

PREPARED REMARKS OF
Tom A. Coburn, Ranking Member
U.S. Senate Homeland Security and Governmental Affairs Committee

“Social Security Disability Benefits: Did A Group of Judges, Doctors and Lawyers Abuse Programs for
the Country’s Most Vulnerable?”
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Today’s hearing is the second in a series looking at deficiencies in the Social Security Administration’s handling of disability claims. Our first hearing, held in September 2012, looked broadly at the weaknesses in decisions made by the agency’s administrative law judges. This afternoon we focus on the findings of our two-year investigation into the Huntington, West Virginia Social Security Office of Disability Adjudication and Review. Specifically, the investigative report we are releasing details how one lawyer, one judge, and a group of doctors financially benefited by working together to manufacture bogus, perhaps fraudulent, medical evidence to award disability benefits to over 1,800 people.

I would like to thank my Chairman Tom Carper and the Chairman and Ranking Member of the Permanent Subcommittee on Investigations, Sens. Levin, and McCain for their support and hard work on this investigation. Without their help, this work and hearing would not be possible.

Before we get to the findings of our investigation, I want to extend a thank-you to the four courageous individuals sitting in front of our Committee this afternoon. Without them, we would not be here today. These women – Jamie Slone, Melinda Martin, Sarah Carver, and Jennifer Griffith – saw the disability programs being exploited and were brave enough to bring their story to the Committee. I commend all of you and hope others take up your example to speak-up when you see wrongdoing. Congress needs to know where the problems are in our government so they can be addressed, and hopefully changed for the better. Again, thank you to each of you for traveling to Washington, D.C. to tell your story. I very much look forward to hearing from each you.

The issues we are going to discuss today, like many of our country’s current problems, began with Congress. Only here could we take something as important as the Social Security disability programs and let politics hurt those most in need. By this I mean that for a long time, Congress has acted as if getting people onto the program is more important than doing oversight of the program. In practical terms, this has meant pushing SSA to eliminate its hearings backlog with little interest in how that is done.

This point was driven home clearly the last time the Senate considered a nominee to head the agency. During the 2007 confirmation process for former Commissioner, Michael Astrue, many senators used the chance to criticize how long it took for claimants to get a hearing in front of the agency’s Administrative Law Judges (“ALJs”). In response, Mr. Astrue pledged to work to reduce the backlog and wait times for hearings.

Shortly after he was confirmed, the agency rolled out an aggressive plan to reduce the backlog. At bottom, the backlog plan asked agency employees to do more, faster. While the agency hired more ALJ’s to carry the load, it also pressured the ALJs to decide more cases by spending less time on each case. As part of the plan, SSA pushed all ALJs to decide between 500-700 cases per year, many of which contained thousands of pages of medical evidence. The agency also went so far as to set daily goals for ALJs. In 2011 and 2012, each ALJ was to decide 2.37 cases per day. To speed the process further, judges were encouraged to skip hearings altogether and just write the opinions if felt it was warranted.

The agency made clear that moving a high volume of cases was *the* top priority. On the surface, the plan appeared to work.

Over the next few years, the agency saw an incredible improvement in the time it took to issue a decision by an ALJ. Wait times for ALJ hearings dropped from 514 days to as few as 353 days by 2012. The number of ALJ decisions likewise increased from roughly 575,000 in 2008 to more than 820,000 in 2012 – a 43 percent increase. By February 2011, Commissioner Astrue proudly announced that under his watch, the agency had “reversed a trend of declining service and an increasing backlog in our disability workloads.”

With so much emphasis on the *quantity*, the agency’s attention to oversight of the ALJ decisions diminished. The report the Committee is releasing today details just how much the quality of the decisions suffered in one particular office – SSA’s Huntington, West Virginia Office of Disability Adjudication and Review. The report describes how one lawyer, several judges, and a group of doctors took advantage of the situation and exploited the program for their own personal benefit. Together, they moved hundreds of claimants onto the disability rolls based on manufactured medical evidence and boilerplate decisions. As a result they saw millions of dollars flow their way, promotions at work, and had bad behavior ignored.

The ALJ at the center of this mess was Judge David B. Daugherty. Over the course of his tenure with the agency he became one of most prolific ALJs for the agency in the country. During 2010, the last full year he decided cases, Judge Daugherty was the third –highest producing ALJ out of more than 1,500 at SSA. In that year alone he decided 1,375 cases and awarded benefits in 1,371 with an approval rate over 99.7 percent. He only denied four cases all year.

He was outgunned only by Frederick McGrath of Atlanta, Georgia who decided over 3,200 cases and Charles Bridges of Harrisburg, Pennsylvania who approved nearly all of his 1,855 cases.

Many of Judge Daugherty’s peers, however, questioned how it was possible to decide so many cases when most others struggled to finish a third of that. When asked by a fellow ALJ how he was deciding such a high volume of cases, Judge Daugherty responded “you’re just going to have to learn which corners to cut.”

To cut those corners, our investigation found that Judge Daugherty focused on cases from one attorney, Eric C. Conn of The Conn Law Firm. A self-described multimillionaire, Mr. Conn’s law office is located in Stanville, Kentucky; his practice focused almost entirely on clients seeking Social Security disability benefits. Early on, Mr. Conn became known for his aggressive marketing, with billboards everywhere along the highways of Stanville and throughout Eastern Kentucky. Witnesses interviewed by the committee said you could not listen to the radio or watch television without seeing his commercials.

By all accounts his marketing efforts worked. By 2010, Mr. Conn was the third highest paid disability attorney in the country, despite working in a town with only 500 people. In 2010, Mr. Conn received almost \$4 million in attorney’s fees from the agency. The only other attorneys receiving more from SSA were Charles Binder of the Binder & Binder firm, which received \$22 million, and Thomas Nash of Chicago who received \$6.3 million.

However, as our investigation uncovered, there was much more to the story than Mr. Conn’s advertising. Mr. Conn, Judge Daugherty, and several doctors carried out a sophisticated plan to ensure claimants would be approved for disability, relying on questionable – and in my opinion, likely fraudulent – methods. We will turn next to the plan they carried out.

For the plan to succeed, the top priority was getting Mr. Conn’s cases in front of Judge Daugherty. Generally, whenever a claimant is denied benefits and then appeals to an ALJ, SSA sends the case to

whichever office is closest to where the claimant lives. This protects claimants who might otherwise have to travel great distances, which can be difficult for someone who is disabled.

Mr. Conn, however, discovered a way to ensure his cases would always go to the Huntington Office. He would require them to sign a waiver, requesting their cases instead go to SSA's Prestonsburg, Kentucky office – a satellite of the Huntington office located near the Conn Law Offices. The Prestonsburg hearing office is staffed by Huntington ALJs who travel there once a month. And so, no matter where the claimant lived their disability claim would be assigned to a Huntington ALJ on appeal. Directing the cases from there to Judge Daugherty, however, would take additional effort.

In the normal course, agency rules require cases be assigned to ALJs on a rotational basis with the oldest cases assigned a hearing date first. Yet, at the moment a case arrived in the office, but *before* it was assigned, Judge Daugherty would at times intercept Mr. Conn's cases and assign them to himself. If cases would slip past and get assigned to another judge, Daugherty would go into the computer system and move it to his docket.

Some in the SSA office began to notice what was happening and brought it to the attention of the office's chief judge, Charlie Andrus. Only, despite having the issue brought to him repeatedly over a period of ten years, Judge Andrus never once stopped it.

By approving a large volume of Mr. Conn's cases Judge Daugherty met his agency-mandated monthly quota with very little effort.

According to documents and committee interviews, each month Judge Daugherty and Mr. Conn would coordinate on a list of his clients to approve. The key, however, was that he would only approve Mr. Conn's clients if he provided the judge with one additional piece of evidence that showed they were disabled.

And so every month, Judge Daugherty would call Mr. Conn's office to let them know just what kind of evidence he needed for each client. On the call, Judge Daugherty would start by relaying the name and Social Security number of each person he was ready to approve. He would then say whether the new piece of evidence should relate to a "mental" or "physical" problem. The lists would then be typed up and saved on computers at the Conn Law Firm. Mr. Conn's staff referred to these monthly lists as the "DB Lists" after the judge's nickname, D.B. Daugherty.

The Committee obtained DB Lists from June 2006 through July 2010. The lists contained as many as 52 claimants each month. In total, the DB Lists from that time period contained the names of 1,823 people who were approved for disability benefits.

After Judge Daugherty told Mr. Conn the kind of medical evidence he needed, the next step for Mr. Conn was to ensure a doctor provided it. Fortunately for Mr. Conn, he had a crew of paid doctors ready to provide what he needed.

To find doctors willing to go along with him, Mr. Conn searched the Internet for ones with checkered pasts. Those in his circle had histories of malpractice and some had medical licenses revoked in multiple states. Until his death in 2010, Mr. Conn's "go to doctor" for physical ailments was Dr. Frederic Huffnagle. While practicing as an orthopedic surgeon, Dr. Huffnagle was the subject of numerous malpractice lawsuits and had his medical license revoked in at least one state.

Since Dr. Huffnagle lived four hours away, Mr. Conn arranged for him to come to town for two days each month and examine his clients in a medical suite in his law office. Clients were scheduled for exams in fifteen minute blocks and the doctor would meet with up to 35 clients each day.

The medical report Dr. Huffnagle gave Mr. Conn was modest, at best. Dr. Huffnagle, as well as the others, would provide brief reports about the visit and a form describing the claimants' "residual functional capacity." This second form is commonly known as an "RFC" and is a key document used by all SSA judges. An RFC describes a claimant's limitations in performing any job in the national economy – the agency's standard in determining whether a claimant was entitled to benefits.

To understand the problem with the RFC's filled out by Dr. Huffnagle, it is important to understand what they contained. For each claimant, the RFC asked the doctor to determine a few basic things:

- the amount the claimant could lift or carry; and
- the number of hours the claimant could sit, stand or walk in an 8 hour workday

The RFC also required the doctor to determine how often the claimant could perform 22 other activities by marking one of four answers: never; occasionally; frequently; or constantly. Given the vast range of answers Dr. Huffnagle could provide on this form about the claimant, it would be nearly impossible for two claimants to be found with the exact same limitations. The chances of two RFCs being filled out the exact same way is next to impossible.

Yet, somehow, Dr. Huffnagle found that his patients almost always had the same limitations. **90 percent** of the time, Dr. Huffnagle signed one of just 15 different versions of the form. For just one version he frequently signed, Dr. Huffnagle reported **97 claimants** had the exact same limitations.

This was no coincidence. Our investigation found this was a planned step in the process for getting Mr. Conn's clients onto disability. Mr. Conn had 15 versions of the RFC completely filled out before any doctor visit took place. He cycled through them, assigning one of these 15 pre-filled RFCs to people in the order they came through his door, even if it had nothing to do with their claimed limitations. The only thing that changed was the name and Social Security number on the top of the page. Mr. Conn then forwarded the opinion and the RFC to Judge Daugherty.

While agency rules require ALJs to carefully review a claimant's entire medical file and write a comprehensive decision, Judge Daugherty did otherwise. Based on the decisions we reviewed, his opinions would routinely cite only a single piece of evidence – namely, the reports from Mr. Conn's doctors. As such, his opinions were much shorter and less detailed than those of other ALJs. Almost all of them included a boilerplate paragraph that concluded, quote:

Having considered all the evidence, I am satisfied that the information provided by Dr. Huffnagle most accurately reflects the claimant's impairments and limitations. Therefore, the claimant is limited to less than sedentary work at best.

This was remarkable for two reasons. One, a claimant's case file can be hundreds of pages – if not thousands of pages – long. For a judge to say the only piece of evidence worth looking at is the one paid for by the claimant's lawyer is absurd.

Secondly, before a claimant ever gets to the ALJ level, most have already been evaluated and denied by the agency *twice*. Judge Daugherty's opinions generally ignored the hard work of other agency decision-makers.

In the opinions we reviewed, Judge Daugherty rarely strayed from a basic format. In fact, most of his decisions were identical to one another, with only small portions changed. As such, he was able to write a lot of decisions with little effort.

While Dr. Huffnagle passed away in October 2010, the same RFC forms he signed continued to be submitted by other doctors, several of whom we will hear from today.

We reviewed 102 RFCs signed by **Dr. Herr** and **94 percent** were identical to RFCs Dr. Huffnagle signed. Of the 10 RFCs we reviewed signed by **Dr. Ammisetty**, nine were identical to the prefilled forms used by Dr. Huffnagle.

Identical RFC forms were also used by doctors examining Mr. Conn's clients for mental impairments. For these, Mr. Conn often sent his clients to see Dr. Brad Adkins. Adkins would meet the clients, write up a short report and submit a mental RFC. This RFC required Dr. Adkins to rank the claimant with regard to 15 different abilities, such as "follow work rules" and "behave in an emotionally stable manner." The form required Dr. Adkins to rank each ability the following ways: unlimited; good; fair; poor; or none. Once again, finding two identical RFCs should be next to impossible. Yet, we found that 74 percent of the RFC's signed by Dr. Adkins were one of just five different forms.

These five forms came from Mr. Conn's office already filled out, but Dr. Adkins told Committee investigators he routinely signed. Only the names and Social Security numbers were changed. And just as before, Judge Daugherty would cite only these documents when awarding benefits to Mr. Conn's clients.

It would be useful now to turn back to the issue of why these individuals did what they did. The short answer is that each of them – Mr. Conn, his doctors, Judge Daugherty and Judge Andrus – benefited in different ways, both personally and financially.

Mr. Conn made millions. For claimants on the DB Lists from just 2006 to 2010, Mr. Conn was paid **over \$4.5 million** by the Social Security Administration in attorney fees. In 2010 alone he earned **over \$3.9 million** for all of his cases, including those from Judge Daugherty.

Mr. Conn's doctors also benefited handsomely. Mr. Conn paid his doctors up to \$650 per claimant, helping them earn considerable fees. For the four years of records the committee obtained, Mr. Conn paid **Dr. Huffnagle almost \$1 million** and **Dr. Herr was paid more than \$600 thousand**. Dr. Adkins was paid nearly \$200,000 for his work.

And Judge Daugherty took full advantage of his freedom. The running joke in the Huntington office was if you wanted to find Judge Daugherty, don't bother looking in his office. When fellow ALJs complained about Judge Daugherty taking advantage of time and attendance rules, the agency looked the other way. His big numbers effectively let Judge Daugherty do whatever he wanted.

Finally, as the Huntington office rose to be the second most productive office in the agency, office management and ALJs received salary increases. Some of the office management even received bonuses for their productivity. Judge Andrus received national recognition when he was tapped by the agency to mentor other ALJs across the country and then promoted to Assistant Regional Chief Administrative Law Judge.

While lawyers, doctors were getting rich by exploiting a broken program, the real victims were the claimants and the American taxpayer.

The *claimants* suffer because we don't do any favors when we wrongly award benefits. While the disability programs have tremendous upside, there is a real risk we needlessly sentence someone to a lifetime of dependency.

At the same time, the American taxpayer suffered. For just the claimants listed on the DB List, Judge Daugherty approved **an estimated \$546 million** in lifetime federal benefits. For all of his cases, Judge Daugherty awarded \$2.5 billion in lifetime benefits in his last six years. With the disability trust fund scheduled for exhaustion in just a few short years, we cannot afford to handout half of a billion dollars mistakenly.

Probably the most troubling issue our investigation uncovered, however, is what happened when details of this plan started to become public. In May 2011, a reporter named Damian Paletta with the *Wall Street Journal* ran a story about the relationship of Mr. Conn and Judge Daugherty. Along with Judge Andrus, Mr. Conn and Judge Daugherty responded by carrying out what appears to be an elaborate attempt to cover up the truth from SSA and the American people.

After the story ran, Judge Daugherty and Mr. Conn made the unusual decision to speak with each other using only pre-paid, disposable phones. We were told by Mr. Conn's former employees this was to keep their conversations from being tracked.

For his part, Judge Andrus conspired with Mr. Conn to retaliate against Ms. Carver, here to testify today, who he believed was behind the *Wall Street Journal* article. Their plan was to follow and film Ms. Carver on days she was working from home in an attempt get her fired for violating agency telecommuting rules. Despite several attempts, they were never able to find Ms. Carver doing anything wrong. Once the agency discovered what was going on, they placed Judge Andrus on administrative leave.

A final troubling finding was the systematic destruction of documents once allegations began to surface publicly. Both Mr. Conn and the agency took unusual steps to destroy documents potentially related to a known, open congressional investigation. After the *Wall Street Journal* article, the Committee found that Mr. Conn had hired a local shredding company to destroy over 3 million pages of documents. His former employers informed us he shredded all hard copies of the DB Lists along with a warehouse full of files. He had another employee destroy all the office computers, along with the hard drives, in a massive bonfire. Ms. Slone also noted a number of emails from Judge Daugherty to Mr. Conn mysteriously went missing. The agency, for its part, could not find any of Judge Daugherty's emails, either.

While Mr. Conn was destroying documents, the agency approved the purchase of personal shredders for the offices of Huntington management. Keep in mind, this occurred in the middle of a congressional investigation when the agency was legally obligated to preserve all relevant documents. Sen. Levin and I immediately asked the local SSA OIG agent to seize the shredders, which he did. Why Huntington management allowed an office under investigation to buy four personal shredders is a question that needs to be answered. When my staff asked the office's top judge why he approved the purchase of shredders during ongoing criminal and congressional investigations, he said he hadn't even considered that it might be a problem. That is unacceptable.

We can't lose sight of why we are here today. This bipartisan, two-year investigation shows that Congress needs to update the laws and regulations governing SSA's disability programs. Judge Daugherty, Mr. Conn and his doctors clearly stretched – and possibly broke – the agency's rules. But attorneys using doctors to provide bogus medical evidence is not just isolated to Mr. Conn or even Huntington, West Virginia. Just last year, I released a report that found much the same thing happening in three other areas of the country.

And much like I began, I will end by noting Congress continues to be the problem. With the clock ticking on the agency's trust fund, some in Congress refuse to acknowledge the disability programs are broken and are in dire need of significant oversight.

One simple reform that would make a big difference is including a professional from the Social Security Administration to represent the government (and ultimately, the American taxpayer) in decisions made by ALJs. This reform would bring a needed balance to both hearings and decisions at the ALJ level of appeal, which is especially true now that most claimants have representation. As we learned in our previous report, some claimant attorneys withhold evidence from the ALJ showing the claimant's condition improved. A government representative would help make sure no evidence is overlooked.

While the ALJ is tasked with also representing the interests of the government, he is clearly outnumbered. Then add agency management breathing down the ALJ's neck to meet monthly quotas for deciding cases. A representative for the government would bring needed balance to the ALJ's decision and ensure the ALJ considered all medical evidence in the claimant's file.

This reform has long been a recommendation by the Social Security Advisory Board and is fully supported the Association of Administrative Law Judges. This is one area where Congress can find common ground on needed reforms.

We also need to make sure these ALJs have the tools they need to render the proper decisions. The agency's recent forbidding the purchase of symptom validity testing, like the MMPI, is ridiculous. These tests determine if an individual is malingering, or lying, about their symptoms. The SSA OIG recently determined the agency stands alone in not using the MMPI, with everyone else finding it a useful tool: other agencies; private disability insurers; academics; and the medical community at large.

I hope today's findings encourage others to take a hard look at this program and support much needed reforms for this program that last year supported almost 11 million Americans with \$136.9 billion.

I also want to encourage other Americans to follow the example set by these four brave women sitting in front of me today. If you see fraud in the disability programs, go to my Senate website and let me know about it.

I appreciate the witnesses being here today and look forward to their testimony.