. You've never heard of it, have you?

Ms. MADYUN. No, sir, I haven't.

Senator SHELBY. OK.

Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. That's a good question, Senator Shelby. And that maybe something we need to address. I have here, by the way, the first time I've seen one of these—I've bet you've seen a lot of these—

Ms. MADYUN. Yes, sir.

The CHAIRMAN. This is the Social Security Administration's Representative Payee Report. It's one page and—Yes, sir, Senator Shelby?

Senator SHELBY. Mr. Chairman, can I ask her one more?

The CHAIRMAN. Certainly, absolutely.

Senator SHELBY. Do you have any judgment here, today, about how many people in the State of Arkansas are represented by a representative payee in dealing with their Social Security check?

Ms. MADYUN. No, I don't. Just looking over the cases I've consulted with private attorneys, and in our own legal services, I would say maybe 2 out of 10. That's just—or maybe even higher. The number is growing.

Senator SHELBY. Twenty percent?

Ms. MADYUN. Yes. The number is growing.

Senator SHELBY. But you're not sure of the—

Ms. MADYUN. I'm not sure, no. I haven't kept an accounting of that, myself.

Senator SHELBY. Thank you, Mr. Chairman.

The CHAIRMAN. Audrey, let me ask this, and I think Senator Shelby would share an interest in this area. In boarding homes, board and care homes, and let's take the region of Arkansas, in which you live, and maybe Mary, having been a nurse, is familiar with this. Have you seen representative payees who are also the owners of the board and care homes, and nursing home owners, have you seen this?

Ms. MADYUN. Too many times. That's what most of the people who come into us, or meet me on the street, knock on my door, whatever, talk about, that the owners are out there grabbing for the benefit checks.

The CHAIRMAN. I noticed nothing, Senator Shelby, on this particular form which—I don't think there's anything here which asks them their own occupation, nor even asks a question about any

former criminal history of any nature. So this is a pretty open-ended form.

Ms. MADYUN. Yes, sir. It just takes a couple of seconds to fill it out.

The CHAIRMAN. And that person then can become a payee?

Ms. MADYUN. That's just their reporting form that comes out, computer generated, which is one of the simpler forms. Most of the notices we see are kind of complex. The payees, themselves, don't understand them. That's why I end up sometimes having to fill out such a simple form as that. So you can imagine the more complex forms as far as "please report this in 9 months," or whatever, if the payees cannot understand those, they certainly can't understand the more complex ones.

The CHAIRMAN. Well, you know, let me play devil's advocate for a moment. I don't know that I would want to become a representative payee for someone. I think the time consumed, and maybe the liability that I would incur, I can frankly see why someone might not want to become a representative of someone. Do you see this?

Ms. MADYUN. Yes, sir, I do. And that's something that I hope you all will consider in considering a change in the law. One of the reasons why a lot of people are having to go to shady characters as payees, is because of a lot of people who just don't want to deal with it. Sometimes a payee maybe changed from month to month, to month. And they just don't want to deal with the situation.

The CHAIRMAN. Could we utilize the network of legal services throughout the country, to maybe help become the payees for some of these beneficiaries? Would that work, or not work?

Ms. MADYUN. I cannot say. I wouldn't—I'm not at liberty to say that.

The CHAIRMAN. This is the first trip you've had to Washington, all three of you. Let me tell you a little bit about the mission of this committee. This is not what we call a legislative committee. For example, I sit three floors down in the Finance Committee. That is a legislative committee, which proposes legislation. This committee exercises oversight over programs and over problems that especially elderly citizens can have. And then, as Senators, we take these issues to the floor of the Senate, as they do in the House of Representatives, and we try to basically change rules, regulations, or sometimes even submit legislation on our own. Now, we're going to all join in this piece of legislation that's going to attempt to reform SSA's payee program by making it more safeproof.

We know it's very difficult to do, but that's the purpose of this committee. And that's what we're going to attempt to do. And that's why your statements this morning, and your testimony have been so beneficial to us, to help us learn firsthand what is going on out there.

I know I speak for Senator Shelby and the other members of the committee when I say that the reason you don't see other members of the committee here is because each of us have three or four committee meetings going on today. Also, several of the Senators are over on the Senate Floor. And we will begin votes this afternoon on several amendments that will be before the Senate.

Senator Shelby.

Senator SHELBY. I have no further questions.

The CHAIRMAN. I want to thank all the witnesses today, and you've been very helpful and constructive in your statements. Thank you.

Ms. MADYUN. Thank you.

Ms. FREELAND. Thank you.

Ms. MILLER. Thank you.

The CHAIRMAN. We have our next witness, that I will call at this time, Mr. Louis Enoff, who's the Deputy Commissioner for Programs, Social Security Administration.

Mr. Enoff, we welcome you this morning. And do you have any assistants, or aides you would like to bring to the committee table, to the witness table? If you do, feel free to do so.

Mr. ENOFF. I appreciate that, Mr. Chairman. I'll start off myself. And it is Enoff. I get confused with one of your colleagues.

The CHAIRMAN. Enoff. Thank you.

STATEMENT OF LOUIS D. ENOFF, DEPUTY COMMISSIONER FOR PROGRAMS, SOCIAL SECURITY ADMINISTRATION

Mr. ENOFF. I appreciate being here, Mr. Chairman, and I appreciate your interest in this area. I think it's an area that we have the same objectives in, and I think we can work together in bringing about some solutions.

With your permission, Mr. Chairman, Mr. Shelby, I would submit my entire statement for the record, and give you a brief summary.

The CHAIRMAN. Without objection, your full statement will be placed in the record.

Mr. ENOFF. Thank you.

Although we think that our current representative payee policies are effective for the large majority of our beneficiaries, we know, that there are some problems with regard to a relatively small, but very, very important proportion of beneficiaries who have needs that are generally far broader than the need for a Social Security payee. These are persons who are likely to need a person to manage all of their financial affairs, and they may need a variety of other social services as well.

Therefore, I want to suggest to you that solutions to their problems do not rest with SSA alone, but require the involvement of other public and private organizations as well. And you've heard this morning some of the reasons why some of these situations are very involved and very difficult.

I commend you for focusing on the needs of these particular beneficiaries, and we do want to work together with you and other interested parties in finding more comprehensive solutions to the problems that face this group of beneficiaries. The current representative payee problems, we believe, are limited to this group that numbers about 250,000 beneficiaries in total, who do not have a relative or a governmental institution as a payee. And we think that some portion of this 250,000 represent the special need category. As was referred to earlier, there are over 4.6 million beneficiaries with payees. So I just give you that number to give you an idea of the proportion.

I'd like to now mention several of the activities that we have begun to improve the representative payee process. And we believe that the most effective solution, and I think you referred to that earlier, in finding qualified payees, is to identify additional voluntary payee sources and to expand the voluntary payee programs that have been so successful. For example, the American Association of Retired Persons sponsors a program under which its members volunteer to be payees. We've been very supportive of their efforts to fund expanded services of this nature, and we're working with the AARP to improve the effectiveness of local payee arrangements with AARP volunteers. We've also discussed with the Department of Veterans Affairs the possibility of permitting the VA payees to manage Social Security and SSI benefits when there's an overlap.

Recognizing that many beneficiaries with special needs also face other problems associated with guardianship issues, and one was referred to here this morning, a departmental task force has been formed to serve as a focal point for representative payee issues within the Department of Health and Human Services, and to address them from a broad perspective. In addition, we will be promoting the expansion of volunteer payee sources at an SSI outreach symposium that we will be holding in Washington on June the 14th. We've invited more than 50 outside organizations to attend that symposium.

Also, recognizing that the resolution of representative payee issues requires a coordinated Social Security effort, the Commissioner formed an intercomponent task force to consider these issues last summer. The task force did recommend the development of a comprehensive representative payee data system. The design and analysis of such a system will be completed in October of this year. Also based on a task force recommendation, we will be conducting several representative payee studies this summer to help identify the characteristics of the high risk payees. The results of these studies will be used to evaluate and improve the selection and the accounting policies for high risk situations.

Finally, I'd like to comment on some of the legislative options that I understand are under consideration by this committee. As I said, we totally agree with the principles involved here. I do have a concern that we are already doing a number of the things that are in the legislation, and I would be concerned if we get a situation where the legislation would limit us from having some flexibility where we need it. There are some situations that require a different approach. And my understanding from the staff is that we are working well together in eliminating those possibilities. But we're concerned that in an effort to solve some specific problems we don't develop legislative options that would, for example, prohibit lump sum retroactive payments in every case. Because, in some of these cases, we would have to withhold benefits needed to meet emergency needs if we could not make an exception.

So let me just say in summary, Mr. Chairman, that we are firmly resolved to do all that we can to assure that well qualified payees are selected promptly, that the payees act in the best interests of the beneficiaries, that the rights of the beneficiaries who need payees are fully protected. I don't believe there are any quick

or easy solutions. I might tell you that when I began looking at this area, I thought, well, all we would have to do is simply follow the legal guardianship process. And when I looked into that, Mr. Chairman, I found that there are more problems in that process than there are in our representative payee process. So we're involved with just a small portion of the persons who have guardianship problems that go beyond us. And I would recommend to you, Mr. Chairman, that you look into some of the allegations, for instance, that were represented by the lady from Legal Services in Arkansas, in terms of legal guardians, where there's a court appointed guardian who has not properly acted. And that doesn't involve just Social Security benefits, Mr. Chairman. There the person usually has responsibility for all financial affairs of the individual.

[The prepared statement of Mr. Enoff follows:]



FOR RELEASE ONLY UPON DELIVERY

STATEMENT

BY

LOUIS D. ENOFF

DEPUTY COMMISSIONER OF PROGRAMS
SOCIAL SECURITY ADMINISTRATION

HEARING ON

THE SOCIAL SECURITY

REPRESENTATIVE PAYEE PROCESS

Mr. Chairman and members of the committee, I appreciate the opportunity to be here today to discuss representative payee issues.

We are very concerned about the effectiveness and implementation of our representative payee policies. Although we believe that we generally accomplish our objective of appointing responsible and caring payees, we are aware of some problems in the representative payee selection process for certain beneficiaries who have special needs.

We have been reevaluating our policies and procedures in order to resolve the problems in this area. Further study will be necessary to identify all of the problems, fully understand their causes, and develop appropriate solutions. While there are no easy answers to the problems that confront us, we are committed to doing what we can to provide the beneficiaries who require representative payees with the protection they need.

I will begin by describing the beneficiary group encountering representative payee problems and summarizing the Social Security Administration's (SSA) representative payee policies. I will then mention some ideas we are exploring and some actions we have taken to help assure that beneficiaries who need payees are protected. Finally, I will comment briefly on some of the legislative ideas in this area that I understand the committee is considering.

For our purposes today, I will be focusing on adult beneficiaries since the problems we are discussing relate to them.

Historical Perspective

The Secretary of Health and Human Services has broad authority to determine whether benefits should be paid directly to a beneficiary or to another person on his behalf. This authority was provided in the 1939 Social Security Amendments.

Social Security policies are designed to protect beneficiaries' rights to receive and manage their benefits without interference. Thus, most adults receive their own benefits. Some beneficiaries, however, are unable to manage their benefits because of mental or physical impairments. In such a case, we appoint a payee to receive and use the benefits on the beneficiary's behalf and to be responsible for informing us of events that affect the beneficiary's entitlement to benefits.

Our policy has always been to appoint as payee the best-qualified person willing to serve. We consider such factors as the payee applicant's ability to carry out payee responsibilities, his knowledge of the beneficiary's needs, his interest in the beneficiary's welfare, his relationship to the beneficiary, and any other indications of whether he will act in the beneficiary's best interests.

From 1939 until well into the 1970s, we encountered few difficulties with our representative payee policies, because in the very large majority of cases the normal payee sources yielded suitable payees--close relatives, friends, and so on.

The current representative payee problems are generally limited to a proportionately small group of beneficiaries. These beneficiaries are generally poor, uneducated, mentally or emotionally handicapped, and without relatives or friends who are interested in their welfare. They include people who are homeless, suffer from alcoholism or drug addiction, or exhibit anti-social behavior. About 5 percent of beneficiaries with payees have a payee who is not a relative or a governmental institution. This 5 percent represents slightly more than 250,000 beneficiaries out of the 4.6 million who have payees. We think that some portion of this 250,000 represents the beneficiary group that is most likely to have special payee problems.

Even though the special needs group is relatively small, it has been growing over the past decade for several reasons. One contributing factor was the enactment of the Supplemental Security Income (SSI) program, which, by virtue of the nature of the program, increased the number of beneficiaries at the lower end of the socio-economic scale who require payees and for whom it is often more difficult to find payees. In addition, the SSI program created unique payee demands by requiring payees for otherwise competent beneficiaries who were medically determined to be alcoholics or drug addicts. The number of such SSI beneficiaries has grown from about 4,000 in 1982 to about 13,000 currently. Another contributing factor was the increase in the number of homeless people.

We believe our current payee policies work well for the vast majority of beneficiaries. But, we recognize that beneficiaries with special needs require some additional attention. Special procedures must be used to give them the extra help they need. In providing this extra service, we believe it is highly desirable to work with care-giving sources to assure coordinated delivery of services to these beneficiaries.

The problem of finding suitable payees for special needs beneficiaries is sometimes compounded by the beneficiaries themselves. Because they fear their benefits will be delayed if SSA has to look for a suitable payee, they sometimes give us incomplete or incorrect information about their true relationship with the payee applicant--thus hiding creditor/debtor situations--or misrepresent a virtual stranger as an interested friend. In order to trigger payment of their benefits, they may risk being taken advantage of by an inappropriate payee.

With this general background in mind, I would now like to summarize our three-part representative payee process which consists of:

- o determining the need for a payee;
- o finding and appointing a payee; and
- o accounting for the use of benefits.

Determining the Need for a Payee

We will appoint a payee for an adult beneficiary if he is legally incompetent or an SSI beneficiary medically determined to be a drug addict or alcoholic. We will generally appoint a payee for an adult beneficiary if he is unable to manage his benefits because of a mental or physical impairment.

The representative payee process generally begins when we become aware that a beneficiary may not be able to handle his own benefits. This may occur when someone files for benefits on the beneficiary's behalf, or a relative, friend, or social agency indicates that a representative payee may be needed.

Once we become aware of the possible need for a payee, we get evidence as to whether a payee is actually needed. A court order declaring a person incompetent is legal evidence for this purpose. More commonly, we obtain a medical opinion, often from a treating physician, as to whether the beneficiary is capable of managing his own benefits. In the few cases in which legal or medical evidence is not available, we base our decision on statements from the beneficiary, his relatives, his custodian, and other people familiar with his situation.

Finding and Appointing a Payee

Once we decide a payee is needed, we solicit applications from persons who are likely to be the best-qualified payee. In soliciting applications, we take into account information provided by the beneficiary, his relatives and friends, payee applicants, and social agencies as to who would be a qualified payee. We also accept applications from anyone who wishes to be payee.

The selection of a payee is guided by the following order of preference:

- o a spouse (or other relative) who has custody of the beneficiary or demonstrates strong concern for his welfare or a legal guardian;
- o a friend who has custody or demonstrates strong concern for his welfare;
- o a public or private nonprofit organization with custody, a Federal institution without custody, a statutory guardian, or a voluntary conservator;
- o a private institution operated for profit and licensed under State law which has custody; or
- o other qualified persons or organizations who are willing to serve.

The existence of a higher ranked candidate does not preclude the selection of a payee from a lower category since our goal is to appoint the best qualified payee based on the beneficiary's needs. However, we do contact all known candidates who have equal or higher ranking than the proposed payee to assure that we consider all well-qualified persons.

Before we appoint a payee, we generally interview each applicant to determine his qualifications. We verify his identity and ask him about his relationship to the beneficiary, about his concern for the beneficiary's welfare, and how he would use the benefits. He must also tell us whether he has ever been convicted of a felony and whether he is currently serving, or has ever served, as payee for another beneficiary.

During the payee selection process, the beneficiary sometimes requests to be his own payee. In this situation we obtain new evidence regarding his ability to manage his own funds and make an appropriate determination.

As a general rule, we make temporary direct payment to a beneficiary who has been found unable to manage his own benefits if there is no qualified payee immediately available. Benefits are not suspended for more than 90 days. However, the law does not permit direct payment to SSI beneficiaries who are alcoholics or drug addicts, and as a matter of law and policy, we do not make direct payment to beneficiaries who are legally incompetent.

We notify the beneficiary or his legal guardian in advance if we decide to appoint a payee for him or change his payee. This gives him the early opportunity to object to the proposed payee

and to submit evidence before the decision is implemented. Although the advance notice procedure does not afford the beneficiary formal appeal rights, we do reevaluate our decision if he objects.

A formal notice of our decision is sent to the beneficiary or his legal guardian, the selected payee, all nonselected payee applicants, the beneficiary's representative, and the previous payee. However, only the beneficiary or his legal representative may formally appeal the decision to make representative payment and the specific choice of payee.

As part of the appointment process, we discuss with the payee his duties and responsibilities, especially proper use of benefits, conservation of benefits, reporting requirements and recordkeeping. We also give him written material which covers these points.

Accounting for the Use of Benefits

If the facts of a case lead us to believe that a payee requires more careful monitoring than would ordinarily occur, we follow up with periodic reviews of the payee's performance to determine the effectiveness of the payee appointment. Where the beneficiary is due a large lump-sum payment, we make a special evaluation to determine how the retroactive payment should be paid to best serve the needs of the beneficiary.

Once a payee is appointed, our primary concern is to ensure that benefits are properly used in the best interests of the beneficiary. We consider that payments have been properly used when they are used for the beneficiary's current maintenance, including food, shelter, clothing, and medical care, or for certain of the beneficiary's financial obligations. We require that unused benefits be conserved for his future needs.

Pursuant to a March 1984 Federal court order, we have required annual accounting of benefits from all payees, except certain State mental institutions which are reviewed under a different system. As part of the annual accounting process, the payee completes a report which solicits information about:

- o the beneficiary's custodian;
- o how the benefits were used; and
- o the amount of benefits saved.

We review all accounting reports to determine whether they reflect proper use of benefits. If information is omitted or raises misuse or custody questions, we contact the payee for additional information. Depending on the adequacy of his response, we may initiate an investigation as to whether benefits are being properly handled. If we find that the interests of the beneficiary are not being served by continuing payment to the existing payee, we find and appoint a new payee. We also take action to recover any misused benefits and may refer payees suspected of fraudulent misuse to the HHS Inspector General for possible criminal prosecution.

Current Activities

I would now like to mention several initiatives we have undertaken or are exploring to improve the protection of beneficiaries in need of representative payees, particularly those in the special needs category that I have discussed today. These activities represent a continuing effort to provide long-term solutions to payee problems. I should emphasize, however, that some of the ideas that we are pursuing are in the preliminary stages of evaluation and may not turn out to be feasible or effective solutions.

- o Expansion of voluntary payee sources: We believe that the most effective solution to the problem of finding qualified payees is to identify additional voluntary payee sources and to expand the voluntary payee programs that have been successful. Some examples of our recent activities are:

- For several years, the American Association of Retired Persons (AARP) has sponsored a program under which its members volunteer to be payees. The program provides for training and monitoring their accounting of benefits. We have been supportive of AARP's efforts to fund expanded services of this nature and are working with AARP to improve the effectiveness of local payee arrangements involving AARP volunteers.
- We have discussed with the Department of Veterans Affairs (VA) the possibility of permitting the VA payee (fiduciary) to manage Social Security and SSI benefits as well as VA benefits. Further discussion is planned after we review VA selection and accounting procedures.
- Recognizing that many beneficiaries with special needs also face other problems associated with guardianship issues, a Departmental taskforce has been formed to serve as a focal point for representative payee issues and to address them from a broad perspective. The taskforce supports the development of one or more demonstration projects to forge linkages between existing providers of social services and those most in need of financial services, e.g., the mentally ill, the homeless, and drug addicts and alcoholics. Information obtained as a result of numerous contacts with other agencies, including the Administration on Aging and the Alcohol, Drug Abuse, and Mental Health Administration, is being used in planning such demonstration projects.
- We plan to promote the expansion of voluntary payee sources at an SSI Outreach Symposium to be held in Washington, D.C. on June 14. More than 50 outside organizations have been invited to attend.
- o Local management reviews: Regional offices are reviewing representative payee practices with local management during their periodic field office visits. Emphasis is being placed on selection problems and solutions and on direct payment options.
- o Direct payment: On March 31, we issued additional guidance to field employees to ensure that direct payment to the beneficiary is considered whenever obstacles are encountered in locating a qualified representative payee.
- o HHS Office of Inspector General (OIG): We have asked OIG to investigate the allegations of improper SSA representative payee practices made in connection with recent California representative payee litigation. We will take appropriate corrective actions based on OIG's findings and recommendations.
- o SSA Taskforce: Recognizing that resolution of representative payee issues requires a coordinated SSA effort, Commissioner Hardy last summer directed that an intercomponent taskforce be convened to consider these issues and to develop an effective strategy for dealing with them. The taskforce began its work in September 1988 and issued its report in February 1989. Now, I would like to discuss some of the recommendations of the taskforce and the steps SSA is taking to implement them.
- The taskforce recommended the development of a comprehensive representative payee data system. Design and analysis of such a system is scheduled to be completed by October 1989.
- We will conduct several representative payee studies this summer to help identify characteristics of high-risk payees. The results will be used to evaluate and improve selection and accounting policies in high-risk situations.
- In order to ensure that payees are appointed only for persons who need them, we are reevaluating our incapability standards. In addition, to promote better understanding within the medical community of the importance of a physician's opinion as to a beneficiary's ability to handle his own funds, we are redesigning the form we use to request capability opinions from physicians.

- We are exploring ways to ease the administrative burden of the accounting procedures on volume payees, such as nonprofit organizations.

The taskforce will continue to meet regularly to consider additional improvements and to ensure that the new policies and procedures work effectively.

Committee Proposals

Finally, I would like to comment on some legislative options designed to improve the representative payee program that I understand are under consideration by the committee. While we support the objectives of these options, we do have some concerns about them.

First, we are concerned that, in an effort to solve specific problems, some of the approaches are so detailed and restrictive that they will eliminate the administrative flexibility that we need to make our policies and procedures responsive in individual cases. For example, prohibiting lump-sum retroactive payments to a beneficiary in all cases in which we make direct payment because we are unable to find a qualified payee immediately could result in withholding payments from people who need such benefits to meet emergencies. We need the flexibility to make payments based on the circumstances in each case.

A general prohibition against creditors serving as payees would preclude the appointment of desirable payees, such as a landlord who is also a friend, and thus not be in the best interest of some beneficiaries. Although we fully agree that it is important that we identify potential conflicts of interest, we need the flexibility to be able to make exceptions to the general policy based on individual circumstances. I am also concerned that limitations on payee selection could lead to delays in finding a suitable payee, facing us with the difficult choice of withholding payment or paying the beneficiary directly even though he is unable to manage his benefits.

Although we support the concept of stricter accounting for high-risk payee categories, we believe that the categories should be established administratively based on ongoing studies and data, rather than defined by statute. Such an approach would permit adjustments as information and technology are updated. As I mentioned, we are planning to conduct studies to help determine the characteristics of high-risk payees.

I should also note that some alternatives would impose requirements that may not be feasible, or which may be feasible only under limited circumstances, such as certain centralized file requirements. Ultimately, we plan to automate pertinent data on payee applicants, including past misuse activity and felony convictions, but the extent to which this can be done requires further investigation, analysis, and systems development.

Finally, it appears that several ideas under consideration are unnecessary because they are reflected in current policy. For example:

- o We verify the identity of all payee applicants.
- o We provide beneficiaries with advance notice that a representative payee is being appointed. We also provide the beneficiary with a written explanation of his right to appeal the determination that he needs a payee and the selection of a particular payee.
- o We make a good faith effort to recover misused benefits from a payee, and we reimburse the beneficiary for unrecovered misused benefits if we determine we were negligent in appointing the payee or in failing to terminate the payee where appropriate.
- o Upon request, we provide States with addresses to which more than one Social Security or SSI benefit is being sent.

Conclusion

In summary, we are firmly resolved to do all that we can to assure that well-qualified payees are promptly selected; that payees act in the best interests of the beneficiaries; and that the rights of beneficiaries who need payees are fully protected. As I have mentioned, we have already taken some actions to more effectively accomplish these objectives, and we are exploring other avenues as well. While there are no quick or easy solutions, I am confident that we have begun to deal effectively with these representative payee concerns and that, by working closely with other interested parties, we can come to satisfactory solutions.

The CHAIRMAN. Mr. Enoff, you stated that you were getting ready to have a sort of a symposium on this issue?

Mr. ENOFF. The symposium is on SSI outreach activities. But there's a close connection to—

The CHAIRMAN. Are you asking to this symposium the Legal Services people from—

Mr. ENOFF. We have invited some Legal Services representatives. There are over 50 organizations.

The CHAIRMAN. I would strongly recommend that they're out there on the firing line every day and they see a lot of these cases, and they see a lot of the problems.

Mr. ENOFF. Mr. Chairman, it varies. I might say that in different offices we've been successful with different approaches. Sometimes the Legal Services, sometimes Traveler's Aid, sometimes the AARP. It depends, it seems, on the particular situation and locality. And the degree of problem varies from locality to locality. I have talked to managers. I talked to our manager in Helena, AR, that was referred to earlier. And she tells me that they work very closely with East Arkansas Legal Services, and she speaks highly of them. And I would hope that the representatives from Legal Services, when they find these conditions, would let the manager in that office know about these conditions, so that we could deal with them. I believe the manager in that office is a very capable person.

The CHAIRMAN. You've been with SSA now for how many years?

Mr. ENOFF. Twenty-five years, Mr. Chairman.

The CHAIRMAN. All right.

In 1984, I believe we saw this study—I believe that was the year that said that about 20 percent of these were problem cases. Didn't this alarm you?

Mr. ENOFF. Mr. Chairman, 20 percent is an alarming figure, but when you look at the 20 percent, it's not a situation where 20 percent of the persons were determined to be improper payees, or improperly using the funds. The 20 percent was an accumulation of minor problems—payees left a space on the accounting form, or the like. And I could give you a further breakdown of that for the record, if you like.

The CHAIRMAN. If you would, for the record.

Mr. ENOFF. Certainly.

[Subsequent to the hearing, the following information was received for the record:]

REPRESENTATIVE PAYEE STUDY

The 1983 report referred to in the testimony was based on a review of representative payee accounting cases processed in December 1980 and January 1981. In reviewing the report, it is important to note that the primary purpose of the study was to determine SSA's operational capabilities when resuming a workload (representative payee accounting) which had been suspended for 2½ years. Most of the percentages in the study relate to operational issues and problems, and not to problems in representative payee performance.

Some of the major findings of the report are as follows:

Actual misuse was found in only 0.1 percent of the cases reviewed. This is perhaps the most important figure since it represents an actual financial loss to the beneficiary.

The need for a payee change was *indicated* in 4.4 percent of the cases. We do not know how many changes actually resulted. Most of the 4.4 percent were cases in which the payee simply handed over funds to the beneficiary instead of managing

the funds, which is inconsistent with SSA policy regarding the duties of a representative payee.

15.8 percent of the cases did indicate some type of recordkeeping problem. Examples of problems found include lax recordkeeping and improperly titled bank accounts. For these cases, while overall payee performance may not have been fully satisfactory, the payee remained the best available choice.

The CHAIRMAN. Now, I think you're saying that you think these problems are limited to a relatively small group. Now, how can you state that—

Mr. ENOFF. I wouldn't say—excuse me, Mr. Chairman—

The CHAIRMAN. Yes.

Mr. ENOFF. I wouldn't want to say relatively small. I'm saying in proportion to the total number of representative payees, percentage-wise this is not a large percentage. It's a significant number of persons because we have a very big program. And I don't want to minimize our concern here. So I didn't want to put that in the record.

The CHAIRMAN. My point is I just don't know quite how you can take that position, when you, in SSA, have no real monitoring process or system out there in place. I don't know how you—

Mr. ENOFF. Mr. Chairman, we have a monitoring system. It's not the best system in the world. I'll be the first one to say that. We have an accounting system that does require an annual accounting of funds by the representative payee. It requires that annually we get that report. And I would—

The CHAIRMAN. These are estimates, though, by the representative, isn't this correct?

Mr. ENOFF. Well, they are verifiable, Mr. Chairman. And the person would be required to have a separate account to have those moneys in so that we could verify that. And I would also say that we do—it's not something I'm proud of, but we do find payees misuse these funds, and we do find misuse. I believe the figures from a recent informal survey indicate that there were about 1,000 situations where we found misuse by the payee, and we then attempt to recover those funds.

Now, again, the best situation would be if everyone could handle their own benefits. I think we'd agree to that. But we do have situations, and I want to make clear to the committee, we generally do not make that decision without a medical opinion. In the situation where it says a payee is necessary, that would be based on the medical opinion that would be in the file. And I would hope that our procedures are being followed. Now, from some of what I heard this morning, the procedures were not followed in particular situations.

The CHAIRMAN. It seems to me like you're making a good faith effort to check out and have medical documentation before you disqualify someone from receiving their own benefits. Yet, the person that you give the benefits to gets no background check.

Mr. ENOFF. Well, that's another problem. And we have not done, again, enough. We have begun. We do make sure that we know their identity. We do ask them for information that would allow us to determine criminal activity, and also to determine whether or not they have been a payee for anyone else, whether they're currently a payee for anyone else, to prevent the kind of situation,

hopefully, that occurred with the case that you referred to—with Mrs. Puente.

Now, I would say in that situation, I'm not sure we could have prevented that, because as I've looked at that case, she lied. And to have done a negative verification may have been difficult, because she claimed to be a relative of the individual for whom she was payee. As it turned out, she was not a relative. So, we get into a very difficult situation—and this is part of the problem—

The CHAIRMAN. You're pretty well using an honor system out there.

Mr. ENOFF. To a degree—to a degree—

The CHAIRMAN. I'll tell you what, I'm going to let Senator Shelby—I'm monopolizing this.

Senator Shelby.

Senator SHELBY. Thank you.

Isn't it basically a breakdown of oversight in this situation in dealing with a lot of money, probably millions of dollars, maybe billions?

Mr. ENOFF. I would say, Mr. Shelby, that it's a changing situation.

Senator SHELBY. We understand that.

Mr. ENOFF. Of the 4.6 million payees, I'm willing to say that 98 percent of them are spending the funds properly.

Senator SHELBY. Let's slow down a minute. There are 4.6 million payees?

Mr. ENOFF. That's correct.

Senator SHELBY. Are these representative payees?

Mr. ENOFF. That's correct.

Senator SHELBY. OK.

Mr. ENOFF. There are—4.6 million beneficiaries who have payees.

Senator SHELBY. OK.

Mr. ENOFF. And the vast majority are parents—a widow with her children in her custody.

Senator SHELBY. Well, let's talk about what percentage of—is it as much as 20 percent figure that you're having problems with that?

Mr. ENOFF. The estimate I would say is that there are—

Senator SHELBY. It's only an estimate, you don't know?

Mr. ENOFF. Obviously, I do not know of every problem, no.

Now, I would say, if we would try to home in on a high risk group—

Senator SHELBY. It's a very high risk, but it's also a vulnerable group, isn't it?

Mr. ENOFF. Yes, it is, absolutely.

Senator SHELBY. It's probably the most vulnerable of the groups that you could name.

Mr. ENOFF. And that's why I say, while it's small in proportion, it's very, very important.

Senator SHELBY. Why hasn't the Social Security Administration recognized that this, one, is a problem, over the years; two, that you're dealing with the most vulnerable people in the United States, and you've got to do something about it. You've got to do something about oversight, such as auditing a representative payee, checking as the Chairman's legislation would, on whether or

not they would have a prior criminal record. What's wrong with this and why haven't you done it?

Mr. ENOFF. We have done that, Mr. Shelby. We do ask the question about a criminal record—

Senator SHELBY. OK.

Do you fingerprint them and send them to the FBI?

Mr. ENOFF. No, we do not.

Senator SHELBY. And see?

Mr. ENOFF. No, sir. And I don't believe—

Senator SHELBY. So you take their word on it?

Mr. ENOFF. I don't believe the legislation would ask us to fingerprint them and send them to the FBI either.

Senator SHELBY. It would be a good idea, though, wouldn't it?

Mr. ENOFF. Well, if that's your suggestion, we'll certainly consider it. Are you suggesting that—

Senator SHELBY. Sure, I'd suggest anything—why would anybody be ashamed or be afraid of what something might come out unless they had something to hide. That's my thrust, and what I'm interested in, and I hope you are, but the administration hasn't shown this, the prior administration, that is protect the most vulnerable. And you're dealing in 4.6 million people that have representative payees. I believe that was your figure.

Mr. ENOFF. That's correct.

Senator SHELBY. Most of these people, you would say, in your judgment, don't have a problem. But let's say that 20 percent of those people, or say even a low figure, I'll take a low-ball figure, 10 percent, 460,000 if it was 10 percent, couldn't you, under the administration that you operate under, the Social Security Administration, couldn't you do an audit of these accounts, could you not do it?

Mr. ENOFF. I think we could do a better job of auditing the high risk accounts.

Senator SHELBY. Do you have, let's say in my State of Alabama, let's talk about Birmingham being the largest city there, and do you have a unit in the Social Security Administration, say in Birmingham, AL, that would look after the representative payees? In other words, look after them from the standpoint of oversight and monitoring as to the money paid out and the problems, and a complaint unit there in case the person who was supposed to get the money and the benefits could come to you and say, look, Ms. So-and-So, or Mr. So-and-So is not taking care of me, they're exploiting me?

Mr. ENOFF. We have units that review the accounting forms and then come up with problems.

Senator SHELBY. How many people—in other words it's just paperwork, it's not human work?

Mr. ENOFF. No, it is human work. In other words, each of the persons in the local office should be looking for potential abuses. And I would tell you that anytime that there's an allegation of abuse, we investigate that fully. And there are many allegations of misuse of funds, and those are investigated fully by our staff on-site in the local area.

But I want to get back to—

Senator SHELBY. You have a unit—let's get back to this. Do you have a special unit in the Social Security office, like in my own State?

Mr. ENOFF. The units that—

Senator SHELBY [continuing]. That deal with this, or is just like everyday business and if you had a complaint you'd deal with it?

Mr. ENOFF. We have a Office of Program and Integrity Review.

Senator SHELBY. OK.

Mr. ENOFF. That probes into areas like this. And they do have a satellite office in Birmingham, yes.

Senator SHELBY. Is anybody, then, prosecuted for abusing this?

Mr. ENOFF. Yes.

Senator SHELBY. Do you know how many that would be?

Mr. ENOFF. I can supply that for the record. I don't have the number.

Senator SHELBY. Surely.

[Subsequent to the hearing, the following information was received for the record:]

How many individuals are prosecuted as a result of misuse?

Nationally, in fiscal year 1988, 9 cases involving misuse were referred to the U.S. Attorney for possible civil suit. In addition, SSA refers misuse cases to the Office of Inspector General (OIG) for criminal prosecution.

Note.—We do not have specific information available on the number or disposition of cases referred for criminal prosecution. OIG keeps statistics by program and not by the reason for referral.

Mr. ENOFF. But I want to get back to a point you made, Mr. Shelby, because I think it's an important point, and I think we're all working toward the same objective here.

To the degree that we put additional burdens on the representative payees, Senator Pryor said he's not sure he'd want to be a payee. Well, we'd like Mr. Pryor to be a payee. That's the kind of person we want. But sometimes this kind of person that is busy, doesn't have time, and doesn't want some of these activities. We have to try and balance that.

Senator SHELBY. I'll tell you, Mr. Enoff, if I couldn't look after some beneficiary's money better than I look after my own, you wouldn't want me to be a payee. I'll tell you that. I'm not very good at this. But I was just recognizing the problem. [Laughter.]

Mr. ENOFF. I think you're right. It's a balancing act, and I do believe we've about the same objective here. We want to protect the most vulnerable. And we want to do that—that's why we believe that finding those organizations that have an interest in the whole person, not somebody that just has an interest in looking after someone's money.

The CHAIRMAN. Excuse me, Mr. Shelby.

Senator SHELBY. Don't you think this should be one of your highest priorities, though, and your phrase was, the integrity section in the Social Security office there, to protect, as I said earlier, and other people have used the phrase, the most vulnerable people who can't protect themselves, people who might not know how to complain to your office, people who can't handle their money, but are being exploited? And it looks to me like that should be a high priority. You shouldn't have to have us up here in the Senate to bring this to your attention by having this hearing.

Mr. ENOFF. Well, I look at it as working together. I believe we are giving it attention, and I appreciate your interest, and I think we need help from outside. Because, as I said, this is not an issue that affects only Social Security. And I believe you understand that, when we're talking about a person having a need to have someone help them look after their affairs, Social Security is a small portion. And as we have a growing population of aging persons—

Senator SHELBY. This is a growing problem within Social Security, and that's what we're talking about today.

Mr. ENOFF. Well, I think that there is a problem within Social Security, and I think that working together we can solve that, working together with private agencies, with Legal Services, with this committee, and with others. I believe that we can solve that problem. I'm not suggesting to you that we will prevent any abuse from ever happening.

Senator SHELBY. I understand that.

Mr. ENOFF. That's my objective.

Senator SHELBY. But you might not prevent it, but you can cut down on the chances—

Mr. ENOFF. Absolutely.

Senator SHELBY [continuing]. Of it happening.

Mr. ENOFF. Absolutely. We can do better, and we will do better.

Senator SHELBY. Could you furnish me, for my interest, the number of cases that you have that are representative payees in my home State of Alabama, and how many complaints you have had, and what has been the disposition of these complaints, and how the unit is working, and so forth.

Mr. ENOFF. Certainly. I'd be happy to supply what we have. I'm not sure how far back we would have that record, but I'd be glad to supply you with what we've got.

Senator SHELBY. Well, let's say in the last 5 years.

Mr. ENOFF. I doubt that we would have 5 years worth of information, Mr. Shelby.

[Subsequent to the hearing, the following information was received for the record:]

1. *Number of cases with representative payment in the State of Alabama?*

Our records indicate that in Alabama there are approximately: 26,024 title XVI adult beneficiaries with payees; 40,945 title II adult beneficiaries with payees 66,969 total.

2. *How many complaints?*

While we do not yet have automated records relating to misuse, in a recent informal survey, Social Security field offices were asked to estimate how often in the past 2 years they have found misuse of benefits. The results for the 26 offices in Alabama were as follows: 13 offices reported no cases of misuse in the past 2 years. 6 offices reported 1 case in 2 years; 4 offices reported 2 cases in 2 years; 1 office reported 3 cases in 2 years; 2 offices reported 4 cases in 2 years.

3. *What was the disposition of the complaints?*

While we do not have available data on the disposition of misuse cases in Alabama, it is our practice to initiate change of payee actions and recovery efforts in all cases where misuse occurs.

Senator SHELBY. Is this going to be a high priority in this administration to do something about the abuse?

Mr. ENOFF. It certainly is. As I said, we have appointed a task force, the Secretary has appointed a task force at the HHS level.

We believe there is a problem. We need to work with other agencies—

Senator SHELBY. You know it's a problem.

Mr. ENOFF. We know it's a problem.

Senator SHELBY. Thank you. Mr. Chairman, thank you for your indulgence.

The CHAIRMAN. Mr. Shelby, thank you.

Mr. ENOFF. We are going to introduce, this afternoon, the legislation we talked about. And I'd like to say this. I don't know that that's a perfect piece of legislation. In fact, I don't know of any perfect piece of legislation that we've ever introduced around here, but I would very much appreciate the comments from your office and any others that you would like to bring forward to make comments or suggestions.

Mr. ENOFF. I believe the staffs have been working together, and we will continue to do that.

The CHAIRMAN. We hope that dialog will continue.

We are very fortunate to have the Minority Whip, the distinguished Senator from the State of Wyoming, who is a favorite with everyone around here. The Honorable Alan Simpson has just arrived. Senator Simpson, we recognize you at this time.

STATEMENT OF SENATOR ALAN K. SIMPSON

Senator SIMPSON. I ought to come here more often.

You should have heard what the last group said about me. I'm glad I came here for refuge and solace—

Senator SHELBY. And friendship.

Senator SIMPSON. And friendship, yes, Richard.

Thank you very much. I have a statement. I'll place it in the record. I just want to again tell you, Mr. Chairman, I think this is important. We want to ensure that the money gets to the people for whom we intend it. I, too, practiced law in "real life" in a little old town of Cody, WY, and boy, I saw abuses in this program—"Say, Old Charlie is an alcoholic, I'll take care of his check," and the other guy was a worse alcoholic and blew the check. So, I mean it was fun and games. And so, certainly rep payee protections and safeguards are mutually beneficial to the recipient and to the Government where we have a person impaired, or in substance abuse, or alcoholism, or homeless. Those are the most vulnerable people in the Nation, and they need a steady and protective hand.

The Chairman has explained the purpose of this hearing. I want to work closely with him and with the administration to design and help pass the legislation that he is today discussing. Dave Pryor is a splendid man to work with.

I always have a little bit of trouble with proposals which turn existing regulations into legislative statute. I believe that demonstrates nothing more than a fundamental distrust of Government agencies' ability to do their jobs. I've seen it with the EPA. I don't think it's productive. Forget whether it's a Democrat or a Republican Administration, all you're doing is locking into statute what should be done in a discretionary way where you do it by regulation. I think it removes that necessary degree of discretion from the control of those who are closest to the problem—the people

who work on a daily basis with the intended beneficiaries, and who must, at times, get a bit creative with the rules in order to best serve a beneficiary's interest. We don't always bend the rules in a negative way, we bend the rules in a positive way sometimes. And that's what people—all we ever get to hear here is how we bend the rules in a negative way. Nobody ever comes in here and tells how we bend them in a positive way, because that's not fodder.

Flexibility is essential to those, I think, who serve down there in the trenches. And I know that to date the Chairman's proposal strikes a necessary balance between regulatory flexibility and beneficiary protection. It's a good bill, and I'm pleased to co-sponsor it. I only urge him—and I need not do that, because he's such a sensitive man—to guard that balance carefully as this bill makes its way through the process. We have a tendency up here, as the Chairman knows so well, to err on the side of rigorous paternalism; to assume that everybody out there is a boob, and that we know what's up here—and we're running around passing, or handling 200, 300, 400, or 600 pieces of legislation.

We have a tendency to straitjacket the creativity of the very capable program administrators with a lot of inflexible rules and requirements, particularly when goaded on by so-called advocates, and people who have their own very sharp axes to grind, or people who don't like the present administrator, who want to do a number on Dorcas, or do a number on down-sizing, and we have to listen to all that jazz too, and mix that into this. I hope we can separate that out. Separate out the "get Dorcas," and the "don't down-size" people, and get to what is it we really are trying to do for the people who are involved here. And I think the Chairman might agree that that's the mission.

While evidence of a systemic problem with the payee program is fairly anecdotal—the last study, I understand, was in 1983, and that was superficial—the consequences of abuse are sufficiently egregious, to warrant additional legislative protections. I believe we have an affirmative duty to ensure that the money that is dispersed from the Social Security Trust Fund reaches those, and only those who are entitled to receive it.

I commend the Chairman for his research into this issue, and for his very thoughtful and measured, and balanced response, which is the key to his legislative success. I look forward to reading all of the testimony, and I thank the Chairman.

[The prepared statement of Senator Simpson follows:]

Sen. Alan K. Simpson

Opening Remarks

"Social Security's Representative Payee Program"

June 6, 1989 10:00 a.m.

THANK YOU, MR. CHAIRMAN, FOR CALLING THIS IMPORTANT HEARING ON THE SOCIAL SECURITY REPRESENTATIVE PAYEE PROGRAM. THIS PROGRAMS ASSURES THAT SOCIAL SECURITY PENSION PAYMENTS FIND THEIR WAY TO THE NEARLY 5 MILLION INDIVIDUALS IN THIS NATION WHO, FOR WHATEVER REASONS, WOULD OTHERWISE BE UNABLE TO RECEIVE OR TO MANAGE THE BENEFITS TO WHICH THEY ARE ENTITLED. MENTALLY IMPAIRED, SUBSTANCE DEPENDENT, OR HOMELESS, THESE INDIVIDUALS ARE CERTAINLY AMONG THE MOST VULNERABLE IN THE NATION, AND THEY NEED A PROTECTIVE HAND.

THE CHAIRMAN HAS ALREADY EXPLAINED THE PURPOSE OF TODAY'S HEARING, SO LET ME JUST ADD THAT I KNOW HE HAS WORKED CLOSELY WITH THE ADMINISTRATION AND IN PARTICULAR WITH SOCIAL SECURITY ADMINISTRATION OFFICIALS TO DESIGN THE LEGISLATION HE IS INTRODUCING TODAY, AND I COMMEND HIM FOR IT.

AS A RULE, I DO NOT LIKE PROPOSALS WHICH WOULD TURN EXISTING REGULATIONS INTO LEGISLATIVE STATUTE -- I BELIEVE THAT DEMONSTRATES A FUNDAMENTAL DISTRUST OF GOVERNMENT AGENCIES' ABILITY TO DO THEIR JOBS. I ALSO BELIEVE THAT IT REMOVES A NECESSARY DEGREE OF DISCRETION FROM THE CONTROL OF THOSE WHO ARE CLOSEST TO THE PROBLEMS -- THE PEOPLE WHO WORK ON A DAILY BASIS WITH OUR INTENDED BENEFICIARIES AND WHO MUST, AT TIMES, GET CREATIVE WITH THE RULES IN ORDER TO BEST SERVE A BENEFICIARY'S INTEREST. FLEXIBILITY IS ESSENTIAL IN THE TRENCHES.

I KNOW THAT, SO FAR, THE CHAIRMAN'S PROPOSAL STRIKES THE NECESSARY BALANCE BETWEEN REGULATORY FLEXIBILITY AND BENEFICIARY PROTECTION. IT IS A GOOD BILL AND ONE WHICH I AM PLEASED TO SPONSOR WITH HIM. I WOULD ONLY URGE HIM TO GUARD THAT BALANCE CAREFULLY AS THIS BILL MAKES ITS WAY THROUGH THE PROCESS. WE HAVE A TENDENCY, UP HERE, AS THE CHAIRMAN KNOWS, TO ERR ON THE SIDE OF RIGOROUS PATERNALISM -- TO STRAIGHTJACKET THE CREATIVITY OF VERY CAPABLE PROGRAM ADMINISTRATORS WITH INFLEXIBLE RULES AND REQUIREMENTS. PARTICULARLY WHEN GOADED ON BY SO-CALLED ADVOCATES AND PEOPLE WHO HAVE THEIR OWN AXES TO GRIND.

THIS IS AN EXCEPTION TO THE RULE. WHILE EVIDENCE OF A SYSTEMIC PROBLEM WITH SOCIAL SECURITY'S REPRESENTATIVE PAYEE PROGRAM IS ONLY ANECDOTAL -- THE LAST "STUDY" WAS IN 1983 AND IT WAS RATHER SUPERFICIAL -- THE CONSEQUENCES ARE SUFFICIENTLY AGGREGIOUS TO WARRANT ADDITIONAL LEGISLATIVE PROTECTIONS. I DO BELIEVE THAT WE HAVE AN AFFIRMATIVE OBLIGATION TO MAKE ENSURE THAT MONEY DISBURSED FROM THE SOCIAL SECURITY TRUST FUNDS REACHES THOSE -- AND ONLY THOSE -- WHO ARE ENTITLED TO IT, OR IS SPENT FOR THEIR BENEFIT.

ONCE AGAIN, I COMMEND THE CHAIRMAN FOR HIS RESEARCH INTO THIS ISSUE AND FOR HIS THOUGHTFUL, BALANCED RESPONSE.

I LOOK FORWARD TO HEARING FROM OUR WITNESSES.

The CHAIRMAN. Alan, thank you very much. You're always thought provoking when you come to these hearings. And we value your membership a great deal on this committee.

Speaking of the legislation, we do have an additional sponsor, just since the hearing has started, and that's Senator Kassebaum has called, and wants to be a sponsor. I know that she, like the rest of us, will look forward to your further comments and dialog on trying to make something work.

Let me ask one final question, then I'm going to call our next panel. Do you have, at this time, a simple list in SSA of those who have been convicted of Social Security fraud? Is there any way, if someone comes into the Social Security office in Cody, WY, or Magnolia, AR, and wants to be the representative for Aunt So-and-So, is there a way that you can press a computer and say that this individual has a conviction?

Mr. ENOFF. Not right now, Mr. Chairman.

The CHAIRMAN. Is that something we should pursue?

Mr. ENOFF. That's something we are pursuing, Mr. Chairman, and that's part of the system design that I talked about. We would have a system designed by October of this year that will give us the ability to access, by computer, Social Security fraud, as well as whether a person is acting as payee for any other persons. We think that a person, when we ask that question, should volunteer that, but we would be able to verify it, just to prevent the possibility that there's someone who is trying to pull something.

The CHAIRMAN. Mr. Enoff, we very much appreciate your statement today, and your cooperation in answering the questions, and we look forward to continuing this dialog.

Mr. ENOFF. I look forward to working with you, Mr. Chairman.

The CHAIRMAN. Thank you.

Our next panel is Michael Teefy; Betty Broadhead; Kim Gaines. Michael Teefy is an SSA Claims Representative, Vancouver, WA. Betty Broadhead is Goldsboro, NC, an SSA Claims Representative. And Kim Gaines from San Francisco is also an SSA Claims Representative. So we have three of you who are out there, as I believe Senator Simpson said, out there in the trenches, who see these issues on a day-by-day basis. We look forward to you coming from long distances before this Special Committee on Aging, and I'll call on Mike first.

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

The CHAIRMAN. Mike, I'll tell you what, we're getting into some time constraints. We're going to put your full statements in the record, and we're going to ask you each limit your comments to 5 minutes, if you would. Thank you.

Mr. TEEFY. No problem, sir.

STATEMENT OF MICHAEL A. TEEFY, AFGE, SSA CLAIMS REPRESENTATIVE, VANCOUVER, WA

Mr. TEEFY. First, what I would like to do is address some of the points that Mr. Enoff made and respond to them, because of some issues that he raised in his testimony that need some additional questions or answers.

First, he's identified a high risk area of 250,000 people. And at the same time indicating there are 4.6 million people that have representative payees. The selective sample that they've used for high risk, I believe, is very inadequate and very invalid. And the point being, is that all 4.6 million people who do have representative payees have an equal right to assure that their benefits are being accounted for yearly, and that they are being used correctly. He had also indicated an issue of possibly using the Veterans Administration to become payees. The difficulty there is that the VA payee is only located at VA hospitals. So, therefore, the potential advantage would only be in certain, specific areas. Additionally, there, the VA does not like to be payees for cross programs, and our experience in the offices is that they are not too willing to be that helpful.

The other factor was on the identification issue of payees. Basically, all a person is required to do when they come into a Social Security office to be the payee, is identify themselves by name, and by Social Security number on the application, and in certain offices they will ask them for their driver's license. That is not very much of an identification check. The issue of the criminal question, or activities of the individual is on the SSA-11, which is the application to be a representative payee. All the person is asked, is have you ever been convicted of a felony, not have you ever been convicted of a misdemeanor, have you ever abused benefits, just a very simple question. And normally, you won't have an individual who's coming in in this type of a situation, say, yes, in fact I am a felon.

In regards to my testimony, what I'd like to do is—I'm from Vancouver, WA. I'm a claims representative. I'm a member of the American Federation of Government Employees, and I'm also an Executive Council Representative on the American Federation of Government Employees National Council for the Social Security Field Office. I've worked for Social Security for 16 years. I've been a service representative in the field offices. I've been a staff assistant in the management/regional offices, and I've been a claims representative for the past 12 years.

One of my responsibilities in my job is the actual selection of payees, and the actual accounting. The information that I'm providing to the committee is based on my personal knowledge and experiences, and those of my fellow employees.

Under Social Security, a beneficiary requires a representative payee when they are a minor, that is a child under the age of 18. There is also a requirement to be a payee if an individual is declared by the court to be incompetent. The third category, which most of the representative payees fall under, is when an adult is considered to be incapable of managing their own funds. The incapability is not a legal declaration, it's established through a medical determination either by a physician, a psychiatrist, and even in some cases a third party. These determinations are generally divided into two areas, mental and physical. It's very rare that we have an individual who requires a payee of physical limitations. Almost in all cases it's mental, and the determinations are generally divided into two categories, mental disorders, and diminished mental capacities. Generally the mental disorders are the younger individuals, the diminished mental capacities are the people that

are in nursing homes. By definition, the need of an individual to have a payee means that the payee has a significant responsibility in assuring that the funds are properly used on behalf of the beneficiary.

The CHAIRMAN. Mike, let me——

Mr. TEEFY. Sure.

The CHAIRMAN. I hate to do this, I'm going to have to interrupt. We're going to ask some questions in a minute, which I think might cover some of the points that you have in the full body of your text.

Mr. TEEFY. OK.

The CHAIRMAN. We're going to print your full statement. We're going to have some questions in a moment. We're going to ask Betty Broadhead, I believe, to go next, and then Kim Gaines to give their 5-minute statements, and then Senator Simpson and will pose questions that I think will cover some of the areas in your printed statement.

Mr. TEEFY. Thank you.

[The prepared statement of Mr. Teefy follows:]

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*to do for all that which
none can do for oneself*

STATEMENT BY

MICHAEL A. TEEFY

SSA CLAIMS REPRESENTATIVE
VANCOUVER, WASHINGTON

Mr. Chairman, members of the committee, my name is Michael Teefy. I am a claims representative in the Vancouver, Washington Social Security Office. I am a member of the American Federation of Government Employees (AFGE) and also an Executive Council Representative for the AFGE National Council of Social Security Administrative Field Office Locals., I have worked for Social Security for sixteen years. During this time I have been a Service Representative, and a staff assistant for SSA management. I have been a Claims Representative for the past twelve years.

As a Claims Representative, one of my responsibilities is the selection of representative payees and accounting for the funds received by the payees. The information that I am providing to the committee is based on my personal knowledge and experiences and those of my fellow co-workers.

Under Social Security rules, a beneficiary requires a representative payee when he or she is a minor (individual under age 18), an individual declared incompetent by the court, or when Social Security determines that an adult is "incapable of managing their own funds." Incapability is not a legal declaration, it can be established through a medical physician, psychiatrist or third party determination. The concept of incapability revolves around findings of mental, not physical incapacities. These determinations are divided into two general areas: mental disorders and diminished mental capacities. By definition the need of an individual to have a

payee means that the payee has a significant responsibility in assuring that the funds are properly used on behalf of the beneficiary. By definition the beneficiary is incapable of protecting himself against misuse by the payee.

Social Security would have the committee believe that little no problem exists. In fact it is using statistics and samples that are invalid. The agency has unfortunately deemed that accountability of benefits is a low priority. At times over the past ten years, the agency has even omitted payee accounting as a work load. Basically the agency has adopted the attitude of, "out of sight, out of mind." It has eliminated accounting due to workload and staffing constraints. The agency's attitude of, ". . . the right check, to the right person, at the right time," had one serious drawback. In representative payee cases the "4th R," responsible use of the benefits was not even a consideration. The agency assumed that the penalty clause would prevent misuse. SSA has basically asked the fox to watch the henhouse and then told the fox that we would ask him in one to two years how the hens are doing. His reply is always "just great!"

The agency's process of accountability is severely flawed and has created invalid and inaccurate accounting, fostered the misuse of benefits and frustrated employees attempting to protect beneficiaries. More significantly with respect to the aged and disabled beneficiaries the SSA failed to insure the protection of their benefits which can and does directly affect their lives.

I would estimate that less than 10% of all payees maintain records of the use of benefits, and that this 10% are generally spouses, brothers, sisters or adult children of "incapable" individuals. It is the other 90% who can not or do not properly account for the use of benefits that have created a "pandoras box," which the agency refuses to peek into! Private board and care facilities, (basically homes that "care for" the elderly), third parties or friends, even some nursing facilities, are not properly held accountable for the use of monies. Our payee selection process of payee accounting procedures means that we rely on people we never see, never check and never question. We presume that they are providing for and protecting the monies for the incapable individuals. This agency attitude allows for no checks or balances and provides the opportunity for misuse of benefits and abuse of the individual. This opportunity I fear, is more wide spread than even this committee or SSA employees imagine.

Accounting processes are in fact largely a paper process. All of the current payee process and practices are conducted by mail and, or by telephone. Payees are not required to submit evidence of expenses or proof of how they use monies on behalf of the beneficiaries. A payee is required to answer 6 questions correctly, six simple questions. If they do the agency assumes it has "protected" the beneficiary for another year. If the payee does not answer the questions correctly, they are given another chance to answer them. The accounting process is an effort in futility. The penalty for failure to comply with the accounting is suspension of benefits, which severely impacts the welfare and wellbeing of the "incapable" individual. If the payee is uncooperative the beneficiary suffers.

The vast majority of payees I question have advised me that they were never advised that they needed to keep records, set-up special savings accounts or how to "use" the money. These statements are unfounded or untrue. They have been told both verbally and in writing. They chose to ignore their responsibility and all we can do is readvise them of their duty.

This issue is like an iceberg floating in a far away sea. The agency knows it is there but is afraid investigate, fearful for what it will discover or how gigantic the problem may be beneath the surface.

Recommendations:

- 1) The agency must institute a policy to insure verifiable accounting.
- 2) An aggressive policy which insures proper and timely accounting.
- 3) Create penalties, including significant criminal penalties for misuse.
- 4) Provides that SSA become responsible as the payee when a proper payee cannot be found.
- 5) On site accounting (yearly) for residential board and care facilities.
- 6) Specific accounting for beneficiaries who receive more than \$368.00 monthly.
- 7) Verification and validation of payees.

It is essential that the committee understand that regardless of the recommendations - nothing will be accomplished in the area of protection and accountability without additional field office staffing and an aggressive protective policy of accounting. Payee abuse will continue to reach out and touch all of us. My parents, your parents, my family, your family. Only you can provide this direction - this leadership.

Again, thank you for the opportunity. I'll try to answer any questions you may have.

The CHAIRMAN. Betty.

**STATEMENT OF BETTY BROADHEAD, AFGE, SSA CLAIMS
REPRESENTATIVE, GOLDSBORO, NC**

Ms. BROADHEAD. Thank you, Mr. Chairman.

I was a field representative for 12 years before I was reclassified as a claims representative because of drastic cuts in the staff. And as a field representative it was my duty to go to institutions, the Register of Deeds, and the contact station, et cetera, and be a liaison person for Social Security. Well, in our particular area—I want to relate to why I think that we should have the field representative, or a one-on-one, because of the rep payee actions, is we have two of the largest State mental institutions in our area. One is an institution for adults, and the other one is an institution for mentally retarded children. There is over 1,400 patients at the adult institution, over 600 at the children's unit.

The Cherry Hospital, which is the adult institution is the payee for monthly benefits of \$65,883. The children's center is the representative payee for \$86,664. We also have the State's largest non-profit private medicaid certified unit in the State, and they're payee of \$27,000 plus. This is a total of almost \$3 million per year that these institutions receive. The first major disadvantage of deleting the field representatives—as the field representative, I stated that I went weekly, and I monitored these rep payee moneys to see that their needs were being met, and their money is not being misused. Without the field rep, they only have what they call the on-site review, which Social Security conducts once every 3 years.

I have a copy of one of the latest on-site reviews, and it's two pages long. It took two people less than 2 days to conduct this on-site review. My question is, I just don't believe that the Social Security Administration can get a full review in less than 2 days on this many patients to see that their needs are being met, and they're receiving their benefits.

Talking about cutting our staff, we have cut in our local office from 28 people down to 19 in the past 5 years. We do not have an SSA representative payee unit. We have never had one since I've been with Social Security. And I've been working with Social Security for 22 years. We have units of the Social Security unit and an SSI unit, and because of the drastic cuts in staff, our claims have priority over payee actions. And the reason for this is because payee action is not accountable toward our goals, and the pressure is you will meet your goals.

I don't see how the Social Security Administration can keep cutting staff and expect us to do a thorough job in the rep payee, and I personally think this is important, or more important than the initial claims that are taken.

Also, I would like to tell a quick story, if I've got time, when I was working at a contact station, the contact station used to give a full range of services, as Social Security does, you could do it in this contact station. Well, all Social Security contact stations are either being eliminated or cut down to the time of number of visits that we go. In our particular area, we've cut down to two times a

month. This is about 45 miles from our District Office. It's 100 miles, plus, for a lot of people to get to this contact station. We have been told by management, now, that we will not take claims at the contact station, that we will set them up for appointments and et cetera. But that's not my story.

My story is, while I was working at the contact station, I had a lead—about a destitute lady, and we were told that she lived several miles back in the woods. So because of the remote distance, and all, I hired this little boy to go with me. We drove about 5 miles in the woods until we came to a creek. There was no bridge, so we took our shoes off, and we waded across the creek, and walked about 2 more miles into the woods, and we ran across this little run-down shack. There was no electricity. There was no running water. In fact, there was not even a well. We went inside, this little lady in her seventies, was sitting there eating out of tin cans. She did not even have a stove or a heater. She had newspapers and cardboard boxes literally stacked against the walls to keep the wind from coming through.

I took an SSI application from this lady, and the end result is—I also reported it to the Department of Social Services, and the end result is she started receiving benefits. She bought a mobile home, and had a well dug, and help was given where help was needed. If they keep cutting our staff, we cannot do anything about these situations.

Another one, right fast, was a lady who was receiving about \$400 per month and had a representative payee. Her next door neighbor reported that the lady had no food, or her needs were not being met. I also made a personal contact to her home. She lived in an old converted tobacco barn, and if you're from North Carolina or in that area, you know about what a tobacco barn is. It had no windows, no door, no ceiling. And there was actually snakes crawling on the rafters in her home.

Well, I reported this to the Department of Social Services, and since the lady had no relatives, we asked the Department of Social Services to file to be her representative payee, which they did. We finally located the former payee, tried to do a final accounting. The lady had no money. To my knowledge, not one penny has ever been collected from this former payee. She claims that she had never been asked to make any kind of an accounting of the benefits.

If drastic cuts in the Social Security keep occurring, there is no way these things could be detected, and this could have gone on indefinitely.

[The prepared statement of Ms. Broadhead follows:]

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*to do for all that which
none can do for oneself*

STATEMENT BY

BETTY BROADHEAD

SSA CLAIMS REPRESENTATIVE
GOLDSBORO, NORTH CAROLINA

STEWARD OF LOCAL 3172

Mr. Chairman, members of the committee my name is Betty Broadhead. I am presently a Social Security Claims Representative in Goldsboro, N.C. Thank you for giving me the opportunity to appear before you today to express my feelings about staff cuts, and the effect these cuts are having on the SSA and particularly on the representative payee program.

From January, 1977 until March, 1989, I was a Field Representative in Goldsboro, NC. When I was a Field Representative, my duties included weekly visits to institutions, the Register of Deeds, public information activities, and weekly visits to a contact station (which I will describe later). I was a liaison person and often represented SSA to other agencies. I have been converted from a Field Representative to a Claims Representative because of drastic staff cuts in SSA and the pressure on my office to put me in "work production."

I have always believed strongly in the responsibilities of SSA to its claimants and recipients.

My testimony concerns the disadvantages of deleting the Field Representative positions in field offices. I will deal only with my experiences in the Goldsboro, N.C. District Office.

We service two large state mental institutions with over 1400 patients and one of the state's largest private non-profit medicaid certified mental institutions with over 600 patients.

Cherry Hospital State Mental Institution for adults is payee for monthly SSI/SSA benefits of \$65,783.00. O'Berry Center State Mental Institution for severely retarded children, is payee for monthly SSI/SSA benefits of \$86,665.10 and Howell's Child Care non-profit institution for mentally retarded children is payee for benefits of \$27,832.00. These institutions receive \$2,952,776.00 per year as representative payees.

The first major disadvantage of deleting the Field Representative is that there will be no one to monitor and insure that this money is properly administered. Without the Field Representative the only Social Security review of these expenditures will be an on-site review conducted once every three years. In my opinion, these three-year reviews are not sufficient. How can we insure that these beneficiaries are receiving the proper amounts and that their needs are being met, unless we have someone to monitor this on an on-going basis?

I have a copy of a recent on-site review which required 2 people less than 2 days to conduct. I believe it is impossible to see that beneficiaries' needs are being met when there is a constant turn-over in this time frame. The on-going relationship that I had with these institutions allowed me to insure proper payment and use of benefits. I collected an average of over \$4,000 in overpayments monthly from these institutions. Without a Field Representative these overpayments are not going to be detected and collected timely.

Five years ago, there were 28 people on duty in the Goldsboro, NC office, compared with 19 today. As a result of these cuts, I have been converted to a Claims Representative and we no longer have the manpower for properly monitoring the representative payee functions at these institutions. I personally initiated a stream-lined placement procedure at the institutions to insure that eligible patients can return to the community and work toward being self-supporting. The one-on-one relationship I had with the social workers at the institutions allowed us to find reliable representative payees for these patients. Without a Field Representative this program will be impotent because there will be no one person assigned to maintain these relationships. In our office and agency wide, claims are the priority, not payee actions, because they are not a countable item toward meeting the goals. As a Field Representative, I monitored and insured that these beneficiaries got their money in the right amount and timely. Because of staffing cuts and the deletion of the Field Representative position, there is no one to do this.

Another program that will suffer is SSI recipients under Public Law 91-15. These are SSI recipients who can continue to receive SSI benefits up to three months while in institutions if they meet certain criteria. Instructions issued to the field offices 12/88 provide that the SSA should actively assist under Public Law 91-15, including visits to the institutions. Who is going to do this?

These beneficiaries enter the state mental institution from all over the state as well as other states. Representative payees for these beneficiaries often live in other areas and are not aware of these continued payment provisions. The Field Representative has the flexibility and working relationship with the institution personnel to insure that strict time limits are met and that the beneficiaries are not short-changed.

As a Field Representative, I was also responsible for manning a contact station 45 miles away from the SSA district office, and serving people living as much as 100 miles from the district office. At a contact station, SSA provided a full range of services to people who cannot visit the district office. All claims and post entitlement actions were previously handled at the contact station. This is a general description of contact stations nationwide.

Beginning April, 1989, contact station service was reduced to two times a month. Employees who man the contact station have been instructed not to take claims. The loss of a Field Representative effectively means that there is no operating contact station. Our contact station has served a large rural area where a high percentage are illiterate and poor. The new procedure of the 800# has left many of these people unable to obtain benefits for which they are eligible. There are many of these that do not have access to a telephone, they do not have bank accounts for direct deposit. Because many cannot read or write, they cannot furnish us with proper information to establish eligibility without face-to-face interviews. By having a Field Representative man a contact station, he/she is able to assist these people. Deleting the Field Representative position will cause undue suffering.

Let me illustrate, while I was working at the contact station I received a lead about a destitute lady who lived along back in the woods. Because of the remote location, I personally hired a young boy from the area to accompany me and I made a visit to the lady's house. I drove my car about five miles in the woods until I came to a creek. There was not a bridge so we waded across the creek and walked approximately two miles deeper into the woods. We came upon a small run down

shack. There was no electricity or running water, in fact, not even a well. Inside lived a little old lady in her 70's. She was eating out of tin cans, no stove or heater was in the house. She had old newspapers and cardboard boxes stacked around the inside walls to block out the wind. She had sewn together newspapers to use as covers on her bed. I took an SSI application from her. This lady was not illiterate, only poor. I went back to the district office and told my story. The staff collected food, blankets, a flashlight and clothes. I took annual leave and delivered these goods. I also notified the local Department of Social Services about this case. The end result is:

help was given and the lady was able to purchase a mobile home in a short time because she became entitled to SSI checks. This is not an isolated case in our area. In another case I visited a lady that was entitled to Social Security benefits and had a representative payee. It had been reported to me that this lady had no food and her personal needs were not being met. I made a personal contact to the home of the beneficiary. She lived in an old tobacco barn with no windows or ceiling, only rafters and a dirt floor. There were snakes crawling on the rafters. I went to the local Department of Social Services and asked them to apply to be payee for this lady. We conducted an accounting from the former payee but were unable to collect any of the money. Without a Field Representative this situation could have continued indefinitely. Under the new staffing pattern and agency goals, there is no way these people would have been discovered and helped.

These types of occurrences, throughout my Field Representative tenure, has made me feel good and useful. My greatest satisfaction has come from helping individuals who are in poverty. I feel frustrated and angry now that the agency has moved away from its service to the public orientation. There has been a drastic reduction in the number of Field Representatives throughout the nation. This is a direct result of staffing cuts. There are no plans to restore the Field Representative position in the Goldsboro office.

The decline in service that has resulted from the Field Representative deletion makes me sad. I have always been proud to be a Social Security Administration employee because I have always felt that the agency had the best interest of the people at heart.

It would be very difficult for me to adequately express my disappointment in the recent changes that have resulted in the tremendous decrease in service to the public. Employees in field offices are now told that the "goals" are the bottom line. This attitude has resulted in the people's needs being completely disregarded. My disappointment in the agency's new staffing pattern has made me decide to leave the agency through early retirement.

Again, thank you for the opportunity to testify. I would be happy to answer any questions that you may have.

The CHAIRMAN. Betty, I want to thank you for your statement. We're going to place the full text of your statement in the record, and I also want to thank you for sharing those two particularly moving human interest stories that you just mentioned to the committee. And we may have some questions in a moment that will cover some of these issues.

Mr. Kim Gaines. Kim?

**STATEMENT OF KIM P. GAINES, AFGE, SSA CLAIMS
REPRESENTATIVE, SAN FRANCISCO, CA**

Mr. GAINES. Thank you.

My name is Kim Gaines. I have been a claims representative for Social Security for the past 12 years.

The CHAIRMAN. Now, where is your home?

Mr. GAINES. In San Francisco.

And I'm also a representative of the American Federation of Government Employees. I'd just like to expand a little on a couple things that Michael said about the differences here between when we're talking about legal guardianships and incapability. Now, incapability is an SSA phrase. It just means that we have had a medical opinion that the person is unable to manage their benefits. Now, in my experience, that medical opinion carries very little weight. When we make disability decisions, frequently we have to send applicants for examinations that are paid for by the Federal Government. And these examinations are normally with—I won't say unqualified physicians, but the sort of clinics that you see in urban areas that do a lot of these sort of examinations for Government agencies, workers compensation, things like that.

I've had many clients tell me that these examinations last 10 to 15 minutes, for which the Government pays sometimes \$100, \$150. Now, based on that 15-minute examination with a person they've never met before, we've determined a person is unable to manage their benefits. The story that you heard earlier from Ms. Freeland, who had been managing her AFDC checks for years, is not uncommon. It happens all the time. My main contention, that is in my written statement, is that we could avoid a lot of problems if we just didn't insist that people who don't need payees have payees. We don't fully investigate whether or not a person is really capable of managing their benefits.

In the sort of area that I live in, where we have a large transient and homeless population, finding payees is essentially impossible. We have six social agencies in the city and county of San Francisco, that do payeeships. All of them have anywhere from a 3 month to a 1-year waiting list. In San Francisco, you don't have a lot of extended families like you'd see, say, in North Carolina. So you don't have a lot of relatives who are willing to do this. So we are forced to just pick friends from the streets. And you do the best you can. You come down to a choice where you just have to either pay someone that you know is of questionable qualifications to be a payee, or not pay them at all. And you just have to take the chance, sometimes, that the person is going to do well, because even if the person only gets a part of the money, it's better than having no money or sleeping in a doorway.

So, the other point that I would like to talk about for a second is when Mr. Enoff was saying that the allegations of misuse are fairly rare and that we fully investigate every instance of it, is not exactly accurate. In general when a person walks into an office and says that they're payee is misusing their benefits, the first thing we do is change the payee. There could have been 1 to 3 months worth of checks that have gone out to this old payee. We may never contact them, we may never have the opportunity to ever find them again. That's the majority of the cases of misuse we see. Any numbers that the agency is going to provide you with are going to be based on cases that we prosecute, or cases that have been referred to the integrity staff. But if I refer a case to the integrity staff, they don't want to talk to me unless we're talking about \$6,000, \$8,000, \$10,000. They don't want to talk to me about 3 months worth of checks. So that's the majority of the cases you're going to see. You're going to see one, 2 months worth of checks, maybe, \$800. In California we pay a maximum of about \$678 a month in SSI.

Now, I can't go to the regional office and say this payee took off with this money. They say well, it's not worth pursuing. So, I just want you to be aware that any numbers that the agency gives you on the instance of payee misuse, you can multiply by any factor you want, but you can be sure that the actual numbers are considerably higher because we just simply have never kept records.

[The prepared statement of Mr. Gaines follows:]

AFGE**AMERICAN FEDERATION of
GOVERNMENT EMPLOYEES**

*to do for all that which
none can do for oneself*

STATEMENT BY

KIM P. GAINES
SSA CLAIMS REPRESENTATIVE

AND

LOCAL PRESIDENT DESIGNEE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AFL-CIO
LOCAL 3172

Good morning Mr. Chairman and members of the committee. My name is Kim Gaines and I am employed by the Social Security Administration as a claims representative in the San Francisco Mission District Office. I have worked almost exclusively in the Supplemental Security Income program for the past twelve years. I appreciate this opportunity to express my views on the practices used by SSA in the representative payee programs and the difficulties faced by field office personnel in during this period of scarce staff and reduced resources. I would like to be clear that I am here today not only as a representative of SSA field office workers but out of personal concern for our clients and the deterioration of the quality service that they have a right to expect. Since I began my career with SSA at the age of nineteen I have never been more concerned with my future as an employee of this agency. I have seen the Mission District office staff reduced from 52 employees to a present staff of only 27. Many hardworking quality employees have chosen to leave the agency, at times taking as much as a \$10,000.00 reduction in pay, rather than face further staff reductions and the increased work pressures that result. I have chosen to remain at SSA for the present in hopes that we can someday return to the agency I know we can be.

We all know of the problems in the representative payee programs operated by SSA. What we may all not be aware of however is the lack of attention given to this problem by the agency prior to the recent publicity. As a member of this committee you should be very suspicious of any person who can provide data on the frequency of incidents of payee problems. Only very recently has the agency begun to collect this data and the information now being compiled is limited to a few very extreme cases of misuse. More common is the beneficiary who visits the local office to report that the present payee has misspent the benefits intended for him or her. Generally this simply involves a change of the payee and the issue of the misused funds is rarely pursued with the former payee. The actual incidence of misuse of benefits by a representative payee is certainly considerably higher than any figures I have ever seen although it is not possible to provide even an approximate figure as the information has never been collected to compute any realistic data. If this committee desires a more accurate figure it should also request that the agency provide information on payee changes and allegations of misuse reported to field offices.

An area of particular concern for me is the method in which SSA determines if an individual needs the services of a representative payee. The decision that a person lacks the ability to manage any benefits in his or her best interest is usually made in one of two ways. First, the field office can contact a medical source familiar with the client and solicit an opinion. Note that this medical source need not be an M.D.- it is frequently a psychologist, social worker, case manager or a similar sort of professional. A one page form containing only six questions is used to document a person's capability.

The second way we determine capability is when an applicant is determined to be disabled by the Disability Determination Services with which SSA contracts to make determinations of eligibility for disability benefits. The disability analyst is required to make a decision on capability when approving applications where psychiatric or substance abuse problems are present. Many applicants are sent to a consultative examination paid for by the agency in order to evaluate the allegations made of specific problems. Many of these applicants have indicated to me while

developing their case that these exams may last only ten or fifteen minutes and include little on which a disability or capability decision should be based.

Capability determinations normally involve complex issues and should be based on an extensive and thoughtful evaluation of not only the medical evidence but all available information including his or her past history of dealing with financial concerns.

To remove a person's right to receive and use their own benefits is an area that the agency clearly fails to give the attention that should be required. In doing so it creates not only a disservice to the public but also to the agency itself future payee problems could have been avoided from the beginning. After I received the invitation to speak here today I made a point to look at a good number of cases I had worked on over the past several years. I believe that it is reasonable to state that fully one-third of the persons deemed incapable during the disability application process are able to manage their affairs in their own best interest and are put in jeopardy by these decisions. Most of these are people who have been managing their own financial affairs for all of their adult life and suddenly we decide that are unable to continue doing this based on a fifteen minute examination performed by a complete stranger. If we were willing to expend the additional time and resources necessary to make an informed decision that is supported by the weight of both the medical and nonmedical evidence, we could eliminate a considerable number of our future payee problems while preserving the beneficiary's right to receive his or her own benefits.

Where a genuine need exists for the services of a representative payee it is often difficult to locate someone who is willing to serve and also seems suitable to act in this capacity. In San Francisco where I live and work, a native born client is rare. Most have family elsewhere in the country thus no relatives who could reasonably serve as payee. This situation is no doubt similar in other urban areas that have large transient and homeless populations. If no relative is available we must look elsewhere for a payee, normally to social agencies or friends. Of the six social agencies in the City & County of San Francisco that

provide payee services, each has a waiting list ranging from three months to one year. This leaves the services of friends, neighbors, landlords, etc. which is rarely an ideal applicant for a payeeship. As claims representatives we are commonly faced with the choice of paying benefits through a payee of questionable qualifications or delay paying any benefits while attempting to locate a suitable applicant. Before staff reductions of the past few years we did have a third alternative which was to pay the client directly on a temporary basis while locating a payee. This is no longer a viable choice however as the possibility of ever having the opportunity to return to an old case is remote due to the demands on the average field employee's time used completing work previously done by person who is no longer employed by the agency.

When we do have a payee application from someone who would appear to meet our qualifications, the agency provides us with no method of verify the information provided by payee applicants. Essentially it always down to the judgement of the claims representative processing the application. This judgement however can be impaired by the unmanageable workloads and unreasonable processing time and production expectations established by the agency for it's workers.

The agency needs to provide social agencies with some incentive to act as a payee. Although it would be possible to allow a social agency to charge the client a small fee for the service, a more reasonable approach would seem to provide grants to contract agencies in areas where the need is the greatest. In addition, claims representatives need a process to verify identity, employment, and criminal history of potential payees without causing undue delays in paying the benefits.

I hope this information can be useful to this committee and can help in correcting a serious problem within SSA that has been overlooked for much too long.

The CHAIRMAN. Kim, I want to thank you. And I have a unique challenge here for this panel. I'm going to try—when do you all have to catch a plane to go back home?

Mr. GAINES. At 4:30.

The CHAIRMAN. I very much appreciate you, who not only represent a very fine labor organization, but also have expressed the concerns of many Social Security beneficiaries testifying on this matter. I request that the three of you take a few moments after we conclude this hearing, informally—you're free to use this table, this room—look at this form and give us some suggestions on how we could improve it and the information that is derived from it. Second, I'd like you all to take a look at the legislation that we're looking at introducing this afternoon, section by section. Just note any comments you might have as you go through that legislation. I think this would help us as a committee, and as a group of Senators trying to address a very, very difficult issue.

I would very much appreciate knowing, from your perspective, how we might improve this form and our proposed legislation.

Let me ask this to Mike. Did SSA, Mike, ever have a program that effectively monitored payees?

Mr. TEEFY. Yes, sir, there was.

The CHAIRMAN. What happened to it?

Mr. TEEFY. I came to the agency in 1973, and during that period of time when an individual—we did a yearly accounting, and the individual was required to bring in checkbooks, receipts. We used to ask questions as to how much do you charge or pay for rent, how much do you expend for food, how much do you expend for allowances, medical insurance. It was a form that we actually used. In the middle of 1974, with the implementation of the SSI system, basically SSA just put accounting on hold and it remained on hold for almost about 7 or 8 years. When they have reinstated under the new procedures using the 623 Form, the form that you were just showing, they basically request a nondocumented response: So at one time there was accounting, and it was a primary responsibility of the service rep. And if there was any allegation of fraud or misuse, it was referred to the claims representative, and it was considered a fairly high priority. And it was done. But after about 1974, it just became a nonissue because the agency just didn't feel that it was important enough, and they were primarily concerned with the claims adjudication process, and not with post eligibility.

The CHAIRMAN. Thank you for that answer.

What sort of a priority is given today to checking out payees?

Mr. GAINES. Well, in the office that I work in, there's essentially in offices any more, there's two positions, claims representatives and service representatives. In some offices the claims representatives do the payee accountings, but where I work it's done by the service representatives, and which we only have four in an office that serves approximately 150,000 people. And just before I left San Francisco, I checked the pending files for those people to see if there were any—or about how many payee accountings they had pending. And I found a lot of them. I found some as old as 14 and 16 months old that hadn't been checked yet. So you could only do it if you have time to do it. And you can only do as much as you can

in 8 hours a day. I work in an office that used to be 52 people, and we're 27 now. So we don't have a lot of time to do things like that.

And as they mentioned, the claims processing is the priority. That's what they tell us gets us the people. That's what they tell us, you know, is our bread and butter, and that's what we have to do before any other work.

So as far as a priority, only in the past week has anyone even asked me about a payee accounting.

The CHAIRMAN. Well, I want to thank this panel. I'd like to say also to Betty, I was very touched by you as an employee of the U.S. Government going out, going down a country road, fording a creek, and walking 2 miles to find someone who needed our support and our help. And I hope when I get that age, and I'm that lonely, and I'm that far removed from society, that someone like Betty Broadhead will be there representing our Government and the services of our Government. You're to be commended. All of you are to be commended. And I want to thank this panel, and I will now call our next panel.

We're going to have our next panel if you would come forward, please. There's going to be about a 3-minute break while I make a quick phone call, and I'll be right back.

[Recess.]

The CHAIRMAN. I apologize for the delay to our final two witnesses this morning: Curtis Child and Linda Olson. Curtis is an attorney at law with the Legal Services of Northern California and Linda Olson is an attorney with the Legal Aid Society of Metropolitan Denver.

You both have been very patient during this 2-hour hearing, listening to all this. But maybe we have all learned something from it. I hope we have.

Let me state, too, that Congressman Levin, who does have legislation on this issue, will not be able to get here this morning. He was going to be our lead off witness, and we deeply appreciate what he has done in this area. We will place his statement in the record at the appropriate place, and I would like to ask, even before you make a statement, Curtis or Linda, that maybe you also join the previous panel in sitting around informally and looking over the Social Security Administration payee form, and maybe making some suggestions. We'll make some of the Aging Committee staff available to you to work with, and also to make any comments about the legislation, which will be introduced this afternoon.

Curtis, you may make your statement.

[The prepared statement of Congressman Levin follows:]

STATEMENT OF REPRESENTATIVE SANDER M. LEVIN
BEFORE THE SENATE AGING COMMITTEE

June 6, 1989

I appreciate the opportunity, Senator Pryor and members of this committee, to appear here today as you consider how to strengthen and reform the vital services that the Social Security Administration offers to some 5 million beneficiaries who depend on representative payees.

We need to do all that we can to safeguard the benefits that go to these people, who are among the nation's most vulnerable citizens. I commend you for holding this hearing and look forward to learning more about the bill that you are introducing today to deal with concerns that our constituents and other Americans have about this very important subject.

What's Wrong with the Current System?

Most Social Security recipients are capable of managing their own affairs, but for those who cannot -- because they are under legal age or because of a mental or physical impairment -- current law authorizes the appointment of someone known as a representative payee to arrange for a place for the person to live, pay that person's bills, and perform related services. The federal government has an obligation to make sure that these people are not taken advantage of.

In March of this year, because of stories in the media and complaints forwarded from state and local government officials, as well as community and advocacy groups, the House Social Security Subcommittee on which I serve held a hearing into SSA's representative payee policies and procedures. Unfortunately, the testimony that we heard then suggests that major problems exist and that Congress must take steps to ensure that the Social Security Administration is able to restore confidence to beneficiaries, their families, and the American public.

Two sets of problems need special attention. First, faulty screening of payee applicants, incomplete investigations, and inadequate accounting procedures have led directly to financial misuse. For example, several widely publicized cases in Michigan and other states show that SSA has not been able to prevent dishonest payees from getting into the system. People are even able to use aliases to sign up to receive the checks of Social Security beneficiaries although they have defrauded recipients and the U.S. Treasury in the past.

In addition to encountering financial loss when representative payees illegally convert government checks to their own uses, some recipients face physical harm at the hands of unscrupulous payees. As many in this audience know, at least one unscrupulous board and care operator in Sacramento, California, is currently being prosecuted by local law enforcement officials in connection with the deaths of several people in her charge.

The people who are being victimized are the elderly, the very young, and other people who are among the most vulnerable in our society. They all deserve better. As a result of what I learned at that House hearing, I have introduced legislation, joined by two of my colleagues, Representative Bob Matsui (D-Cal) and Representative Jim Moody (D-Wis) as original co-sponsors, to help remedy these problems.

What Should Be Done?

I would like to share with you today a few of the points included in that bill that may be useful in your work. They fall under four basic headings. I look forward to working with you in improving this critical situation.

1. Improve Beneficiary Rights

Congress needs to spell out beneficiary rights further in several important areas. By requiring a face-to-face interview with the beneficiary to evaluate the need for a rep payee, needed safeguards will be built into the procedures that SSA uses to determine whether someone really needs to have a representative payee in the first place.

Such an interview will also provide an opportunity for SSA to explain how the program operates and what complaint and appeals rights a Social Security or SSI beneficiary has once a representative payee is in place.

Once a payee is certified, other protections are needed to ensure that the beneficiary can recover misused funds. In line with a recent federal court decision in which the judge required SSA to refund benefits because the agency had not adequately screened a payee who subsequently misused a beneficiary's funds, my legislation would require Social Security officials to issue a second check so that the beneficiary should not needlessly suffer.

2. Reform the Screening of Payee Applicants

The second subject that should be covered by reform legislation concerns the process by which SSA recruits and investigates representative payee applicants. Because of the potential that serious conflicts of interest could occur if someone pays himself or herself for services rendered to Social Security or SSI beneficiaries, the legislation bans all creditors from acting as rep payees, except in the cases of relatives who live in the same household as the beneficiary and residential care facilities licensed by State governments.

It also gives SSA additional tools to use to screen the pool of rep payees and apply greater scrutiny in high risk situations, such as applicants with criminal records. Before anyone can be certified as a rep payee under this legislation, SSA would be required to complete a thorough investigation designed to verify the applicant's identity and determine whether he or she has a prior felony record or has been terminated as a rep payee in the past.

I welcome the changes that the Social Security Administration has begun to make since the agency has come under greater public scrutiny on this subject. These changes in its investigative procedures do not, however, go far enough in my view to ensure that bad apples cannot get into the system. I'm also concerned with the charges that some informed critics make that beneficiaries are sometimes told by SSA officials that they couldn't receive money to which they were clearly entitled unless they themselves found someone to act as their rep payee.

I believe legislation is needed to deal with that problem by placing an affirmative responsibility on SSA to certify a responsible payee or, if need be, temporarily fulfill the rep payee function until one can be found. If SSA is unwilling to perform such services for hard-to-place recipients, one answer is to work more closely with nonprofit community groups that already provide guardianship services under state law.

3. Improve the Quality of Rep Payee Services

It's not enough for rep payees to be honest. Congress also needs to help SSA recruit payees who will manage beneficiary affairs conscientiously. This is done in my bill by providing authorization for SSA to compensate qualified nonprofit organizations which apply to take on this responsibility in cases where family and close friends are not available to do so.

Testimony received at the House hearing earlier this year, Mr. Chairman, showed that there are organizations ready and willing to do this job in my state of Michigan and elsewhere around the nation. Let's put them to work, not stand in their way.

4. Hold Rep Payees Accountable

At that hearing we heard a strong call to reform SSA's procedures concerning representative payees from state and local government officials, SSA employees, as well as advocacy and community groups. This legislation proposes a prudent and workable system to monitor how rep payees fulfill their responsibilities on the job.

In high-risk cases, the secretary would be required to develop a program of accountability monitoring based on quarterly reporting by representative payees. In the case of relatives and certain governmental institutions acting as rep payees, the secretary is authorized to develop alternative mandatory annual accounting procedures.

Another accountability feature has been carefully designed to link the rep payee application and reporting processes. The secretary is required to keep certain centralized files available for use by local offices in rep payee investigations.

Besides using this information to improve rep payee certification and accountability monitoring decisions, a second purpose is to aid state regulation of nursing homes, adult residential care facilities, board and care homes, and other facilities in which Social Security and SSI recipients reside by requiring SSA to share information with state licensing and protective service officials for use in investigating unlicensed board and care homes.

That last objective, Mr. Chairman, would correct some of the problems which Representative Claude Pepper was working on just before his death. Reform of the procedures which SSA uses to select and monitor representative payees would be a fitting way for this Congress to continue his work on behalf of the Social Security Program.

STATEMENT OF CURTIS L. CHILD, ATTORNEY AT LAW, LEGAL SERVICES OF NORTHERN CALIFORNIA

Mr. CHILD. Thank you.

Chairman Pryor, I'd like to thank you for the invitation to testify before this committee. My name is Curtis Child and I'm an attorney with Legal Services of Northern California. I'm counsel along with attorneys from the National Senior Citizens Law Center in a case called *Briggs v. Sullivan*. That's a lawsuit challenging the Social Security Administration's policies and practices in its representative payee program. And essentially what we are alleging in that lawsuit is that those policies right now are leaving beneficiaries homeless, hungry, and exploited.

Our lawsuit focuses on three major problems. First is the Social Security Administration's policy of suspending benefits for those persons who cannot find a representative payee; its failure to conduct investigations of representative payees, once someone brings one in; and Social Security Administration's refusal to reimburse beneficiaries who lost benefits to payees who are not investigated. The Ninth Circuit Court of Appeals has in fact granted an injunction pending an appeal that does enjoin, presently, the Social Security Administration from not paying directly the benefits to persons who do not have representative payees. So right now they are required to pay directly in the State of California, under that injunction. And it's certainly our position that is what the law presently requires.

I'd like to share with this committee, if I may just briefly, the experiences that a number of the plaintiffs have had in this litigation, as well as some of the declarations. And then if I can just talk briefly about the proposed legislation, and how we think that may address and deal with those problems.

I just want the committee to note, the one common thread that I think—or the common threads that I think run through this entire problem is the Social Security Administration's requiring people to go find their own representative payee, putting pressure on them to do that at the risk of not paying their benefits unless they do find a payee, and then no investigation of the payee. It's really a Hobson's choice for these people. If they don't have a payee, any friend or relative, they have two real cruel alternatives. Those alternatives are to go entirely without benefits, or turn to someone in the community who they may not know, or trust, and drag them in at the risk that they may not properly handle those benefits for them, and often, as we find out, they don't properly handle those benefits.

Certainly the most sensational example that happened three blocks from our office was the boarding house incident. This was the boarding house in Sacramento where a woman who operated an unlicensed boarding house, the manager, who had just spent 3 years in prison for actually drugging elderly and disabled persons and forging their Social Security checks. She was on parole at the time she was approved to be a representative payee. One of the conditions of the parole specifically provided that she was not to be handling Government checks.

The next person is Charles Briggs, who's the named plaintiff in our lawsuit. Mr. Briggs had been receiving SSI benefits on the basis of a mental impairment for a number of years. Sacramento County had acted as his representative payee, and last summer decided that they were no longer going to act as his payee. They notified the Social Security Administration of that, and they immediately suspended his benefits because he had no one else to act as his payee. He lost his housing. He was forced on the street, and literally lived in parking lots, eating at soup kitchens for a period of 6 months. Not until our office intervened were we able to get his benefits to him directly.

The CHAIRMAN. Curtis, does your office act as the representative payee from time to time?

Mr. CHILD. No, no. And we can't do that. A couple of reasons. One, our office is a law office, and that's what we have to certainly devote our resources to doing is providing legal representation for low income persons. The other may be for potential conflicts of interest that may arise from that.

Another plaintiff in this litigation was Robert Pierce. He has had four payees in the last 12 months. And the same thing kept happening to Mr. Pierce. He would get a payee—it started off with a boarding house in Los Angeles, who ended up absconding with some of his money. He reported it to Social Security, they suspended his benefits. He drug in someone off the street who also absconded with his benefits. He reported it to Social Security and again his benefits were suspended. Off benefits again. That continued happening over the course of a year. His last payee, he was paying \$100 a month to serve as his payee. So it was actually costing him \$100 out of his benefits to do that, because that was the only person he could literally find on the streets to act as his payee. There are no services available in Sacramento County of any significance to provide representative payees for persons. And we're finding in this litigation that that is in fact true throughout the State of California.

The CHAIRMAN. One of the previous witnesses mentioned the AARP having a program of serving as representative payees. Is that working?

Mr. CHILD. There are some small projects dotted throughout California that I'm aware of that do that. The problem is, it is a voluntary project, and they're very limited in the number of volunteers that they do have that can provide those services. The other part of it is because they are volunteers, often times the persons who are required to have representative payees can be persons who are difficult to work with, which is, I think, inherent in the nature of their disability, which can sometimes be the mental impairment. And volunteers are not interested in providing those payee services to them, either. So it's a very small number that I think they can make payee provisions for.

You heard Elizabeth Freeland testify. You asked her one question about whether the misuse had been reported. She had gone in a number of times and reported that misuse, and had gotten the response, "sorry, we can't help you," just as you heard one of the claims representatives testify. Her benefits were \$2,200, and apparently that was not sufficient for them to consider significant

enough to proceed in taking a report of misuse. We're finding that that happens all the time. I had a person in my office not too long ago who said he went in and reported a misuse to the Social Security, and the response he got was "sorry, we can't help you, that's an agreement between drunks," and sent him away.

As far as Elizabeth, as soon as she came to our office, one of the first things that I did was, in fact, make that report of misuse. And I reported it to every local law enforcement agency in Sacramento County, and to every Federal law enforcement agency, including the U.S. Attorney, the Secret Service, anyone I could think of who could possibly do anything. Interestingly enough I got responses only from the local law enforcement agencies, who said it was outside of their jurisdiction. I got no response from any of the Federal agencies. I did ultimately get a response from the Commissioner, because I did send a letter directly to the Commissioner. She requested that the local office do an investigation. Their investigation consisted of calling at the last known address, the representative payee wasn't there, and concluding because they couldn't find the representative payee that they could not make a determination of misuse. The Commissioner did, in fact, respond to me directly that there was no misuse and that they would not refund the benefits to her.

And as you're aware, a finding of misuse, or no misuse, is a final decision, and not appealable. And I think your legislation would address that. And I think that's an important part of that, to ensure that the claimants can make that claim once Social Security makes a determination of misuse.

The CHAIRMAN. Curtis, I hate to cut you off. I have a meeting in about 10 minutes in the Capitol Building, and I have to be there. But I'm still going to ask a couple of questions, but if we could have Linda Olson tell about a situation that involves a Mr. Holt there in Denver, I believe. Linda, would you make your statement and then I'll have a couple of questions for both of you. We will place both of your full statements in the record.

[The prepared statement of Mr. Child follows:]

TESTIMONY OF
CURTIS L. CHILD
Before the
UNITED STATES SENATE
SPECIAL COMMITTEE ON AGING

I. INTRODUCTION

My name is Curtis Child and I am a staff attorney at Legal Services of Northern California (LSNC) in Sacramento, California. I would like to thank the Committee for its invitation to testify at this hearing. Legal Services of Northern California is funded primarily by the Legal Services Corporation and provides legal services to the poor, elderly, and disabled in 18 Northern California counties through five regional offices. LSNC has placed a high priority on Social Security and Supplemental Security Income (SSI) issues, handling both individual cases and cases affecting large numbers of individuals. For years LSNC has been contacted by Social Security and SSI recipients with problems they confront daily in the Social Security Administration's (SSA) representative payee system.

In the summer of 1988 after being contacted by several Social Security and SSI recipients who were victimized by their representative payees I began an investigation of SSA's policies concerning representative payments. I submitted a Freedom of Information Act request to the Commissioner of SSA on July 18, 1988, and was astounded at the response, or more appropriately, the lack of response. For example, I requested any records in the possession of SSA concerning the monitoring, evaluation, or review of representative payee procedures in the State of California. The only document provided was a 1984-85 report summarizing performance of state institutions as representative payees. Apparently SSA has done nothing to otherwise monitor, evaluate, or review representative payee procedures in California. Equally amazing was SSA's response to my request for any records documenting SSA's efforts to ensure the availability of representative payees for all Social Security and SSI recipients determined to require them. The only document produced was a memorandum of understanding between SSA and the American Association of Retired Persons allowing AARP to operate a pilot representative payee project in the Washington, D.C. area. Again, it appears that SSA has done nothing on a local or national scale to ensure the availability of representative payees for those who need them.

As my investigation continued, I was contacted by several other Social Security and SSI claimants who were not receiving their benefits because of SSA's policies. Then in November, at a boarding house just three blocks from my office, eight bodies were found buried in the backyard. The boarding house manager, Dorothea Montalvo Puente, has been charged with the murder of one of the victims: an individual for whom she had been approved by SSA to act as his representative payee. What makes this event so horrifying was that at the time she was certified to become the victim's representative payee she was on federal parole after serving nearly three years in prison for drugging disabled and elderly persons and forging their U.S. Treasury checks. She had also been convicted of forging U.S. Treasury checks in 1978 and was given five years probation. The terms of her most recent parole included that she be prohibited from employment involving the elderly and disabled and handling government checks. The arrest of Mrs. Puente directly underscores one of the many problems in the representative payee system.

LSNC, along with the National Senior Citizens Law Center, filed suit on February 14, 1989, in United States District Court in Sacramento challenging the legality of many of SSA's representative payee policies that are the subject of these hearings. This case, Briggs v. Bowen, No. 89-0203 (E.D. Cal.), was brought by five named plaintiffs on behalf of all similarly situated Social Security and SSI recipients in California. Specifically, the plaintiffs seek to: 1) halt SSA's policy of suspending benefits of eligible beneficiaries because they cannot find representative payees; 2) require SSA to conduct investigations of proposed representative payees prior to certifying them to act as payees; and 3) force SSA to pay benefits to beneficiaries who never received those benefits because a payee SSA failed to investigate absconded with those benefits.

We believe the federal courts in Briggs will successfully halt some of the agency's most egregious policies in California. Indeed, the Ninth Circuit of the United States Court of Appeals has enjoined SSA from refusing to pay Social Security or SSI benefits directly to eligible recipients because those beneficiaries cannot obtain a representative payee, pending an appeal of the issue. However, we also believe that beneficiaries across the nation will only be safe if Congress steps in and strengthens the Social Security representative payee program. Our work on behalf of the Briggs plaintiffs and the members of the class they represent has only reaffirmed our past experience that the payee system as it is now operated by SSA results in serious personal and physical harm to numerous beneficiaries.

II. PROBLEMS WITH SSA'S REPRESENTATIVE PAYEE PROGRAM

As you know, the Social Security Administration's representative payee program was designed by Congress to provide some additional help to those beneficiaries who, for various understandable reasons, are unable to handle their own funds. Its purpose was undeniably benevolent.

There are, by Social Security Administration's own estimates, about three million beneficiaries with representative payees. In 1983, SSA estimated that approximately 1.5 billion dollars of Social Security and SSI benefits are paid out every month to representative payees.

Many payees are, of course, honest, caring friends and relatives who are, despite the lax oversight of SSA, truly attempting to help beneficiaries in need. Those persons who voluntarily provide valuable assistance to children and adults who are unable on their own to handle their benefits should be saluted.

However, as the payee program is now operated by SSA, Congress' benevolent purpose has been lost. SSA's determination that a beneficiary needs a payee is more often tantamount to either being sentenced to months as a homeless beggar in our streets or to a government approved license for financial abuse. Indeed, in some communities in our nation private profiteers are virtually lining up at Social Security offices in the hope they can get their hands on a beneficiary's money by being appointed a payee.

A few examples garnered by our office and other legal services programs will illustrate the problems confronted by our clients every day as a result of the uncaring and often illegal representative payee policies of the Social Security Administration:

- A homeless SSI recipient had her benefits suspended for lack of a payee for nearly a year. During that time she visited her local Social Security office five or six times a month only to be told that it was her responsibility to find a payee in order to receive her money. While her benefits were suspended and she was forced to live on the streets, she was kidnapped, and raped.
- One Social Security office approved a person as a payee without investigation despite a warning from a social service agency that the prospective payee was an alcoholic and the only identification was the payee's county jail release papers.
- In one community SSA has approved a liquor store manager as a payee for several people. The manager keeps an open tab for his beneficiaries and reimburses himself every month out of their benefits.
- A homeless man in San Francisco, eligible for SSI benefits, who has been unable to find a payee was advised by SSA that his benefits will be indefinitely suspended while he is on a six-month welfare department waiting list for payee services.
- One social service worker reports that many of the representative payees he has encountered have themselves

been required to have payees. One beneficiary in Sacramento presently has a payee who herself has a payee.

- Out of desperation, a woman beneficiary, after having her benefits suspended for months due to the lack of a payee, asked a male stranger from a bar to serve as her payee. After SSA routinely approved him, her payee used the funds to get drunk and later physically and sexually abused her.
- SSA approved a payee despite her improper Social Security number. And, when confronted with explicit evidence that the payee absconded with more than \$6,000 of the beneficiary's money, the SSA worker stated "there isn't anything we can do."

These are only a small sample of the hundreds of complaints made to legal services offices about SSA representative payee abuses. And, it is only the tip of the iceberg, as very few of the more than 3 million beneficiaries with payees are able to seek assistance from a legal service program.

We believe the problems with SSA's payee program can generally be placed within the following general categories:

1. Failure to properly pay benefits to all eligible persons;
2. Failure to investigate and screen potential payees;
3. Failure to monitor the actions of payees;
4. Lack of procedural protections and remedies for beneficiaries who have been harmed by SSA's actions or financially abused by a payee.

Let me explain the nature of the problem in each of these categories and then offer some possible solutions that we believe would help to assure that elderly and disabled beneficiaries who need payees still receive the benefits Congress provided for them.

III. FAILURE TO PAY BENEFITS

A. SSA's Policy

SSA has instituted several policies which taken together have resulted in thousands of elderly and disabled persons, who are by definition eligible for Title II Social Security and SSI, being thrown out into the streets without receiving their benefits. These people end up homeless, have no funds for food or clothing, and are subject to the everyday violence faced by vulnerable persons who must try to survive on the streets.

The two policies of SSA which are responsible for creating these unnecessary additions to our nation's homeless are: a) unilaterally suspending benefits for persons who need payees when no one is currently available to serve in that capacity; and b) placing the responsibility for finding a payee on the beneficiary, not the agency.

The result of these policies is dramatically illustrated by Mr. Briggs, the named plaintiff in our suit, who was specifically told that he would not receive his benefits until he could find a person to serve as his payee. Because Mr. Briggs was not successful in finding either an organization or reputable person to be his representative payee, SSA then instituted its "suspense" policy and refused to pay him the benefits he was entitled to receive for six months! During that time Mr. Briggs, because he had no other money and despite his admitted eligibility for more than \$600 a month of Social Security benefits, was left homeless and starving on the streets of Sacramento.

There is, in our judgment, no excuse for these inhumane SSA policies. SSA has no legal authority to "suspend" the benefits of

persons whom the agency has determined need payees, but who cannot find them. The current representative payee statutes give the agency only two choices once it has determined that a person is unable to manage his/her own benefits: pay the benefits to a representative payee or pay them directly to the recipient. The best interest of the beneficiary is to be the determining factor as to which choice the agency makes.

Congress has not given SSA, nor should it, the power to withhold payments to persons who need the assistance of a payee. How could it ever be in the best interests of elderly and disabled Social Security and SSI recipients to leave them penniless, homeless and starving?

Of course, for a small percentage of the persons in need of payees, Congress has required that benefits not be paid unless a payee is appointed. These persons are disabled SSI recipients whose disability is due to alcoholism or drug addiction. SSA has estimated that out of more than 3 million persons who have payees, only about 16,000 fit into this special category.

In 1974 Congress mandated payees for these alcoholics and drug addicts to protect against their SSI grants being used to further their addiction. By requiring payees for this group of disabled people Congress was simply trying to provide funds to live on as well as see that these people secured some help to overcome their disability. Congress did not, however, intend that their benefits would be stopped. Rather, under the current law Congress mandated that SSA literally find payees for these alcoholics and drug addicts. Given the small number of people affected, that is not an onerous task. There is no legal authority to withhold money from any individual clearly eligible for benefits under the SSI rules.

There is also no legal authority for the agency to demand that beneficiaries be responsible for finding persons to serve as payees. Indeed, as you can imagine there is little logic in the agency first determining that someone is unable to make rational decisions about spending his or her money, but then expecting them to be able to size up the money management capabilities of third parties.

In combination with SSA's suspense policy, shifting responsibility for finding payees to beneficiaries places enormous pressure on beneficiaries to literally drag people in off the street to act as payees in order to get at least enough money to eat. Under SSA's current policies, beneficiaries are left with the unacceptable choice of either receiving no money for the month because they have no payee, or obtaining an unknown and perhaps unscrupulous person to be their payee. A few dollars from a shady person, perhaps a chance to sleep in a bed for a month, is often preferable to the terror of spending day after day, night after night, on the streets.

B. Proposals For Change

Although, my clients maintain these policies are illegal under current law, we believe there are also actions Congress can take to help remedy this very serious and life threatening problem. First, Congress can reiterate and emphasize that SSA's current policies are not authorized by the Social Security Act. SSA should be instructed to immediately cease suspending recipients' benefits because they have been unable to find a reputable representative payee. The bill you are introducing does that. However, it is not necessary to give the Secretary any discretion to except from this requirement beneficiaries who are entirely incapacitated. These beneficiaries will in reality be under the care of an individual or institution. Based on SSA's past experience in this area the Secretary should not be given an opportunity to define his way out of the requirement.

Furthermore, it is essential that SSA not be allowed to leave SSI recipients who are disabled due to a drug or alcohol addiction without any benefits to meet their needs for food, clothing, housing, medical care, and other necessities. In this instance SSA should be required to serve as representative payee or otherwise be obligated to ensure that

beneficiaries' immediate needs are being met so that eligible recipients are not left with absolutely no means of support.

Second, the obligation of SSA to find payees for people should be reinforced. It is, and should be, the duty and obligation of the agency to find representative payees for persons who cannot manage their own funds.

We recognize, however, that there are practical difficulties in finding reputable payees for many persons who may need these services. Therefore, we also suggest that Congress require each state to develop a representative payee program of last resort. The program should provide, through an appropriate state agency or state certified non-profit organization, representative payee services. Such a state run program will assure that if no appropriate friends or relatives are available to serve as payees, someone reputable will take over. Under such a program, Congress must place explicit limitations on who can be licensed by the state to eliminate the possibilities that private profiteers will become involved. With a clear and explicit obligation to find payees placed upon SSA and a state duty to make such services available when no other prospective payee exists, persons who need payment through a payee will receive it.

We believe that such a system of back-up payees can be created within the current social service structure and without any significant additional funding. Such a program can be tied into existing federal social service programs such as those funded by the Older Americans Act, special programs for the developmentally disabled, or the Community Mental Health programs.

We are opposed, however, to any attempt to have a "payee-of-last-resort" program paid for by taking a portion of the recipient's monthly benefits. These elderly and disabled beneficiaries need every penny of their meager funds just to survive. Allowing payees to receive fees from monthly benefits will simply reinforce SSA's view of representative payees as a punishment rather than for the benevolent purpose that was envisioned by the program's creators.

Finally, in recommending this system of state certified or approved payees, we want to emphasize that we are not suggesting that Congress eliminate the ability to directly pay benefits when no alternative payees are available. Indeed, the direct pay option must remain as a critical stop-gap measure to ensure that Social Security and SSI recipients will no longer be forced by the government to join the ranks of the homeless.

IV. FAILURE TO INVESTIGATE PAYEES

A. SSA's Policy

At the present time, as far as we can determine, SSA has no program whatsoever to investigate and/or screen potential payees. Mrs. Puente, with an easily verified criminal record, was appointed payee by SSA for beneficiaries in her board and care home. She could probably walk into any Social Security office today, after all that has happened, and still be routinely approved as a payee.

Indeed, our clients, out of desperation, have brought known alcoholics living on the streets into a Social Security office and had those persons approved as payees on the spot, without even the semblance of an investigation. Social service personnel report to us that Social Security personnel will approve anyone who walks in the door as a payee with no questions asked.

The foolishness of SSA's policies is exemplified by their recent publication of new policy to "investigate" criminal backgrounds of payee applicants. This new policy, revealed only last February, simply requires SSA personnel to ask people if they have a criminal record. If they answer "no", then no further investigation occurs. Believe it or not, up until February 1989, the Social Security Administration had never

even considered whether a prospective payee had a criminal record when it appointed the payee. Apparently, the agency now believes that people with criminal records who intend to misuse funds will simply admit to their intent when asked.

The failure to investigate payee applicants is even more troubling when it is viewed in light of SSA's policy of refusing to repay benefits to recipients when a payee misuses the funds. SSA takes the view that payment to the payee is equivalent to payment to the beneficiary. Thus, in the case of Ms. Freeland, who will be testifying before you today and is one of the Briggs plaintiffs, even though her payee, who had a known criminal record for fraud, absconded with her funds, Ms. Freeland will not receive any additional payment from SSA. Indeed, the Commissioner herself advised Ms. Freeland that SSA will not pay her the nearly \$2,200 in benefits she did not receive as a result of her payee's absconding with those benefits. In effect, Ms. Freeland's payee, whom SSA failed to investigate even in a cursory manner, goes free while Ms. Freeland, the beneficiary who is undoubtedly eligible for benefits, is left with nothing.

Again, in our view, there is absolutely no excuse for SSA's failure to investigate and/or screen prospective payees. Indeed, in the 1984 representative payee amendments, Congress explicitly demanded that SSA investigate the propriety of persons who apply to be payees. SSA has, however, ignored those directives.

Paying someone's benefits to a representative payee is, as this Committee recognizes, an important, if not critical, decision for many beneficiaries. It affects their lives very directly. It impacts on where they live, whether they can eat, if they will have sufficient clothing, where they can go, etc. If SSA just gives the funds of these elderly and disabled beneficiaries to anyone who walks in the door, then the agency is courting disaster.

B. Proposals for Change

In light of SSA's refusal to follow Congress' directives in 1984, we believe Congress must now not only reiterate those investigatory requirements, but it is also imperative that it strengthen them. First, we recommend that Congress require SSA to conduct criminal background checks of all payees using the FBI fingerprint system. And Congress should forbid persons with criminal records, with certain minor exceptions, from serving as payees. Simply asking a payee if he or she has a criminal record, as the agency now proposes, is not enough. Allowing SSA to continue to avoid its obligation by only requiring a feasibility study of conducting criminal background checks would permit SSA to continue paying benefits to unsuitable payees, leaving the beneficiaries subject to abuse and a loss of their benefits. A person with a criminal record such as Mrs. Puente could once again be approved to be a representative payee. It is essential that criminal background checks be conducted by SSA prior to the appointment of a payee.

Second, SSA should be required to keep records of persons who have in the past abused their responsibilities as representative payees and those payees should be barred from ever serving as a payee again. The legislation you are introducing should do that.

Third, persons or entities who are creditors to beneficiaries should be barred from serving as payees. This would prohibit boarding home operators, liquor stores, nursing homes, bartenders, and some state institutions from being a payee. Your legislation should also prohibit these abusive situations.

Finally, SSA should be required to develop a system to facilitate the availability of quality payees by providing training programs in conjunction with local social services providers. We believe there should be one person in each Social Security office whose job is to develop and be aware of sources for new payees, to train prospective payees, and to work with new payees to assure they fulfill their responsibilities.

V. FAILURE TO MONITOR PAYEES

A. SSA's Policy

Consistent with its policy of refusing to screen payee applicants, SSA also takes a hands off approach when it comes to monitoring the performance of the representative payees that it does appoint. Once SSA sends a monthly check to a payee, the agency contends it has fulfilled its payee obligations. SSA has demonstrated little or no interest in whether the payee absconds with the funds or pays them appropriately to the beneficiary.

Even when beneficiaries specifically complain that they never received their funds, SSA simply advises them that such a problem is a personal matter between the payee and the beneficiary -- SSA has, they claim, no role. In addition, the agency tends, even when it does "examine" a complaint of misuse, to automatically accept the word of the payee over the claim of the beneficiary. SSA seems to implicitly trust all payees no matter what their background.

SSA's failure to monitor payee performance has a long history. In 1979 SSA unilaterally halted even the most cursory examination of payee performance. At that time, the National Senior Citizens Law Center, in conjunction with Legal Services of Western Oklahoma and Greater Boston Elderly Legal Services, filed a suit, Jordan v. Heckler, challenging SSA's failure to provide any mechanism for financial accounting of representative payees. They argued that accountings were necessary to monitor payee's accounts and to help prevent misuse of benefits.

In 1983, the Jordan court ruled that the constitutional requirement of due process of law demanded that SSA annually conduct accountings for all payees. Although SSA has tried diligently to get the federal court order in Jordan overturned or limited they have been unsuccessful. Now, under the specific direction of the federal court, SSA is finally conducting a form of accounting for all representative payees.

Unfortunately, the order in Jordan only begins to address the problem; it does not solve it. The accounting form accepted by the Jordan court is actually a one-page questionnaire which asks, but does not follow up on, a few simple questions. For example, the current form (SSA Form 623) inquires if a payee has paid all of the funds to the beneficiary. If the payee answers yes, then the agency assumes everything is all right. Payees are not required to explain their disbursements or demonstrate what happened to the money. It is hard to envision an unscrupulous payee admitting that he or she has kept the money rather than paying it to the beneficiary.

Despite the fact that SSA's own studies have revealed that misuse or unsatisfactory payee performance occurs with nearly 20% of the payees, the agency continues to take no actions to improve its monitoring of payee performance. There still is very little, if any, effort made to fully examine and evaluate reports of misuse. Claims representatives rarely discuss allegations directly with payees or beneficiaries; nor is the more expansive accounting form (Form 624), which looks more like a traditional court ordered accounting, used as it was intended, to monitor situations where reports of abuse and misuses have occurred.

From the experience of our clients and other legal services advocates, misuse is substantially more likely to occur when the representative payee is either a non-relative, institution, or person who is a payee for more than one beneficiary (i.e., the multiple payee or "professional" payee). In these specific, high risk situations, the current simple annual accounting forms are not sufficient to control the misuse and abuse by representative payees.

B. Proposals for Change

Based on this history of SSA neglecting its monitoring duties and the continued misuse of benefits, particularly by high risk payees, we believe Congress should take several actions to further protect these vulnerable beneficiaries. First, Congress should mandate a separate and specific monitoring program explicitly directed at the high risk payees (non-relatives, institutions, and multiple payees). Congress should identify these high risk classes of payees and allow the Secretary to expand these classes if necessary. Such a program must be comprehensive and should include at least the following:

1. Uncovering the names and whereabouts of all current payees who are in these high risk categories. We understand at the present time SSA has no record of which payees fit into these high risk groups. Once identified, all of these current payees should be immediately subject to a search for criminal records through the FBI fingerprint system, should have all existing accountings reviewed in depth, and should be required to complete a new comprehensive accounting as described below.

2. Requiring all high risk payees to keep more complete records of their actions and, if they are a payee for more than one beneficiary, requiring them to maintain separate accounts for each person's funds.

3. Requiring the high risk payees to file a comprehensive accounting on an annual basis, using a form similar to SSA's Form 624, rather than the current truncated Form 623. Each of these new accountings should be examined every year by SSA, instead of its current practice of reviewing only a random sample of accountings that are filed.

4. Annually providing beneficiaries who have payees in these high risk categories a separate form inquiring if they have properly received their funds from their representative payee. If beneficiaries indicate funds were not received, then SSA should immediately conduct a thorough investigation.

5. Requiring SSA to conduct an annual review of the performance of all high risk payees. The review should involve reexamination of the file for complaints, assuring that all annual accountings have been satisfactorily completed, and a redetermination of whether the beneficiary still needs the services of a payee.

In addition, Congress should strengthen existing record keeping and auditing requirements for all payees. The current statutory requirement exempting spousal and parental payees from accounting should be removed to make the statute consistent with the Constitution and the controlling orders of the federal court in Jordan which demand accountings of all payees.

While payee abuse is more likely in the high risk categories, there is no evidence to support a conclusion that it does not occur when the payee is a relative. In fact, legal services advocates regularly confront clients whose parents or spouse have misused funds through the payee system. Moreover, the kind of accounting now required by the Jordan court order is so minimal that any spousal or parental payee who is carrying out his or her responsibilities should have little difficulty in filling out the form. The Jordan accountings are not onerous, but they at least ensure some monitoring of every payee.

Congress should also require SSA to immediately review all allegations of misuse and seek a written report from payees when misuse has been alleged. Currently, SSA has the discretion to seek such a report, but it is a discretion rarely, if ever, utilized. See 42 U.S.C. §405 (j)(3)(E). In the 1988 fiscal year SSA discovered misuse and initiated recovery of SSI benefits in only 9 cases. There were no cases where benefits were fully recovered and only two were referred to the U.S. Attorney for civil suit.

SSA should be required to specifically review the actions of any payees who receive a check for retroactive benefits in excess of \$1,000. Situations where significant sums of money are involved present an increased risk of misuse and must be monitored more closely. We suggest a special one-time accounting form be developed so that payees who receive retroactive checks in excess of \$1,000 will have to demonstrate in detail how those monies were spent. Further, beneficiaries should be notified when SSA sends a retroactive check to the payee. Under the present system beneficiaries usually are not informed that a payee has received a check for retroactive benefits, and it often takes many months before the beneficiary can determine that the payee has misused the money.

Finally, Congress should mandate that SSA provide particularly close scrutiny of payees for the first nine months. Our experience shows that a significant portion of payees who misuse funds do so immediately, particularly when they initially receive, as is often true, a large check for retroactive benefits. Close monitoring in the first nine months will help uncover most cases of financial abuse before the problems become severe.

The changes we suggest in monitoring payee performance will, of course, not eliminate all misuse. However, increased scrutiny, greater limitations on who can become payees, more screening of payee applicants, and a new attitude on the part of SSA officials, are sure to substantially reduce the rampant misuse that is now occurring under the SSA's present policies.

VI. LACK OF PROCEDURAL PROTECTIONS AND REMEDIES

A. SSA's Policy

Despite the fact that a determination that a beneficiary needs a payee results in the recipients total loss of control over their only source of income, the process has always been handled secretly and without many of our usual procedural, due process protections. Although beneficiaries stand to lose significant rights when SSA decides they need a payee, there are virtually no rules as to how that decision is made, nor is there a meaningful method for reviewing those determinations. Moreover, these decisions as to the mental and physical capabilities of beneficiaries are being made by thousands of SSA employees in field offices who have absolutely no training or expertise in evaluating the needs of elderly or disabled people.

The absence of procedural protections is highlighted by the other side of the coin, the lack of reasonable remedies for beneficiaries when either SSA or payees fail to carry out their duties. When SSA neglects to either properly investigate or supervise payees, and payees in turn misuse thousands of dollars in benefits, the agency stands idly by, claiming that a beneficiary's only remedy is a private action against the payee. Even though it is possible that payee misuse cases can be referred to the U.S. Attorney for suit, during the last three fiscal years SSA only referred 15 cases in the entire country to the U.S. Attorney. Obviously, this is a virtually useless remedy.

The notices now used by SSA to inform beneficiaries of their need for a payee or suspension of benefits are abysmal. Just last February one of the Briggs plaintiffs received the following notice from SSA:

"Regarding your Supplemental Security Income Benefits: Your representative payee has resigned effective April 1, 1989. He will sign over the March 1989 SSI check to you. No check will be issued for April 1989. Please come into this office as soon as possible to discuss the payee situation."

The beneficiary received no notice of his rights to challenge SSA's decision to suspend his benefits or of his right to challenge his need for a payee.

**STATEMENT OF LINDA J. OLSON, ATTORNEY AT LAW, LEGAL AID
SOCIETY OF METROPOLITAN DENVER, INC.**

Ms. OLSON. Thank you. I do appreciate the invitation, and I am here on behalf of my client, Reginald Holt, who is a disabled Social Security disability recipient.

Mr. Holt was told by Social Security that he had to have a representative payee, and since he had no relative or close friend, he selected a man named Billy Stewart, whom he knew slightly. As it turned out, Mr. Stewart had a criminal record for charges including fraud by check at the time he applied to be Mr. Holt's representative payee, but Mr. Holt was unaware of this.

Social Security, as you've heard, did no investigation, and sent Mr. Stewart Mr. Holt's check for \$7,945. He spent every dime of the money for his own purposes. Mr. Holt was not even aware that the check had been sent until long after it was spent. Mr. Holt did go to Social Security several times and inquire about the check and was told that he would have to talk to his representative payee about the matter. And I think this is the usual practice. The only alternative is that for a beneficiary he can ask for change of payee, or submit a doctor's statement that he doesn't need a payee any more.

Mr. Holt did submit a doctor's letter, and he did get his subsequent checks directly in his own name. But the \$7,945 was lost.

The CHAIRMAN. Tell me, if I might interrupt, what was the link at that time between Mr. Stewart, who became the representative of Mr. Holt? What was their link, any?

Ms. OLSON. They just were friends. They knew each other slightly. And they had known each other for approximately 6 months. I think that they both had alcohol problems, and that's probably how they met.

The CHAIRMAN. Excuse me for interrupting.

Ms. OLSON. That's all right.

There was no investigation done on this charge of misuse until our office intervened and made a formal written request. At that time Social Security did bring in Mr. Stewart and questioned him. He submitted a written statement as to how he'd spent the money for Mr. Holt's benefit. None of the allegations in his statement were true, and we rebutted those. Ultimately, the Social Security office did conclude that there had been misuse of benefits. Mr. Holt's case is unusual just in getting that far. And it was only because he was so persistent, I think, that he got a formal misuse determination.

At that point we expected the money to be reimbursed, but the Social Security Administration said no, we have to determine whether or not we acted with good acquittance in mailing Mr. Stewart the check. That investigation, if there was any, took another year, and ultimately on July 6, 1988, Social Security concluded that it had acted with good acquittance. It had properly certified Mr. Stewart as the rep payee. And in this notice of July 6, no appeal rights were given to Mr. Holt. The matter was supposed to end, he was advised to go after Mr. Stewart for the money. So we filed an action in the Federal District Court of Colorado, alleging that Social Security had breached its duty under the 1984 Disabil-

ity Reform Act amendments to investigate Mr. Stewart prior to sending him the check.

And on March 20, 1989, Judge Sherman Finesilver did hold Social Security responsible for this failure to do an investigation, and did order Social Security to reimburse Mr. Holt the \$7,945.

We do think that the financial reimbursement of beneficiaries is an important provision of your proposed legislation. Without any sort of fiscal accountability, it is unlikely that Social Security is going to take seriously claims of misuse and its responsibility to investigate.

[The prepared statement of Ms. Olson follows:]

TESTIMONY OF LINDA J. OLSON

Before the

UNITED STATES SENATE

SPECIAL COMMITTEE ON AGING

My name is Linda Olson and I am a staff attorney with the Legal Aid Society of Metropolitan Denver (LASMD). Our program is a private Colorado non-profit corporation founded in 1925 to provide free legal representation and assistance in civil matters to low-income persons in the Denver metropolitan area and in numerous rural mountain counties. The program is funded by the Legal Services Corporation, United Way, and a variety of other public and private grants and foundations. In my capacity as an LASMD staff attorney, I have represented hundreds of elderly and disabled Social Security and Supplemental Security Income (SSI) recipients in individual cases and class actions involving the Social Security Administration.

I recently represented a client named Reginald Holt in a lawsuit filed in the Federal District Court of Colorado. Holt v. Bowen, No. 88-F-1457 (D. Colo.). The disposition of this case directly relates to some of the issues now before this committee. Therefore, a brief recitation of the facts and the Court's holding may illustrate the need for certain legislative reforms in the area of misuse of funds by representative payees.

Mr. Holt is a 38-year old man who suffers from a number of disabling conditions including a personality/seizure disorder and alcoholism. He applied for Social Security disability and SSI benefits, and on November 5, 1985, he was found to be under a disability as of February 1, 1983.

Mr. Holt was advised by Social Security that he could not handle his own funds and that a representative payee would have to be selected to manage his lump-sum retroactive check and his monthly payments. Mr. Holt was further advised that he would have to propose the name of a friend or relative to act as his representative payee. Although Mr. Holt did not feel he needed a representative payee, and he had in fact handled his own state disability funds for many years, he was told that unless he selected a representative payee, he would receive no Social Security or SSI payments.

In desperation, Mr. Holt proposed that a friend named Billy Stewart act as his representative payee. Although he did not know Mr. Stewart very well, he appeared to be trustworthy.

On February 28, 1986, Billy Stewart completed Social Security Form SSA-11, requesting to be selected as Mr. Holt's payee. Social Security conducted no investigation as to Mr. Stewart's qualifications to handle Mr. Holt's money. Such an investigation would have revealed that at the time Billy Stewart applied to be a representative payee, he had a Denver police record indicating charges of fraud by check and aggravated robbery. Mr. Holt was unaware of Billy Stewart's criminal record.

Social Security certified Billy Stewart as Mr. Holt's representative payee. A check for \$7,945.00 in retroactive Social Security disability benefits for Reginald Holt was mailed by Social Security to Billy Stewart in May, 1986. Billy Stewart received the check, endorsed it, and on May 15, 1986, deposited it into his own bank account.

Mr. Holt was not even aware that the check had been mailed in May. When he inquired of Social Security and of Mr. Stewart about the check, he was told that the check must have been lost in the mail. He then completed a lost check form and waited for a tracer to be placed on the check. Meanwhile, Mr. Stewart made numerous withdrawals from his bank account until on August 22, 1986, the balance remaining in the account was seventy-one cents. Mr. Holt did not even learn that Mr. Stewart had his money until after it was all spent.

During the time Mr. Stewart was spending Mr. Holt's money, he avoided contact with Mr. Holt and advised his employer not to allow Mr. Holt to see him at his work place. He also moved so that Mr. Holt could not find him. Mr. Holt repeatedly reported these problems to the personnel at his local Social Security office, but he was told he would have to work things out for himself. Finally, on September 15, 1986, Mr. Holt was allowed to complete a written statement at the Social Security office indicating his belief that Billy Stewart had stolen his money and the fact that he had not received any of the \$7,945.00 mailed to Mr. Stewart. He further stated that he was unable to locate Mr. Stewart.

The Social Security office did nothing to help Mr. Holt recover his funds or locate Mr. Stewart. He was allowed to submit a doctor's statement indicating that he did not need a representative payee, and thereafter his monthly checks were sent directly to him. He was repeatedly advised that he would have to seek the funds from Mr. Stewart. Mr. Holt retained a private attorney to try to get back his money, but that attorney was unsuccessful in getting any cooperation from Social Security either in establishing the misuse, in requesting reimbursement from Billy Stewart, or in repaying the funds to Mr. Holt.

Mr. Holt then came to Legal Aid. On January 26, 1987, I filed a written demand, in Mr. Holt's behalf, for reimbursement from Social Security due to the failure of the local office to investigate Mr. Stewart prior to sending him Mr. Holt's lump sum payment. After receipt of this demand, the District Office did begin an investigation into Mr. Holt's complaint of misuse of funds by Billy Stewart. Billy Stewart was located and questioned at the District Office regarding his expenditure of Mr. Holt's funds. Mr. Stewart provided a lengthy written statement as to how he had allegedly spent Mr. Holt's funds for Mr. Holt's expenses. Mr. Holt and I then provided voluminous rebuttal evidence that Mr. Stewart had lied in his written statement and that in fact none of the funds had been utilized by or for Mr. Holt.

On November 13, 1987, more than a year after Mr. Holt filed his complaint with Social Security, the District Office concluded that Billy Stewart had in fact misused all of the \$7,945.00 check he had been sent for the benefit of Reginald Holt.

The District Office advised Mr. Holt that although misuse had been established, Social Security was not liable for reimbursement unless the Office of Disability Operations in Baltimore made a determination that the agency had failed to act with "good acquittance." No standards were provided to Mr. Holt as to how the good acquittance determination would be made.

We waited another seven months, and on July 6, 1988, the Office of Disability Operations wrote Mr. Holt that it had determined that certification of Mr. Stewart as representative payee had been "proper" and that "the administration is relieved of liability of the benefits misused by Mr. Stewart." Mr. Holt was given no right to appeal this final determination by the Secretary.

Mr. Holt then proceeded to file an action in the Federal District Court asserting that he was entitled to reimbursement of his funds pursuant to the Social Security Act due to Social Security's failure to conduct any investigation of Mr. Stewart prior to its disbursement of Mr. Holt's lump sum retroactive payment. The Secretary filed a Motion for Summary Judgment alleging that the Federal Court lacked jurisdiction over this matter because Mr. Holt had not exhausted his administrative remedies.

On March 20, 1989, Federal District Judge Sherman Finesilver held that the court had jurisdiction under the Social Security Act because the Secretary had made a final decision and exhaustion of administrative remedies was waived. He further found that Social Security was liable for its failure to investigate Mr. Stewart prior to sending him Mr. Holt's lump sum check, and he ordered the Secretary to reimburse Mr. Holt \$7,945.00. He later modified his order to provide that the Secretary pay Mr. Holt directly, rather than through another representative payee.

Mr. Holt still has not received his lump sum check, and the Secretary's deadline for appealing Judge Finesilver's decision is June 16, 1989. During the three years Mr. Holt has been deprived of his retroactive disability benefits, he has suffered extreme mental and physical distress. His already fragile emotional well-being has been seriously undermined both by the theft of Mr. Stewart and by the callous and indifferent treatment he received from Social Security.

Many of the wrongs inflicted upon Mr. Holt by the Social Security Administration could have been remedied if the existing representative payee statute was enforced and if additional legislative reform would mandate greater scrutiny of representative payee applicants by Social Security, prompt and thorough SSA investigations of beneficiaries' allegations of misuse, and mandatory reimbursement to beneficiaries when the Secretary breaches his statutory duty to protect beneficiaries from unscrupulous payees.

1. Screening and investigation of representative payees.

Although the statute presently requires that Social Security investigate representative payee applicants, in practice there is little or no investigation. Judge Finesilver found that "the Secretary's failure to investigate was a proximate cause of Plaintiff's loss of benefits." He further found that, "A routine check with a local law enforcement agency would have revealed that Stewart was not an appropriate candidate for a representative payee position." He concluded that "at a minimum, such an investigation should include appropriate background questions along with a face-to-face interview. Answers to these questions could then be used in determining the need for further investigation."

At the time Mr. Stewart applied to be Mr. Holt's representative payee, there was not even a question on the representative payee application regarding an applicant's criminal background. Although the application form has since been modified to include this question, certainly this modification is not enough. It is unrealistic to expect that most representative payees with a criminal history will confess this history on the application form. Therefore, it is necessary that some sort of criminal background check be instituted to protect beneficiaries such as Mr. Holt from individuals who have been convicted of crimes, especially crimes involving the mishandling of money.

A face-to-face interview with both the representative payee applicant and beneficiary at the time of application, in which inquiry is made about such matters as the relationship of the parties, credit and job references of the payee applicant, criminal history, and past experiences in handling the funds of another, could serve to protect unwary, disabled beneficiaries. Certainly the representative payee should provide adequate identification, and a list of prior addresses, and should agree to sign the application upon penalty of perjury. Social Security could then make collateral contacts to verify the information obtained in the application and interview. It is apparent from Judge Finesilver's decision that the mere review of the face of the representative payee application is not a sufficient investigation within the meaning of the Act.

Furthermore, the completion of such investigation must precede the release of large lump sum payments to representative payees, except in extreme emergencies. The conference agreement to the 1984 amendments specifically directed the Secretary to establish procedures to prevent the disbursement of large lump sum payments to new representative payees prior to the successful completion of an investigation. There should be a deadline of a reasonable time period for completion of the investigation, however, to prevent a long-term deprivation of benefits. Perhaps if the investigation cannot be completed within 60 days, the lump sum check should be mailed directly to the recipient.

If these procedures had been followed in the case of Reginald Holt, Mr. Stewart never would have been certified as Mr. Holt's representative payee, and he would not have received Mr. Holt's lump sum check.

2. Prompt misuse investigations.

Legislation should also mandate procedures that Social Security must follow when a beneficiary alleges that a representative payee has misused benefits. The record shows that on April 18, 1986 the Social Security office knew that Billy Stewart had provided a bad address and incorrect job references. Nevertheless, several weeks later he was mailed \$7,945.00. Mr. Holt's allegations that his representative payee was avoiding him were similarly ignored.

The current practice seems to be that misuse allegations are given short shrift by Social Security. Only a very persistent beneficiary, such as Mr. Holt, is afforded a complete misuse investigation and a written determination of misuse, and this investigation occurred long after the benefits were lost. In my experience, most misuse allegations are summarily and verbally dismissed by Social Security staff. The beneficiary is simply advised to talk the problem over with his representative payee. Occasionally, it is suggested that the beneficiary seek a change of representative payee or obtain medical evidence establishing that a representative payee is not needed.

Obviously, none of these solutions resolves the problem of the loss of misused benefits. Never is the beneficiary advised that if he can establish misuse, there is a chance that the Secretary can be held liable for this misuse. We would recommend that the statute require a prompt and formal misuse determination and afford full notice and appeal rights to beneficiaries who wish to dispute a determination of no misuse.

3. Repayment of Misused Benefits by Social Security.

Judge Finesilver held that under the "statutory scheme" of the Social Security Act, the Secretary is liable for the misused funds because of his failure to investigate Mr. Stewart. The Secretary's own internal policy provides for repayment when the Administration fails to act with "good acquittance." (PCMS §GN 00604.090). The statute could be clarified, however, to expressly authorize such repayment.

Such clarification would serve a two-fold purpose. It would allow disabled beneficiaries such as Mr. Holt, an avenue for financial relief from the harm suffered by the Secretary's breach of his duty to investigate or monitor representative payees. Disabled beneficiaries, like Reginald Holt, depend upon the receipt of their monthly and lump sum benefits in order to obtain the necessities of life. In addition, the clarification of financial liability would serve as a financial incentive for the Secretary to follow his own rules and regulations regarding certification and monitoring of representative payees.

At the present, without this financial incentive, the Secretary assumes no responsibility for negligent certification or payment to representative payees. The entire burden of recouping the funds is thrust upon handicapped individuals who have already been exploited by the Social Security Administration and their representative payees. Only if the Secretary is forced to recoup funds in the event that an improper representative payee misuses funds and the Secretary could have or should have prevented such misuse, will there be some improvement in the Secretary's current representative payee policies. The determination that the Secretary is not liable for repayment should also be subject to notice and hearing procedures, and judicial review.

Such a provision would also encourage the Secretary to institute civil and criminal actions against representative payees who have misused recipients' funds. At the present time, very few cases are referred for either criminal prosecution or civil collection. Social Security should be required to report to the beneficiary, in each instance of misuse of funds, why criminal fraud charges or civil damage claims were not filed against the payee who misused their benefits. Mr. Holt does not understand why he has been struggling for three years to get back the money taken by Billy Stewart, and Social Security has not taken Billy Stewart to court.

In addition, Social Security should establish retrievable records of persons found to have misused benefits, even if they are not ultimately prosecuted for criminal fraud. At this time only representative payees who have been convicted of a felony for willful misuse of funds may not be certified as payees. 42 U.S.C. §408. We would recommend that individuals found to have misused funds be similarly barred. In the alternative, if a representative payee applicant is certified who has been found to have misused funds in the past, at least that payee should be required to meet a higher and more detailed periodic reporting requirement subject to regular auditing by Social Security.

On behalf of Mr. Holt and myself, thank you for extending to me the opportunity to testify at this hearing. Our office welcomes the opportunity to provide any additional information the Committee may need.

The CHAIRMAN. What year was the Holt case decided?

Ms. OLSON. Just this year, March 20, 1989.

The CHAIRMAN. Oh, that recently. So this is going to be a—it appears to me a real precedent in this field, is that correct?

Ms. OLSON. Yes. And in fact, Mr. Holt still has not received the money. The appeal time for appealing that decision expires in another week.

The CHAIRMAN. You were the attorney in this? Did you argue the case?

Ms. OLSON. Yes. It actually was decided on summary judgment—the Secretary moved for summary judgment saying that the court had no jurisdiction, because there is no appeal process for this sort of action. Apparently the Judge was so outraged by the circumstances that he gave us summary judgment without our filing a motion.

The CHAIRMAN. Mr. Holt had a splendid lawyer, I might say.

Ms. OLSON. Thank you.

The CHAIRMAN. Now, does SSA help a lot of these beneficiaries in trying to find representative payees?

Ms. OLSON. No, in our State they don't help them at all. I don't think it's as big a problem in small metropolitan areas. There are a number of agencies willing to be rep payees, but it certainly can be difficult.

The CHAIRMAN. If I might go back to the Holt case, did the Social Security Administration file any charges against Billy Stewart?

Ms. OLSON. None. They still have not filed any charges.

The CHAIRMAN. Has anyone filed any charges?

Ms. OLSON. No, criminal charges were filed in another fraud by check incident, but not in this case.

The CHAIRMAN. But not in the Holt matter?

Ms. OLSON. No. He's actually wanted right now on these other charges.

The CHAIRMAN. Do you know, if in fact, he's the representative payee for any other beneficiaries?

Ms. OLSON. He could be. But I don't know that, no.

The CHAIRMAN. There needs to be some warning about these people. There seems to be, right now, a total absence of any sort of a warning system about the Billy Stewarts of the world who are roaming around out there.

Ms. OLSON. I think that's true. And in fact, I would be very interested in the list that emerges of the criminal prosecutions initiated by Social Security, because I think it's probably a very short list. I think the statistics show in 1988 Social Security only referred two SSI cases to the U.S. Attorney for civil suit in the whole country. So, I think it's unlikely that they do much about these cases. And that's one reason that the financial liability provision would probably encourage more restitution efforts.

The CHAIRMAN. Tell me a couple of reforms, Linda, you think we might consider, that might straighten this matter out.

Ms. OLSON. Well, I think that the misuse investigation provision has to be strengthened so that Social Security does look into it promptly when a beneficiary alleges misuse, and if there's a finding of no misuse, beneficiaries are given appeal rights. And second, I think, that something like a good acquittance determination has

to be made if Social Security breaches its duty to either investigate or to monitor. In Mr. Stewart's case, there was only the matter of the initial investigation. If they had done a criminal records check on his case, probably he never would have been certified.

Shortly after that he was removed as representative payee, but the damage was already done at that point.

The CHAIRMAN. Curtis, do we need more laws and regulations, or do we need a greater commitment on behalf of SSA?

Mr. CHILD. I'm afraid we probably need both, because the laws have been there. In 1984, Congress did require the Social Security Administration to start conducting investigations. And they have not started doing those investigations, as is obvious from these cases. So I think what we need to have Congress do, is to reaffirm to Social Security Administration that it's very serious in dealing with these problems, and that Social Security should, in fact, take them seriously, and deal with them that way.

And I think, first, your legislation would confirm existing law as far as suspending benefits. I think it is important, that we do that. And let Social Security know that they've got to insure that the needs of persons are being met. I think that also has to focus on those persons who are disabled because of a drug or alcohol addiction. I had five people in my office the last 2 weeks who were losing payees, who were receiving the benefits because of a drug or alcohol addiction, and each of them were going to lose their housing and be on the streets unless we could somehow ensure that their needs are going to be met. And I think your legislation would still do that without giving money directly to persons who have these addictions, but still ensure that their needs are going to be met.

The CHAIRMAN. Is there any—and I probably should know the answer to this, and I don't, but does the payee—can the representative payee charge to the beneficiary expenses that they incur, or any fee for looking after weekly expenditures?

Mr. CHILD. Right now the law does not authorize the charging of any fee to act as a representative payee, but it does allow for the expenses of any representative payee to be used. For example, a checking account, if that costs money, then that money could come out of the representative payment.

The CHAIRMAN. There's certainly not much incentive out there for someone to become a representative payee?

Mr. CHILD. Well, that's certainly true. But we would not advocate that those limited benefits actually be available to pay representative payees. The benefits are barely able to meet a person's minimum subsistence needs, and they shouldn't be made available to pay for a representative payee.

The CHAIRMAN. Linda, did you have any further statement that you would like to—I interrupted you two or three times there.

Ms. OLSON. No, thank you. I'm through.

The CHAIRMAN. Curtis, did you have any further comments?

Mr. CHILD. Could I just make one comment?

The CHAIRMAN. Sure.

Mr. CHILD. And that as far as the discovery on the misuse, the numbers that were cited by the representative from the Social Security Administration. I would certainly refer this committee to

their reports to Congress that they've done for the last several years on misuse, and in 1988, there were only nine SSI cases that were actually—misuse was discovered and they initiated recovery. They're just simply not serious about doing that, and I think we need to reinforce that obligation. And your legislation should do that.

The CHAIRMAN. On the form, and I hope you all will look at this form. I know you're familiar with it, and give us some suggestions for it, or some improvement in it. At least it would appear, on that form, that prospective representative payee for a beneficiary, could state under oath whether they were serving in that capacity for any other individual, or any other individuals. Wouldn't this be a proper question to ask?

Mr. CHILD. Oh, it would certainly be a proper question, but I don't think that it would be the only means of dealing with that. There should be a secondary source to be able to check whether, in fact, that person is acting as a representative payee for another person. That's very important, because what we're looking at is persons who are coming into this program with the intention of committing fraud. And when you sit down and ask them questions, their voluntary responses are probably going to be whatever it takes to further their fraud.

So there's nothing wrong with asking that question, but I'd submit that we would need to go further and ensure Social Security has access to that information so when a person gives them their name and their Social Security number, they can immediately check and see if that person is in fact acting as a representative payee for another person.

The CHAIRMAN. I guess the best of all worlds for a representative payee is to be bonded. But that's not going to happen, because we see thousands of cases where a beneficiary can't get anyone to represent them, much less going through and having a bond written on them. But, do you have any suggestions?

Mr. CHILD. Well, in a sense, I think you're providing a bond, that this legislation would do that, by making Social Security ensure that it does the investigation that the person is a person that should receive those benefits. And if they don't, then the beneficiary is going to be reimbursed for those benefits that were ultimately misused.

It does, I think, create a real incentive for Social Security to ensure that persons who are qualified to act as representative payees are acting in that capacity.

The CHAIRMAN. Curtis, I want to thank, on behalf of the committee, both you and Linda. You've come a long way and you've been very helpful, and we look forward to a continuing dialog with you, because we're looking for answers right now on how to deal with a very complex matter.

I also want to thank all of the witnesses who have come from all over the country today for this hearing. And also my colleagues on the Senate Special Committee on Aging who have participated. Several have called this morning expressing their inability to come, and desiring to be here, but other committees and floor activity has prevented that.

So, with that we will have the committee stand adjourned, and hopefully, you can work informally here for the next few minutes on giving some suggestions to our staff. The meeting is adjourned.

[Whereupon, at 12:30 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

OREGON LEGAL SERVICES CORPORATION
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June 2, 1989

Jennifer McCarthy
Senate Special Committee on Aging
Senate Dirksen Office Building G 31
United States Senate
Washington, D.C. 20501

Dear Ms. McCarthy,

The following is my statement regarding my experiences with problems with the Social Security Representative-Payee program, as you requested when we spoke on May 31, 1989.

STATEMENT OF JENNIFER L. WRIGHT

My name is Jennifer L. Wright. I am an attorney employed by the Oregon Legal Services Corporation in its Albany Regional Office. My position is funded in large part by the Oregon District 4 Council of Governments, which is the local area association on aging receiving federal funds under the Older Americans Act. My caseload consists entirely of clients aged 60 and older, and my case priorities emphasize issues which affect primarily seniors.

I represented a client in her seventies who had suffered a stroke in October of 1987, shortly before the death of her husband. The client was hospitalized, and later transferred to a nursing home. Her son was appointed her representative-payee by Social Security in February of 1988.

Prior to that time, the client's son had already taken all of her possessions from her apartment and sold or given them away, without his mother's permission, retaining the proceeds for himself. The son failed to visit his mother in the nursing home, or to provide for her needs, and failed to pay her nursing home bills in a timely manner. The client did not receive the \$25 in personal money required by Medicaid.

The client contacted our office at the end of March of 1988, requesting that her son be removed as representative-payee. On April 5, 1988, our office wrote to Social Security notifying them of the above problems with the representative-payee and requesting that an alternative rep-payee be appointed. We also notified Social Security that the client did not know what had become of her Social Security checks for November, December, and January, when the client was hospitalized and completely incapacitated, but before a rep-payee had been officially appointed.

The client's son continued to receive her Social Security as rep-payee through June of 1988, despite repeated phone calls and letters to Social Security. The client's social worker and the nursing home were all aware of the problems with the rep-payee. Social Security sent a letter to the client's son in June, telling him that he was being removed as rep-payee and asking him to return the checks for May and June to Social Security. The son did not pay the client's nursing home for May or June, and the money was never returned. Beginning in July of 1988, the client became her own payee for Social Security. Her August check was delayed for over a month, apparently because of delays in changing over the payee on Social Security's computer.

Our office began preparing a lawsuit against the client's son, for conversion and breach of fiduciary responsibility. During negotiations with the son's lawyer, we learned that the son had received another of the client's Social Security checks, in January of 1989, which he returned to Social Security. The son finally agreed to repay the two months' worth of Social Security benefits which he received for May and June of 1988. The check from the son then bounced. Two weeks later, at the beginning of May, 1989, the client passed away. She had been living in extremely straightened conditions most of the time she was in the nursing home, due to the misappropriation of her Social Security benefits by her son. At her death, it was found that her son had failed to pay up her burial plan, as he had promised to do. There were not enough funds to pay for the client's burial.

Social Security completely failed to investigate the fitness of the client's son to be her rep-payee. The slightest inquiry would have revealed the problems which already existed with the son's handling of the client's finances. In addition, Social Security acted with criminal slowness and inefficiency once the problems were brought to their attention, resulting in 4 months of benefits being paid to someone demonstrably unfit to receive them.

I believe that these failings on the part of Social Security were not due to ineptitude or an uncaring attitude on the part of the Social Security staff. My impression in dealing with the staff was that they were trying very hard to do their jobs, but that they suffered from totally inadequate resources and an enormous overburden in their caseloads. The staff simply did not have the time or the resources to do their job properly, and it was my client, no doubt along with many others, who suffered the consequences.

There is nothing that can be done now to right the wrongs done to my client, due to Social Security's failure to fulfill its obligations. However, I hope that my client's story can at least help to prevent the same thing from happening to other seniors in the future. Seniors who need rep-payees are by definition among the most vulnerable group in our society. Their rights must be protected. Thank you for your attention.

Jennifer L. Wight
Attorney at Law



State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

June 12, 1989

DIVISION OF COMMUNITY SERVICES

1 WEST WILSON STREET
P.O. BOX 7851
MADISON, WISCONSIN 53707

Senator David Pryor
Chairman of the Senate
Special Committee on Aging
SD-G31
Washington, D.C. 20510-6400

Attention: Jennifer McCarthy

Dear Senator Pryor:

Thank you for the opportunity to submit the attached written testimony to the Senate Special Committee on Aging regarding improved supervision of representative payees on behalf of beneficiaries of OASDI and SSI. I have had an opportunity to review your draft summary of May 30, 1989 and fully support the changes you are considering.

I look forward to further developments in this subject area. I would appreciate being informed of the results of your efforts.

Sincerely,

Nancy Howland
Protective Services Specialist
Bureau of Long Term Support

Attachment

WRITTEN TESTIMONY SUBMITTED TO THE SENATE SPECIAL COMMITTEE ON AGING REGARDING THE PREVENTION OF ABUSES BY REPRESENTATIVE PAYEES OF SOCIAL SECURITY AND SSI RECIPIENTS, JUNE 6, 1989, BY NANCY HOWLAND, PROTECTIVE SERVICES SPECIALIST FOR THE WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

To: Senator David Pryor
Chairman of the Senate Special
Committee on Aging

Mr. Chairman, thank you for allowing me to submit written testimony on the prevention of abuses by representative payees of Social Security and SSI recipients.

I do think it would be helpful if the Social Security Disability Benefits Reform Act of 1984, Sec. 16, could be implemented more fully. In addition, this part of the law needs to be strengthened to more closely monitor the character and suitability of the representative payee not only initially but also on an ongoing basis. The primary monitoring effort of the Social Security Administration appears to rely on the representative payee's annual report, or, on recipient specific complaints.

I am sure that representative payees file an annual financial report. However, it is obvious from the California situation that it is possible for the representative payee to keep filing the report even if the Social Security/SSI recipient is no longer living.

It is unfortunate that the federal regulations for selecting a representative payee seem so wide open in that almost anyone can be the representative payee for almost any reason (see especially 20 CFR 416.615(c)). If the person does not object or believes that he or she cannot object to the selection or continuation of the representative payee, the stage can easily be set for exploitation or abuse. Because Social Security and SSI recipients include many of our most vulnerable citizens, long-term abuse may go unchecked. There are many reasons why a vulnerable person may not object even if the representative payee is neglectful or abusive: fear of eviction from an apartment; fear of the reality that the SSI check will not be issued by the Social Security Administration unless someone can be found to receive the check; fear on the part of elderly, disabled or mentally ill recipients that their complaint would be dismissed as unfounded, or worse, that they would be involuntarily committed to an institution; fear based on illiteracy or mental impairment; fear of any contact with the government.

I am more concerned about the non-relative provider as representative payee than perhaps any other group. Abuses do occur when agencies or family members are payees. However, because these occur less frequently and because there is a greater opportunity for earlier discovery of problems with agencies or family members, I believe the non-relative provider as payee represents the situation more prone to abuse. If our protective services agencies are involved in locating a representative payee, care is taken to screen interested individuals and most agencies have a policy against using a non-relative provider as payee. Therefore, only the most isolated and vulnerable people in the community rely on a non-relative provider such as a boarding home operator or landlord. In too many instances, these non-relative providers have no motive to protect the best interests of the Social Security or SSI recipient.

I hope you will consider actions which will strengthen federal law and federal agency capacity to carry out both initial investigations and periodic direct recipient contact. Because this would be a labor intensive activity, it is very likely that some setting of priorities has to occur as to which group or groups of recipients are monitored for payee abuses. For the reasons I have outlined above, first priority needs to be given to those individuals with non-relative provider payees. Thank you.

Nancy Howland, Protective Services Specialist
 Wisconsin Department of Health and Social Services
 Division of Community Services
 Bureau of Long Term Support

Written testimony to Senate Special Committee on Aging.
 RE: " S.S.A. 's Representative Payee Program: Safeguarding
 Beneficiaries Against Abuse".

I am writing to present testimony on the need for a Community Representative Payee Program for elderly, chronic homeless and other individuals/families who receive SSA benefits.

I am David L. Favreau. I work for the Department of Mental Health in the Greater Lowell Area of Lowell, Massachusetts. For the last two years I have been working with the chronic homeless population. I have worked with other Community Services in assisting individuals from the age of 19 years old to 68 years old in applying for SSA benefits since April of 1988. In the last year(4/88) we have applied for over 50 individuals for their SSA benefits. All of these individuals have been homeless. Of these homeless individuals that we have applied for SSA benefits; 90% are chronic substance abusers, 60% suffer from other forms of emotional and medical problems. The majority (70%) have no more than a 9th. grade level of education and are functionally illiterate. The vast majority (90%) have no family support, no formal vocational education and no healthy social supports. These individuals are so dysfunctional that they are unable to tolerate going to the local Social Security Office to apply for their own benefits. The vast majority need some one to slowly go over the application and the information resources(hospitals, rehabs.,doctors...).

Since these individuals are so dysfunctional and are being found eligible for SSA benefits, they are in need of a safe, accurate and competently operated community based representative payee program.

I would like to offer the following examples and possible outline for a community based representative payee program.

Example Cases:

- 1) P.K. a 19 year old homeless man who we assisted in applying for SSI benefits. This individual suffers from a major mental illness and substance abuse. He needed a representative payee and asked another homeless individual who lived at the same homeless shelter. P.K. received his first check on 7/1/88. His payee cashed the SSI check and just gave it to P.K. . The money was gone in 3 days. At the end of July/88 his payee left the Lowell area with a traveling carnival, so when P.K. received his August/88 SSI check he couldn't cash it. He ripped it up and ended up living in abandoned cars until he was arrested and hospitalized for his mental illness.
- 2) R.H. was an 82 year old homeless woman who recently died. This elderly woman lived on the streets for over 5 years. Each month she received a SSA check and would bank it. She used only a small amount each month and lived in a homeless shelter. She suffered from numerous non-life threatening medical problems and would refuse treatment for these conditions. She was not incompetent, would refuse to give information about herself and had no family. She died this Spring from pneumonia. It was after her death that the Shelter staff learned that she had over \$80,000.⁰⁰, in a bank account.

- 3) M.A. is a 48 year old homeless man who had a car accident 3 years ago and sustained a head injury. We filed for his SSA benefits because he was dysfunctional, had memory loss and brain damage. He had no substance abuse problem. He was awarded SSDI benefits. He needed a payee due to his condition and another shelter guest offered to do it. M.A. received over \$8,000.⁰⁰ in retro-active monies. He was swindled out of these monies and his payee just disappeared one night. M.A. now needs a new payee, he has no one he can trust and no family in this region.

- 4) D.C. is a 32 year old homeless veteran who has a long standing alcohol abuse problem. He was awarded SSI/SSDI benefits. His brother who is an alcoholic became his payee. D.C. was awarded \$7,500.⁰⁰ retro-active monies. They drank the money away in 2 months. D.C.'s liver "blew up" and he almost died. Now he has to be on a special diet and abstain from all alcohol or he will die. It is a matter of time for D.C. because of the severity of his medical condition and it is not clear how long he will be able to abstain from alcohol.

These cases are just a few examples of the age and diversity of individuals we have been working with for the past year, and there are many more.

Proposal For A Community Representative Payee Program

A Community Based Representative Payee Program would provide the following services:

- 1) it would be a voluntary service offered to individuals who need a payee for their SSA benefits.
- 2) it would act as liason between the individual receiving SSA benefits and the Social Security Administration Office in their community to maintain and adjust client benefits.
- 3) it would set up an individual account for each client and keep accurate records of expenses and monthly SSA benefits.
- 4) it would set up a monthly budget with the client and pay monthly fixed expenses.
- 5) it would also budget out weekly pocket monies.

This service would assist the Social Security Admin. in accurately paying of benefits, it would help prevent individuals from becoming homeless, abusing their benefits and being abused for their benefits. This service would raise the level of living for not only elderly, but also for a lot of other individuals who need this service.

I currently estimate that an individual who receives basic SSI benefits receives about \$480.⁰⁰ a month. A Community Representative Payee Program with 1 full time staff member could assist 40 clients (at maximum).

This means that each month the Payee Program would manage \$19,200.⁰⁰, and over a year \$230,400.⁰⁰. These figures do not include those individuals who would receive more benefits each month through SSDI, and retro-active monies awarded. An average Payee

Program could manage benefits ranging between \$250,000.⁰⁰ to \$350,000.⁰⁰ a year for SSA benefits.

The future trends clearly indicates that the need for a Representative Payee Program for recipients of SSA benefits is not just needed for elderly. This program is also needed for a diversified population of individuals ranging from the age of 18 years and up. Individuals who have retired and for individuals who are disabled and who need money management services.

Finally, this would be a Community Based Service with each community tailor making this service to fit the needs of their own community. For the last year we have approached many community agencies in an attempt for one of them to start a program like this. All agree it is a much needed service, however none of them feel able to handle this program. Questions of funding sources for this service is always the number one topic.

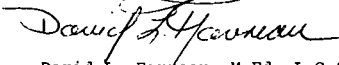
Where we stand today is with a growing problem with no easy solutions in sight. This issue is not just relevant to elderly, but to a large population of individuals who receive SSA benefits. This type of program would not only maintain the standard of living for most- it would also help raise the level of subsistence for many. It would better manage Social Security Funds and funnel the monies into appropriate sources in the community(housing, food, clothing, etc..). It would also have a trickle down effect of having an impact on other community services that are already over burdened(homeless shelters, emergency room admissions at medical and psychiatric hospitals, etc...).

This is not just a local issue with just a local answer. This is a nation wide problem with thousands of individuals at risk and hundreds of millions of Federal monies in jeopardy.

Enclosed is a partial list of those individuals that we have assisted in applying for SSA benefits in the past year.

I would like to take this time to thank you for your time and consideration on this issue. We will continue to assist individuals in applying for SSA benefits and will also continue to work with our community in attempting to find an answer to this problem and to better serve those individuals who so desperately need our help.

Respectfully Submitted.



David L. Favreau, M.Ed.,L.C.S.W.
Solomon Mental Health Center
Lowell, Ma. 01854.

* I would also like to mention an exceptional individual who has worked very closely on this project and who has been responsible for much of its success: Joseph Tucker
Massachusetts Rehabilitation Commission
Lowell, Ma.

MASSACHUSETTS REHABILITATION COMMISSION

MEMORANDUM

TO: David Favreau - Solomon Mental Health Ctr. DATE: June 20, 1989

FROM: Joseph M. Tucker - MRC G.R. Program

SUBJECT: Shelter Clients serviced to date.

Key P= Payee W=Withdraw AW=Hearing Level
R=Reconsideration D=Denied, No appeal

<u>Initials</u>	<u>SS#</u>	<u>Key</u>
1. N.M.	033-28-1877	
2. P.K.	027-64-9382	P.
3. H.A.	031-38-7154	P.
4. W.A.	018-30-6359	
5. P.L.	021-52-2731	W.
6. A.P.	034-46-7420	P.
7. M.B.	018-52-4614	P.
8. W.F.	015-40-1268	P.
9. K.W.	016-54-6020	P.
10. S.D.	012-40-1833	P.
11. M.C.	034-44-4805	P.
12. R.G.	034-32-5547	P.
13. R.S.	034-46-8872	
14. H.W.	031-28-7577	P.
15. R.A.	021-28-9700	P.
16. R.L.	020-34-6014	P.
17. D.M.	017-48-3723	P.
18. N.C.	026-46-1958	D.
19. D.D.	034-46-8006	R.
20. J.B.	006-60-1366	R.
21. D.N.	021-56-5779	R.
22. R.C.	021-42-4432	P.
23. R.O.	019-24-5746	
24. R.M.	013-56-7386	W.
25. G.L.	584-14-7240	AW.
26. H.M.	010-48-8103	R.
27. W.A.	018-30-6359	
28. R.W.	024040-8704	D.
29. M.C.	018-22-5687	R.
30. M.F.	011-44-1769	
31. B.N.	001-28-3952	R.
32. L.C.	018-52-6461	P.
33. J.G.	020-48-4833	R.
34. J.R.	085-44-0095	R.
35. J.Q.	020-50-2805	P.
36. K.B.	026-60-8734	P.
37. D.W.	026-56-6518	P.
38. M.P.	024-40-4239	
39. G.W.	016-26-2848	
40. L.S.	014-42-9888	
41. S.T.	025-38-4435	
42. W.A.	010-48-9702	R.
43. R.B.	019-54-2724	
44. J.H.	032-46-0281	
45. J.L.	018-54-5518	
46. B.B.	033-52-7543	
47. M.L.	020-48-4814	
48. S.P.	022-50-3849	
49. J.Mc.D.	028-50-2475	

Social Security Advocates

P.O. Box 4187
Phoenix, Arizona 85030-4187

June 27, 1989

Honorable David Pryor
Chairman
United States Senate
Special Committee on Aging, SD-G31
Washington, D.C. 20510-6400

Mr. Chairman, Members of the Committee,
and Members of Congress:

It is my pleasure to have this opportunity to submit for the legislative record our comments and recommendations on the Representative Payee Abuse Prevention Act of 1989, S.1130. I am here today as a representative of the Phoenix-area Social Security Advocates, a group comprised of individuals working in all facets of state and federal programs involving the disabled community. Our members include social workers from one of the unique privately-funded agencies advocating for the disabled, vocational rehabilitation specialists, attorneys regularly representing claimants for Social Security benefits, representatives from the Arizona Disability Determination Service of the Department of Economic Security, and representatives of the North Phoenix District Office of the Social Security Administration. The broad spectrum of insights reflected in our membership allows us a very special approach to consideration of issues, including legislation, that will affect our constituency and clients. We therefore hope that our comments and recommendations will be accepted by the Committee and Legislature as an opportunity to see how the proposed bill is likely to affect not only claimants, but also Social Security employees who will be charged with actual implementation of new and modified programs.

We are impressed with Senator Pryor's introductory comment that he would vigorously oppose presently contemplated staff reductions at the Social Security Administration. Our group has recently completed a survey of general problems encountered by our clients on a regular basis at all levels of disability claims processing. Perhaps the most obvious defect in the system has been the elimination of employees responsible for development of information necessary to fair and accurate analyses of disability claims. These staffing inadequacies have occurred, moreover, at the same time that the Commissioner of the Social Security Administration repeatedly advises the Congress that it is well capable of serving the disabled and retired population with even fewer employees. Reality intrudes unpleasantly, however, into such unrealistic and unfathomable representations. With respect to the particular legislation I would like to address here, this Committee and its colleagues in the House of Representatives and Senate should simply be aware that an entirely different picture is obtained if one looks closely at the district and branch offices of the Social Security Administration.

Our group generally applauds the interest and participation of this Committee in efforts to improve the present system whereby disabled or retired individuals, or their auxiliary beneficiaries, are provided access to responsible representative payees. As the Committee has observed, the Social Security Administration has not made establishment of an effective representative payee program a priority comparable to the needs of the disabled population. Changes are clearly warranted, but should be crafted carefully and with consideration of the delicate balance between the rights of disabled claimants actually to receive the benefits they are entitled to and avoidance of perpetuating a patronizing attitude towards the disabled. In addition, consideration must not be overlooked for the already overburdened employees of the Social Security Administration who will be directly responsible for discharging the obligations enumerated in this legislation.

Our group members representing the Phoenix-area Social Security Administration offices specifically requested that we not underestimate the real impact that will be created on their jobs and those of their colleagues. While the intentions of the legislation are admirable, this Committee and the Congress must remain aware that political agendas and policies appear to have taken precedence in the Office of the Commissioner, resulting in actions that indeed undermine the capacity of field employees to perform their duties in a viable and efficient manner. The Representative Payee Abuse Prevention Act of 1989 attempts to protect disability claimants, but no such improvements will be attained unless adequate staffing is provided, not at the administrative level, but at the basic areas where individual claimants and potential representative payees will be contacted. The legislation provides for, or re-emphasizes, several elements of a comprehensive representative payee system, all of which will entail significant increases in the responsibilities and time necessary to discharge those duties. In particular, this bill requires more detailed investigation of potential representative payees, subject to penalties for inadequate development of information that results in misuse of benefit payments; additional administration of notice issuance, following development of an appropriate notice format; more substantial efforts to locate representative payees where a payee cannot otherwise be appointed; and enhanced monitoring of the performance of representative payees ultimately selected to handle benefits for the disabled, retired, or auxiliary beneficiary. The legislation specifies, moreover, a much more involved process for performing those tasks, all of which will contribute to increasing the workload of claims and service representatives in the district, branch, and other local offices of the Social Security Administration.

A related, but not entirely secondary, issue is that the Social Security Administration has somewhat unusual methods for assigning "work credits" to those employees processing different aspects of a Social Security benefit claim. Our prior inquiries into the claims determination program indicate that each particularized element of the claim analysis is assigned a statistically generated period of time in which the employee "should" perform the necessary function. The designated work credits, however, often bear no resemblance whatsoever to reality, and those jobs for which only minimal work credits are obtained, but in fact require significantly more time to complete, are typically given very low priorities. The present system, as we understand it, is therefore entirely incompatible with the legislation's requirement that the Social Security Administration reinforce the development of representative payee resources as a priority in its overall administration of the Title II and Title XVI benefit plans.

The intentions of this Committee and Senator Pryor in the introduction of the Representative Payee Abuse Prevention Act of 1989 deserve our enthusiastic support. We are generally pleased with the focus of attention, including the increased participation by and responsibility of the Social Security Administration in development of such resources for disabled, retired, or auxiliary beneficiaries who are not capable of handling their own financial matters. Our review of the proposed bill, though, reveals several areas that are of concern to us. In order to facilitate this committee's evaluation of our comments and suggestions, testimony has been directed to specific sections of this bill.

I. Screening and Investigation of Representative Payees (Section 2)

The bill as presently constituted refers simply to "a written determination by the Secretary," without specifying the level at which such a determination will appropriately be made. Included in the question is whether the individual approving the claim for disability benefits should also be required or permitted to decide that the claimant is in need of a representative payee. The method for determining whether the beneficiary's interest would be served by appointment of a representative payee also is not expressly set forth, and would appear to leave broad discretion to any number of individuals who have no contact whatsoever with medical evidence or the claimant directly. Decisions to require a representative payee often appear to be based simply on a review of the medical diagnosis or age, rather than actual demonstrated functional deficiencies. This policy is incompatible with later provisions of the statute, particularly Section 3(c), providing for payments directly to beneficiaries.

While we appreciate that the statute is not always the best place to create specific criteria for implementation in administrative regulations, we would recommend that more comprehensive instructions be provided to the agency. Such directions would include more definitive criteria to be considered in the initial analysis of an individual claimant's need for a representative payee. The following situations, not intended to be all-inclusive, nonetheless represent the most likely circumstances that will be encountered. In the first instance, neither the medical evidence nor the decision-maker supports appointment of a representative payee. In that case, no investigation would be required and no representative payee would be appointed absent new evidence from reliable sources that the claimant is not capable of handling his or her own finances.

In the second potential situation, only one of several medical experts, and the decision-maker, recommend appointment of a payee. In such cases, the need for a payee should be presumed, but the claimant must also be allowed definite appeal rights. The notice of appeal should clearly explain, furthermore, the possible consequences of protesting appointment of a payee, which may involve the claimant alleging he or she is not in fact impaired to the extent determined, possibly conflicting with the conclusion such individual is disabled in the first place.

The third scenario is when no examining or treating medical expert, including a psychologist, recommends appointment of a payee, but the decision-maker does indicate it is necessary. Under such circumstances, the Social Security Administration should be required to obtain clarification by appropriate experts who have already treated or examined the claimant. Information should be obtained by contacting all examining and treating sources directly, requesting specific information about the individual's capacity for handling funds in his or her best interests.

No agency office or individual simply implementing decision to approve a claim for disability, retirement, or auxiliary benefits, should be permitted the authority or discretion to require appointment of a payee. If questions do arise that have not been addressed previously, the decision-maker should be contacted by the implementing office or department and asked to provide necessary information. The requisite information would thereafter be obtained by following the procedure described above in example three. Under no circumstances, however, should further development of evidence regarding the need for a representative payee interfere with payment of current benefits. Retroactive, lump-sum payments should be withheld, as set forth in other parts of this bill. The sole exception would be those cases where the need for a representative payee is presumed due to substance abuse being a contributing factor in the original disability determination. We would suggest, however, that the current regulation applying such a presumption to the Title XVI Supplemental Security Income program only be extended to cover Title II Disability Insurance Benefits as well. No useful purpose is served by distinguishing access to SSI or DIB, and a substance abuser is just as likely to use either benefit payment for purchases of alcohol or drugs, perpetuating the disabling condition.

II. Procedure for Investigation of Representative Payee (Section 2b)

The general restriction on release of lump-sum retroactive benefit payments pending completion of the investigation is an excellent element of the suggested program. The proposed Section 205(j)(2)(B)(ii), though, should be clarified where it states that "the Secretary shall retain discretion as to excluding an applicant who is a spouse of the beneficiary or a parent with custody of minor child or children." The provision should make it clear that a parent or spouse who has been convicted of a felony or specific misdemeanor may, within the Secretary's discretion, be excluded as a Payee for the disabled or retired individual, and for minor children. As currently written, it is an arguable interpretation that spouses and parents are excluded from the investigation of their criminal history.

A subsequent provision of that part of the statute also requires further modification. We agree that maintenance of a centralized, up-dated file identifying representative payees is both appropriate and necessary. The directions provided, however, may not obtain such information on representative payees who receive benefits by direct deposit to financial institutions. The Social Security Administration should be required, therefore, to maintain the directory of representative payees by the payees' Social Security numbers, and not merely by the account number of the beneficiaries. In addition, parents of minor children should not be subjected to receipt of a difficult to understand or potentially disturbing communication from the Social Security Administration because two or more beneficiaries' benefits are being received by the parent. Some effort should thus be made to distinguish non-related and related representative payees receiving benefits for two or more individuals. Cross-references should be limited, moreover, to payees receiving benefits on more than one account, and not simply for more than one beneficiary.

III. Safeguards to Protect Beneficiaries (Section 3)

The prior notice provisions in this legislation again provide needed due process rights to individuals. Current regulations, however, ostensibly already require "advance" notice of appointment of a representative payee. The primary beneficiary, at least in disability benefit programs, also must "approve" any individual appointed as his or her representative payee. The most frequent problem in our experience is that retroactive benefit payments to custodial parents are not reported to the disabled wage earner sufficiently in advance where the custodial parent does not reside with the primary beneficiary. In such cases, the noncustodial parent may actually have a prior claim to the retroactive benefits, especially where, for example, voluntary child support payments have been made during the period of time represented by the retroactive benefit payment.

The fundamental problem, in the past, has not been that such safeguards are not available. The difficulty instead has been that the Social Security Administration has inadequate staff, and inappropriate priorities, resulting in a simple lack of resources to perform the designated functions. The focus once again returns to policies and political decisions made by the Commissioner's office to reduce staffing even though current levels of service had deteriorated significantly. Requiring issuance of a notice is certainly appropriate and necessary, but it will only be effective if adequate communication is established between the two separate offices issuing the notice and issuing the payment itself. In a recent case, just such a conflict has been created because the retroactive benefit payment was issued several days prior to mailing of the notice, offering the disabled, primary beneficiary no viable right whatsoever to object to any part of the payment of auxiliary benefits to the custodial parent, who no longer resided with the disabled claimant.

In addition, it may be very nice to advise an individual of his or her right to object to the determination that a representative payee is necessary. The difficulty occurs when the beneficiary, and particularly one who is going to have a representative payee because of a disabling mental condition, requests a specific statement from an attending medical provider advising that the claimant no longer is incapable of handling his or her own funds. It is not unlikely that the Social Security Administration would thereafter re-evaluate the individual's right to benefit payments in the first place, based on some purported "improvement" in the medical condition that resulted in a favorable disability determination. The consequences of producing evidence contrary to what may already be in the administrative record should be included in the notice, even if it has the ultimate result of discouraging individuals from objecting to appointment of a representative payee.

IV. Limitations on Who May be Appointed Representative Payee (Section 3b)

The proposed legislation permits a licensed/certified care facility, or its administrator, owner, or employees, to be appointed representative payees only "as a last resort" and "after good faith efforts have been made by the local social security office to locate an alternative representative payee." Proposed Section 205(j)(3)(B)(iii). The current regulations now provide

that such licensed care facilities are near the top of such preference lists. This priority should be maintained, rather than forcing efforts to obtain a representative payee who has little or no regular contact with the beneficiary. Once the facility or its principles have been licensed/certified, there should probably be a presumption that such individual will be a qualified representative payee.

We are similarly concerned about the potential burden imposed on the agency to locate "a suitable representative payee for each beneficiary for whom a suitable representative payee cannot be readily established" otherwise. Proposed Section 205(j)(4)(C). The legislation now under consideration also mandates that the local offices maintain a current list of all local public and non-profit community-based social service agencies willing to provide representative payee resources. The absence of such lists will be considered a failure to comply with other provisions of the Act, as amended, subjecting the Social Security Administration to significant penalties. While such a requirement is laudable, it will be impossible in certain areas for the Social Security Administration to comply.

In Phoenix, for example, there simply are no such public or private non-profit agencies willing and able to provide representative payee services. In Phoenix, the county public fiduciary is the only local resource of any sort, public or private, profit or non-profit, for qualified representative payees. Appointment of the public fiduciary as a representative payee requires processing through the civil court system, though, and the offices may not have unlimited capability to accept the number of referrals that could be expected.

An untapped source of potential payees are attorney-representatives who have already been involved in processing of the Social Security claim. The proposed bill, however, would likely disqualify such individuals as "creditors" due to the provision of services to the beneficiary. A possible exclusion is available if the Social Security Administration found that there was no risk to the beneficiary and "no substantial conflict of interest" between the relationships as attorney and representative payee. While this is not a preferable solution, it may allow for short-term institution of benefit payments pending location of an alternative payee, including through the public fiduciary's office.

V. Payments Made Directly to Beneficiary Under Certain Circumstances (Section 3c)

The proposed amendments allowing for direct payment to the beneficiary for whom an application has been made for appointment of a representative payee, again is both reasonable and necessary. There is an adequate exclusion for payment of lump-sum retroactive benefits, which would preclude wasting of otherwise limited resources until a determination can be made on the propriety of appointment of a representative payee. The further restriction requiring consideration only of "functional deficiencies," rather than merely the diagnosis, age, or eccentricity, should be extended to all cases where appointment of a representative payee has become an issue, except as discussed above in circumstances where the "disability" is due to substance or alcohol abuse. The additional requirement that the Social Security Administration undertake direct payment of immediate survival needs, though, must once more be analyzed in the context of an already depleted agency staff. The current employees would experience an incredible increase in work duties, requiring substantial re-orientation and training in areas with which they are not already familiar. This provision is another favorable proposal, but does not appear to incorporate practical difficulties in implementation with the presently limited staff and resources available through the Social Security Administration.

VI. Enforcement of Beneficiary Rights (Section 3d)

Termination or suspension of representative payee services is, once again, a real question that must be addressed. The proposed legislation, however, is not specific enough in its reference to a determination by "the Secretary." Proposed Section 205(j)(5)(A). There is no specification which level of the agency is authorized to make such a determination. There is, moreover, no particular directions to the Secretary that individuals accused of violations that may result in termination or

suspension of representative payee services are entitled to applicable due process guidelines, including the right to confront adverse witnesses and to file appeals of the administrative determinations. The only reference to appeal rights appears to be if the Social Security Administration determines there has not been a misuse of funds, in which case the beneficiary may protest further. The same rights ought to be provided to representative payees, especially since a substantial portion of the beneficiaries requiring payees in the first place are individuals with severe psychiatric/psychological problems.

Provisions for the Secretary making "every good faith effort...to obtain restitution of the misused funds," are certainly laudable. The problem, however, again is how such restitution is to be obtained. If the statute contemplates filing of a civil suit in the locality where the representative payee and/or beneficiary reside, necessary legal services must either be retained independently or provided through the Department of Health and Human Services or the United States Attorney's office. This will require an entirely new area of legal practice for those offices of legal counsel, and will not likely endear this Committee or the Congress to attorneys currently working for the federal government. The decision to file suit, moreover, will involve a difficult balancing of the costs of such litigation with the amount of misused benefits that can reasonably be recovered.

Similar factors should be considered in efforts to collect fines assessed on individual representative payees, as well as withholding of full or partial benefits to which a "convicted" representative payee is entitled. This provision should be clarified to reflect withholding of benefits to which the representative payee is independently entitled, rather than benefits to which the payee is entitled as a payee. If the representative payee receives benefits for more than one individual, those other benefits also should not be available to refund misused benefits for the victimized beneficiary. In the SSI program, the Social Security Administration may encounter legal obstacles to recovery of misused funds by decreasing already limited SSI payments to which the representative payee is directly entitled.

A further question yet unanswered is whether repayment of misused funds to the beneficiary will be in a lump-sum or by periodic installments. In either situation, the beneficiary entitled to SSI benefits should not be penalized for receipt of those funds or resources.

VII. Improved Monitoring, Accounting, and Recordkeeping (Section 4)

Phoenix Social Security Advocates has no recommendations to improve the provisions requiring a system that will enable the agency to enhance its monitoring/accounting functions with respect to the representative payee program. We cannot overemphasize, however, that such obligations will be imposed on employees of the agency who are already unable to provide complete, effective, and timely services to all applicants and beneficiaries. The statutory amendments cannot be analyzed in a vacuum, but must be viewed within the context of the present political environment at the Social Security Administration, particularly as it has been directed over the past few years by the Office of the Commissioner.

VIII. Feasibility Study (Section 5)

It is the understanding of our group that the Department of Veterans Affairs has previously charged administrative fees when acting as representative payee for beneficiaries of veterans' benefits. The Social Security Act, though, restricts the right to receive any fees for representing individuals before the Social Security Administration. The Department of Veterans Affairs would arguably be providing such services before the agency, and it is difficult to conceive how the Social Security Administration would be able to monitor ongoing fee charges if the Department of Veterans Affairs becomes an individual's representative payee for purposes of Social Security disability benefit payments.

The Department of Veterans Affairs, furthermore, would be the only agency allowed to charge fees, resulting in an unfair advantage over other private or public agencies that would other-


wise be capable of providing the same services. The feasibility study required by this bill should therefore be extended to include evaluation of any publicly funded non-profit organizations; state government or state government-funded agencies; and appropriately qualified/certified private non-profit or for-profit organizations. The Social Security Administration should be encouraged to permit state governments to fund, or assist with funding of, such agencies and organizations, including those that assist the developmentally disabled, mentally retarded, or other discrete segments of the disabled population. In addition, federal subsidies, through such sources as block grants, should be allowed to assist those states electing to fund alternative sources for representative payee services.

The legislative directive is simply for a feasibility study, and no viable source of representative payees should be excluded from consideration. The scope of the study should therefore be expanded greatly, to include, rather than exclude, all possibilities.

IX. Conclusion

The re-emphasis of the need for suitable representative payee services is greatly appreciated. As individuals representing numerous claimants for Social Security disability, old age, and auxiliary benefits, we are frequently frustrated by the inordinate delays encountered while the Social Security Administration resolves disputes about the need for a representative payee in the first instance, and then attempts to locate a suitable payee. There is an incredible dearth of resources in the Phoenix area, making the agency's job even more difficult. We fully anticipate there will be a major conflict between the needs of claimants/beneficiaries, the expressed desires of Congress in considering this legislation, and the ultimate actualization of policies and procedures by the Social Security Administration. In the past, the agency has implemented programs in minimal compliance with legislative directions, particularly by subtle program modifications. The results have been significantly decreased employee morale, regular attrition of experienced and qualified employees, a failure to replace employees leaving the agency, and a refusal to acknowledge the often overwhelming tasks required to process a Social Security claim effectively and with the greatest benefit to the individual claimant.

We remain ever hopeful that substantive changes will improve the lots of our clients. The disabled, elderly, and minor dependent children are often reluctant or simply unable to raise their voices loud enough to be heard by those in a position to provide needed assistance. As a group of people dealing with these continuing problems on a regular basis, we believe still that effective changes can be made in the system by working within the process established by the legislative and executive branches. Your attention to and consideration of our comments are greatly appreciated, and we hope that we have been able to contribute positively to your assessment of not only the proposed legislation, but the Social Security disability and retirement programs in general. Thank you again for this opportunity to address the Committee and its colleagues.


Joel F. Friedman
Chairman Social Security Advocate

Deborah Young
Secretary

Ruth Wootten
Subcommittee Member

TESTIMONY OF NEAL S. DUDOVITZ, DEPUTY DIRECTOR
OF THE NATIONAL SENIOR CITIZENS LAW CENTER
BEFORE THE UNITED STATES SENATE
SPECIAL COMMITTEE ON AGING

I. INTRODUCTION

I would like to thank Senator Pryor and members of the Special Committee for your invitation to provide written testimony on various proposals for protecting beneficiaries of the Social Security and Supplemental Security income (SSI) programs from abuse by representative payees. We are pleased that the Committee has recognized the serious problems that exist under the current representative payee program.

As part of our work, the National Senior Citizens Law Center (NSCLC) is regularly consulted by advocates for elderly and disabled beneficiaries who have encountered problems with SSA's representative payee program. Hundreds of situations of Social Security and SSI payee abuse have been brought to our attention from all over the country. Our experience suggest that overhaul of the Social Security Administrator's representative payee system is long overdue.

Indeed, in an effort to halt some of SSA's most egregious payee policies our office, in conjunction with Legal Services of Northern California, has recently filed a lawsuit against the agency. Our case, Briggs v. Sullivan, No. 89-0203 (E.D. Cal), seeks to eliminate SSA's policy of suspending benefit payments to eligible beneficiaries who, through no fault of their own, are unable to secure payees and to force the agency to pay funds to beneficiaries a second time when an uninvestigated payee absconds with benefits.

While we strongly believe that the federal court in Briggs will find Social Security's current suspense policy and lack of investigation of prospective payees unlawful, we also believe that beneficiaries will only be safe if Congress steps in to strengthen the Social Security payee program. Our work in Briggs has only reaffirmed our past experience that the payee system as it is currently operated by SSA is the direct cause of serious and irreparable harm to thousands, perhaps millions of beneficiaries. The time has come to correct SSA's unsupportable policies which are jeopardizing the lives of Social Security and SSI beneficiaries.

II. CURRENT PROBLEMS WITH SSA'S REPRESENTATIVE PAYEE PROGRAM

The Social Security Administration's representative payee program was enacted by Congress as part of the original Social Security Act to provide additional help to those beneficiaries who were unable to handle their own funds. Its purpose was undeniably benevolent.

And, following in that tradition many payees are honest, caring friends and relatives who are truly attempting to help persons in need. Those payees who voluntarily provide valuable assistance to children and adults who are unable to handle their own benefits should be saluted.

Despite those laudable efforts by some payees, as SSA now operates the representative payee program much of its benevolent purpose has been lost. Today a determination by SSA that an adult beneficiary needs a payee is more often than not tantamount to being sentenced to months as a homeless beggar or granting a payee a government approved license for financial abuse. In some communities in our nation private profiteers are virtually lining up at Social Security offices in the hope they can get their hands on a beneficiary's money by being appointed a payee.

The current abuses in SSA's system generally fall within four categories: (1) failure to provide benefits to beneficiaries' in need of payees; (2) failure to investigate and screen potential payees; (3) failure to monitor payees; and (4) lack of protections and remedies for beneficiaries.

A. Failure To Pay Benefits

Perhaps the most disturbing aspect of SSA's current system is the agency's deliberate decision to withhold benefits from beneficiaries -- leaving them, despite their benefit entitlement, homeless and starving on the streets. These results, which are dramatically illustrated by the stories of the plaintiffs in the Briggs suit, result from two specific SSA policies.

First, is SSA's practice of unilaterally suspending benefits from beneficiaries who need payees when no one is currently available to serve as a representative payee. Second, is SSA's corollary policy of placing the responsibility for finding a payee on the beneficiary, not the agency.

In suspending benefits of people who are clearly entitled to either Social Security or SSI benefits, the agency pays no attention to the needs of the individual. Rather, SSA has

simply concluded that because a person is unable to handle their funds, unless a payee is found no money will be paid. The agency never asks the question, "How will the beneficiary eat for 90 days while their benefits are withheld?" or "Where will a poor and disabled beneficiary, who has no other income, sleep while the search for a payee is in process?"

We believe there is no excuse for such inhumane policies. In our opinion SSA has no legal authority to "suspend" benefits on the grounds that a person needs a payee, but none can be found. Under current law the agency has only two choices once it has determined that that person is unable to manage their own benefits: pay the benefits to a representative payee or pay them directly to the recipient. Congress has never authorized the Secretary to withhold benefits because SSA cannot readily find a payee.

Similarly, there is no legal authority for the agency to demand that beneficiaries bear the responsibility for finding a payee. Indeed, as you can imagine, there is little logic in the agency first determining that someone needs a payee because they are unable to make rational decisions about spending their money; but, then expecting those same people to be able to size up the money management capabilities of third parties. More importantly, SSA's policy also ignores the reality that for thousands of beneficiaries in need of a representative payee, there is simply no one available who is able or willing to serve as their payee.

In combination with SSA's "suspense" policy, shifting the responsibility for finding payees to beneficiaries places an enormous pressure on beneficiaries to literally drag people in off the street to act as payees in order to get at least enough money to eat. Under SSA's current practices, beneficiaries are left with the unacceptable choice of either receiving no money for the month because they have no payee, or uncovering an unknown and perhaps unscrupulous person to be their payee. A few dollars from a shady person, perhaps a chance to sleep in a bed for a few nights, is often preferable to the terror of spending day after day, night after night on the streets.

B. Failure To Investigate Payees

As Senator Pryor's remarks in the Congressional Record reflect, Congress has already recognized that SSA has totally abandoned any system of investigating prospective payees.

Despite the explicit statutory language inserted by Congress in 1984 mandating investigation of payees, at the present time, SSA has no program whatsoever to investigate and/or screen potential payees.

Our clients, out of desperation, have brought alcoholics living on the streets and persons with known criminal records into social security offices and had those persons approved as payees on the spot. Local social workers and social service personnel report to us that SSA will approve anyone who walks in the door as a payee with no questions asked.

SSA's recent attempt to inquire about criminal backgrounds of payees only exemplifies the agency's total lack of understanding and commitment to a responsible program of payee investigation. Under SSA's "new" policy, revealed this Spring, claims representative now must ask prospective payees if they have a criminal record - a question not asked in the past. If, however, the prospective payee answers "no" to the inquiry no further action is taken. Apparently, SSA believes that people with criminal records who intend to misuse funds will simply admit to their intent when asked.

The failure to investigate payee applicants is even more troubling when it is viewed in light of SSA's policy of refusing to repay benefits to recipients when a payee misuses the funds. SSA contends that payment to a payee is equivalent to payment to the beneficiary. Thus, even when SSA's lack of investigation fails to uncover a known criminal record for fraud and the payee subsequently absconds with the beneficiary's funds, SSA will not repay one penny to the beneficiary. In short, the payee, whom SSA failed to investigate even in a cursory manner, goes scot free while the beneficiary, who is undoubtedly eligible for benefits, is left with nothing. And, SSA, the agency responsible for it all, sits on its hands.

Paying someone's benefits to a representative payee is, as this Committee understands, an important, if not critical decision for many beneficiaries. It affects where they live, whether they can eat, if they will have sufficient clothing, where they can go, etc. If SSA just gives the funds of these elderly and disabled beneficiaries to anyone who walks in the door, without any form of investigation, then the agency is courting disaster.

C. Failure to Monitor Payees

Consistent with its policy of refusing to screen payee applicants, SSA also takes a hands off approach when it comes to monitoring the performance of the representative payees that it does appoint. Once SSA sends a monthly check to a payee, the agency contends it has fulfilled its obligations to the beneficiary. SSA has demonstrated little or no interest in whether the payee absconds with the funds or uses them appropriately for the beneficiary.

Even when beneficiary's complain that they never received their funds SSA simply advises them that such a problem is a personal matter between the payee and the beneficiary. SSA has, the agency claims, no role to play in aiding the beneficiary obtain their benefits.

As this Committee is well aware, SSA's failure to monitor payee performance has a long history. In 1979 SSA unilaterally halted even the most cursory examination of payee performance. At that time, our office, along with Legal Services of Western Oklahoma and Greater Boston Elderly Legal Services, filed a suit, Jordan v. Heckler, which challenged SSA's failure to provide any mechanism for financial accounting of representative payees.

In 1983, the Jordan court ruled that the constitutional requirement of due process of law demanded that SSA annually conduct accountings of all payees. Although SSA has tried diligently to get the federal court order in Jordan overturned or limited, they have been unsuccessful. Now, under the specific direction of the federal court, SSA has finally been ordered to conduct accountings for all representative payees.

Unfortunately, the order in Jordan only begins to address the problem, it does not solve it. The accounting form accepted by the Jordan court is actually a one-page questionnaire which asks, but does not follow up on, a few simple questions. Payees are not required to explain their disbursements or demonstrate what happened to the money. Indeed, to be caught, an unscrupulous payee must virtually admit they took the beneficiary's funds!

Despite the fact that SSA's own studies have revealed that misuse or unsatisfactory payee performance occurs with nearly 20% of the payees, the agency continues to take no action to add new procedures to the Jordan mandated accountings. There

is little, if any, effort made to fully examine and evaluate reports of misuse. Claims' representatives rarely discuss allegation directly with payees or beneficiaries; nor, is the more expansive accounting form (Form 624) used as it was intended, to monitor situations where reports of abuse and misuses have occurred.

The experience of our clients and their legal services advocates have also taught us that misuse is substantially more likely to occur when the representative payee is either a non-relative, institution, or person who is a payee for more than one beneficiary (i.e., the "multiple" or "professional" payee). It is obvious that in these specific high risk situations, the current simple annual accounting forms are not sufficient to control misuse and abuse by representative payees. Unfortunately, SSA has refused to recognize this reality.

D. Lack of procedural Protections and Remedies

Despite the determination that a beneficiary needs a payee results in a recipient's total loss of control over their only source of income, the process has always been handled secretly and without many of our usual procedural due process protections. Although beneficiaries stand to lose significant rights when SSA decides they need a payee, there are virtually no rules as to how that decision is made; nor, is there a meaningful method for reviewing those determinations. Moreover, decisions as to the mental and physical capabilities of beneficiaries are being made by thousands of SSA employees in field offices who have absolutely no training or expertise in evaluating the needs of elderly or disabled people.

The notices used by SSA to inform beneficiaries of their need for a payee or suspension of benefits are abysmal. The notices neither advise recipients of their right to challenge SSA's decision to suspend benefits nor of the determination that a payee is necessary. The notices are devoid of any meaningful information about people's rights.

Correspondingly, there are no reasonable remedies for beneficiaries when SSA or the payees it appoints fail to carry out their duties. When SSA neglects to either properly investigate or supervise payees and payees in turn steal thousands of dollars in benefits, the agency stands idly by claiming that a beneficiary's only remedy is a private action against the payee.

A virtually useless remedy for a beneficiary who has been deemed unable to make reasonable financial decisions.

Moreover, even though it is possible for payee misuse cases to be referred to the U.S. Attorney for suit, during the last two fiscal years SSA only referred 10 cases in the entire country to those offices. Obviously, this is a remedy only on paper.

III. COMMENTS OF S.1130 - THE "REPRESENTATIVE PAYEE ABUSE PREVENTION ACT OF 1989"

We applaud Senator Pryor and the co-sponsors of S.1130 for recognizing the serious failures of SSA's payee system and taking strong and significant steps to correct those abuses. We believe S.1130, if enacted, will go a long way towards restoring the representative payee program to its original benevolent intent.

We would like to offer for consideration several comments on the specific provisions of the bill:

A. Section II: Screening and Investigation of Payees.

This Section, we believe, is critical to correcting the problems encountered by our clients. Unless SSA is required to seriously screen and investigate proposed payees, we will never halt the rampant financial abuse by representative payees.

Since SSA has failed to establish, on its own, a reasonable system for screening and investigating payees, we believe that Congress must, as S.1130 does, mandate a specific system setting forth the minimal elements and standards for a proper investigation. All of the standards enumerated in S.1130 are, in our opinion, necessary to insure that payees are properly screened.

We suggest, however, that the Senate consider adding three additional elements to the investigation process. First, we believe that the only meaningful way in which people with known criminal records can be screened out of the payee system is through the use of fingerprints. Simply inquiring about a person's criminal background, as the Secretary currently does, or leaving the feasibility of such an inquiry up to the agency who regularly has appointed payees with known criminal backgrounds, is not, in our judgment, sufficient.

We believe that by requiring all payees to submit to fingerprints and then checking those fingerprints with local po-

lice agencies, is the only reasonable deterrent in appointing people with criminal records as representative payees. This should be a simple and relatively cost free examination.

We do not believe, as some have maintained, that requiring people to submit fingerprints will deter competent persons from serving as payees. People who serve in fiduciary capacities such as notaries, guardians, applicants for the bar examination, are often asked to submit their fingerprints to authorities.

Second, we urge the Committee to consider an absolute ban on any creditor of a beneficiary serving as that beneficiary's payee. This would prohibit boarding home operators, liquor store owners, nursing homes, bartenders, and some state institutions from being a payee.

In our opinion, payees who have a self-interest in receiving a portion of the beneficiary's monthly check have an explicit conflict of interest with the beneficiary. Such persons cannot, by definition, carry out their fiduciary duty to insure that the Social Security and SSI benefits are spent solely in the interest of the beneficiary. Those situations are rife for abuse as the payee begins with a strong personal incentive to take and use the recipient's benefits.

Third, we recommend that Congress require SSA to provide, in each local office, a specific person who is charged with the responsibility for determining when a beneficiary needs a payee and identifying the proper person to serve in that capacity. We believe it takes special training and education to make such critical determinations about people's capabilities. It is important to have reasonable standards as S.1130 proposes, but it takes caring, intelligent and trained people to make those standards operate on a day-to-day basis.

Having a special person with representative payee responsibilities in each social security office should also be coupled with a provision requiring SSA to develop a program to train prospective payees and provide consultation and assistance for new payees to assure they fulfill their responsibilities. In short, the representative payee program should be given high priority in every social security office, rather than be relegated to the bottom of the barrel as it now occurs.

B. Sec. III: Safeguards to Protect Beneficiaries

1. Notice

The Notice provisions are a significant improvement over the current system. With the simple, timely, and detailed explanations required by these provisions of the bill, beneficiaries will finally be able to understand what actions the agency intends to take and correspondingly beneficiaries will be able to protect themselves from improper actions by SSA.

2. Limitations on Who Becomes a Payee

We welcome the requirement that some creditors be prohibited from serving as payees. As we noted above, we have long urged the Congress and the agency to ban such persons from becoming payees as they are inherently in a conflict of interest with the beneficiary they are supposed to serve.

We are concerned, however, that the bill's exceptions to the general rule, particularly allowing nursing homes and board and care facilities to serve as payees, provides too broad of an opening for abuse.

Our experience, and that of our clients, indicates that nursing home operators and board and care providers who serve as payees are primarily interested in securing the recipients' check for themselves and not in meeting the recipients' basic needs. The reality is, as I think the Committee understands, those facilities are interested in and agree to serve as payees because it is the one sure way to get their hands on the payee's funds.

We recognize that by banning creditors from serving as payees, particularly to the extent it prohibits nursing homes and board and care facilities who are currently payees from continuing, it may significantly limit the availability of payees for many beneficiaries. We believe that gap can more properly be filled by the creation of a Congressionally mandated state system of "payee-of-last-resort."

Such a program would provide representative payees through an appropriate state agency or state certified non-profit organization. Congress would place explicit limitations on who could be licensed by the state to eliminate the possibilities that private profiteers will become involved. In that manner, this state run program will assure that if no friends or relatives are available to serve as payees, a reputable entity with no financial conflict will be available to take over.

We believe that a system of back-up payees can be created within the current social service structure and without any significant additional funding. Such a program can be tied to existing federal social service programs such as those funded by the Older Americans Act, special programs for the developmentally disabled or the Community Mental Health programs.

3. Direct Payments

Perhaps the most important provision of S.1130 is the section clarifying the Secretary's obligation to pay benefits directly to recipients until proper payees can be found. There is, in our opinion, no reason why elderly and disabled beneficiaries who meet every requirement for SSI or Title II benefits should end up starving on the streets, while the government holds on to their funds.

The bill leaves no doubt that the current suspense policy must be halted for any beneficiary who has previously been in direct pay status. However, the bill does not completely prohibit the suspense policy for persons who are newly eligible recipients.

In the latter case, the bill allows the Secretary to suspend benefits if the Secretary believes that substantial harm will result under direct payment. We believe this exception should be eliminated. There are several reasons for our recommendation:

1) We believe that it is always in the best interest of the recipients to have sufficient funds to obtain the basic necessities of life. It can never help someone to leave them homeless and starving, as will still be possible if the suspense system continues for some beneficiaries.

2) Providing any possibility of suspending benefits will ultimately result in suspensions for everyone. The Secretary has already indicated by past actions that he believes that anyone who needs a payee and does not have one will be harmed by direct payment. Indeed, he has defended his policies on exactly those grounds in Briggs. We expect that if S.1130 is enacted as now proposed, that the exception will swallow the rule.

3) SSA personnel have no expertise or ability to make the critical judgments demanded by the current provision of the bill. The bill requires a sophisticated analysis of personal

needs which must be made by highly trained social service personnel. SSA claims representatives primary task is determining financial eligibility, not subjective determination as to functional ability of recipients. Those determinations are better left to state and local social service providers who are more knowledgeable in this area.

4) It is a mistake to create yet another form of payment to meet the immediate needs of people whose benefits are suspended. Social Security and SSI programs are complicated enough, especially when a representative payee is required, without adding yet another system of payment for immediate needs. More importantly, with past budget restraints and reduced personnel, it is highly unlikely that the agency will be able to timely administer a new emergency payment system for these selected beneficiaries. Again, the result will be, in our opinion, that elderly and disabled recipients are left out in the cold while an understaffed local office, ostensibly trying to avoid harm to the beneficiaries, tries to find proper payees.

On the other hand, a complete ban on suspending benefits because of the unavailability of payees, assures that no one entitled to benefits will be made destitute by SSA. Our proposal is simple to administer and does not require the agency to create a whole new social service structure.

We have also, as we noted above, proposed that Congress respond to the need for payees by mandating a state system of "payee-of-last-resort." With such a system in place, there would rarely be a situation where someone who needs a payee is unable to find one. Thus, the possibility of suspending benefits would simply not be raised.

4. Enforcement

The enforcement provisions of the bill will certainly make it more likely that beneficiaries who lose funds through payee misuse will have their benefits restored. We are particularly supportive of the provisions requiring the Secretary to repay lost funds if the misuse stems from SSA's failure to investigate or monitor the payee.

We believe, however, that this provision should be broadened to require repayment in all cases where the Secretary has concluded that misuse occurred. Under the current system when misuse takes place the only person who suffers is the bene-

ficiary who totally loses the benefits he or she is clearly entitled to receive under the law.

We think the one person least able to afford to be harmed are the elderly and disabled recipients who by the Secretary's own definition are unable to make financial determination for themselves. Only by a total shift of responsibility will the financial loss rest on the shoulders of the party who has the greatest ability to absorb it and the greatest incentive to take action to prevent financial abuse - SSA.

Thus, we believe that whenever a factual decision is made were misuse occurred the agency should immediately repay to the recipient the funds that were misused by the payee. In turn, SSA should have sufficient authority to pursue the payee and gain repayment for the agency. Since SSA will know that if a payee misuses money the agency will have to repay the funds, that should also be an incentive for the agency to undertake proper investigation and monitoring to avoid payee misuse.

Finally, we endorse the provision of S.1130 allowing a recipient an administrative hearing if the agency concludes that no misuse occurred. We also note that providing administrative review of misuse determinations fits into the remedial scheme we have outlined. Because a finding of misuse should require SSA to immediately repay the beneficiary and because the Secretary would be given increased authority to pursue payees who misused money, a finding by the agency of "no misuse" would have an even greater impact on a beneficiary. As a result it is only fair to provide beneficiary's with a means to appeal such a decision.

C. Sec. IV: Monitoring, Accounting, And Record Keeping

These provisions of the bill serve, we believe, two purposes. First, it amends the current law to make it conform to the constitutional accounting requirements set forth by the Jordan court. Under the bill, like the court order, SSA will be mandated to undertake annual accountings for every payee. In addition, the Secretary will have to develop a statistically valid system of review of the accounting program -- something the Secretary has refused to do in the past.

Similarly, the bill continues to allow the Secretary to use a different method of monitoring for institutions that serve as payees. Like the court in Jordan, the bill permits the

Secretary to continue to use his On-Site Review program to evaluate the performance of institutions that serve as payees. We note, however, that the bill does not set any minimums for SSA's monitoring of institutions. Both the Jordan court and Congress in its 1984 payee amendments indicated that any system of institutional monitoring by SSA must include a review of every institution at least once every three years. We recommend that a similar requirement be inserted in S.1130.

Finally, we wholeheartedly endorse the new provisions mandating a more strict monitoring system for the high-risk payees - i.e., those who are more likely to misuse beneficiary's funds. We agree that the groups identified in the bill, nursing homes, board and care homes, and non-relatives all fit within that category.

There is also, we believe, a special group of non-relatives - those who serve as payee for more than one beneficiary -- who should be monitored even more closely. The bill as now written should allow even greater scrutiny of this identifiable group; but, we urge Congress to specifically mention this group in the statute to insure that the Secretary will not overlook them.

Our only concern with these new monitoring provisions for high risk payees is the indication that the Secretary need not immediately implement the system. We understand the need to carefully develop these new programs, but while that is happening the payees continue to abuse beneficiaries. More importantly, this is not a new problem. The misuse by high risk payees has been well-known by people who worked in this area, including SSA officials, for at least ten years. The time is ripe for action, not further study.

IV. CONCLUSION

Again, I want to thank the Committee for inviting us to submit these comments and proposals. We are hopeful that after a decade of work on the problems of payee abuse in the Social Security and SSI programs, the enactment of laws to help our clients is now on the horizon.

